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**Human Rights Commission**

**Zambia**

**An Independent Report Submitted by the Human Rights Commission of Zambia to the Committee on the Rights of Persons with Disabilities.**

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# Glossary of Acronyms

DFPP – Disability Focal Point Persons

DMMU – Disaster Management Mitigation and Unit

ICT – Information and Communication Technology

MDA – Ministries, Departments, and Agencies

NMRF – National Mechanism for Reporting and Follow-up

NPD – National Policy on Disability

NTFPD - National Trust Fund for Persons with Disability

UPR – Universal Periodic Review

ZABS – Zambia Bureau of Standards

ZAPD – Zambia Agency for Persons with Disabilities

ZICTA – Zambia Information and Communication Technology Authority

ZNBC - Zambia National Broadcasting Corporation

MIBS – Ministry of Information and Broadcasting Services

7NDP – Seventh National Development Plan

PLEED - Programme for Legal Empowerment and Enhanced Justice Delivery

# Executive Summary

Since ratification of the Convention on the Rights of Persons with Disabilities in February, 2010, Zambia has made significant progress in domesticating provisions of the treaty and enhancing protection and promotion of rights of persons with disabilities. The Persons with Disabilities Act No. 6 of 2012, other laws and policies domesticate provisions of the convention. The Zambia Agency for Persons with Disabilities (ZAPD) under the Ministry of Community Development and Social Services (MCDSS) is a legally established coordination mechanism mandated to plan, promote and administer services for persons with disabilities.

However, persons with disabilities still endured high levels of discrimination and inequality in practice due to entrenched negative public attitudes, lack or limited awareness on the rights of persons with disabilities. The principle of non-discrimination, particularly in relation to access to health, education services, discriminatory social and cultural practices, customary marriage disputes and inheritance, was not adequately implemented with respect to children belonging to most vulnerable groups, such as girls, children with disabilities, children belonging to religious minorities, children living with HIV/AIDS, migrant and refugee children, orphans and children born out of wedlock[[1]](#footnote-1).

The Constitution and some subsidiary legislation still contained discriminatory clauses against persons with disabilities. Examples include Article 13 (1) (h), 16 (2) (i), 70 (2) (d) and 83 (1) (b) of the Constitution and the Penal Code Act Chapter 87 of Laws of Zambia (Section 139 on “defilement of imbeciles or person with mental illness”).

Persons with disabilities still faced difficulties getting necessary services during arrest, detention and appearance in courts due to lack of authoritative legal and policy measures relating reasonable accommodation. Despite constitutional guarantees under Article 18, access to justice remained costly and mostly at the expense of rights holders except in exceptional circumstances where the Legal Aid Board provided State legal assistance, however, the process and criteria was less well known to many. The Legal Aid Board was understaffed and overloaded with work/cases. This consequently affected their reach and compromised the quality of services offered.

 Women and girls with disabilities in particular mostly lived in poverty due to a number of factors, including lack of education, limited economic opportunities and social exclusion. They were more vulnerable to abuse, gender-based violence and discrimination in various forms which constituted a violation of their rights and fundamental freedoms affecting their development and advancement.

In education, there were inadequate number of specialized teachers and a limited number of school facilities and materials adapted for the special needs of children with disabilities, as well as services and infrastructure to ensure that education was fully inclusive. Decisions for school enrolment and placement, habilitation and rehabilitation, integration in society and many others were still not guided or referenced to the best interest principle.

Majority of public and private infrastructure including roads, schools, hospitals, courts, police stations, public administration offices, hotels and new buildings were inaccessible[[2]](#footnote-2). Most public and private buses did not provide for ease of access for Persons with Disabilities.

Whilst the enactment of the Mental Health Act No. 6 of 2019 is progressive in many respects and provides for respect for the right to legal capacity for persons with mental impairments under Section 4 (1). However, that proviso was diluted or taken away by the subsequent provisions in Section 4 (2) of the same Act which stated that where the nature of the mental illness, mental disorder or mental disability results in the absence of mental capacity of that mental patient, the mental patient shall not enjoy legal capacity and was legally disqualified from performing a function that requires legal capacity.[[3]](#footnote-3)

Reports from correctional and detention facilities continued noting instances where persons with disabilities particularly persons with mental disabilities were arbitrarily deprived of their liberty contrary to the provisions of the law. Section 167 of the Criminal Procedure Code which allowed the deprivation of liberty for persons found unfit for trial or not guilty by reason of “insanity” remained of concern. Such categories of persons were indefinitely detained under the “President’s Pleasure” in Hospital Psychiatry Units without regular case reviews. Those laws and practices were contrary to human rights norms and standards and amounted to exclusion and/or discrimination.

Despite Constitutional prohibition, acts of torture have not been criminalized in Zambia, allowing Law Enforcement Officers to violate the constitutionally guaranteed right with impunity. Many people, including persons with disabilities, had been victims of torture, especially when they were in the custody of Law Enforcement Officers.

The State has not put in place legal and policy measures aimed at giving effect to Article 19 and actualise the elements of choice, support and inclusion in communities. Choice means the right to choose where and with whom to live. With regard to support; the state had an obligation to support persons with disabilities and their families in disability related services on a day to day basis. Inclusion should ensure communities were organized to be inclusive of persons with disabilities through education, employment, social, cultural and political processes among others.

The State was also yet to give effect to the policy measure for the Minister of Transport to ensure that there were concessional transport fares for persons with disabilities in both the public and private sectors. The provisions of the Act was also largely not enforced, resulting in Persons with disabilities, particularly those using wheel chairs, experiencing mobility difficulties as transporters in some cases denied them access to transport on account that their personal mobility devices would occupy too much space.

Right to respect for privacy of persons with disabilities has not been domesticated either in the Persons with Disabilities Act, the National Policy on Disability or any legislation or administrative measure. The omission to provide for protection of persons with disabilities in regard to their right to privacy, coupled with lack of provision of trained and professional support staff, adversely undermined the right of Persons with Disabilities to privacy.

Notwithstanding the progress made towards realization of the right to inclusive education for persons with disabilities, concerns remain on the inadequate capacity in terms of the numbers of competent and specialized teachers. Stigma and discrimination of children with disabilities in schools, as well as against teachers for children with disabilities remained a serious barrier. Most learning institutions buildings were not accessible to persons with disabilities as they did not meet the standard requirements of Universal Design and also lacked the necessary materials and facilities for the education of children with disabilities. The inclusive education policy mainly focused on primary school going children and little attention was given to secondary and tertiary education. The number of teachers taught on how to handle children with special needs across the country remained very low thus impacting on the quality of education offered to children with disabilities.

The barriers faced by persons with disabilities in accessing health services were mainly twofold; (i) most of the physical environments in form of buildings made it difficult for persons with disabilities such as those with physical impairments to readily access services (ii) negative attitudes towards persons with disabilities by health personnel, particularly as it pertained to sexual reproductive health services and products negatively affected access to health for Persons with Disabilities. Such attitudes promoted stigma and discrimination. Numerous complaints received from persons with disabilities, particularly women and persons with albinism alleged dehumanising and degrading treatment during the course of seeking health services due to entrenched stigma and discriminatory practices. There were numerous complaints from women with disabilities that their right to privacy and confidential counselling and guidance was not respected whenever they went to health institutions to access medical services. Despite the legal and policy measures to offer affordable or free health services to persons with disabilities accessibility and affordability remained problematic. There appeared to be no specific guidelines provided on how health personnel were required to attend to the health needs of persons with disabilities.

