



Plot No 37A Elm Road Woodlands, Lusaka, Zambia
Phone: +260956396085, Email: info@disabilityrightswatch.net
www.disabilityrightswatch.net www.facebook.com/disarightswatch

MEMORANDUM

TO:
The Clerk of the National Assembly,
National Assembly of Zambia,
Parliament Road
P.O, Box 31299
LUSAKA,
ZAMBIA.

ATTENTION: COMMITTEE ON NATIONAL GUIDANCE AND GENDER MATTERS

RE: THE WELFARE OF WOMEN AND GIRLS WITH DISABILITIES IN ZAMBIA

1.0 INTRODUCTION

1.1 Brief background

This memorandum is being submitted to the Parliament of Zambia with the invitation from the Committee on National Guidance and Gender Matters on the welfare of women and girls with disabilities in Zambia. As we make this submission, we wish to bring to the attention of the Committee the generally accepted language of addressing persons with disabilities is as just stated here without including the terminology “living”. Therefore, the group being addressed in this memorandum should be referred to as “women and girls with disabilities’ and not ‘women and girls living with disabilities’.

Disability Rights Watch (DRW) totally agrees with the understanding of the Committee on National Guidance and Gender Matters in that, in deciding to investigate the subject matter, the Committee considered the fact that women and girls with disabilities are one of the most vulnerable and invisible sections of society in Zambia. The Committee went on to observe that invisibility, stigma and marginalisation of women and girls with disabilities are exacerbated by age and the type of disability, leading to multiple discrimination and violence often perpetrated by those closest to them.

Therefore, the Committee decided to undertake a study with the ultimate objective of providing a vivid picture of the challenges encountered by women and girls with disabilities and enjoin the government to be more proactive in addressing their concerns. In view of this, DRW is making this submission to contribute towards the Committee’s efforts to ensuring that the government

addresses the concerns raised on the welfare of women and girls with disabilities in Zambia.

1.2 Disability Rights Watch

Disability Rights Watch (DRW) is a non-profit organisation registered in 2011 as a company limited by guarantee under the Patents and Companies Registration Agency and in 2015 under the Zambia Agency for Persons with Disabilities (ZAPD) as a Disability Service Organisation.

Its core objective is to ensure the promotion and protection of the rights of persons with disabilities, including the promotion of their inherent dignity, through strategic advocacy and to build the organisational capacities of organisations of persons with disabilities towards achieving an inclusive society. DRW uses the strategic partnership and collaborative approach to inclusion and development to achieve its goal.

2.0 SITUATION OF WOMEN AND GIRLS WITH DISABILITIES IN ZAMBIA

2.1 Policy and legal framework governing the welfare of women and girls with disabilities in Zambia.

It should be stated from the onset that in Zambia, there are no specific policies and pieces of legislation governing the welfare of women and girls with disabilities. The welfare of women and girls with disabilities is governed through general policies that address the rights of persons with disabilities in general and other laws that address gender issues.

The Constitution of Zambia establishes the right of every citizen to be treated equally and to live a life free from discrimination. The Constitution provides that no law shall make any provision that is discriminatory either of itself or in its effect.¹ The Constitution further defines discrimination as 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.² These provisions of the Constitution direct themselves to protecting the rights of everyone and this includes women and girls with disabilities. In Article 266, the Constitution of Zambia covers the intersectional discrimination issues of sex, pregnancy and social and economic status of women and girls with disabilities in Zambia.

¹ Government of the Republic of Zambia (2016) Constitution of Zambia Amendment Act No. 2: National Assembly of Zambia.

² Government of the Republic of Zambia (2016) Constitution of Zambia Amendment Act No. 2, Article 266: National Assembly of Zambia.

In Part II, the Persons with Disabilities Act (2012) provides for the rights of persons with disabilities. Under this Part the Act recognises gender equality as a General Principle to guide the respect of the rights of persons with disabilities. Women and girls with disabilities enjoy protection for equality under this provision. The Persons with Disabilities Act, provides that a person shall not discriminate against a person with disability on the basis of disability.³

The Persons with Disabilities Act further provides that “a person shall not exploit or subject a person with disability to abusive, violent or degrading treatment including their gender- based aspects.⁴ Women and girls with disabilities are more susceptible to exploitation, abuse and violence on the grounds of their gender and disability. This provision of the Act protects them from such vices because it takes into consideration their gender issues.

Furthermore, the Persons with Disabilities Act protects the rights of women and girls with disabilities, in general terms, by giving them the right to enjoy their decision making capabilities and the right to own property. The Act provides that a person with disability shall enjoy legal capacity on an equal basis with others in all aspects of life.⁵ This enjoyment of legal capacity includes women with disabilities.

