CHAPTER 5

THE COLONIAL LEGACY OF DISABILITY: ANALYSING HISTORICAL PERSPECTIVES AND DISABILITY LEGISLATION IN ZAMBIA – 1890S-1960S

Dumisani J Ngoma & Josephine Mwenda***

Summary

This paper offers a historical overview of the perception and treatment of persons with disabilities in Zambia, focusing on the pre-independence era. It begins with an examination of cultural understandings of disability prior to British colonisation and then explores how colonial rule influenced these perspectives. A significant finding is the enduring impact of colonial mental health legislation on mental healthcare and support for individuals with cognitive disabilities. By tracing disability narratives through this pivotal period, the paper provides insights into how socio-cultural attitudes have shaped the real-world experiences of persons with disabilities over time.

1 Introduction

Zambian law is characterised by a pluralistic system that integrates various legal traditions and social influences.[1] It comprises of the Constitution, laws enacted by Parliament, statutory instruments, Zambian customary

* LLB (University of Zambia); MA (Indiana University of Pennsylvania); PhD (University of Strathclyde); Lecturer Mulungushi University, School of Business Studies, Department of Law, Labour and Human Resource Management.

** LLB (Mulungushi University); LLM (University of Cape Town); Lecturer Mulungushi University, School of Business Studies, Department of Law, Labour and Human Resource Management.

1 M Ndulo 'African customary law, customs, and women's rights' (2011) 18 *Indiana Journal of Global Legal Studies* 87.

DJ Ngoma & J Mwenda 'The colonial legacy of disability: Analysing historical perspectives and disability legislation in Zambia – 1890s-1960s' (2024) 12 *African Disability Rights Yearbook* 93-115
https://doi.org/10.29053/adry.v12i1.5531

law, and applicable British statutes.[2] Disability rights in Zambia are primarily governed by the Persons with Disabilities Act[3] and the Mental Health Act.[4]

Historically, individuals with disabilities have been subjected to systemic discrimination and exclusion. During the Nazi era, for instance, over 200 000 children and adults with disabilities were systematically murdered under the guise of eugenic justification.[5] Similarly, in the United Kingdom, the sterilisation and incarceration of individuals with disabilities was widely implemented to prevent the 'multiplication of the unfit'.[6] However, the late twentieth century witnessed the emergence of global movements led by disability rights activists and organisations, such as the Union of the Physically Impaired Against Segregation (UPIAS), which began to challenge these deeply entrenched perspectives. They argued that the exclusion and discrimination of persons with disability was a result of the disability that society placed on top of their impairment.[7]

To this end, UPIAS distinguished an impairment from a disability. It defined impairment as 'lacking part of or all of a limb, or having a defective limb, organ or mechanism of the body'.[8] In addition, it defined disability as

> the disadvantage or restriction of activity caused by a contemporary social organisation which takes no or little account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities.[9]

According to UPIAS, disability is a socially constructed phenomenon different from impairments.[10] By redefining the problem, UPIAS sought to address the issues of discrimination and exclusion by ensuring that society realised that the problem to social participation was not caused by a person's impairment but by society itself. While the distinction between disability and impairment by UPIAS was a welcomed move by disability

2 Constitution of Zambia (Amendment) Act of 2016, art 7. Note that with English Laws and Statutes, the English Law (Extent of Application) Act Chapter 11 of the Laws of Zambia, subject to the Constitution and to any other written law, extends the application of English common law, the doctrines of equity and English statutes in force in England on 17th August 1911 (being the commencement of the Northern Rhodesia Order in Council 1911) to Zambia. Under this Act, Parliament can also extend the Application of English statutes of a later date as well (See English Law (Extent of Application) (Amendment) Act of 2011).

3 Act 6 of 2012.

4 Act 6 of 2019.

5 L Burch *Understanding disability and everyday hate* (2021) 13-14.

6 As above.

7 Union of the Physically Impaired Against Segregation & Disability Alliance *Fundamental principles of disability: Being a summary of the discussion held on 22nd November, 1975 and containing commentaries from each organisation* (1976).

8 As above.

9 As above.

10 M Retief & R Letšosa 'Models of disability: A brief overview' (2018) 74 *HTS Teologiese Studies/Theological Studies* 3-4.

activists because it created a clear agenda for social change,[11] it did not lack criticism. The criticism levelled against it is the fact that some impairments limit peoples' ability to function independently.[12]

In 2012, to reflect global changes in the understanding of disability and give effect to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), Zambia passed the Persons with Disabilities Act which amended the definition of disability as outlined in the 1996 Persons with Disabilities Act.[13] The 1996 Act defined 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 trained animals trained for that purpose.

The Persons with Disabilities Act of 2012 moved away from the notion that the hindrance to social integration is to be blamed solely on an individual's impairment, but that society also plays a role in the disablement process. This Act defines disability as:

> A permanent physical, mental, intellectual or sensory impairment that alone, or in a combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in society on an equal basis with others.[14]

This new definition therefore acknowledges the significant role of societal and environmental factors in the disablement process, aligning Zambia's legal framework with contemporary global understandings of disability. By adopting the social and human rights model, Zambia has shifted away from a purely medical perspective, recognising that disability is not solely a personal limitation but is also shaped by societal barriers and discrimination. This shift is crucial for promoting inclusion, equality, and the full participation of individuals with disabilities in all aspects of society.

However, this paper seeks to demonstrate colonialism's insidious legacy entrenched ableist ideals within Zambia's legal structures, rooted in hegemony, patriarchy, and oppression. Guided by 'scientific' racism and at times religion, colonialism established social inequalities and economic disparities, placing white people at the top of a racial hierarchy and marginalising black people. The entire colonial apparatus reflected harmful prejudices, stereotypes, and fears about Indigenous black people,

11 T Shakespeare 'The social model of disability' in LJ Davis (ed) *The disability studies reader* (2006) 216-217.
12 DB Creamer *Disability and Christian theology: Embodied limits and constructive possibilities* (2009) 27-28; M Oliver & C Barnes *The new politics of disablement* (2012) 23; Shakespeare (n 11) 219.
13 Act 33 of 1996.
14 The Persons with Disabilities Act of 2012, sec 2.

who were considered inferior, unintelligent, and unsophisticated. African culture was deemed primitive and backward, judged against Western norms of normalcy. This racialism extended to the treatment of persons with disabilities, who were often seen as objects of pity or charity rather than individuals with inherent rights. As Heaton observes 'the general narrative of colonial regimes particularly early on in the colonial encounter was that Africans were naturally diseased, unsanitary people, ignorant of basic hygiene and medical practices'.[15] While these colonial views may not fully capture the nuances of pre-independence Zambian customs and beliefs, they provide valuable insights into the prevailing attitudes towards disability during that period.

This paper adopts a historical-legal approach to examine how colonialism influenced the treatment of individuals with disabilities in pre-independent Zambia. It seeks to uncover how certain attitudes and practices that continue to drive discrimination and exclusion of persons with disabilities today are rooted in Zambia's colonial history. Zambia, like other African nations, cannot escape the influence of its colonial past. This legacy has shaped how disability has been understood and approached in the country.

