

An Analysis of the Legal Framework on Access to Education by the Differently Abled People in Zambia

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ABSTRACT : This article explores access to education by differently abled individuals in Zambia. It examines the legal framework provided by the Constitution, the Persons with Disabilities Act and the Education Act, highlighting the gaps and areas for improvement therein. The methodology employed was qualitative desk research whose findings show that even though Zambia provides laws to promote access to education by differently abled persons, the said legislation is not adequate. A lot more needs to be done in terms of institutionalisation and operationalisation for inclusivity as challenges relating to discrimination, restricted curriculums, lack of appropriate accommodation and infrastructure, financial challenges, social challenges, time factor challenges and parental based challenge abound. To facilitate and promote inclusivity in education, the government should enhance support to institutions that protect and advocate for the rights of the differently abled especially in matters relating to access to education and must undertake vigorous and adequate sensitisation in both urban and rural areas.

Keywords: - Differently abled, Disabilities, Education, Access, Rights, Zambia

I. INTRODUCTION

Every individual, regardless of their characteristics, is entitled to fundamental human rights, including the right to education. In Zambia, the Constitution (2016) and specific legislation such as the Persons with Disabilities Act (2012) and the Education Act (2011) provide a legal framework for protecting the rights of differently abled people in general, and in particular, access to education. However, despite these legal provisions, several challenges persist which hinder inclusivity, accessibility, and quality education for this demographic. This article delves into the legal framework, challenges, and potential solutions relating to access to education for differently abled individuals in Zambia.

II. LEGAL FRAMEWORK RELATING TO DIFFERENTLY ABLED PERSONS IN ZAMBIA

Historically, the term "disabled" was commonly used to describe individuals with disabilities. However, this term was often viewed as stigmatizing and it focused on limitations rather than capabilities. Andrews, Powell and Ayers (2022) posit that because of language evolution, the phrase "differently abled" is currently used instead of "disabled" as the phrase reflects a broader societal shift towards more inclusive and respectful terminology regarding individuals with disabilities. It emphasizes the unique abilities and strengths of individuals who may have physical, sensory, intellectual, or developmental differences. As Muster (2017) observes, this terminology recognizes that everyone has varying abilities and challenges, and it promotes respect, dignity, and equality for all individuals, irrespective of their differences. It aims to move away from labeling individuals based on their limitations and instead focuses on their diverse talents and capabilities.

The Zambian Persons with Disabilities Act (2012) defines 'disability' as being "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." The American Psychology Association Dictionary (2015; 2020) defines 'differently abled people' as "individuals who have disabilities or impairments that may affect their physical, mental, sensory, or intellectual abilities, emphasizing the diversity of abilities and challenges among individuals with disabilities or those with a lasting

physical or mental impairment that significantly interferes with an individual's ability to function in one or more central life activities such as self-care, communication or social interactions.”

Every individual is created uniquely and different from one another with their own protected characteristics. However, every individual deserves all basic human rights which are guaranteed to every citizen of a country. These rights are important as they enable people to access and live with essentials such as education facilities. Some of these rights are embedded in the Zambian Constitution, the Persons with Disabilities Act and the Education Act.

2.1 THE CONSTITUTION

The Zambian Constitution, in Article 266, defines ‘disability’ as “a permanent physical, mental, intellectual or sensory impairment that alone, or in combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in an activity or perform a function as specified in the Constitution or as Prescribed.”

In addition, the Constitution provides for the protection from any form of discrimination, be it due to disabilities, gender or race. It states in Article 266 that ‘discrimination’ means directly or indirectly treating a person differently on the basis of that person's birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, tribe, pregnancy, health, or marital, ethnic, social or economic status. The Constitution in Article 8 (d) gives recognizance to human dignity, equity, social justice, equality and non-discrimination on various grounds, including disability, as being part of the national values and principles.

2.2 THE PERSONS WITH DISABILITIES ACT

Education for intellectually disabled individuals in Zambia has evolved over time. Initially, there was limited access to education, with missionary groups playing a significant role in establishing schools for disabled people. The introduction of the Persons with Disabilities Act in 1996 marked a step towards recognizing and addressing the needs of disabled individuals. However, it was only with the enactment of the revised Act in 2012 that more comprehensive provisions were made for protecting the rights of differently abled people, including their right to education thereby ensuring all their basic needs are met with a sense of inclusivity. Section 22 of the Act addresses the protection and promotion of the rights to education of a person with disabilities. The main aim of the foregoing section is to ensure individuals with disabilities are not excluded from the general education system, have access to not only an inclusive free education throughout but also access to appropriate facilities and infrastructure.