Women with disabilities are particularly mentioned in the Persons with Disabilities Act where the Act provides that the Board of the Zambia Agency for Persons with Disabilities shall comprise eight representatives, of whom four shall be women.⁶ This strengthens the representative power of women with disabilities on the Board of the Agency which would trickle on to other decision-making bodies interacting with the Agency.

Apart from the above provisions, the Persons with Disabilities Act is specific on the matter of discrimination in work and employment. Discrimination in work and employment is rife when it comes to women with disabilities, including on the basis of their sex and socio-economic status. The Act provides that “a person with disability shall not be discriminated against on the basis of disability with regard to all forms of employment, including conditions of recruitment,

³ Government of the Republic of Zambia (2012) The Persons with Disabilities Act No. 6, Section 6(1): National Assembly of Zambia.

⁴ Government of the Republic of Zambia (2012) The Persons with Disabilities Act No. 6, Section 6(2): National Assembly of Zambia.

⁵ Government of the Republic of Zambia (2012) The Persons with Disabilities Act No. 6, Section 8(i): National Assembly of Zambia.

⁶ Government of the Republic of Zambia (2012) The Persons with Disabilities Act No. 6, Section 13(l): National Assembly of Zambia.

hiring, and employment....⁷ Particular attention therefore needs to be paid on the issue of discrimination against women in work and employment.

Much emphasis has been placed on the Persons with Disabilities Act of 2012 in this section of this memorandum because it is the principal law that specifically protects the rights of persons with disabilities with clear provisions on the prohibition of discrimination on the basis of disability. The Act is also the main domesticating piece of legislation of the UN Convention on the Rights of Persons with Disabilities.

Zambia has got the National Policy on Disability which is currently undergoing review. The Policy stipulates that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.⁸ This protection generally includes the rights of women and girls with disabilities.

Apart from the specific piece of legislation, the Persons with Disabilities Act of 2012, which protects the rights of persons with disabilities including women and girls and also prohibits discrimination on the basis of disability, we have other gender-based laws that address the welfare of women in general. These laws attempt to mention women with disabilities in their text without precisely outlining how their specific welfare issues would be addressed and their rights protected. For instance, women and girls with disabilities are broadly covered in the National Gender Policy and the Anti GBV Act of Zambia. The National Social Protection Policy also does recognise the vulnerability of women and girls with disabilities.

2.2 Compliance of the legal and policy framework with regional and international instruments particularly with accessibility to physical, social, economic, health and education

Since the Persons with Disabilities Act of 2012 is the domesticating law of the CRPD, it partially complies with the Convention in some aspects regarding the welfare and rights of women and girls with disabilities. For instance, in its General Principles, the Act prohibits exploitation, and abuse of persons with disabilities including on the grounds of their gender aspects.⁹ This directly complies with Article 16 of the CRPD.¹⁰

⁷ Government of the Republic of Zambia (2012) The Persons with Disabilities Act No. 6, Section 35(2): National Assembly of Zambia.

⁸ Government of the Republic of Zambia (2010); The National Policy on Disability: Zambia

⁹ Government of the Republic of Zambia (2012) The Persons with Disabilities Act No. 6, Section 6(2): National Assembly of Zambia.

¹⁰ UN General Assembly (2006), The Convention on the Rights of Persons with Disabilities; Article 16(1): UN.

Further, the Persons with Disabilities Act provides that a person with disability shall enjoy legal capacity on an equal basis with others in all aspects of life.¹¹ This enjoyment of legal capacity includes women with disabilities and is provided for in the CRPD.¹² When it comes to compliance on the inclusion and participation of women with disabilities in matters that affect them,¹³ the Act provides that the Board of the Zambia Agency for Persons with Disabilities shall comprise eight representatives, of whom four shall be women.¹⁴

When it comes to education, the Persons with Disabilities Act¹⁵ provides that the Minister responsible for Community Development shall issue regulations to establish an inclusive education system in Zambia. Inclusive education calls for the effective inclusion and participation of women and girls with disabilities. This complies with Article 24 of the CRPD which calls for inclusive education at all levels of education.

The Act also generally provides for accessibility in places for public use which complies with Article 9 of the CRPD. Division 2 of the Act is on health and it includes access to sexual and reproductive health, especially for women and girls with disabilities and it complies with Article 26 of the CRPD.

Although the Persons with Disabilities Act tends to comply with the CRPD in its text, it is in practice not being implemented fully to implement the aspirations of the Convention.