The paper is divided into five parts. Part 1 is the introduction. Part 2 commences by discussing disability during the pre-colonial era – before 1890. This part demonstrates how disability was understood before the territory now called Zambia became a British Protectorate. Part 3 proceeds by exploring disability during the colonial era until 1924. It discusses how the colonial powers, particularly the British South African Company (BSAC) influenced the native understanding of disability and how this subsequently affected the treatment of persons with disabilities. Part 4 discusses disability from 1924 until the late 1950s when the territory of Northern Rhodesia (now Zambia) was ruled by the British Colonial Office. This part explains, among other things, how the introduction of the 1927 Lunacy Ordinance further influenced the comprehension and treatment of disability and persons with disabilities. Part 5 provides the concluding remarks.

2 Disability during the pre-colonial era – Before 1890

In the pre-colonial era, Zambia was not a unitary state but a region made up of different ethnicities ruled by chiefs.[16] The ethnicities had their own governing rules and laws passed down orally from generation to

15 MM Heaton 'Health and medicine in colonial society' in MS Shanguhyia & T Falola (eds) *The Palgrave handbook of African colonial and postcolonial history* (2018) 307.
16 HW Langworthy *Zambia before 1890: Aspects of pre-colonial history* (1972) 21-26.

generation.[17] To illustrate, in Barotseland (Zambia's Western region) a child born with a deformity[18] was a believed to be bad omen.[19] Typically, the mother would kill the child by forcing the breast into its mouth, thus, choking it.[20] The Ambo of Zambia's North-Eastern region believed that a child who grew upper teeth before the lower (this was referred to as *lutala* or sometimes *lutara*) had a disability.[21] The child was taken and cast into the nearest stream to drown.[22] It is said that the drowning was performed without regret or remorse for it was believed that should the child be allowed to live, the loss of each tooth would entail the death of a person.[23]

Conversely, other impairments were seen as punishments for misdeeds and, therefore, regarded as symbols of wrongdoing.[24] For instance, in the North-Eastern region of Zambia, it was reported that 'in nearly every village there were men and women whose eyes were gouged out, whose ears, noses and lips were sliced off while others had both hands amputated'.[25] In some extreme instances, offenders were mutilated and later impaled or roasted to death.[26] Similarly, in the North-Western region, punishment for certain crimes such as theft, left the offender impaired. A person who was found guilty of theft would have all his possessions seized by the aggrieved party.[27] Further, the thief's fist would be tightly enclosed with the pieces of a smashed clay pot made red-hot, which resulted in the hand being maimed for life as it festered and rotted away in most cases.[28] In this era, because disability either meant a bad omen or a symbol of wrongdoing, persons with disability were looked at with revulsion, horror or fear and were treated as outcasts by society and a nuisance by their parents.[29]

However, in as much as persons with disabilities were considered to be bad omens, society believed disability can befall anyone. Those who dared to laugh at persons with disabilities were warned through the saying '*Lesa ni malumalu*' meaning God changes fortune.[30] It was not always the case that all persons with disabilities in Africa experienced discrimination, exclusion or oppression. For some, the clustered families to which they

17 MM Munalula *Legal process: Zambian cases, legislation, and commentaries* (2004) 46-47.
18 Note that the language used in this text reflects the terminology used at the time of writing, which is now considered insensitive and unacceptable.
19 DW Strike *Barotseland: Eight years among the Barotse* (1922) 61-63.
20 As above.
21 B Stefaniszyn *Social and ritual life of the Ambo of Northern Rhodesia* (1964) 78-79.
22 As above.
23 As above.
24 LH Gann *A history of Northern Rhodesia: Early days to 1953* (1964) 91; LA Wallace 'The beginning of native north administration in Northern Rhodesia' (1922) 21 *Journal of the Royal African Society* 167.
25 As above.
26 G Pirie 'North-Eastern Rhodesia: Part IV' (1906) 6 *Journal of the Royal African Society* 43-58.
27 Strike (n 19) 109-110.
28 As above.
29 PD Snelson *Educational development in Northern Rhodesia 1883-1945* (1990) 80.
30 Stefaniszyn (n 21) 134.

belonged sheltered them.[31] There is evidence that in some parts of African societies, persons with disabilities integrated well into society. For instance, 'in ancient Egypt, people with physical impairments, especially persons with dwarfism, were well treated and often included in the mainstream of social life'.[32] This is likely to have been the case in some parts of Zambia as well.

During the pre-colonial era, missionaries made their way into the region. Their focus was on spreading the gospel of Christ, providing education and healthcare to the local population.[33] In fact, in the history of Northern Rhodesia, the first attempt to teach persons with visual impairment was by a missionary's wife in 1905.[34] Missionaries enforced the idea that disability was needs-based and a problem that required correcting either through medicine or the church's deliverance. Kalusa observes that the missionaries in Mwinilunga (Zambia's North-Western region) regarded their medicine as the only means of addressing human disease and suffering.[35] Further, Hamel and Falola observe that:

> Christian missionaries tended to see the health problems of Africans in terms of their lack of Christian morals, in which physical illness was a representation of African moral failing, very much in keeping up with images of Africa as a 'Dark Continent' of 'backward' and child-like people in need of education and salvation.[36]

It therefore follows that during the pre-colonial era two constructions of disability were prominent, and these constructions emanated from the indigenous people and later on the missionaries. According to the natives, disability was a symbol of either a wrongdoing or a bad omen, thus, persons with disabilities experienced some level of segregation. In addition, the missionaries promoted the idea that persons with disabilities were charity cases and that due to their impairments, they were somewhat incomplete because they did not fit into the definition of an 'able bodied man'.

31 Gann (n 24) 440. It has been recorded that a man and his several wives lived in one homestead and close to him might be the huts of his full and half-brothers and those of his paternal uncles and these groups helped each other in both peace and war: Gann (n 24) 5.

32 N Hamel and others 'Disability in Africa: Inclusion, care, and the ethics of humanity' in T Falola & N Hamel (eds) *African history and the diaspora* (2021) 10-11.

33 N Ndangwa 'Origins and development of social welfare and social work in Zambia' in N Ndangwa (ed) *Social welfare and social work in Southern Africa* (2021) 263-265.

34 Snelson (n 29) 79-80.

35 WT Kalusa 'Missionaries, African patients, and negotiating missionary medicine at kalene hospital, Zambia, 1906-1935' (2014) 40 *Journal of Southern African Studies* 286-289.