Low levels of education, discriminatory attitudes and practices among employers and inaccessible work places have continued affecting employment and employability of persons with disabilities in Zambia. Other than the education sector, very few sectors especially private businesses employ persons with disabilities. As a result most persons with disabilities continued wallowing in poverty and unable to afford basic needs like housing, food, clean water, health and education. Further, persons with disabilities were not adequately encouraged and supported to pursue a passion or career in the arts and sports, nor were sport and art sufficiently considered, promoted and supported as valid career paths.

Even though the State had made substantial accommodations to facilitate participation of persons with disabilities in political and public life, more still needed to be done including training of electoral staff on how to work with persons with disabilities during elections. The State has not provided for more inclusive voting methods or procedures such as advance, mobile or electronic ballots among others which could enable persons with disabilities participate more in political and public life.

There were many reasons why despite the legal and policy measures taken, the promotion and protection of rights of persons with disabilities has not resulted into significant progress. The most important could be inadequate investment in implementation of measures and coordination mechanisms to ensure the measures were actioned. Therefore, the State need to further seek international cooperating to help build the capacity of ZAPD and the Human Rights Commission to implement legal and policy measures to enhance the promotion and protection of rights of persons with disabilities and ability of rights holders to claim them.

In order to address gaps identified, it was imperative for the State to review and amend the Constitution, some subsidiary laws and policies to align them with the Convention and the Persons with Disabilities Act. Measures needed to be taken to fully implement the Persons with Disabilities Act including recommendations made by the Special Rapporteur on the rights of persons with disabilities. There was need to enhance capacity of the coordination mechanism on issues of persons with disabilities (ZAPD) to ensure it effectively implemented its mandate.

# Introduction

1. The Human Rights Commission (HRC) is a Zambian National Human Rights Institution (NHRI) established under Article 230 of the Constitution of Zambia to promote and protect human rights. Its broad mandate and functions are provided for under Article 230 (2) and (3) of the Constitution and Section 9 of the Human Rights Commission Act Chapter 48 of the Laws of Zambia.
2. Zambia is a party to all but one of the 9 core human rights treaties. The country has also signed and ratified most key regional and sub-regional conventions and agreements for the enhancement of human rights. Zambia signed the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) on 9th May, 2008 and ratified it on 1st February, 2010. Subsequently, the State domesticated the Convention through the enactment of the Persons with Disability Act, No.6 of 2012.
3. In preparing this report, HRC examined and referred to a number of documents including UNCRPD, the Persons with Disability Act No.6 of 2012, the National Policy on Disability of 2015, the previous and recent State reports to the CRPD, Report of the Special Rapporteur on the rights of persons with disabilities mission to Zambia, 2017, concluding observations from various treaty bodies including CRPD, the third Universal Periodic Review (UPR) country report and many others. The report has also taken into consideration the Commission’s continuous human rights monitoring findings as well as views from various stakeholders collected through engagement meetings held in the recent past.
4. This report is aimed at providing independent parallel views to State report to the Committee on the Rights of Persons with Disabilities regarding the extent to which persons with disabilities in Zambia currently enjoy their fundamental human rights and freedoms as provided for in the Convention, the extent of the realisation of provisions in each article of the Convention, progress made by the State and some challenges preventing the full enjoyment by persons with disabilities in Zambia of the rights provided for under the Convention. It also makes recommendations on legal, policy and administrative measures the State may consider taking to improve the promotion and protection of rights of Persons with Disabilities.

# Articles 1-4: Purpose, Definitions, General Principles and General Obligations

1. The Human Rights Commission applauds the Government for enacting the Mental Health Act No. 6 of 2019. There are however, some areas of concern particularly with regard to Section 4 of the Act which suggests that in some instances, a person with a disability may not enjoy legal capacity. The Committee on the Rights of Persons with Disabilities reaffirmed that: “A person’s status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) must never be grounds for denying legal capacity or any of the rights provided for in article 12.”[[4]](#footnote-4)
2. In addition to the legislation cited under para. 41 of the State Report, HRC is of the view that the State takes a holistic approach in aligning all laws with the provisions of the UNCRPD as domesticated.. There are many laws that use derogatory terms such as ‘disabled person’ in reference to persons with disabilities. Some of these laws include The Workers Compensation Act No. 10 of 1999, the Defence Act, Chapter 106 of the Laws of Zambia, The Combined Cadet Force Act, Chapter 118, The Public Service Pensions Act, Chapter 260 of the Laws of Zambia, the Medical and Allied Professions Act, Chapter 297, the Value Added Tax Act, Chapter 331 among others.
3. The Commission notes that the definition of reasonable accommodation adopted in the Persons with Disabilities Act under Section 2 fully complies with the definition in the Convention. In fact, it adds the word ‘adaption’ which has enhanced the definition of the term.
4. The definition of ‘Universal Design’ in the Convention has been fully domesticated in the Persons with Disabilities Act, No. 6 of 2011.
5. Section 4 of the Persons with Disabilities Act has domesticated all the general principles of the Convention as per its Article 3. The Section goes further to expand the provisions of Article 3 by adding the other principles namely; ‘recognition as persons before the law’, respect for the physical and mental integrity and independent living.

# Article 5: Equality and Non-Discrimination

1. According to State report, the Constitution under Article 18 guaranteed every person equal protection before the law and this included persons with disabilities. Article 23 prohibited any form of discrimination with Article 26 giving a definition of 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.” [[5]](#footnote-5)
2. Section 6(1) of the Persons with Disabilities Act No. 6 of 2012, prohibited discrimination on the basis of disability while Section 4 of the Act gave principles of non-discrimination that apply to Persons with Disabilities and reinforces guarantees for non-discrimination against Persons with Disabilities in all spheres of life. Section 35 of the Act provided that a person with disability shall not be discriminated in any form on the basis of disability with regard to all forms of employment, including conditions of recruitment, hiring, and employment, continuance of employment, the creation, classification and abolition of positions, the determination of wages, pension or other benefits, apprenticeship, promotion, career advancement and healthy working conditions”. Further, under Section 64, the Act provided for remedial measures where a discrimination against persons with disability had been proven.

1. The Mental Health Act No. 6 of 2019 under Section 6 provided that; “A person shall not discriminate against a mental patient.” In addition, Section 15 (2) of the Act requires the State to provide equal health services to persons with mental disabilities as provided to the general population.

