

# UNCRPD Ratification and Domestication Process in Zambia

## *A Thinking Paper*

*William Jennings Bryan: "Destiny is not a matter of chance; it is a matter of choice. It is not a thing to be waited for; it is a thing to be achieved."*

*Helen Keller: "I cannot do everything, but I can do something. I must not fail to do the something that I can do."*

*Mary Kay Ash: "Don't limit yourself. Many people limit themselves to what they think they can do. You can go as far as you mind lets you. What you believe, you can achieve."*

*Abraham Lincoln: "Always bear in mind that your own resolution to success is more important than any other one thing."*

## 1.0 INTRODUCTION

- 1.1 Zambia is geographically a Southern African country and politically in Central Africa. It has about 13 to 14 million people according to the 2010 population and housing census. Zambia is a former colony of Britain, therefore it follows the common law system.
- 1.2 According to the World Report on Disability of 2011, 15% of every country's population has some form of disability. This translates to close to two million people in Zambia has got some form of disability. However, the 2010 census gives an approximate population of between 350 000 to 400 000 people in Zambia has a disability. This gives a big margin in estimation. If there are close to 2 million people with disabilities in Zambia, then, this is a key population which needs not to be ignored in all national developmental activities and programmes across all sectors.
- 1.3 In this fast growing and developing era of new and high technology, the world is also experiencing a fast growing and developing shift in the way disability is viewed. This era has seen a shift from viewing disability as a charity and medical issue to more of a human rights and social issue. In short, disability is moving from being viewed using the medical model to using the social model.

1.4 In this article, we shall explore the medical and social perspectives of disability and look at the principles provided for by the UN Convention on the Rights of Persons with Disabilities. We shall also touch on the legal provision in the case of disability law in Zambia in as far as domestication of the UNCRPD is concerned. We shall then look at the current status of the process of domesticating and implementing the Persons with Disabilities Act of 2012 and of course the process of making the other laws comply with the principles of the UNCRPD.

## 2.0 THE UNCRPD

- 2.1 The United Nations Convention on the Rights of Persons with Disabilities was adopted in December 2006 and came into force on 3<sup>rd</sup> May, 2008. Persons with disabilities consider the Convention is a landmark piece of international human rights law. It represents the official recognition of disability as a human rights issue on the international front. The UNCRPD symbolises a radical paradigm shift in conceptualising disability from a medical and charity model to a human rights and social model. It demands a move from viewing persons with disabilities as 'objects' of charity, medical treatment and social protection towards viewing persons with disabilities as 'subjects' with rights, who have the agency to claim these rights and make meaningful decisions for their lives as active members of society (United Nations, 2010).
- 2.2 The CRPD is the first internationally binding human rights instrument to comprehensively address the rights of persons with disabilities. The UNCRPD does not in any way create new rights for persons with disabilities. It merely seeks to clarify the applicability of existing human rights law in the specific context of disability. It shapes existing human rights law towards addressing the attitudinal and environmental barriers persons with disabilities face.
- 2.3 The CRPD looks at disability as resulting from the interaction of impairments with various barriers which hinders full and active participation in society on an equal basis with the non-disabled majority. This places the CRPD strongly within a social model, which is rights-based, as opposed to a medical model of disability which involves health-oriented legislative instruments. The UNCRPD embraces a social understanding of disability in which the societal constraints and barriers hinder full participation of persons with disabilities and inclusion in society. It looks at disability as not being caused by individual limitations but by the existing barriers in society. It is this understanding that creates the conceptual platform for articulating disability rights.
- 2.4 The text of the CRPD is comprised of twenty-five preamble paragraphs and fifty articles. It includes an introductory set of provisions outlining its purpose (Article 1) and key definitions (Article 2), along with articles of general (cross-cutting) application, to be applied across the treaty text (Articles 3 to 9). The CRPD also enumerates specific substantive rights elaborated across the full spectrum of civil, political, economic, social and cultural rights (Articles 10 to 30). Finally, it establishes a system of monitoring and implementation (Articles 31 to 40) and includes final provisions that govern the operation of the CRPD (Articles 41 to 50).
- 2.5 The UNCRPD avoids defining 'disability' but in its preamble it recognizes it as "an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in

society on an equal basis with others....” In its Article 1, the Convention looks at Persons with disabilities as including those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The Convention puts the ‘blame’ on attitudinal and environment barriers as the ones responsible for hindering persons with disabilities from enjoying and exercising their rights on an equal basis with other persons. This should be the basis of beginning to understand disability rights and how to address them as we review and develop new policies, laws and programmes or indeed as we promote and protect the rights of persons with disabilities.