Women and girls with disabilities still face a lot of stigma and discrimination in almost all domains of life especially in education health and employment and livelihood.

The GRZ enacted the Gender Equity and Equality Act No. 22 of 2015 to guarantee the protection of the rights of women including women with disabilities. It does not however fully comply with the aspirations of the UNCRPD specifically in Article 6 of the Convention.

2.3 Extent to which the rights of women and girls with disabilities have been protected and promoted.

Just like as already been stated in this memorandum, the rights of women and girls with disabilities do not have specific policies and laws that in themselves expressly promote and protect such rights. Otherwise, provisions exist that indirectly promote and protect the rights of women and girls with disabilities by

¹¹ Government of the Republic of Zambia (2012) The Persons with Disabilities Act No. 6, Section 8(i): National Assembly of Zambia.

¹² UN General Assembly (2006) The Convention on the Rights of Persons with Disabilities: Article 12(2)

¹³ UN General Assembly (2006), The CRPD; Article 6: UN.

¹⁴ Government of the Republic of Zambia (2012) The Persons with Disabilities Act No. 6, Section 13(l): National Assembly of Zambia.

¹⁵ GRZ (2006), The Persons with Disabilities Act, Part V, Division 1.

grounding them under the gender and general disability mirror. This includes the Constitution of Zambia.

The Constitution provides that no law shall make any provision that is discriminatory either of itself or in its effect.¹⁶ This generally protects the rights of women and girls with disabilities from any form of discrimination as may be prescribed by any law or the Constitution itself. The Constitution further defines discrimination as directly or indirectly treating a person differently on the basis of that person's ...sex...age, disability...pregnancy, health...social or economic status.¹⁷ This protection against discrimination includes women and girls with disabilities.

In order to ensure that persons with disabilities, including women and girls with disabilities, are protected from discrimination, the State has designated the Zambia Agency for Persons with Disabilities (ZAPD) established under the Persons with Disabilities Act, to consult with relevant state institutions, organizations of and for persons with disabilities and other civil society organizations to take appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise.¹⁸

In addition, section 64 of the Persons with Disabilities Act makes provision for the attorney general to take appropriate legal action where a person or group of persons is engaged in a practice which is discriminatory under the Act or the discrimination is a significant and substantial infringement of the rights of persons with disabilities and raises issues of public interest. Again, this includes the protection of the rights of women and girls with disabilities.

So, as already stated, there is no existing law that directly promotes and protects the rights of women and girls with disabilities as a stand-alone piece of legislation.

¹⁶ Government of the Republic of Zambia (2016) Constitution of Zambia Amendment Act No. 2: National Assembly of Zambia.

¹⁷ Government of the Republic of Zambia (2016) Constitution of Zambia Amendment Act No. 2, Article 266: National Assembly of Zambia.

¹⁸ NAZ, (2012), Persons with Disabilities Act; section 17: GRZ.

3.0 CHALLENGES FACED BY WOMEN AND GIRLS WITH DISABILITIES IN VARIOUS ASPECTS OF SOCIO-ECONOMIC LIFE AND THE IMPACT ON THEIR QUALITY OF LIFE

3.1 Challenges

Women and girls with disabilities in Zambia face a lot of challenges based on their disability faceted together with their being female, their low socio-economic status including high levels of illiteracy and the cultural aspects of viewing women with disabilities as victims of sorrow and evil curses especially in rural areas. These challenges lead to multiple forms of discrimination across all sectors of human development including in education at all levels, in health including sexual and reproductive health, in employment and livelihood, in family life and participation in public and political life.

Girls with disabilities are rarely enrolled to school because parents believe that they might be not productive in terms of employment even if they got educated. When they get into school, they drop out because of several issues including mockery, bullying (especially girls with albinism) and inaccessible infrastructure.

DRW through its Paralegal Desks have received cases of girls dropping out of school because the teachers and care mothers could not cope with the management of their menstrual issues, especially for girls with intellectual disabilities. It is reported that since the University of Zambia was opened, only one woman with a hearing impairment has so far graduated from there. This is because of the absence or inadequacy of sign language interpretation.

Obviously, due to low levels of education, women with disabilities are rarely employed. This is so especially for women with intellectual disabilities, women with visual impairments and those with hearing impairments. The many of them are dependants. Many women with disabilities are peasant farmers whose harvests do not even sustain their nutritional needs.

When it comes to health, especially access to sexual and reproductive health, women and girls with disabilities face various challenges. Firstly, it should be recognised that women and girls with disabilities are women like any other woman and they are just as likely to be sexually active as their peers without disabilities.