The Act caters for persons with disabilities and ensures accessibility to education, health, social and economic environment, promotion of full enjoyment to their rights and aims at ensuring full and equal enjoyment to fundamental freedoms. An important concept brought out in this Act is to promote equal opportunities for differently abled people in the social, cultural, political, economic and civil sphere. In addition, it caters for the promotion of the full enjoyment and freedom of basic human rights such as education and health. Accessibility to physical, cultural and social environment is also addressed. This Act ensures protection of the rights of differently abled people in all aspects of human endeavor.

2.3 THE EDUCATION ACT

The law which governs education in Zambia is the Education Act which was enacted in 2011 to facilitate all matters relating to the education sector. This Act provides guidance on policies for people with disabilities or special needs. Pursuant to Section 14 (1) of the Act, “subject to the Constitution and the other provisions of the Act, a person has the right to early childhood care, development and education, basic education, including adult literacy education and high school education. The government shall make general and vocational education progressively available and accessible to all persons”. This Act states that every person is entitled to education and being neglected of it is infringing on that person's right.

Unfortunately, despite the forgoing, the problem of access to education by the differently abled is still abound. For example, in 2010, statistics indicated that there were 251,427 persons with disabilities living in Zambia. The Zambia National Disability Survey (2015) revealed an increase in the number of people living with disabilities which stood at 1,744,000. The literacy rate for the population with disability nationally was 58.6 per cent. The percentage of persons with disabilities that had not attended school was higher at 34.4 per cent compared to those without disabilities at 20.9 per cent (ZARD, 2021).

2.4 ANALYSIS OF THE LEGAL FRAMEWORK

The legislation put in place for the protection of the rights of intellectually disabled people is very vague in the sense that it is generalised and does not bring out relevant information on the concept. The statutes give an overview but do not tackle the problem with the intensity that it deserves.

First and foremost, the fundamental law, the Constitution of Zambia, does not provide details on disability as it ought to. In as much as it provides for non-discrimination as part of the national values and principles, it does not provide for access to education for all as a guaranteed right. The right to education is not protected under the current bill of rights. The Constitution only refers to disability in two places, namely, in Article 8 (b) which embodies nondiscrimination and Article 266 which defines disability and outlines the

various types of discrimination, one of which is disability. The Constitution being the supreme law of the land which demands consistency at all times should have been more exhaustive by providing for inclusivity.

The Persons with Disability Act was enacted to cater for the rights of disabled individuals. Section 4 of the Act protects individuals with disabilities from discrimination and Section 21 (2) emphasises the importance of providing information to families and guardians on services available to advance the development of the differently abled persons. Furthermore, this section states that individuals with disabilities should have equal opportunities and equal access to education like the rest of the learners. Just like the Constitution, the Persons with Disability Act does not provide detailed and specific definitions or regulations for different types of disabilities, leading to potential ambiguities in implementation and enforcement.

Further, in as much as the Act mentions the protection and promotion of the rights of persons with disabilities in education, it lacks specificity in terms of the types of educational support and accommodations that should be provided. This can result in inconsistent practices across educational institutions and inadequate support for learners with disabilities. In addition, the Act does not provide adequate enforcement mechanisms, thereby failing to live up to expectations.

The Education Act was introduced to reinforce education in Zambia. The Ministry of Education, through this Act, has the duty to actualise equal access to individuals with disabilities. Section 19 of this Act prohibits discrimination against any learner with disabilities irrespective of the category of disabilities. Section 23 of the Act goes on to address differently abled persons' access to education or those with special needs when it states that 'the Minister shall for purposes of ensuring equality of access to, participation and the benefit of educational institutions for learners with special education needs, promote interventions at all levels of the educational institutions.' The Ministry of Education therefore, is mandated to ensure equality of access and participation to all learners with social needs and further ensure that special education needs are integrated into mainstream educational schools.

III. CHALLENGES FACED BY DIFFERENTLY ABLED PERSONS IN THE EDUCATION SYSTEM IN ZAMBIA

Differently abled individuals face a tremendous number of challenges in their daily lives including accessing education. They face various other challenges daily, *inter alia*, difficulties in communicating or decision making, challenges with mobility, challenges with learning and speaking as well as difficulties in adapting social skills. These challenges make it difficult for a differently abled person to stay on the path of education or even have interest in it.

Some of the challenges faced by differently abled individuals while accessing education include discrimination, restricted curriculums, lack of appropriate accommodation and infrastructure, financial challenges, social challenges, time factor challenges and parental based challenges. Due to these challenges, many differently abled individuals remain illiterate and cannot fend for themselves in the social and economic realm of society. This results in a high number of differently abled individuals being wholly or partly dependent on their families for sustainability. The challenges outlined above are discussed in detail in the paragraphs that follow.