36 Hamel and others (n 32) 15.

3 Disability dynamics in the Missionary and British South African Company Era (1890-1924): Colonial impact and social transformation

In the late nineteenth century, Cecil John Rhodes along with his quest for minerals wished to extend British power inland to create an African empire that would stretch from Cape to Cairo.[37] In 1890, Barotseland entered into a treaty with the British South African Company (BSAC) granting the company acquired mineral rights concessions. Similarly, in 1900, North-Eastern Rhodesia entered a comparable agreement with the BSAC.[38] The treaties under which the BSAC acquired its mineral rights concessions were also the source of its administrative powers.[39]

The administration of the BSAC in North-Western and North-Eastern Rhodesia resulted in the abolishment of the mutilations practised in these regions. The substitutions for these punishments were fines, imprisonment, and lashes.[40] However, these substitutions equally meant oppression for the natives in Northern Rhodesia. Chanock submits that 'the courts that administered justice were informally run, the charges were rarely recorded and when they were, they were frivolous'.[41] For example, persons were charged with 'wasting time instead of buying *food'* which attracted a punishment of four lashes.[42] In one recorded instance, a man was fined for absenting himself from the hospital whilst on treatment.[43] Corporeal punishment in Zambia was only abolished in 1999.[44]

Further, the arrival of the British South African Company (BSAC) marked the onset of industrialisation in Northern Rhodesia, significantly impacting the livelihoods of persons with disabilities. There was an

37 Gann (n 24) 56-57. The Royal Charter was signed for the British South African Company on 29 October 1889.

38 In 1899, Barotseland and North-Western regions were amalgamated through the Barotseland-North- Western Rhodesia order-in-council. To indicate the British sphere north of the Zambezi, the area was referred to as Northern Zambezia. Later, for the ease of administration, Northern Zambezia was split into Barotseland-North-Western Rhodesia and North-Eastern Rhodesia. This was because access to North-Western Rhodesia was easiest from the south and North-Eastern Rhodesia easiest from the east: Gann (n 24) 79-80.

39 P Slinn 'Commercial concessions and politics during the colonial period: the role of the British South Africa Company in Northern Rhodesia 1890-1964' (1971) 70 *African Affairs* 365-366.

40 M Chanock *Law, custom, and social order: The colonial experience in Malawi and Zambia* (1998) 106-108.

41 As above.

42 As above.

43 Chanock (n 40) 71-74.

44 This was after the judgment in the case of *John Banda v The People* HP A/6/1998 where the Court held that corporeal punishment contravened art 15 of the Bill of Rights-Part III of the Constitution of Zambia 1991, which prohibits the use of torture or inhumane or degrading punishment or other like treatment.

emergence of manufacturing industries[45] and the introduction of taxation – hut tax.[46] By 1905, the tax was collected in cash only and was levied on adult males and wives except for the first wife.[47] The punishment imposed for the failure to pay one's tax, which was the same as that used to compel those unwilling to work, was the burning down of their huts.[48] These systems introduced by the BSAC resulted in the migration of many men to the more prosperous mines in Southern Rhodesia for paid employment because the economy now demanded Africans to generate income to pay for certain services and taxes.[49] Ndangwa highlights that the

> migration resulted in distorted demographic patterns in the communities in that only the women, children, the old and the infirm remained and the women had to take on new roles and responsibilities which were previously the domains of men.[50]

The fact that the majority of the native workforce in Northern Rhodesia was comprised of a male 'able-bodied' population working away from their homes, inevitably meant that women were left to care and provide for the children and those with disabilities in the communities.[51] This would have obviously put a strain on women, inevitably resulting in some of them developing disabilities as well. In the same way, those who developed disabilities due to occupational injuries or disease lost out on wage labour, thereby ushering them and their families into poverty.

This era also experienced the advent of World War One (WWI). In WWl, the people of Northern Rhodesia took part in the war as carriers, soldiers, messengers and spies.[52] In this era, many African families lost their relatives and property.[53] Once again there was a massive outflow of

45 C Phiri 'Constraints on industrialization in colonial Zambia, 1890-1964' Masters thesis, University of Zambia, 2021 17-19.

46 Gann (n 24) 100-104. In North-Eastern Rhodesia tax was introduced in 1900 and in Barotseland-North Western Rhodesia it was authorised in 1901. As compared to North-Eastern Rhodesia where tax was imposed almost immediately, the collection of tax in Barotseland only commenced in 1904. The delay being attributed to the fact that they had to get authorisation from the Barotseland paramount chief who became the only chief in Northern Rhodesia to hold a considerable financial stake in the collection of the tax.

47 Gann (n 24) 105; Strike (n 19) 45.

48 Gann (n 24) 102-104.

49 Gann (n 24) 100-104. In addition to the tax and fine payments imposed for certain punishments, there also arose other charges that natives needed to pay. For instance, in 1906 in Livingstone when purified pumped water started being supplied, the people of the town had to draw water from the galvanised pumps using buckets and other utensils at a charge of ten shillings per month.

50 Ndangwa (n 33) 265.

51 By 1939 more than half of the male able-bodied population was working away from home: KT Hansen 'Urban research in a hostile setting: Godfrey Wilson in Broken Hill, Northern Rhodesia, 1938-1940' (2015) 41 *Kronos* 207.

52 B Phiri 'The African participation and experiences in the First and Second World Wars in Northern Rhodesia: A historical perspective 1914-1948' (2022) 57 *Journal of Asian and African Studies* 48.

53 As above.

labour from the villages.[54] Frederiksen observes that at the end of WWl, Northern Rhodesia's future looked bleak in that it was 'a sparsely populated land-locked country with few resources and little investment and had poor prospects in a policy climate which demanded that the colonies pay their way'.[55] Consequently, the country continued being a labour reserve for the more prosperous mines in Southern Rhodesia.[56]

Evidently, it became difficult for Africans to thrive, their simple lives and barter system could no longer sustain them, more so, persons with disabilities who could not even sell their labour. In 1924, the BSAC's administration of Northern Rhodesia ended and was taken over by the Colonial Office.[57]

Clearly, the demand for labour in the period discussed above was great and it revolved around the dexterity of Africans, primarily, those persons without disabilities.[58] Consequently, persons with disabilities experienced alienation and stigmatisation.[59] In essence, persons with disabilities were considered weak and unable to conform to the productivity demands that arose in this era.[60] Under his study of disability in the United Kingdom (UK), Finkelstein observed that disability was essentially a creation of the industrial revolution.[61] However, in the African context, disability linked with the lack of productivity was not only a creation of the industrial revolution but also a colonial import.[62]

4 Disability in transition: The shift from British South African Company Rule to Colonial Office Administration, 1924-1953

The history of disability regulation dates back to when the territory which was to become Northern Rhodesia was first administered by the BSAC, and then as two separate territories: Barotseland North-Western Rhodesia (under the High Commissioner for South Africa) and North-Eastern Rhodesia (under the BSAC), which by virtue of their respective Orders in Council (The North-Western Rhodesia Order in Council 1899 and The North-Eastern Rhodesia Order in Council 1900), extended the application

54 As above.
55 As above.
56 Slinn (n 39).
57 T Frederiksen 'Authorizing the "natives": Governmentality, dispossession, and the contradictions of rule in colonial Zambia' (2014) 104 *Annals of the Association of American Geographers* 1278.
58 Gann (n 24) 107-108.
59 FN Gebrekidan 'Rethinking African disability studies: From the cultural-deficit model to a socioeconomic perspective' in Falola & Hamel (eds) (n 32) 94.
60 As above.
61 V Finkelstein 'Disability and the helper/helped relationship: An historical view' (1981) *Handicap in a Social World* 1-5.
62 Hamel and others (n 32) 8.

of the law of England in these territories.[63] Generally, the laws in England relating to the treatment of persons with disabilities (mainly mental health laws), could be applied in the territories as far as local circumstances permitted.[64] Upon the establishment of the Northern Rhodesia Order in Council 1911 (which also extended the application of English law), the two territories were united into one territory, which came to be known as Northern Rhodesia.