1. The State has further developed and implemented a National Policy on Disability of 2015. The policy provided for measures that were aimed at providing an environment for equality before and under the law and provides that all persons were entitled without any discrimination to equal protection and benefit of the law.
2. However, Persons with Disabilities in Zambia still endured high levels of discrimination and inequality, in practice due to entrenched negative public attitudes, lack or limited awareness on the rights of persons with disabilities. The HRC re-iterates concerns noted by the Committee on the Rights of the Child that “the principle of non-discrimination, particularly in relation to access to health, education services, discriminatory social and cultural practices, customary marriage disputes and inheritance, was not adequately implemented with respect to children belonging to most vulnerable groups, such as girls, children with disabilities, children belonging to religious minorities, children living with HIV/AIDS, migrant and refugee children, orphans and children born out of wedlock”[[6]](#footnote-6).
3. The Constitution and some subsidiary legislation still contained discriminatory clauses against persons with disabilities which include Article. 13 (1) (h), 16 (2) (i), 70 (2) (d) and 83 (1) (b), the Penal Code Act Chapter 87 of Laws of Zambia (section 139 on “defilement of imbeciles or person with mental illness”) and the Criminal Procedure Code Act No. 88.
4. Persons with disabilities especially children still faced difficulties getting necessary services during arrest, detention and appearance in courts. Most public buildings, transport system, parks, hotels and other recreation areas did not provide sufficient accommodations to facilitate access to vital services.

**Recommendations**

1. Implement in full the Persons with Disabilities Act No. 6 of 2012.
2. Review and amend the Constitution and other laws that did not conform to the principles and standards set out in the Convention.

# Article 6: Women with Disabilities

1. The State report enumerates measures taken including signing and ratifying of key international and regional human rights instruments for the enhancement of woman’s rights.[[7]](#footnote-7) They include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the SADC Protocol on Gender and Development. Domestically, apart from strong equality provisions espoused in the Constitution, the State has enacted laws, policies and taken other measures to enhance gender equality, rights and freedoms of women and their full participation at all levels. These include the Gender Equity and Equality Act No. 22 of 2015; Anti-Gender Based Violence Act No.1 of 2011, Persons with Disabilities Act No. 6 of 2012, Citizens Economic Empowerment Commission Act No. 9 of 2006, the National Gender Policy of 2014, National Disability Policy of 2015 and the National Strategy on Ending Child Marriage 2016 – 2021, among others.
2. In the recent past, the State has appointed women including women with disabilities to key decision making positions. There were various State measures such as the Social Cash Transfer and the citizens economic empowerment programmes which targeted women with disabilities and other vulnerable groups.
3. However, HRC observed that women with disabilities continued to face difficulties in accessing such empowerment funds and schemes meant to advance their independent and sustainable livelihoods.
4. Women and girls with disabilities in particular mostly lived in poverty due to a number of factors, including lack of education, limited economic opportunities and social exclusion. They were more vulnerable to abuse, gender-based violence and discrimination in various forms which constitute a violation of their rights and fundamental freedoms and impinged on their development and advancement.
5. There have been concerns that women and children with disabilities have not been increasingly targeted in sensitisation and awareness-raising programmes on gender-based violence and HIV/AIDS related issues[[8]](#footnote-8).

**Recommendations**

1. Review and amend the Persons with Disabilities Act to include specific provisions on the rights of women with disabilities in order to conform to the principles and standards provided in the Convention.
2. Ensure that women with disabilities have full access to empowerment programmes and social services for enhancement of their participation in development on equal basis with others.
3. Take measures to protect women and girls with disabilities from all forms of abuse, violence and discrimination.
4. Ensure persons with disabilities including women and girls are targeted in gender based violence and HIV/AIDS sensitization and awareness creation.

# Article 7: Children with Disabilities

1. The State has developed and has been implementing policies with a view to enhancing protection, respect and fulfilment of the rights of the child including children with disabilities. Some of these policies include the National Child Policy, the National Youth Policy, the Youth Employment and Empowerment Action Plan of 2015, National Policy on disability and the National Implementation Plan on Disability.
2. However implementation of measures lacked resources, concerted policy coherence and efforts. The Disability Focal Point Persons system was dysfunctional and rarely provided reports on measures different institutions were implementing and measurable outcomes being achieved.
3. There was inadequate number of specialized teachers and a limited number of school facilities and materials adapted for the special needs of children, as well as services and infrastructure to ensure that education was fully inclusive.
4. Decisions for school enrollment and placement, habilitation and rehabilitation, integration in society and many others were still not guided or referenced to the best interest principle.

**Recommendations**

1. Develop procedures and criteria to provide guidance on determining the best interests of the child in every area and for giving it due weight as a primary consideration.
2. Review and amend the Person with Disabilities Act to include article 7 of the Convention providing for the rights of children with disabilities in order to conform to the principles and standards provided in the Convention.
3. Implement in full the disability action plan in order to realize the rights of children with disabilities

23. Train more teachers specialized in various special skills adapted for children with disabilities, as well as the provision of services and infrastructure to ensure that education is fully inclusive.

# Article 8: Awareness-Raising

1. Section 17 of the Persons with Disabilities Act No. 6 of 2012, has domesticated Article 8 of the Convention, regarding awareness raising. It provides for creation of public awareness on rights of persons with disabilities with a view to combat stereotypes, prejudices and harmful practices against persons with disabilities in all areas of life, promote capabilities and contribution of persons with disabilities.
2. Apart from measures highlighted in the State Report, the National Policy on Disability (2015) under its implementation framework stipulated measures the State intended to take through the Ministry of Information and Broadcasting Services (MIBS) to raise awareness on the rights of persons with disabilities. Sign language interpretation was regularly provided on Zambia National Broadcasting Corporation (ZNBC) key programmes such as news, national address, other public functions.
3. However, despite the efforts, awareness of the rights of Persons with Disabilities was still low among the public including State and Non-State actors. The coordination mechanism (ZAPD) lacked capacity and resources to create sufficient awareness on the rights of Persons with Disabilities. The organisation of workshops, seminars and meetings including commemoration of internationals days were usually conducted or held in urban areas leaving out rural areas.
4. Generally, the State only raised issues relating to Persons with Disabilities during annual events such as the International Day of Persons with Disabilities. The National Policy on Disability was largely not being implemented.
5. The impact of lack and/or low levels of awareness on disability has been manifesting itself in continued stigma, discrimination, prejudices and myths against persons with disabilities. This had in some cases contributed to grave violation of the rights of persons with disabilities such as killing of Persons with Albinism based on the myth that their body parts possessed supernatural powers capable of making someone rich or curing someone of diseases such as HIV/AIDS.
6. A number of State and Non-State Actors as well as the media had continued using pejorative language and terminologies against Persons with Disabilities, which re-enforced discrimination and violated inherent dignity and rights contrary to the convention.

**Recommendations**

1. Facilitate the development of a comprehensive Communication Strategy aimed at enhancing awareness raising on disability in order to effectively promote and protect the Rights of Persons with Disabilities.
2. Enforce the Persons with Disabilities Act and implement the National Policy on Disability (2015) Implementation Framework on Awareness Raising.