Research shows that women with disabilities face problems of infantilisation (being treated as a child or victim) and disempowerment, abortion and contraception. They disproportionately suffer from all forms of violence, substantial barriers in accessing justice, discriminatory attitudes, norms and behaviour rendering them invisible, and a lack of accessible and appropriate SRHR information and services.¹⁹

¹⁹ Times of Zambia: 26 JULY 2021, Zambia: Sexual, Reproductive Health Rights for Women With Disabilities

Many women and girls with disabilities have reported facing derogative language from health workers on the grounds that they get pregnant. They usually face this when accessing antenatal clinics with other women. The Times of Zambia, quoted Ms' Musole Kaseketi as saying, "The other time one woman with a disability went for antenatal and all nurses at the health facility mocked and condemned her saying she cannot even feel sorry for herself by choosing to get pregnant".²⁰ This emanates from the false belief that women and girls with disabilities are asexual.

Women with disabilities are invisible in the political space. There has been no specific information on why women with disabilities do not participate in political life, but it is all about the low level of education, low incomes, fear of discrimination, stigma and political violence.

3.2 Impact on their Quality of Life

Women and girls with disabilities experience double discrimination, which places them at higher risk of gender-based violence, sexual abuse, neglect, maltreatment and exploitation. The belief that they are asexual has got implications on how women with disabilities interact in their sexual lives.²¹ For example, girls who have had disabilities since youth usually show and express less likeliness to access adequate sex education.²² This has got a negative impact on their lives because it causes them to have a lower level of knowledge which presents obvious risks to sexual safety and wellbeing.

Unemployment obviously leads to having women with disabilities live a life of street begging where they are likely to face gender-based violence, abuse and exploitation. In general, the impact of the challenges women and girls with disabilities face is extreme poverty.

²⁰ Musole Kaseketi, a woman with a disability who is a disability rights activist quoted in the Times of Zambia: 26 JULY 2021, Zambia: Sexual, Reproductive Health Rights for Women With Disabilities

²¹ Disability Rights Watch ongoing information collection from trainings and workshops on sexual and reproductive health rights with women and girls with disabilities in Zambia: experience of women participants.

²² Disability Rights Watch ongoing information collection from trainings and workshops on sexual and reproductive health rights with women and girls with disabilities in Zambia: experience of women participants.

4.0 CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

The welfare of women and girls with disabilities is not specifically addressed when it comes to the promotion and protection of their rights and fundamental freedoms in policy and legal frameworks that particularly deal with them. This leaves a gap when it comes to addressing their rights and welfare using specific policy and legal framework that have special focus on the matters affecting women and girls with disabilities as a distinct group of women and girls with specific disability-gender needs and inclusion accommodations. This is against the background that women and girls with disabilities face multiple forms of discrimination based on the intersection status of being a woman, being vulnerable to poverty, gender-based violence and traditionally or customarily stigmatised.

This therefore demands that the Committee makes specific and deliverable recommendations to government to ensure the welfare of women and girls with disabilities is uplifted to the acceptable standards of the level of other women and girls without disabilities.

4.2 Recommendations

4.2.1 General Matters

- i. Government through the Zambia Agency for Persons with Disabilities should embark on a massive national awareness raising campaign to educate families and communities on the rights of women and girls with disabilities to protection of the law and need to participate in all family and community life-activities on an equal basis with other women and girls without disabilities. This awareness raising campaign should be fully and adequately funded by government.
- ii. Government, through the Ministry of Community Development and Social Services, the Ministry of Education and the Zambia Agency for Persons with Disabilities should create awareness to build the assertiveness, self-esteem and confidence for self-realisation through learning institutions (girls clubs) and Organisations of Persons with Disabilities, especially Organisations of Women with Disabilities, to women and girls with disabilities in order to enhance their full and effective participation in all domains of life and community development.
- iii. The government must establish a baseline of disaggregated data, taking into consideration age and disability, against which future progress towards achievements on the implementation of the CRPD can be measured in regards to the inclusion of women and girls with disabilities in all socio-economic spheres of development.

- iv. The government must collect data on the number of women and girls with disabilities that have benefited from the GEWEL project and the empowerment grants and put in place targeted mechanism to ensure women and girls with disabilities benefit from these state programmes.
- v. The Ministry of Community Development and Social Services should expedite the amendment of the Persons with Disabilities Act of 2012 to ensure the inclusion of provisions specifically addressing the rights of women and girls with disabilities, including the sexual and reproductive health rights. The Ministry should further expedite the process of reviewing the National Policy on Disability and approving a new Policy which expressly includes the promotion of the rights of women and girls with disabilities including their sexual and reproductive health rights. The Act and Policy should address the inter-sectionality around women and girls with disabilities.