4.1 Early legislation – The Lunacy Ordinance of 1927

One of the earliest pieces of legislation affecting persons with disabilities in Northern Rhodesia was the Lunacy Ordinance of 1927 (the Ordinance), passed by the Northern Rhodesia Legislative Council.[65] By enacting this Ordinance, Northern Rhodesia was simply following the legislative developments that had occurred in other colonies such as Southern Rhodesia, Uganda and Nigeria. The Ordinance was modelled on the Ugandan Lunacy Ordinance of 1906.[66] Commenting on the Ugandan Ordinance, Pringle notes that the Ordinance ideally aimed at addressing the 'European cases of insanity, rather than African patients'.[67] The Preamble to the Ordinance stated that it was 'an Ordinance for the detention of lunatics and suspected lunatics and to regulate the law relating to lunacy in the territory'.[68] The Ordinance granted the High Court jurisdiction in lunacy[69] and went on to define the term lunatic as 'including any idiot and any other persons of unsound mind'.[70] The use of such language, though less common today but still present in some statutes, to describe mental illness is open to broad and arbitrary interpretation.[71] Terms like 'idiot' or 'unsound mind' do not specifically define or accurately represent mental illness.[72] In modern times, these terms are deemed unacceptable and unconstitutional, as will be further discussed below.

The works of Vaughan give some insight into the treatment of mental health and psychiatry in British Colonial Africa and the treatment of Africans. Referencing the Nyasaland Native Lunatics Ordinance of 1913, Vaughan describes how defining insanity was a very confusing matter for white colonialists because of a failure to understand and appreciate the

63 See The Barotziland – North-Western Rhodesia Order in Council 1899 art 16; The North-Eastern Rhodesia Order in Council 1900, art 21 and 22.
64 As above.
65 Colonial Office *Northern Rhodesia: Report for 1930* (1932).
66 'South Africa' (1930) 12 *Journal of Comparative Legislation and International Law* 141, 162.
67 Y Pringle *Psychiatry and decolonisation in Uganda* (2019) 32.
68 Lunacy Ordinance of 1927, Preamble.
69 (n 68) sec 2.
70 (n 68) sec 3.
71 M Freeman & S Pathare *WHO Resource book on mental health, human rights and legislation* (2005) 25.
72 As above.

culture, customs, and practices of the native Africans. Observing also that the courts were usually presided over by 'British district officials' ill-qualified in legal matters, Vaughan notes how defining insanity in another culture was equally challenging, and the use of African court assessors as linguistic translators, only made the situation worse.[73]

Despite the ambiguity surrounding the definitions of lunacy or insanity, the ultimate authority for determining who was considered mentally ill rested with white British officials. These officials likely relied on their subjective interpretation of lunacy, as terms like 'unsoundness of mind' are fluid legal concepts rather than clear medical classifications of mental disability**.** Native Africans were particularly vulnerable to discriminatory legislation due to the custodial approach to 'lunacy' in Northern Rhodesia and prevailing racist stereotypes. These stereotypes characterised Africans as fundamentally different and intellectually inferior, believing they needed to be 'civilised' from a primitive state to the modern standards of Western civilisation.[74] It should be noted that the enactment of Lunacy legislation in colonial Africa coincided with the peak of European scientific racism, which viewed Africans as 'the most primitive of all people'.[75] It was during this era, therefore that the tools of scientific racism were used to justify discrimination, segregation, and the unequal treatment of Africans.[76] Vaughan, McCulloch, and Campbell, in their separate works on African psychiatry during colonial times, explore the writings on African psychology and psychiatry by famous psychiatrists such as Carothers, Gordon and Vint, who plied their trade in colonial Africa and whose writings provided 'scientific proof' that the Africans were racially inferior owning to their underdeveloped brains and frontal lobes in comparison to the Europeans.[77] These descriptions of the intellectual ineptitude of Africans were not just restricted to the Africans on the African continent but the same was also said to be true of African descendants in America as well. Thus, in his essay 'Race intelligence', Du Bois chronicled how science was used to justify the racial discrimination of blacks through continued attempts to prove that they were of a lesser intelligence and not fully human.[78]

73 M Vaughan *Curing their ills: Colonial power and African illness* (1991) i.

74 RI Rotberg *Christian missionaries and the creation of Northern Rhodesia: 1880-1924* (1965) 37.

75 J McCulloch *Colonial psychiatry and 'the African mind'* (1995) 46; H Deacon 'Racism and medical science in South Africa's Cape Colony in the mid- to late nineteenth century' (2000) 15 *Osiris* 190. Deacon observes that racist medical theories on insanity did not necessarily influence the timing of racial discrimination, but they did, however, justify to an extent differential treatment based on race and the creation of separate asylums for black and white mental patients.

76 SA Annamma and others 'Dis/ability critical race studies (DisCrit): Theorizing at the intersections of race and dis/ability' (2012) 16 *Race Ethnicity and Education* 1.

77 M Vaughan *Curing their Ills: Colonial power and African illness* (1991); McCulloch (n 75); C Campbell *Race and empire: Eugenics in colonial Kenya* (2007).

78 WEB DuBois 'Race intelligence' (1920) 20 *The Crisis* 117, 118.

It was also claimed that certain mental health conditions, like depression, were uncommon among Africans.[79] When these conditions were found to exist, it was often suggested that they were caused by exposure to European culture.[80] Carothers thus stated:

> In general, it seems, therefore, that classical depressive syndromes are seldom seen, at least in Africans untouched by alien influences; and it behoves one to consider whether other cases do occur but are not disclosed.[81]

The purported increase of schizophrenia among Africans was also explained along similar lines.[82] It is, therefore, possible that the reported increase of these 'exclusively European' mental conditions in Africans was seen as another indicator of the colonialists' civilising mission of the natives.[83] These theories gained much traction in the perception and treatment of Africans by the colonial governments such that any other theories which proposed a contrary view were often dismissed. For example, in their respective works, Vaughan and McCulloch both refer to Wulf Sachs, a South African psychiatrist and psychoanalyst whose early research on African and European patients concluded that there were no inherent differences between their minds. However, colonial authorities frequently dismissed these findings.[84] In referencing the Kenyan colonial experience, Campbell notes that in the 1930s, Gordon's eugenic views became a key focus for the medical profession in Kenya. Doctors who supported eugenics placed these ideas at the centre of debates concerning African welfare, development, and related medico-legal issues.[85] In Northern Rhodesia, the establishment of the Rhodes-Livingstone Institute (RLI) in 1937 as the first anthropological research institution in Africa and the various works published under it were influential in steering colonial perceptions and attitudes about African bodies, minds and social conditions.[86]

Although established as an independent institute, free from direct colonial governmental control, the RLI still received funding from the

79 McCulloch (n 75) 110; J Carothers *The African mind in health and disease: A study in ethnopsychiatry* (1953) 148; M Summers 'Suitable care of the African when afflicted with insanity: Race, madness, and social order in comparative perspective' (2010) 84 *Bulletin of the History of Medicine* 58, 76.