- 2.6 In view of the above, it is inevitable to state that the barriers cause exclusion and restriction in participation thus leading to discrimination. Article 2 of the UNCRPD defines ‘Discrimination on the basis of disability’ as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”.
- 2.7 In the Convention ‘reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.
- 2.8 Article 3 outlines the General Principles which include: respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity and accessibility. These general principles should premise the thinking, planning and implementation of systems and processes in the whole governance and development field. These general principles should also influence the development of policies and laws and regulations and their interpretations. It should be borne in mind that these general principles apply to all persons with disabilities including those with psycho-social and intellectual disabilities.
- 2.9 In Article 4 of the Convention, State Parties are obliged to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. In this same Article, governments are obliged to abolish or amend any laws that are not in compliance with the UNCRPD.
- 2.10 [Article 12 is all about equal recognition before the law. This Article is interesting because it emphasises the fact](#) that persons with disabilities have the right to recognition everywhere as persons before the law. The Article states that “States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”. It further says that States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. The exercise of legal capacity applies to all persons with disabilities including those with psycho-social and intellectual disabilities.
- 2.11 [The UNCRPD goes on to provide for accessibility, access to justice, the right to maintain fertility, access to health including reproductive health service, inclusive education and participation in public and political life. It promotes international cooperation in the implementation of its principles and provisions. States are also](#)

required to submit progress reports in as far as implementation is concerned after two years from the time of ratification.

2.12 In applying our laws or in the process of reviewing our policies and laws, we should always take into consideration the spirit of the UNCRPD at all times.

### 3.0 ZAMBIAN DISABILITY LAW

3.1 Zambia adopts the common law system and it therefore follows the dualistic system when it comes to ratification and domestication of international human rights instruments. This means that after ratification, the government should further adopt the provisions of the international instruments through enacting a local law that domesticates the instrument. Zambia uses the Cabinet to approve the ratification of international instruments. It domesticates them through Parliament.

3.2 The government passed a new disability law in July, 2012 and this law is cited as "The Persons with Disabilities Act of 2012".

3.3 The Act is entitled as an Act to "...promote the participation of persons with disabilities with equal opportunities in the civil, political, economic, social and cultural spheres; provide for mainstreaming of disability issues as an integral part of national policies and strategies of sustainable development; incorporate a gender perspective in the promotion of the full enjoyment of human rights and fundamental freedoms by persons with disabilities to the physical, social, economic and cultural environment, and to health, education, information, communication and technology; provide for the domestication of the convention on the Rights of Persons with Disabilities and its Optional Protocol and other international instruments on persons with disabilities to which Zambia is party, in order to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities and to promote respect for their inherent dignity....

3.4 The Act is the principle disability law. It states that "Subject to the constitution, where there is any inconsistency between the provisions of any other written law impacting on the rights persons with disabilities as provided in this Act or any other matter specified or prescribed under this Act with respect to persons with disabilities, the provisions of this Act shall prevail to the extent of the inconsistency.

3.5 It Part IV, the Act provides for strategic PLANNING FOR persons WITH DISABILITIES. It also provides for the general function of the Minister of Community Development, Mothers and Child Health. The key functions is to issue regulations and statutory instruments for the implementation of the Act. It further provides for the development of national strategies and Plan.

3.6 So, the actual implementation of the Persons with Disabilities Act of 2012 through a comprehensive National Implementation plan supported with adequate resources will actually be the true domestication and implementation of the UNCRPD in Zambia.

### 4.0 GOVERNMENT PROGRAMMES

4.1 ZAPD: the government established the Zambia Agency for Persons with Disabilities to administer and coordinate issues concerning disability in Zambia. The establishment of ZAPD is continued by the Persons with Disabilities Act of 2012. The Agency is designated as the focal point in as far as coordinating the implementation of the UNCRPD. Unfortunately it is inadequately resourced in terms of finances, human resource and technology.