# Article 9: Accessibility

1. The Persons with Disabilities Act obliged relevant State institutions to institute measures that would result into an environment that enhanced accessibility for persons with disabilities in the area of buildings, transportation, information and communications, including technologies and systems, and to other facilities and services. The National Policy on Disability explicitly provided for the accessibility objective with a view to facilitate persons with disabilities to live independently and participate fully in all aspects of life.
2. The State had developed and adopted national accessibility standards to facilitate equal and unhindered access to both physical environment and information and communication. Some newest buildings (very few) had since adopted those standards and were highly accessible to persons with physical disabilities, including new shops and malls.
3. The Zambian kwacha notes and coins had tactile features making it accessible to persons with visual impairments. However, there have been complaints that tactile marks on some bank notes faded away with time causing challenges for persons with visual impairment to identify the notes and transact or trade using money as a medium of exchange.
4. Sign language has been recognized under the law and policy in Zambia as one of the major national languages to be used in public functions, education and any other fora. However, the majority of public and private infrastructure — including roads, schools, hospitals, courts, police stations, public administration offices, hotels and new buildings — were inaccessible[[9]](#footnote-9). Most public and private buses did not provide for easy access for Persons with Disabilities.
5. However, access to essential goods and services was still a challenge for Persons with Disabilities and the State acknowledges in its report. For example, most public buildings, schools, hospitals and pedestrian walkways, medicines and other essential products were largely inaccessible to persons with disabilities.
6. The Zambian sign language has not yet been recognized in practice as one of the national languages and interpretation services for persons with hearing impairments were non-existent in public hospitals, police stations, courts and other public institutions, thus limiting access to vital information on basic goods and services.
7. Campaigns to raise awareness on critical issues, such as the prevention of gender-based violence and communicable diseases, public health and reproductive health rights, were generally not accessible to persons with disabilities, particularly persons with visual and hearing impairment.

1. Low-cost Information and Communications Technologies (ICT) in Zambia were neither user-friendly nor accessible or readily available to persons with disabilities.[[10]](#footnote-10)

**Recommendations**

1. Apply standards developed and adopted by the Bureau of Standards and consider making an accessibility needs assessment of existing infrastructure to be refurbished, coupled with a time-bound plan to make it accessible.

1. Adopt regulations to make public transport available, accessible and affordable for persons with various kinds of disabilities.[[11]](#footnote-11)
2. Ensure medicines or other essential products were available with vital information in Braille, the Zambian sign language should be recognized as an official language and interpretation services for deaf persons must be available in hospitals, Police Stations, Courts and other institutions providing essential services.
3. Increase financial support to ZAPD to enable it effectively implement its mandate in accordance with provisions of Persons with Disabilities Act.

# Article 10: Right to Life

1. As highlighted in the State Report, the Constitution under Article 12, affirms that every human being has the inherent right to life and all necessary measures shall be undertaken by the State to ensure that all persons on equal basis including persons with disabilities enjoy this right except for circumstances as provided for in law.
2. Article 12 of the Constitution provides that “No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.”
3. The Article further provides that “No person shall deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.”
4. The HRC has however, noted with concern that cases of killings or attacks on persons with albinism have been increasing where their body parts have been cut off for suspected ritual practices. There have been a number of reported incidences where men, women and children with albinism have been found dead and or some body parts missing. Those who managed to escape death had one or more parts of their bodies such as the hands or fingers chopped off, or sustained life threatening injuries and continued to live in fear.
5. Despite such gruesome killings or brutal attacks on persons with albinism which grossly violated or threatened their right to life, the State has been unsuccessful in most of its efforts to bring the perpetrators to book and guarantee protection of the right to life for persons with albinism.

1. HRC reiterates concerns raised by the Special Rapporteur on the rights of persons with disabilities, Mrs. Catalina Devandas Aguilar, during her last mission to Zambia in 2016 that “myths and beliefs about impairments have serious repercussions on the right to life and the physical integrity of persons with disabilities.”[[12]](#footnote-12)

**Recommendations**

1. Take firm and concrete measures to protect people with albinism and ensure that those who violate their right to life were punished as provided for in the law.

1. Conduct mass sensitisation to change perceptions and attitudes towards persons with disabilities and combat stereotypes, myths and beliefs associated with impairments which motivate ritual killings and attacks on persons with albinism.

# Article 11: Situations of Risk and Humanitarian Emergencies.

1. The State has not experienced major conflicts or natural and unnatural calamities that would result into a high-risk situation for resilient humanitarian emergencies to be put in place. Notwithstanding the foregoing, the State has put in place policies and guidelines designed to govern State actions aimed at mitigating impacts of situations of risk and humanitarian emergencies including those highlighted in State Report.
2. Further, the Disaster Management Act No. 13 of 2010 provides guidelines for State preparedness, response and recovery in cases of disaster. It establishes Disaster Management Mitigation Unit (DMMU) under the Office of the Republican Vice President. The law includes provisions that established Committees in Districts and satellite areas which were tasked to facilitate for the provision of relief to people and communities in situations of risk. The State also established the department of Resettlement which is responsible for resettling people that have been affected by disasters. The department put in place a Resettlement policy which provided guidelines on how to resettle persons affected by a calamity.
3. However, the laws and policies have no disability –specific provisions guiding State response in times of situations of risk and humanitarian emergency. The provision requiring the Minister responsible to put in place responsive measures creates unpredictability on expected State response in such situations. There was no specific budgetary allocation to deal with a humanitarian emergence affecting persons with disabilities. The establishment of committees did not provide for inclusion of persons with disabilities.

**Recommendations**

1. Review the Disaster Management Act No. 13 of 2010 and other laws, policies and guidelines to expressly provide for specific State response to protect persons with disabilities in situations of risk and humanitarian emergency.
2. Ensure active involvement of persons with disabilities in broad-based committees at Provincial, District and Satellite levels and other structures for managing situations of risk and coordination of humanitarian assistance.

# Article 12: Equal Recognition before the Law

1. The principles of equality and non-discrimination are enshrined in Articles 11 and 23 of the Constitution and in a number of subsidiary legislation and policies. For instance Article 11 in declaratory terms guarantees the entitlement of every person, including persons with disabilities, to the fundamental rights and freedoms.
2. The Persons with Disabilities Act had provisions that promote equal recognition before the law and respect for the inherent dignity of persons with disabilities. Section 8 (1) of 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. HRC welcomes State commitment in the State Report to amend the Persons with Disability Act to include persons with albinism.[[13]](#footnote-13)
3. However, despite those Constitutional and legislative guarantees and/or recognition, the Bill of Rights remains limited in scope to give effective protection of the right to equal recognition before the law. The country, through the failed 2016 referendum, lost an opportunity to expand the Bill of Rights which would have resulted in an augmented recognition and protection of equality before the law for persons with disabilities.
4. Further, HRC has observed that there was inadequate public awareness on equality before the law for persons with disabilities resulting in persons with disabilities not fully enjoying their fundamental rights and freedoms including equal recognition before the law.
5. The enactment of the Mental Health Act No. 6 of 2019 has been progressive in many respects by providing for respect for the right to legal capacity for persons with mental impairments under Section 4 (1). However, that right was diluted or taken away by the provisions of Section 4 (2) of the same Act which stated that;

“(2) Where the nature of the mental illness, mental disorder or mental disability results in the absence of mental capacity of that mental patient, the mental patient shall not enjoy legal capacity and was legally disqualified from performing a function that requires legal capacity.”