80 LA Jackson *Surfacing up: Psychiatry and social order in colonial Zimbabwe 1908-1968* (2005); HL Gordon 'The mental capacity of the African: A paper read before the African circle' (1934) 33 *Journal of the Royal African Society* 226.

81 Carothers (n 79) 123.

82 Carothers (n 79); HL Gordon 'An inquiry into the correlation of civilization and mental disorder in the Kenya native' (1936) 12 *East African Medical Journal* 327.

83 R Keller 'Madness and colonization: Psychiatry in the British and French empires, 1800-1962' (2001) 35 *Journal of Social History* 295. Keller shows how social scientists' false racial divisions were instrumental in establishing mechanisms of domination in the colonies of Africa and Asia.

84 Vaughan (n 77) 114; McCulloch (n 75) 87.

85 Campbell (n 77) 39.

86 After independence the RLI was renamed the Institute for African Studies at the University of Zambia.

colonial government. It had two important missions. Firstly, by utilising tools in social anthropology it would generate 'scientific' knowledge about Africans and the effects of colonialism on them. Secondly, 'it would provide the colonial authorities with useful information that could be used to facilitate the smooth and humane operation of colonial rule'.[87] The researchers at the RLI considered themselves as progressive but the colonial government sometimes viewed them with a sense of ambivalence owing to their highest academic and scholarly approach towards anthropological research concerning the colonial subjects.[88] However, despite some of their works being critical of Gordon and Vint's phrenological conclusions on African intelligence and mental defects, there is a palpable sense that their writings stemmed from perspectives that essentialised the differences between the European and the Black African. Davidson's writings on 'Psychiatric work among the Bemba' clearly demonstrate this.[89] Kalusa and Phiri also observe that the knowledge generated by colonial anthropologists about African society was used by colonial authorities to maintain their hold on colonial power.[90]

During this period, the preoccupation of the colonial psychiatrist lay in trying to figure out what characterised a 'normal' African as opposed to investigating mental illness. Thus, by pathologising what constituted 'normal' African psychology, colonial psychiatry's main goal was to provide compelling scientific arguments about the inferiority of Africans to Europeans. Vaughan, therefore, notes that:

> Colonial psychiatry did identify the 'lunatic' and sometimes incarcerated her or him … but in general the need to objectify and distance the 'Other' in the form of the madman or the leper, was less urgent in a situation in which every colonial person was in some sense, already 'Other'.[91]

With the legislative use of words such as 'idiot' to describe 'lunacy', coupled with the racist scientific beliefs, it is easy to see how the Colonial government could use the Lunacy Ordinance as a means of social control over the African.[92] In addition, as per its Preamble, the Lunacy Ordinance did not have any provision for treatment, but instead it provided for custodial confinement.[93] As such, the ordinance gave magistrates the authority to hold hearings regarding an individual's sanity upon the receipt of sworn information from an informant who believed that any person

87 K Crehan *The fractured community: Landscapes of power and gender in rural Zambia* (1997).
88 As above.
89 S Davidson 'Psychiatric work among the Bemba' (1949) 7 *Rhodes-Livingstone Journal* 75.
90 WT Kalusa & BJ Phiri 'Introduction: Zambia's postcolonial historiography' (2014) 5 *Zambia Social Science Journal* 1.
91 Vaughan (n 77) 10.
92 M Summers 'Suitable care of the African when afflicted with insanity: Race, madness, and social order in comparative perspective' (2010) 84 *Bulletin of the History of Medicine* 58.
93 Lunacy Ordinance of 1927, sec 6.

within the magistrate's jurisdiction was a 'lunatic'.[94] The determination of whether the suspected individual was a lunatic required an examination by two registered medical practitioners who would have to certify 'stating that the suspected person was in their opinion a lunatic and a proper subject for confinement'.[95] In the event that no medical practitioner was available, a magistrate could authorise the apprehension and detention of a person considered to be of unsound mind pending an examination by a medical practitioner.[96] If the suspected individual were a native African, the certification by one medical practitioner would suffice.[97] Native commissioners were also given the authority to order apprehensions and detentions in certain circumstances however the exercise of such power had to be reported to the nearest magistrate, who would then take over the matter.[98]

In exceptional cases 'persons of unsound mind' would by special arrangement with the Southern Rhodesian Government be admitted to the Ingutsheni Asylum (Ingutsheni Mental Hospital) in Bulawayo.[99] This situation continued until 1962 after the establishment of the first and at the time the only mental health hospital in Zambia, the Chainama Hills Hospital.[100] Like everything else, the wards at this facility were segregated on racial lines as well. Europeans were well housed in comparison with the African patients who were housed in less than conducive and generally overcrowded wards.[101] This racially segregated environment made it possible for whites to receive better treatment and attention than their African counterparts who were highly susceptible to gross abuse.[102] Where confinement was deemed unnecessary, the magistrate could direct that the suspected lunatic be placed in the care of their relatives or friends. If they were African, they would be handed over to a chief or headman.[103] African beliefs in witchcraft as the cause of insanity in certain instances were readily dismissed by the colonial authorities, who were quick to deny

94 (n 93) sec 4.
95 (n 93) sec 5.
96 (n 93) sec 7.
97 (n 93) sec 5.
98 (n 93) sec 8.
99 McCulloch (n 75) 20; Jackson (n 80) 24, who states that: 'The birth of Ingutsheni Lunatic asylum was an expression of the British invaders' reorganization of both space and meaning in their ongoing attempt at establishing social order and domesticating "fields of difference", a task for which they first employed mostly terror and violence, but gradually developed infrastructures and institutions of social control and regulation.'
100 A Haworth 'Foreign report: Psychiatry in Zambia' (1988) 12 *Bulletin of the Royal College of Psychiatrists* 127.
101 LA Jackson 'The place of psychiatry in colonial and early postcolonial Zimbabwe' (1999) 28 *International Journal of Mental Health* 38.
102 As above; McCulloch (n 75), referencing the ZNA, 'Inspection of Ingutsheni': Inspector of Chests for the Auditor General, 10 June 1914 report, noted that: 'The best-treated patients at Ingutsheni were the Europeans. Few of them paid fees, the majority being supported at public expense. Whereas the diet for Europeans consisted of bread, meat, sugar, vegetables, butter and coffee, the Africans' rations were limited to second-grade meal, coffee, sugar and vegetables.'
103 (n 93) sec 9.

its existence.[104] The existence of legislation such as the Witchcraft Ordinance also made it more challenging for Africans to explain certain classifications and causes of insanity for fear of being punished under the Witchcraft Ordinance.[105] All in all, the responsibility for making decisions of whether one was a 'lunatic' was a legal one and not necessarily a medical one. Based on that, the law could then be used to justify unnecessary and unreasonable detentions or to constrain individuals perceived to be troublesome by certifying them as insane.