- 4.2 MCDMCH: the Ministry of Community Development, Mother and Child Health is designated focal point ministry for matters pertaining to operationalisation of the Persons with Disabilities Act of 2012. The Minister in this ministry is empowered to issue regulations and statutory instruments for the implementation of the Act. The ministry is also responsible for managing the social protection programme through different schemes. This is in an attempt to reduce severe poverty. At the same time, it is in line with Article 28 of the UNCRPD (Social protection and adequate standard of living).
- 4.3 NTD: the National Trust for the Disabled is a trust fund meant to provide micro-loans to persons with disabilities for them to engage in small enterprises. The trust is inadequately funded.
- 4.4 TEVET: the Ministry of Education is running the Technical Education, Vocational and Entrepreneurship Training which is aimed at empowering youths with enterprising skills. TEVETA is running an inclusive training programme intended to include youths with disabilities in their training. The programme is yielding some notable results. TEVETA is also in the process of aligning its inclusive training guidelines to the UNCRPD.

## 5.0 CURRENT STATUS

- 5.1 The government process of domesticating and implementing the provisions of the UNCRPD is ongoing. The government has in place the Act of 2012 that provides for the domestication of the UNCRPD and its optional protocol.
- 5.2 The optional protocol has not yet been ratified by the Government of the Republic of Zambia.
- 5.3 There is a National Disability Policy of 2013 in Zambia which has already been approved.
- 5.4 The government has already convened a stakeholder consultative meeting to map the development of the National Disability Implementation Plan whose aim is to implement the provisions of the Act and the UNCRPD. The process is on-going although not adequately funded.
- 5.5 The government is currently finalizing the Mental Health Law that domesticates some components of the UNCRPD concerning persons with psycho-social disabilities. This includes the right to legal capacity (including supported decision making).
- 5.6 The final draft Constitution of Zambia is still with the technical committee appointed by the President. It is yet to handover the draft to the President who is the appointing authority. The draft if it is as last seen last year has provisions on the rights of persons with disabilities including the prohibition of discrimination on the grounds of disability.

## 6.0 THINKING AROUND IMPLEMENTATION

- 6.1 In one of the advocacy training workshops, one member of the disability movement strongly called for the implementation of the UNCRPD by government. I threw back

the question to the audience. What do you mean implementation of the UNCRPD? This was received with a chilling silence first. Then a whole lot of debate which left me to conclude that the majority of the members of the disability movement did not understand the whole process of domesticating and implementing the UNCRPD in Zambia.

- 6.2 The implementation is by strengthening ZAPD to effectively and efficiently deliver its mandate as provided for by the Act of 2012.
- 6.3 The other level of implementation is by having the Minister of Community Development deliver on his/her mandate as provided for by the Act of 2012. This includes ensuring that there is a comprehensive strategic implementation plan of the National Disability Policy.
- 6.4 The other level is by having all other ministers, working together with the Minister of Community Development to amend their laws to comply with the UNCRPD. At the same time the ministers should issue statutory instruments to enhance the implementation of the relevant clauses in the Act.
- 6.5 The Human Rights Commission should be designated as the independent monitoring mechanism for the implementation of the UNCRPD with the full participation of persons with disabilities as provided for by Article 33 of the UNCRPD.
- 6.6 Persons with disabilities and their representative organizations to use the provisions of the Persons with Disabilities Act to litigate and use the UNCRPD for persuasion purpose in their litigation actions.

## 7.0 ADVOCACY POINTS AND OPPORTUNITIES

- 7.1 There are still a lot of opportunities to pursue the expediting of the domestication and implementation of the Persons with Disabilities Act of 2012 and the principles of the UNCRPD. These opportunities should not be left hanging without getting hold of them. The DPOs and their allies should quickly grab the 'low hanging fruits' now.
- 7.2 The government has already committed itself through many for a that the implementation of the Act and the principles of the UNCRPD are its priority. This is demonstrated through the convening of the stakeholder consultative meeting on the implementation plan which was held about two months ago, in December, in Lusaka. DPOs should ride on this and keep reminding government to expedite the process. The voice of the DPOs should be amplified over this process.
- 7.3 ZAFOD is running a project on the monitoring of the implementation of the UNCRPD. The project has got a qualified full time member of staff trained to scope legislation and monitor reforms towards compliance with the UNCRPD. The project is a proper tool to bring together DPOs to enhance a united and strong voice based on evidence.
- 7.4 ZAFOD and CBM are managing a project whose aim is to ensure the mainstreaming of disability issues. The major output of this project is to have a clear mainstreaming plan. This is a powerful tool to influence quicker change and implementation.