The Committee on the Rights of Persons with Disabilities reaffirmed that: “A person’s status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) must never be grounds for denying legal capacity or any of the rights provided for in article 12 (on legal capacity).”[[14]](#footnote-14)

**Recommendations**

1. Create more awareness of the right to equal protection and recognition before the law and ensure law enforcement and judicial officers were trained and more accountable in the manner laws were implemented.
2. Amend laws including the Constitution to expand the scope of protection of the right and policies which undermined the enjoyment of the right to legal capacity such as Section 4 (2) of the Mental Health Act No. 6 of 2019.

# Article 13: Access to Justice

1. HRC acknowledges and welcomes State efforts and commitments highlighted in State Report to prioritise access to justice under the 7NDP and measures implemented under the PLEED project to improve access to justice.
2. For instance, through the provisions of Section 8(2) and 8(3) of the Persons with Disabilities Act, the legal framework has attempted to promote equal and effective protection and equal benefit of the law without discrimination as well as the need for adjudicating bodies to take into account the condition of the person with disability and provide procedural and other appropriate facilities to enable the person with disability to access justice and participate effectively in the proceedings. Further, Section 9 of the Act requires law enforcement agencies to take into consideration of the disability of a person on arrest, detention, trial or confinement and to make reasonable accommodation for persons with disabilities. At the State’s expense, local language interpreters including sign language, is available while legal aid services are provided to indigents through the Legal Aid Board.
3. The above notwithstanding, HRC is of the view that a legal and human rights perspective demands that for access to justice to be guaranteed, including for persons with disabilities, there must be six basic elements namely: the existence of a legal framework, availability of legal knowledge to rights holders, legal advice and representation, access to justice institutions, fair procedures and enforceable solutions. It has been noted with concern that majority of persons with disabilities were not made aware of those legal guarantees while legal advice was not readily accessible to them. Further, HRC has noted that legal representation, despite the constitutional guarantees under Article 18, remained costly and mostly at the expense of rights holders except in exceptional circumstances and whose selection criteria was less well known to many persons with disabilities.
4. The Legal Aid Board was understaffed and overloaded with work/cases. This consequently compromises the quality of service offered. Further, persons with disabilities have limited knowledge about formal procedures on how to enforce their entitlements and process to obtain remedies.

**Recommendations**

1. Ensure that provisions in the Persons with Disabilities Act with regard to obligations placed on law enforcement and the judiciary and other justice sector institutions on providing reasonable accommodation were fully implemented.
2. Implement the National Legal Aid Policy which was adopted in 2018 aimed at expanding the provision of legal aid services to indigent clients who may include persons with disabilities.

# Article 14: Liberty and Security

1. The right to personal liberty and security was recognised and/or guaranteed under Article 13 of the Constitution which provides that no person shall be deprived of his personal liberty except as may be authorized by law. Persons with disabilities had their right to personal liberty protected under the constitution as well as under Section 61 of the Persons with Disabilities Act. The Constitution laid down instances when the liberty of persons could be curtailed.
2. HRC through its monitoring of correctional and detention facilities, had continued to observe with concern, instances where persons with disabilities particularly persons with mental disabilities were arbitrarily deprived of their liberty contrary to the provisions of the law and without due regard to their disability.
3. Furthermore, Section 167 of the Criminal Procedure Code, allowed the deprivation of liberty for persons found unfit for trial or not guilty by reason of “insanity”. Such categories of persons were indefinitely detained under the “President’s Pleasure”. Those laws and practices were contrary to human rights norms and standards and amount to exclusion and/or discrimination.

**Recommendations**

1. Review and amend all discriminatory provisions in our laws to bring them in conformity with the Convention and human rights norms and standards including addressing prolonged detention of persons found unfit for trial or not guilty by reason of “insanity” under the President’s Pleasure without regular case reviews.
2. Ensure that reasonable accommodation and safety was provided to persons with disabilities who come in conflict with the law.

# Article 15: Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

1. The State has ratified the International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, accepting the responsibility to take appropriate legislative, judicial, administrative, and other measures to prevent acts of torture in areas under its jurisdiction.
2. At domestic level, the Constitution, under Article 15, prohibits torture and inhuman or degrading punishment and other like treatment. Freedom from torture and degrading punishment or treatment was protected without any derogation.
3. However, acts that constitute torture had not been criminalized in Zambia. HRC through its monitoring reports observed that the absence of legislation criminalising torture had allowed law enforcement officers to violate that constitutionally guaranteed right with impunity. Many people, including persons with disabilities, had been victims of torture, especially when they were in the custody of law enforcement officers.
4. The State of Human Rights Report for 2017/18 found that more than 50% of inmates who went through the justice delivery system reported being severely beaten or tortured[[15]](#footnote-15). However, currently crimes related to torture were handled under general assault offenses, which attract lesser punishment in disregard of the gravity of the offence of torture.

1. In 2015, HRC started engaging State and Non-State Actors on law reform process aimed at criminalising torture. A draft Bill criminalising torture was prepared in 2017 and adopted in principle by the State in December the same year. The Bill still awaited tabling before Parliament for enactment into law.

**Recommendations**

1. Ensure the Bill criminalising torture was quickly enacted into law.
2. Ensure law enforcement officers refrained from acts of torture or cruel, inhuman or degrading treatment or punishment and those found to have committed acts of torture be subjected to due process of the law.

# Article 16: Freedom from Exploitation, Violence and Abuse

1. Article 24(2) of the Constitution provides for the protection of young persons, including young persons with disabilities, against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation. Further, the exploitation of young persons was prohibited through the Employment of Young Persons and Children’s Act Chapter 274 of the Laws of Zambia. In addition, the 2006 Child Policy provided for measures to protect children from any form of abuse and/or exploitation including physical, sexual and psychological violence. The highlighted legislative and policy framework had equal force when it came to the protection of young persons with disabilities.
2. Section 6 (1) of the Persons with Disabilities Act provided that a person shall not exploit or subject a person with disability to abusive, violent, or degrading treatment, including their gender based aspects. Additionally, violence and abuse of persons with disabilities or any other person were generally handled as criminal offenses under the Penal Code Chapter 87 of the Laws of Zambia while the Zambia Police Service, Judiciary and other institutions involved in the administration of justice were legally mandated to protect persons with disabilities from exploitation and abuse.
3. However, despite all these measures persons with disabilities especially women with mental disabilities have continued being victims of exploitation, violence and sexual abuse.

**Recommendations**

1. Enforce legal, policy and administrative measures meant to protect persons with albinism and the punishment of those who seek to exploit and abuse them.
2. Ensure persons with disabilities were protected from exploitation, violence and abuse and incidents were fully investigated and perpetrators were prosecuted.