The introduction of European-styled asylums to Africa was predominantly used to confine and house the 'African insane' and, to a lesser extent 'the European insane, for fear that they would become vagrant or otherwise compromise British prestige'.[106] However, as Vaughan observes, there was no 'great confinement' for natives with mental illness in African asylums during the colonial era in comparison with what was happening in European asylums at the same time.[107] Fernando notes that the introduction of asylum-psychiatry into sub-Saharan Africa did not necessarily meet the needs of the Natives with mental disabilities who in most instances got help from their family and community, and resorted to religious and indigenous medicines for treating their mental health problems.[108] These observations reflect Carothers' views who noted that institutionalisation was mainly reserved for those who proved to be a nuisance and could not be managed at home.[109] McCulloch goes on to indicate that the common African psychiatric inmate was male, and had either been in the prison system or displayed violent and unmanageable behaviour.[110] These observations were also true for Northern Rhodesia as confirmed by Haworth who observes that the transfer of patients to neighbouring Southern Rhodesia was seen by the colonial officials as being too cumbersome and administratively challenging.[111] To this end it was more convenient and obviously cheaper for the colonial government to return patients to their villages for supervision by the headman instead of going through with the

> ordeal of certification, confinement in a gaol and subsequent transfer hundreds of miles by train under an escort and across an inter-territorial border to an asylum where few if any of the staff or inmates can speak their language.[112]

104 S Davidson 'Psychiatric work among the Bemba' (1949) 7 *Rhodes Livingstone Journal* 75, 77. Davidson observed that insanity among the bemba of Northern Rhodesia was usually attributed to possession by evil spirits.
105 Jackson (n 80) 7.
106 J Sadowsky 'Confinement and colonialism in Nigeria' in R Porter & D Wright (eds) *The Confinement of the insane: International Perspectives, 1800-1965 (2003) 301.*
107 Vaughan (n 77).
108 S Fernando *Mental health worldwide: Culture, globalization and development* (2014).
109 Carothers (n 79).
110 McCulloch (n 75).
111 Haworth (n 100).
112 Sadowsky (n 106) 127, quoting Dr Haslam.

4.2 The 1949 Mental Disorders' Ordinance

A landmark piece of legislation in Northern Rhodesia was the Mental Disorders' Ordinance of 1949. This Ordinance repealed the 1927 Lunacy Ordinance and was later incorporated as an Act after Zambia gained independence. The Ordinance proceeded from the recommendations of a 1947 committee that had been set up to examine the operations of the 1927 Lunacy Ordinance. According to Haworth, the committee strongly advocated for the construction of an asylum in Northern Rhodesia, arguing that it was in the real interest of African communities to keep those with mental illness detained for long periods.[113] The Ordinance also coincided with developments in mental health views on the need to provide curative treatment and not merely custodial confinement for those with mental health challenges. There was thus a shift from trying to investigate what 'normality' and 'abnormality' meant for an African, to one aimed at researching mental illness.[114] This was premised on the recurring fears among European psychiatrists of the effects that urbanisation, industrialisation, and detribalisation were likely to have on the African mind at the time.[115] It was about exploring how the Africans would cope or were coping with changes to their social order in the advent of industrialisation.[116]

The threats of decolonisation and fears of the rise of nationalist anti-colonial sentiments only heightened the sense of urgency amongst European psychiatrists who called for accelerated efforts in assessing mental health risks which were expected to befall the Africans due to the drastic changes they would experience.[117] Keller therefore notes that, 'under colonialism, where the ruling state is in almost constant tension with the population, the position of psychiatric knowledge becomes even more complex'.[118] To this effect, the 1949 Ordinance proceeded earlier calls by Donald Mackay, a mission doctor in Northern Rhodesia, on the need to conduct 'extensive research on African Mental health'.[119] Mackay called for the establishment of

113 Haworth (n 100).
114 IY Sun 'Population as discourse: Medicine in late colonial Kenya' Honours Degree Thesis, Harvard University, 2007.
115 Vaughan (n 77); Carothers (n 79); EB Forster 'The theory and practice of psychiatry in Ghana' (1962) 16 *American Journal of Psychotherapy* 5; WV Brelsford 'Insanity among the Bemba of Northern Rhodesia' (1950) 20 *Africa* 46, 51.
116 Vaughan (n 77).
117 A Antic 'Decolonizing madness? Transcultural psychiatry, international order and birth of a "global psyche" in the aftermath of the second world war' (2022) 17 *Journal of Global History* 20.
118 Keller (n 83).
119 D Mackay 'A background for African psychiatry' (1948) 25 *East African Medical Journal* 4.

> mental clinics in every township and men trained in psychiatry and steeped in African background to stem the tide of threatening maladjustment. We hear much of development – but where is their development so pressing as this.[120]

For Mackay, it was not enough for psychiatrists to understand the African mind from the European perspective of what it meant to be normal or abnormal. There was instead the need to take a holistic approach to understand the African mind in his own setting by considering the Africans 'background, his faiths, his hopes, his fears, his sex life – and everything else that makes up the mosaic of his mental environment'.[121]

It was also around this period that the likes of Davidson, a psychiatrist, writing for the Rhodes-Livingstone Institute Journal, called for the use of shock therapy as part of the treatment for some psychiatric cases.[122] Davison in advocating for collaborative work between the study of psychiatry and anthropology, argued that work in this area would 'be of great value both to the Government and to the private industrial concerns'.[123] The benefits would therefore result 'in more efficient administration, reduced policing costs, better physical health and worker discipline, and an improved international image for enlightened colonial rule'.[124] He also made recommendations for the establishment of a psychiatric hospital for Northern Rhodesia. Thus according to the colonial office report, the purpose of this Ordinance was 'to bring the law relating to the care and treatment of mentally disordered and defective persons into line with modern medical practice' (at the time).[125] The Ordinance was modelled on the Southern Rhodesia Mental Disorders Act of 1936 (also formulated after the England and Wales Mental Treatment Act of 1930) since most patients of mental illness were 'detained' there for treatment.[126] Apart from amending the terminology to conform to the medical standards of the time, the Ordinance also sought to 'permit administrative improvements in adjudication and the detention and release of patients'.[127] The Ordinance in keeping with the individual and clinical view that mental disability is an individual defect of intelligence, defined 'mentally disordered' or 'defective person' as:

> Any person who in consequence of mental disorder or disease or permanent defect of reason or mind, congenital or acquired –
> (a) is incapable of managing himself or his affairs; or
> (b) is a danger to himself or others; or

120 Mackay (n 119) 4.
121 Mackay (n 119) 2.
122 Davidson (n 104).
123 Quoted in M Epprecht *Heterosexual Africa? The history of an idea from the age of exploration to the age of AIDS* (2008) 80.
124 As above.
125 Colonial Reports *Northern Rhodesia 1949* (1950) 44.
126 AEM Jansen and others 'South Africa' (1951) 33 *Journal of Comparative Legislation and International Law* 96, 107.
127 P Pike and others 'East Africa' (1951) 33 *Journal of Comparative Legislation and International Law* 107.