7.5 Civil society is strong in calling for the enactment process of the Constitution of Zambia to be clear and quickened. DPOs can ride on this voice and be visible.

## 8.0 PROCESS CHALLENGES

8.1 The Zambia Agency for Persons with Disabilities and the National Trust for the Disabled are inadequately funded for them to effectively and efficiently drive the implementation of disability programmes in Zambia. This is aggravated by the appointment of focal point persons in government ministries and departments who are not adequately skilled with disability equality and inclusion knowledge.

8.2 There is inadequate pressure from the disability fraternity to compel government to quicken the process of implementing the provision of the Persons with Disabilities Act of 2012 and change the rest of the laws to be in conformity with the principles of the UNCRPD.

8.3 There is inadequate skill among the disability fraternity in the interpretation of the UNCRPD in relation to local application, thus weakening the advocacy process.

8.4 Many DPOs are economically weak, thus rendering them incapable to carry out effective strategic advocacy. The majority do not even have advocacy strategies strategic plans.

8.5 The general civil society is not equipped with adequate knowledge on the Persons with Disabilities Act and the UNCRPD in order to make these be part of their advocacy agenda.

## 9.0 ROLE OF THE DPOs

9.1 The DPOs have got a direct mandate to participate in the monitoring of the implementation of the UNCRPD. This is as provided for by Article 33 of the UNCRPD which states that "Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process".

9.2 The DPOs may participate fully by being part of the monitoring mechanism put in place by the State or by establishing independent monitoring mechanisms led by civil society by officially recognized by the State as a monitoring mechanism.

9.3 In order to effectively monitor implementation, the DPOs need to have the necessary capacity in terms of understanding what they are monitoring and how they are monitoring that which they are monitoring. So, skills development is required within the DPOs.

## 10.0 CONCLUSION AND RECOMMENDATIONS

10.1 Persons with disabilities form a significant group of citizens in the population of Zambia and are key in all national interventions meant for economic growth and development. It is in view of this that they need to be fully and effectively included in all programmes and at all levels. This can be effected through the expeditious implementation of the provisions of the Persons with Disabilities Act 2012 and further alignment of the rest of the Zambian laws to the principles of the UNCRPD.

- 10.2 There is need to develop regulations that will operationalise the provisions of the Persons with Disabilities Act 2012.
- 10.3 The process of developing and finalizing the National Disability Implementation Plan must be quickened with the full participation of persons with disabilities at all states. This national plan will be the base for the inclusion of persons with disabilities in all sectors of national development.
- 10.4 The government should ratify the Optional Protocol by December, 2014. The optional protocol provides for a complaint submission procedure to the UN Committee on Disability once ratified. Complaints from countries that have not ratified No suggestions be admitted.
- 10.5 The government should quicken the process of enacting the new Constitution of Zambia. Persons with disabilities made UNCRPD driven submissions that need not to be lost. The current Constitution does not include disability as a prohibited ground for discrimination. The last draft of the Constitution that was released to the public last year carried this. It also included sign language as a real language.
- 10.6 The government should start the process of submitting the first progress report on the implementation of the UNCRPD to the Committee on Disability. The report is long overdue since it was due in 2012. The DPOs should at the same time develop and submit their shadow report.
- 10.7 The government should designate the Human Rights Commission as the independent monitoring mechanism of the implementation of the UNCRPD with the full participation of persons with disabilities. A monitoring committee should be put in place and adequately funded.
- 10.8 Disabled People's Organisation should step up their advocacy work to ensure the State is up to speed with the implementation of disability programmes as prescribed in the Persons with Disabilities and as provided for by the UNCRPD. The DPOs should join the rest of civil society in calling for the enactment of the new Constitution. DPOs should be visible within civil society.

***Hope is There; Never Give Up!***

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