# Article 17: Protecting the Integrity of the Person

1. HRC appreciates steps taken by the State as elucidated in the State Report, to protect the physical and mental integrity of persons with disabilities.
2. Notwithstanding the progressive provisions in the Persons with Disabilities Act, there were still some pieces of legislation which still contained derogatory terms in reference to persons with disabilities. For example Section 139 of the Penal Code Chapter 87 of the Laws of Zambia still refers to a person with a mental illness as an “imbecile” while the terms “unsound mind” and “insanity” were widely used in other pieces of legislation to refer to persons with mental impairments. For example such derogatory terms are used in Sections 160 and 167 of the Criminal Procedure Code Chapter 88 of the Laws of Zambia.

1. HRC has noted efforts by the State to review the Mental Disorders Actof 1949 through the enactment of the Mental Health Act No. 6 of 2019 which enhances respect for the integrity of persons with mental disabilities despite noted areas requiring further improvements. Similarly, attention should be given to other pieces of legislation that still maintain pejorative terms which did not comply with the Convention.

**Recommendations**

1. Conduct a legislative audit of laws that were inconsistent with the provisions of the Convention on the Rights of Persons with Disabilities.
2. Amend all laws including clauses in the constitution inconsistent with Article 17 of the convention.

# Article 18: Freedom of Movement and Nationality

1. The Constitution guarantees both the freedom of movement and nationality. The constitution under Article 22 guaranteed the freedom of movement and persons to reside in any part of Zambia as well as to leave and return to Zambia. Further, the constitution under Article 34 guaranteed the right to a nationality by providing that citizenship may be acquired by birth, descent, registration or adoption.
2. The Constitution through Article 39(1) of Amendment Act No. 2 of 2016, introduced dual citizenship. The Article provided that “a citizen shall not lose citizenship by acquiring the citizenship of another country.” Therefore, any person, including persons with disabilities, could have dual citizenship. To give effect to the provisions of the constitution and to make the protection of the right to nationality a reality, the State enacted the Citizenship Act No. 33 of 2016 making substantive and procedural provisions relating to citizenship.
3. HRC has noted that there were adequate laws providing for nationality as well as freedom of movement by all persons including persons with disabilities. However, registration of birth of children in general and particularly those with disabilities remained problematic. Children with severe disabilities who are usually “hidden” or “abandoned” in special care institutions were the most affected.

**Recommendation**

1. Ensure birth registration of children especially those severe disabilities were expeditiously carried out.

# Article 19: Living Independently and being Included in the Community

1. The HRC acknowledges the positive steps taken by the State as highlighted in its report to domesticate Article 19 of the Convention both in the Persons with Disabilities Act No. 6 of 2012 and the National Policy on Disability of 2015. The Persons with Disabilities Act, for instance, under Section 7 provides that “Except where a person with disability is required to be in a specialised institution due to the nature of the disability, a person with disability shall not be deprived of the right to choose their place of residence, to live with that person’s family or the right to participate in social, political, economic, creative or recreational activities”.
2. Additionally, Section 32 provided that: “the Minister shall, in collaboration with State institutions and non-governmental organisations, organise, strengthen and extend comprehensive habilitation and rehabilitation services and programmes in such a way that these services and programmes;

(*c*) Supported participation and inclusion in the community and all aspects of society, and are voluntary and available to persons with disabilities as close as possible to their own communities, including in rural areas”. To that effect, the state was meeting its obligation under the Convention “to adopt all appropriate legislative, legislative… measures for the implementation of the rights recognized in the present Convention”.

1. However, more needed to be done by the State to fully meet its obligation under Article 19 (b) which obliged State Parties to ensure that “Persons with Disabilities had access to a range of in-house, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community”. Particular concern was that there were a number of environmental barriers in Communities that impeded independent living. For instance, although the National Policy on Disability provided that the Ministry of Works and Supply shall ensure that old buildings that were not accessible to persons with disabilities were modified to conform to and also ensure that all new public buildings being constructed were user friendly and accessible to persons with disabilities, progress, if any, was slow in that respect.
2. In addition, all interventions aimed at giving effect to Article 19 should satisfy the elements of choice, support and inclusion. Choice means the right to choose where and with whom to live. With regard to support; the state had an obligation to support persons with disabilities and their families in disability related services on a day to day basis. Finally, there should be inclusion which ensured communities were organized to be inclusive of persons with disabilities through education, employment, social, cultural and political processes among others.
3. Many facilities such as roads and buildings were not designed to comply with needs of persons with disabilities, and had no appropriate signage in braille or tactile marks suitable for independent living by Persons with Disabilities. Above all, most public and private institutions that provided services to the general members of the public did not have sign language interpreters, for instance for persons with hearing impairment. As a result, Persons with disabilities had difficulties to access public and private services such as education, health and many others without or with minimal aid or support in line with promoting the right to independent living.
4. General Comment No. 5 of the Committee on the rights of persons with disabilities which interpreted and clarified provisions under Article 19, equally called on States parties to adopt de-institutionalization. This was also one of the recommendations of the UN Special Rapporteur who visited Zambia in 2016.

**Recommendations**

1. Issue statutory instruments to give effect to the provisions of the Persons with Disabilities Act on independent living and inclusion of persons with disabilities in the community. In particular, the Government through the Ministry of Works and Supply should develop and enforce minimum standards and guidelines for the accessibility of facilities and services that were open or provided to the public in line with the National Policy on Disability.
2. Provide necessary support to persons with disabilities and their families to live independently in the community by among other things provision of free or affordable assistive devices.
3. Consider establishing community living centers to provide for interventions in cases of severe disabilities that may be difficult to manage by the person with disabilities and his/her family.
4. Enhance community sensitization to combat stigma against persons with disabilities.

# Article 20: Personal Mobility

1. The State has domesticated Article 20 of the UNCRPD in the Persons with Disabilities Act and the National Policy on Disability. In particular, Section 40 of the Persons with Disabilities Act domesticates Article 20 of the UNCRPD. The National Policy on Disability also provides specific measures to respective State institutions to implement measures that gave effect to the right to personal mobility. For instance, the State implemented a zero rate tax base on assistive devices and materials for persons with disabilities
2. However, concerns have been raised to the effect that the tax exemption in practice predominantly applied to persons with physical disabilities thereby excluding other categories of persons with disabilities who also had similar mobility problems.
3. The Persons with Disabilities Act under Section 47 provided that all public service vehicles reserve seats for persons with disabilities unless there were no persons with disabilities to occupy, the said seats were available when the bus was full That was a positive measure aimed at facilitating easy mobility of persons with disabilities. However, there was lack of enforcement mechanisms to actualize the provision.

1. In addition, the National Policy on Disability provided that the State through the Ministry of Transport should “ensure concessional transport fares for persons with disabilities were introduced in public and private sectors” to promote personal mobility of persons with disabilities.
2. The State was also yet to give effect to the policy measure for the Minister of Transport to ensure that there were concessional transport fares for persons with disabilities in both the public and private sectors. The provisions of the Act was also largely not enforced, resulting in Persons with disabilities, particularly those using wheel chairs, experiencing mobility difficulties as transporters in some cases denied them access to transport on account that their personal mobility devices would occupy too much space.