(c) is unable to conform to the ordinary usages of the society in which he moves; or
(d) requires supervision, treatment or control; or
(e) (if a child) appears by reason of such defect to be incapable of receiving proper benefit from the instruction in ordinary schools.[128]

And continuing on the same trajectory of ambiguously defining mental health conditions, the Ordinance further provided for six classifications of a mentally disordered or defective person namely: mental disorder; mentally infirm; idiot; imbecile; feeble minded; and moral imbecile.[129] The classification system was intended to distinguish between different types of mental illness, with the goal of providing appropriate treatments and preventing generalisations about housing the insane in the same facilities. This was particularly important for differentiating between serious mental disorders that required certification and less serious ones.[130]

Commenting on the Southern Rhodesian Act which had the exact same categorisations and definition of mental disorders as the Northern Rhodesian Ordinance, Jackson argues that the terminology used facilitated the merger of 'the colonial social agendas with science'.[131] It therefore seems that the passage of time had not changed the views of colonial psychologists and psychiatrists' views as regards the African mind as they were still keen to establish a causal link between the African contact with 'European civilisation' and African mental illness. The classifications of mental disorders or insanity for the colonial psychiatrist and psychologists was unquestionably targeted at not just understanding mental illness among Africans but had the ulterior motive of describing and defining African inferiority generally. Thus, despite replacing the Lunacy Ordinance 1927, any reference to the term lunacy remained unaffected going by the wording of section 37 of the Mental Disorders Act 1949 which read:

> Wherever in any law any reference to a lunatic or to lunacy or to an asylum is contained, that reference shall be read and constructed as a reference to a patient or to a mentally disordered or defective person within the meaning of this Ordinance, or, as the case may be, to mental disorder or defect or to a mental hospital.[132]

Although the Act provided for the treatment and care of those with 'mental disorders' it extended the powers of the Magistrates and other officers to

128 Mental Disorders Ordinance of 1949, sec 2.
129 Mental Disorders Ordinance of 1949, sec 5.
130 ED Myers 'The 1959 United Kingdom Mental Health Bill: Comparison of some aspects with the Mental Disorders Act of Southern Rhodesia' (1962) *The Central African Journal of Medicine* 139.
131 Jackson (n 80) 138.
132 Mental Disorders Ordinance of 1949, sec 37.

apprehend and detain suspected 'mentally defective and persons' without the necessity of a warrant or medical certification from a medical practitioner in certain cases where a person was considered to be a danger to themselves or others, or wandering at large and unable to take care of themselves.[133] The Ordinance also contained provisions for the temporary and involuntary detention of those suspected of having a mental disorder for a period not exceeding 14 days for the purposes of inquiring into the state of mind of the 'patient'. The period of detention could be further renewed for another 14 days.[134] Admission into a specialised facility required the opinion and certification of two medical practitioners.[135] It is also important to note that the specialised facilities that had been designated for the reception, treatment or detention of persons suffering from mental disorders were less than pleasant. Davidson observed that the absence of a mental hospital in Northern Rhodesia meant that many persons with mental disabilities were kept amongst criminals in deplorable conditions in prisons.[136] Unfortunately, even the few mental observation centres which were attached to some of the general and district hospitals were also no different from the prisons 'with high barred windows and heavy doors giving access to rows of small cell-like rooms'.[137]

The enactment of the Mental Disorders Ordinance 1949 cannot be understated as it is a clear demonstration of the long-lasting legacy of colonialism as it pertains to the treatment of persons with mental disabilities in Zambia. This piece of legislation remained on the Zambian statute books until 2019, when it was repealed and replaced by the Mental Health Act 2019. Thus, most of the institutions and the methods of treatment and care for persons with mental disabilities in Zambia reflect the 1949 Ordinance, which according to one commentator, 'criminalises those with mental disabilities'.[138] The enactment of mental health legislation in Zambia under colonialism marked the entry of Western influence and methods of treating mental health and persons with mental disabilities with very little regard for the African models of managing mental health. The creation of psychiatric institutions, the institutionalisation of persons with mental disabilities and the administration of questionable forms of treatment, has to this day continued to contribute to the discrimination and stigma faced by those with mental disabilities.

133 Mental Disorders Ordinance of 1949, secs 7 & 8.
134 Mental Disorders Ordinance of 1949, sec 9.
135 Mental Disorders Ordinance of 1949, sec 10.
136 Davidson (n 104).
137 Haworth (n 100) 128.
138 K Karban and others 'Scaling up mental health services in Zambia: Challenges and opportunities reported in an education project' (2013) 42 *International Journal of Mental Health* 60, 62.

The case of *Gordon Maddox Mwewa v Attorney General* (*Mwewa*),[139] serves as a stark reminder of the enduring legacy that colonial legislation can have on a nation's social and legal systems. Despite Zambia's independence, the Mental Disorders Ordinance 1949 (reframed as the Mental Disorders Act after independence), continued to shape the treatment of persons with mental disabilities in the country until the enactment of the 2019 Mental Health Act. In *Mwewa*, the petitioners, persons with mental disabilities challenged the constitutionality of the Act, arguing that it violated their rights to dignity, personal liberty, and freedom from discrimination. The court agreed with some of these arguments, finding that certain provisions of the Act were discriminatory and unconstitutional. Specifically, section 5 of the Act, which used derogatory terms such as 'mentally infirm', 'idiot', 'imbecile', 'feeble-minded', and 'moral imbecile' to describe persons with mental disabilities, was declared void. However, the court did not strike down the entire Act, demonstrating the continued influence of colonial laws in the country's legal framework. This highlights how the legacy of colonialism can persist in a nation's laws and policies, even decades after independence.[140]

4.3 Blind Persons' Ordinance 1961

An important development in 1961 was the enactment of the Blind Persons' Ordinance for the welfare of the blind in Northern Rhodesia. The Ordinance provided for the creation and establishment of the Northern Rhodesia Council for the Blind under the chairmanship of a Commissioner for Blind Welfare.[141] The role of the Commissioner for the Blind was to advise the Minister on all matters affecting the education, training, and employment of blind persons.[142] The Council's aim was to coordinate the work of existing organisations in the field of blind welfare, which also included supporting the Royal Commonwealth Society for the Blind,[143] in its campaign with mobile clinics in certain provinces of Northern Rhodesia.[144] This Ordinance also provided for the voluntary registration of blind persons by the Boards for the blind established by the Council for the Blind and where no Board was in place to the District Commissioner having jurisdiction in an area.[145] Where an application was made, the individual was required to be examined by an authorised officer who was required to certify whether or not they were satisfied that the