4.2.2 Access to Quality Inclusive Education

- i) Ministry of Education should ensure that all schools and other learning institutions are physically accessible and adapted to the inter-sectional needs of women and girls with disabilities, including their sexual and reproductive health needs and sanitation.
- ii) Ministry of Education consistently provide both pre-service and in-service training and education on the identification and mitigation of different disability-gender related vices that lead to the non-retention or poor performance of girls with disabilities in schools. The teachers should further be equipped with skills to redress any form of negative vice that has an impact on the retention, achieving and effective participating of the girls with disabilities in school, including gender-based violence, until they successfully attain tertiary level education.

4.2.3 Access to Quality Health

- i) The Ministry of Community Development and Social Services in liaison with the Ministry of health and the Zambia Agency for persons with Disabilities should embark on a public awareness campaign on the right of women and girls with disabilities to access health services on an equal basis with other women with emphasis on the need for family and community support.
- ii) Government should take measures to increase access to sexual reproductive health services by women with disabilities by training frontline health personnel in disability inclusion and rolling out training using its IEC Module for Persons with Hearing Impairment and Visual Impairment recently produced with the support of UNFPA. This includes training in basic sign language.

4.2.4 Respect for Family Life

- i. The government, through the Ministry of Community Development and Social Services, Ministry of Health and the Zambia Agency for Persons with Disabilities, must increase public and community awareness and education on the right of women with disabilities to found families with partners of their choice and to make free and informed decision on their sexuality including the number of children they wish to have without any interference.
- ii. The Ministry of Health should incorporate into their training programmes of medical and health human resource the rights of women and girls with disabilities to make free and informed choices on their reproductive rights including the right to maintain their fertility for the purpose of choosing when to have their own family without any undue influence or forced sterilisation or forced contraception.
- iii. Government, through the MCDSS should strengthen its support system to ensure that women with disabilities provide the necessary care to their children in circumstances where they are incapable of providing for the child without separating them from their child unless otherwise where the best interest of the child is to be protected.

4.2.5 Inclusion in Work and Employment

- i. The government must expeditiously issue statutory instruments to the persons with disabilities Act with regards to the reservation of employment for persons with disabilities in both the public and private sector, with specific provisions on employment of women with disabilities. This will help to open job opportunities for women with disabilities.
- ii. The government must take practical measures to enforce the law with regards to the minimum wage so that women and girls with disabilities employed as house helpers or shop keepers are paid a decent wage which will compensate for their disability related extra costs.
- iii. The National Trust Fund for Persons with Disabilities and the Citizens Economic Empowerment Commission should develop loan and financial management products specifically tailored for women with disabilities to accelerate their economic empowerment through effective participation in trade and business.

4.2.6 Participation in Public and Political Life

- i. Measures adopted by the government must include affirmative actions to ensure representation of women with disabilities in leadership positions, from local to national level.
- ii. The Office of the President should ensure that women with disabilities who hold appropriate and pre-requisite qualifications are appointed to Constitutional and public or political office on an equal basis with other women. Such appointments should be extended to those appointments made by Cabinet Ministers to different boards and commissions.

- iii. Government must in partnership with organisations of persons with disabilities embark on a robust public education programme on the rights of women with disabilities to participate in political and public life alongside some leadership capacity building interventions.

4.2.7 Protection from Exploitation, Violence and Abuse

- i. Government, through its relevant line Ministries dealing with gender-based violence and the ZAPD should educate women and girls with disabilities in learning institutions, health facilities and community-based women's groups on all aspects of gender-based violence including the aspects of identifying the forms of violence, reporting and access to counselling, rehabilitation and safe-home services. Such education programmes should be tailored to disability and age appropriateness, including appropriateness to the inclusion accommodations of women and girls with intellectual and psychosocial disabilities.
- ii. The Ministry of Home Affairs and Internal Security in conjunction with ZAPD, should train all law enforcement officers, including police, immigration and correctional facility officers, on Gender and Disability Inclusion which includes sign language, appropriate communication modes, disability appropriate language and terminologies, accessibility and gender-specific reasonable accommodations for women and girls with disabilities. This training should ultimately form part of the whole curriculum at the training colleges for these law enforcement officers.
- iii. Government should equip all officers working at all one-stop centres on GBV in the country with skills to effectively handle and resolve GBV and related matters affecting women and girls with disabilities taking into consideration their multiple and inter-sectional discrimination. All such one-stop centres should be accessible to all women and girls with disabilities in terms of built infra-structure, language and communication.

Wamundila Waliuya,

Director.

DATED: 31st January, 2022