**Recommendations**

1. Enforce the provisions of the Act including policy measures to ensure independent living and personal mobility for persons with disability.
2. Scale up efforts towards awareness raising to both duty bearers and rights holders on the requirements regarding personal mobility.

# Article 21: Freedom of Expression and Opinion, and Access to Information

1. Article 20 of the Constitution guaranteed the right to freedom of expression which provides that “(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.”
2. The State has to some extent domesticated Article 21 of the UNCRPD through the Persons with Disabilities Act, the National Policy on Disability and other legislations such as the Competition and Consumer Protection Act No. 24 of 2010, pursuant to which the 2013 Consumer Protection Guidelines were developed by the Zambia Information and Communication Technologies Agency (ZICTA). The domestication related to access to information while the use of sign language and braille had been officially recognized and used during State programmes and functions.
3. The Persons with Disabilities Act under Section 49 obliged all Television Stations to “provide a sign language inset or sub-titles in all newscasts and educational programmes, and in all programmes covering events of national significance”. Section 50 of the same Act provided that “ (1) all persons providing public telephone services shall, as far as possible, install and maintain telephone devices or units for persons with hearing disabilities and tactile marks on telephone sets to enable persons with visual disabilities to communicate through the telephone system.  (2) All persons providing mobile devices shall, as far as practicable, take measures to ensure that a mobile device which may be used by a person with a disability is made available to that person within a reasonable time, upon request”.
4. The Consumers Protection Guidelines expressly prohibited discrimination on the basis of disability in using and accessing ICTs. It provided that “a Licensee shall not discriminate any person in the provision of services based solely on his [her] status, race or gender, ability or disability.
5. Notwithstanding the progressive legal, policy and administrative measures undertaken, the State had not fully domesticated the fundamental right to Freedom of Expression, Opinion and access to information of persons with disabilities in the Act.
6. Further, the enforcement and implementation of the legal, policy and administrative measures was largely lacking mainly due to limited capacity by the State. For instance, the National Policy on Disability stipulates that the Ministry of Information and Broadcasting Services, among other measures, “provide access to national information in form of braille for all important documents [such as Acts and Policies] under Government Printers” however, this was not being done.
7. Even though some essential drugs and medicines were available in Braille due to regulations from countries of source, the Zambia Bureau of Standards (ZABS) did not have measures in place to ensure that essential drugs and medicines such as for hypertension, diabetes, HIV/AIDS etc were available to consumers including persons with disabilities with appropriate labeling and other information in Braille. Access to such vital information could be the difference between life and death to someone with visual impairment.
8. In its report, the State has acknowledged challenges in providing information in large print and easy to read formats and commits to progressively provide public information in such formats.[[16]](#footnote-16)

**Recommendations**

1. Domesticate fully Article 21 of the Convention aimed at realising the right to freedom of expression and opinion.
2. Enhance capacity to enforce and implement the Persons with Disabilities Act and the National Policy on Disability relating to the right to access to information.
3. Seek appropriate technical and financial support, both locally and internationally, towards meeting its obligations of promoting the rights of persons with disabilities under Article 21 of the Convention.
4. Ensure information relating to the provision of essential public services including goods such as drugs was available in braille and formats that are accessible and user friendly to Persons with Disabilities.

# Article 22: Respect for Privacy

1. The Constitution protected the right to privacy of home and property for all individuals, which included persons with disabilities, particularly when read with Article 23 which prohibited any form of discrimination. Article 17 of the Constitution provided that:

(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises…”.

1. The above constitutional provision was limited in scope as it did not provide for protection against unlawful interference in one’s correspondence or any form or communication or to unlawful attacks on the honour or reputation of persons with disabilities, for instance.
2. Right to respect for privacy of persons with disabilities has not been domesticated either in the Persons with Disabilities Act, the National Policy on Disability or any legislation or administrative measure.
3. The legal omission in the protection of persons with disabilities in regard to their right to privacy, coupled with lack of provision of trained and professional support staff, adversely undermined the right of Persons with Disabilities to privacy.

**Recommendations**

1. Domesticate Article 22 of the Convention relating to the right to privacy of Persons with Disabilities and ensure that effective enforcement and implementation mechanisms were put in place towards promoting and protecting the right.
2. Provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities which enhances the right to privacy; and
3. Promote the training of professionals and staff working with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

# Article 23: Respect for Home and the Family

1. The State generally respected the right for home and family for all citizens, including persons with disabilities, by refraining from unnecessary interference with private matters and also protecting that right through legal measures such as the Marriages Act, Chapter 50 of the laws of Zambia.
2. The Persons with Disabilities Act provided for marriage between intending spouses based on their full and free consent, provided they were 21 years and above.
3. However, Section 17 of the Marriage Act obliges a person with disability of “unsound mind” among others, to obtain consent from a guardian, notwithstanding the fact that she or he was of marriageable age. Thus, persons with mental and intellectual disabilities including those, for example, with cerebral palsy were required to have the consent of guardians for their marriages to be considered legal. Failure to produce a written consent of a guardian may result in the marriage not being certified in accordance with the provisions of the Act, meaning that family rights that accrue from a marriage relationship may not be legally protected where consent of a guardian was lacking.
4. The right of persons with disabilities to respect for home and the family was severely undermined by family and societal stigma and discrimination. Families and society at large in Zambia considered persons with some disabilities as incapable of marrying and founding a family and their desire to exercise and enjoy that right was mostly, socially not recognized and respected. This had an adverse effect on their legal recognition of their right in the event that they were considered to be of “unsound mind”, for instance to marry, as they required consent from the very individuals not respecting their right to found a home and family.
5. This kind of violation of the right for respect for home and family was most prevalent among persons with mental or intellectual disabilities. As a result, this group of persons mostly ended up having children out of wedlock. The State, however, provided alternative care for such children in the event that the parents were not able to look after them. Regrettably, such children were usually separated from their parents and taken into institutionalized child care or foster homes as opposed to alternative care within the extended family circles or community in a family setting.
6. HRC also noted with concern that cases of family members facilitating sterilization of family members with mental and intellectual disabilities or with cerebral palsy without their consent was still rife as their right to produce children was often viewed as irresponsible and placed an additional burden on family members. Such actions ran contrary to their right to decide the number and spacing of children as guaranteed under the Convention.
7. Persons with disabilities suffered from verbal abuse, stigma and discrimination in the course of accessing family planning and sexual reproductive health services and products, as well as when accessing antenatal and midwifery support services from both public and private service providers such as health institutions.

**Recommendations**

1. Amend the Marriages Act to remove the requirement for consent and include assisted decision making in marriages, family planning and other rights for persons with disabilities.
2. Increase public awareness on the rights of Persons with Disabilities to respect for home and family including educating families on assisted decision making to curtail incidences of forced sterilisation of women with mental disabilities.
3. Encourage development and enforcement of a code of conduct and ethics among health personnel and providers of sexual reproductive health services and products to respect the rights of Persons with Disabilities

# Article 24: Education

1. The State Report under Article 24 elaborated a number of legal, policy and administrative measures taken to enhance the protection and progressive realisation of right to education for persons with disabilities.