139 [2017] ZMHC 77.
140 FK Kalunga & CM Nkhata 'Protection of the rights of persons with mental disabilities to liberty and informed consent to treatment: A critique of *Gordon Maddox Mwewa & others v Attorney-General & another*' (2018) 6 *African Disability Rights Yearbook* 60.
141 Blind Persons Ordinance 27 of 1961, secs 3 & 4.
142 Colonial Office *Report on Northern Rhodesia for the Year 1961* (1962).
143 This society was formed in Bulawayo in 1955 with the help of the British Society for the Blind (later known as the Royal Commonwealth Society for the Blind and now Sight Savers International).
144 Colonial Office (n 142).
145 Blind Persons Ordinance of 1961, sec 10.

person examined was indeed blind.[146] As the name suggests, the Blind Persons Ordinance as well as the Northern Rhodesia Council for the Blind, were not all-encompassing of other impairments but restricted their reach to the blind only.[147] The main reason for concentrating efforts on the blind was because of the high prevalence rate of blindness among children in the northern provinces of Northern Rhodesia.[148]

The government's predominant concentration on the welfare of the blind, did not necessarily imply that other forms of impairment were left unattended. The care for other persons with disabilities, especially those with physical impairments, was mainly the responsibility of the Ministry of Local Government and Social Welfare in collaboration with grant-aided voluntary organisations. Thus, through the Ministry's Social Welfare Division, adults with physical disabilities could obtain assistance either in the form of some subsistence or 'in deserving cases, help with vocational training and the provision of tools or equipment to enable [them] become self-sufficient'.[149] The Federal Government, through the Ministry of Health, also provided services for juveniles with mental disabilities (referred to at the time as 'ineducable juveniles'), whilst specialised training facilities were made available for children with mental disabilities and learning difficulties (referred to at the time as 'educable defective children') through the Ministry of Education.[150] The Territory also had leper schools for persons suffering from leprosy. From 1960, the leper schools were the responsibility of the Ministry of Local Government and Social Welfare having assumed responsibility from the Ministry of African Education. Other categories of physical disabilities were catered for by voluntary bodies, such as the Northern Rhodesia Society for Handicapped Children, The Northern Rhodesia Polio Fund, and the Lusaka Society for African Cripples.

From this, it is clear that the formal education system during the colonial era was both segregationist and discriminatory not only on the grounds of race but on the grounds of impairment as well. Speaking on the South African school system during the apartheid-era Ndlovu, however, argues that whilst it is easier for us to focus on the negatives of these segregated special schools for persons with impairments, it is also

146 Blind Persons Ordinance of 1961, sec 10(3). Note that 'authorised officer meant, the commissioner, a juveniles inspector, a District Officer, a registered medical practitioner, an inspector of schools and any other person duly authorised by the Minister' in Blind Persons Ordinance of 1961, sec 2.

147 Ministry of Community Development, Mother and Child Health *National Policy on Disability: Empowering Persons with Disabilities* (2013).

148 Colonial Office *Report on Northern Rhodesia for the Year 196*1 (1962); J Wilson 'Blindness in the Northern Provinces of N. Rhodesia' (1962) *The Central African Journal of Medicine* 105.

149 Colonial Office (n 142).

150 As above.

important to address some of the positive elements as well.[151] Thus, although the system could be viewed as segregationist, it can also be viewed as a system that recognised the humanness of learners with impairments.[152] In effect, these special segregated schools were designed and built in such a way that they could be accessible for those with impairment. They also had trained teachers and specialised equipment to cater for the unique needs of those with impairments.[153] Nonetheless, as already mentioned earlier, it cannot be overlooked that because segregation was an entrenched system in the entire socio-economic fabric of Northern Rhodesia, the best schools with the best equipment and the best teachers were largely located and designated in white settler neighbours. Facilities for the native black Africans were usually given secondary priority, whose welfare was often left to the benevolence of the various missionary societies scattered around the country.

4.4 Progressive developments and reforms in disability advocacy, 1930s-1960s

The late 1930s also experienced the advent of World War Two (WWII). Meshack points out that 'after the Second World War broke out, it quickly spread into the African continent and the British and French immediately started mobilising their African Troops and preparing for war'.[154] Further, Geurts notes that:

> WWII was a pivotal moment for disability theories because there was an emergence of the ideology of equal chances … however, this ideology was not extended to the African Population because Africa was still perceived as a disease-ridden place where impairment was considered natural.[155]

Despite the above perception, there was a progression in the education, and to an extent the care of persons with disabilities. To start with, after the death of Issie Hofmeyr, a missionary's wife who founded the first school of the blind, Ella Botes started a class for visually impaired students in 1914 consisting of 12 students at Madzimoyo in the Eastern Province. In 1940, Ella Botes later opened a school solely for blind boys with the help of the young men trained at Magwero.[156] In 1952 schools and centres for the blind such as Kangonga and Kambowa rehabilitation centres in Ndola were established. These centres not only provided sheltered employment but training in various skills. For instance, the Kangonga rehabilitation

151 S Ndlovu 'Humanness and ableism: Construction and deconstruction of disability' in M Steyn & W Mpofu (eds) *Decolonising the human: Reflections from Africa on difference and oppression* (2021).
152 As above.
153 As above.
154 M Owino 'Africa and the Second World War' in Shanguhyia & Falola (eds) (n 15) 357.
155 KL Geurts 'Disability and cultural meaning making in Africa' in T Falola & N Hamel (eds) *Disability in Africa: Inclusion, care, and the ethics of humanity* (2021) 138-139.
156 PD Snelson *Educational development in Northern Rhodesia 1883-1945* (1990) 80.

centre taught the making of baskets, cane furniture and brooms while the centre in Kambowa mainly focused on agriculture. By 1963, a total of 27 pupils who were visually impaired had passed standard VII from the school in Magwero. These pupils were subsequently trained as teachers, telephone operators and evangelists.

5 Conclusion

The era before independence in Zambia saw the development of social and cultural belief systems that led to the marginalisation, exclusion and oppression of persons with disabilities. Well before the term 'disability' came into common usage, there existed a general understanding in society that those with impairments were unfortunate and that their conditions precluded them from participating in community life. This understanding of disability centred around four groups: the indigenous Africans of pre-colonial times; Christian missionaries; the British South Africa Company (BSAC); and the Colonial Office. Among indigenous African societies, disability was regarded as a bad omen or sign of wrongdoing. The missionaries, meanwhile, viewed disability as a personal tragedy requiring medical assistance or spiritual healing through the church. On the other hand, the BSAC regarded those with disabilities as weak and unable to meet productivity demands. Similarly, when the Colonial Office took over, they enacted ordinances that led to the detention of those with mental health conditions, effectively contributing to the discrimination against and segregation of persons with mental disabilities.