3.1 DISCRIMINATION

Discrimination is a challenge faced by most differently abled people irrespective of the type of disability. Discrimination occurs when a group of people or a single person is unjustly treated and categorized in a separate group from others. Discrimination of differently abled people may be direct or indirect. The American Psychological Association (2020) defines direct discrimination in this regard as overt actions or policies that treat individuals with disabilities less favorably than others based solely on their disability. This can include refusing to hire a qualified person because of their disability, denying them access to services or facilities, or treating them unfairly in educational or social settings.

Indirect discrimination occurs when seemingly neutral policies, practices, or criteria disproportionately disadvantage individuals with disabilities compared to others. For example, a requirement for all job applicants to have a driver's license may indirectly discriminate against persons with certain disabilities that prevent them from driving, even though driving may not be directly related to the job requirements (American Psychological Association, 2020).

It is notable regrettably that both types of discrimination disadvantage differently abled persons and this breeds stigma among individuals with disabilities at national, regional and global level. Such persons are discriminated against in school areas. Able bodied learners have little to no knowledge on this topic which leads to them discriminating against any individual with a disability thereby leading to some differently abled shunning education.

In as much as the Education Act demands the establishment of special education centres, free government run special education systems are very limited and are only accessible to those that can afford it. Many differently abled persons that come from poor families end up going to free government mainstream schools,

most of which do not cater for special education. Other learners discriminate against them by being rude to them, calling them names, side lining them or even making weird faces at them. In such situations, some teachers also discriminate against them because they are not well prepared to tackle differently abled persons.

In a nutshell, individuals with disabilities are discriminated against by their peers, teachers and staff when they are treated differently due to the disability by calling them names or avoiding any kind of interaction. They also face discrimination by the institutions because they do not provide adequate accommodation and infrastructure to facilitate their needs.

3.2 RESTRICTED CURRICULUM

The curriculum of a school refers to the lessons and academic contents of a specific course which is taught in an educational institution. The curriculum includes contents of a course, objectives, methods or learning experiences and evaluation of a student. A curriculum should be designed in such a way that it fits the needs of every learner irrespective of their characteristics. However, schools in Zambia do not have an all-inclusive curriculum to cater for students with disabilities.

In 2005, The Zambia Institute of Special Education made major changes to the curriculum of the special education course to include different disabilities rather than focusing on a single disability. The course was taught in a specialised institution which many teachers did not go to. Chirwa, Kalinda and Thankian (2023) observe that it is only until recently, that the University of Zambia has included the concept of special education in teaching courses but despite the training, the few teachers do not have expert experience to allow them react adequately in a situation concerning a learner who is differently abled.

The curriculum of individual education institutions does not adequately cater for learners with disabilities in ways they should such as having an expert teacher for individuals with disabilities. This has resulted in teachers not being able to adapt when they have learners with disabilities. Furthermore, the classes in most schools in Zambia are overcrowded which makes it difficult for individual attention on the individuals with disabilities who may require special attention. In as much as students are facing difficulties with adapting to curriculums, teachers also find it difficult to adapt to certain curriculums that are designed for individuals with disabilities.

In inclusive education, the education of the child with a disability starts at the regular school together with their other non-disabled peers. The child is not expected to fit into the existing curriculum and practice, instead the curricula and teaching style, practices and environment are adapted to suit the range of diversity that is found among children in the class (UNESCO, 2001).

3.3 LACK OF APPROPRIATE ACCOMMODATION/INFRASTRUCTURE

To accommodate for differently abled individuals, an educational institution needs to be fully equipped with appropriate facilities and infrastructure. Banda-Chalwe, Nitz and De Jonge (2014) posit that accessibility of the built environment is regarded as being pivotal in ensuring equity of participation for people with disabilities and has evolved internationally as a topic of concern over recent decades.

The built environment can either facilitate or hinder full participation in mainstream society and is considered fundamental to integration, inclusiveness and equality for all as reflected in the United Nations Convention on the Rights of Persons with Disabilities (UN Convention, 2006; WHO, 2001)

The UN Convention on the Rights of Persons with Disabilities mandates nations to take appropriate measures to identify and eliminate obstacles and barriers to accessibility and ensure that people with disabilities participate fully in all aspects of life (UN Convention, 2006). The education institutions should provide ramps, stairs, wide passageways and doors, flexible furniture arrangements, braille and sign language among others. Unfortunately, these facilities are not present in most educational institutions in Zambia thereby hindering access to education by the differently abled persons.

3.4 FINANCIAL CHALLENGES

Financial challenges are a big hindrance in acquiring knowledge in Zambia for both those with disabilities and those without. Families of those with disabilities face more hardship due to extra costs they incur in buying customised equipment and seeking health care to better the lives of those who are disabled. Most often, their wages are spent on seeking medical attention at the expense of spending on education.

People would rather spend on bettering the health status of the disabled unlike spending on education and as such, it is not catered for. Schools which have facilities for the differently abled are usually very expensive. Many people in Zambia live on very low budgets and many of them barely have a single meal daily. Education then becomes the last thing to be factored into their budgets.

3.5 SOCIAL CHALLENGES

Individuals with disabilities face social challenges while acquiring education. The difficulties occur when they are interacting with others, learning to adapt to others and understanding what is expected of them in social situations. These challenges make it extremely hard for individuals with disabilities to gain knowledge or interact with peers in a classroom where they are expected to acquire knowledge.

3.6 TIME FACTOR CHALLENGES

Time factor plays an important role in the process of education among differently abled individuals some of whom may find it difficult to assimilate information at a normal speed. This results in them having to spend much more time on a single topic or responding to an examination question. With them taking a lot more time, it affects the way an examination may be conducted. Generally, examinations have specific duration which needs to be followed by every individual. The time factor is also a challenge in the classroom because the teacher moves at the pace of the understanding of the majority. While the rest of the class may understand a concept, an individual with, say an intellectual disability may not and this may lead to a build-up of misunderstood information. Challenges with time affects the way an individual acquires knowledge.

3.7 PARENTAL BASED CHALLENGES

Parents play a big role in a person's life especially when acquiring knowledge and at times, some parents with differently abled children do not accept the child's situation. They may not be aware or understand disabilities and as such the behaviour of their child serves as some sort of indication for them not to be sent to school. Parents think such children should learn vocational work instead of enrolling them in learning institutions. These challenges affect the process of gaining knowledge for an individual with a disability because the parents of the child did not understand the behaviour of the child, thus they do not enrol them into schools.

In addition, the government does not educate parents about differently abled persons. They do not provide adequate information which would help the parents understand the needs of their children. In these cases, parents are really at a disadvantage because they do not receive support from any external governmental organisations that could provide counselling or financial assistance. These challenges frustrate the parents and this results in the parents giving up of their children.

From the foregoing, it is evident that differently abled persons face numerous challenges in accessing education in Zambia. Some of the challenges are attributed to lack of adequate support from either their homes, society or the government. These challenges, if not addressed, will continue being a hindrance to access to education for the differently abled in Zambian society.

IV. POSSIBLE SOLUTIONS TO CHALLENGES FACED BY THE DIFFERENTLY ABLED IN ACCESSING EDUCATION IN ZAMBIA

First and foremost, differently abled individuals should have the right to inclusive education at all levels of education and this can be achieved by ensuring that, at institutional level, those in charge or the administration of each educational institution provide a thorough assessment of differently abled persons admitted into the institutions to evaluate and analyse the type and level of disability and corresponding needs. By so doing, the education institutions will be in a better position to better cater for the individual needs and they will in turn be able to provide adequate facilities and infrastructure.

At policy level, the government should invest in separate institutions that protect and advocate for the rights of disabled individuals especially in relation to issues to do with access to education. This can be achieved by engaging with and empowering various institutions, both government and non-government, that are involved in education provision. The government support can be in the form of funding, human capital, materials, infrastructure development, customized information technology, etc.

In addition, the government should ensure adequate information regarding differently abled individuals is given to every person that is directly or indirectly involved or affected, including those in rural areas. Aggressive sensitization programs should be rolled out country wide and in the same vein, the government should educate the parents and members of society on matters relating to the differently abled. Support to parents and society should not only be that relating to medical needs, but they also need to be advised on various other issues, including access to education.

Lastly, every teacher, should be educated on the needs of differently abled persons to better understand this group of individuals and be able to devise ways to better cater for them. This knowledge building of the teachers should not be a one-off but must be done regularly if the country is to enhance inclusivity for all in education.

V. CONCLUSION

In conclusion, it can be stated that Zambia as a developing country, has made strides in protecting the right to education of differently abled persons in society, through enacting various legislation. However, the said legislation is inadequate in terms achieving its main objective, that is, of ensuring access to education for all the differently abled in society. The current legal framework needs review as it appears not to adequately address the protection of the right to education of differently abled persons.

Challenges relating to discrimination, such as restricted curriculums, lack of appropriate accommodation and infrastructure, financing, social challenges, time factor challenges and parental based challenges continue to be persistent and they need to be addressed in order for the ideal of education for all to be

attained in the country. Some of the notable potential solutions could be, for instance, governments enhancement and implementation of adequate policy aimed at increasing access to education for the differently abled and support to education institutions to enable them conduct needs assessments so as to be able to provide adequate infrastructure and facilities; raising awareness countrywide on the need to educate the differently abled, thereby fostering inclusivity and continuing professional training for teachers at all levels. By so doing, Zambia can ensure that all individuals, including the differently abled have equal access to quality education and opportunities for personal and professional growth.

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