1. The Persons with Disabilities Act, provided for promotion and protection of the rights of persons with disabilities to inclusive education and education in general. Sections 22 to 26 of the Act provided the various measures the State had put in place aimed at facilitating the education of persons with disabilities and prohibitions against discrimination on the basis disability. For instance, Section 22 (2) (a) of the Act stipulated that “persons with disabilities should not be excluded from the general education system on the basis of disability”. It further provided that children with disabilities should not be excluded from free and compulsory primary education, secondary education and higher education on the basis of disability. The Act also provided that children with disabilities should have access to an inclusive free education from primary education, secondary education and higher education in the community they live. The Act further stipulated penalties for violation of the rights of persons with disabilities.
2. Section 24, for instance, made it an offence for any parent, guardian or custodian of a child with disability of school going age, not to enrol such a child in school. Additionally, Section 25 also made it an offence to refuse the admission of a child with disability in a learning institution on the basis of their disability.
3. The State also provided for the promotion of education for persons with disabilities in the National Policy on Disability with a wide range of proposed interventions which were consistent with the object and purpose of the Convention.
4. HRC noted some progressive measures towards implementation of the policy on the rights of persons with disabilities to education. For instance, sign language and Braille were introduced in the school curriculum from primary to tertiary education in an effort to reduce the barrier between learners with hearing and visual impairments and teachers. There were also efforts to train teachers in Braille and sign language in order to employ qualified teachers to teach pupils and students with visual and hearing impairments.
5. Notwithstanding the progress towards realization of the right to inclusive education for persons with disabilities, HRC noted with concern that there was inadequate capacity in terms of the numbers of competent and specialized teachers. Stigma and discrimination of children with disabilities in schools, as well as against teachers for children with disabilities remained a serious barrier.
6. Most learning institutions buildings were not accessible to persons with disabilities as they did not meet the standard requirements of Universal Design and also lacked the necessary materials and facilities for the education of children with disabilities.
7. HRC also noted that while teachers’ training colleges were offering compulsory training in special education, there was lack of specialization in the different areas of disability thereby limiting the type of skills training provided to the learners.
8. Further, the inclusive education policy mainly focused on primary school going children and little attention was given to secondary and tertiary education. The number of teachers enrolled in the special education units across the country remained very low thus impacting on the quality of education offered to children who may require specialised teaching skills.
9. The State Party report indicated that through the Ministry responsible for Higher Education some affirmative measures to ensure equalisation of opportunities in access to tertiary education were taken. For instance, the bursary support for technical education and vocational training has reserved 10 percent slots for learners with disabilities.[[17]](#footnote-17) The initiative is not part of NPD and very few persons with disabilities were accepted in universities eligible for students’ loans and bursaries. Additionally, very few were aware of the initiative.

**Recommendations**

1. Take practical steps towards modifying infrastructure in all learning institutions and ensure that new buildings met the required standards of Universal Design to make them accessible to Persons with Disabilities.
2. Break the resistance from some learning institutions, teachers as well as from personnel managing special education institutions, to meaningfully transition from special education to inclusive education. A lot of awareness raising and effective enforcement of the Act and implementation of the Policy will be required in order to redress the attitudinal barriers against inclusive education.
3. Increase training in Braille as well as in sign language among teachers including adequate facilities and materials in learning institutions in order to implement the progressive legal and policy measures that the State had put in place.
4. Scale up efforts to implement the inclusive education policy, including allocating adequate financial resources if the children with disabilities were to fully enjoy their right to education on an equal basis with others, including creating awareness on the 10% bursaries slots to students with disabilities in higher education.

# Article 25: Health

1. As highlighted in its report, the State had taken measures to domesticate the right to health for persons with disabilities under Section 27 of the Persons with Disabilities Act and stipulated specific measures to be undertaken for its realization under the National Policy on Disability.
2. The Act provided that persons with disabilities should have accessible, acceptable, quality, affordable or free health care services while the Policy provides for enforcement of the code of conduct for public and private health care providers to address rights of persons with disabilities. It further provided for decentralization of medical and rehabilitation services.
3. The State enacted a National Health Insurance Act No 2 of 2018 and under Section 16 (a) the Act provided for persons with mental or physical disabilities to be exempted from contributing towards health insurance in order for them to access quality health services. The State also enacted the Mental Health Act No 6 of 2019 to provide for the promotion and protection of the rights of persons with mental disabilities
4. However, effective implementation of the Persons with Disabilities Act and Mental Health Act were negatively affected due to various challenges that the health sector in Zambia was experiencing in providing universal quality health care services.
5. The HRC also noted that, despite the provisions for affordable or free health services for persons with disabilities, there appeared to be no specific guidelines on how health personnel were required to attend to the health needs of persons with disabilities.

**Recommendations**

1. Eliminate existing gap between the laws and policies and their implementation at local levels in order to effectively promote and protect and progressively realise the right to health of persons with disabilities.

1. Make necessary modifications to some health institutions infrastructure to make them accessible to persons with disabilities. There was also need for increased awareness of the rights of persons with disabilities among rights holders and duty bearers.
2. Provide health-related information in Braille as well as provide sign language interpreters in health institutions to redress the communication barrier between persons with visual and hearing impairments and health service providers and/or personnel.
3. Enforce the Code of Conduct and increase awareness among health personnel on the State obligations to protect and promote the rights of persons with disabilities.

# Article 26: Habilitation and Rehabilitation

1. The Persons with Disabilities Act, No.6 of 2012 and National Policy on Disability gave mandate to relevant State institutions to provide continuing training for professionals and staff working in habilitation and rehabilitation centres, facilitate the availability, knowledge and use of assistive devices and technologies designed for persons with disabilities, facilitate the provision of habilitation and rehabilitation services and facilities to persons with disabilities and ensure their full participation into the mainstream of society.
2. The State also ran comprehensive Community Based Rehabilitation (CBR) programmes in Kazungula, Livingstone and Zimba districts of Southern Province with a plan to progressively scale it up to all the districts of Zambia.
3. The accessibility and affordability of public health services remained a concern for most persons with disabilities. Only a few selected major hospitals provided habilitation and rehabilitation services causing delays in obtaining assessments and commencing habilitation and rehabilitation programmes.
4. Persons with disabilities living in rural areas requiring habilitation and rehabilitation faced even more hurdles in accessing and affording the services due to long distances to health facilities and, also the generally high levels of poverty. These hurdles were normally compounded by long held negative traditional myths and attitudes about persons with disabilities; and non-availability of necessary equipment for habilitation and rehabilitation

**Recommendations**

1. Ensure all major hospitals especially in rural areas were well equipped and resourced to offer habilitation and rehabilitation services to persons with disabilities.
2. Raise more awareness on rights of persons with disabilities especially among health personnel.

# Article 27: Work and Employment

1. The State Report highlights a number of measures taken by the State to progressively realise the right to work and employment. The report also highlights some statistics of employment for persons with disabilities in some sectors[[18]](#footnote-18) Article 173 (1) of the Constitution provided for values and principles of the public service including representation of persons with disability in the composition of the public at all levels.
2. The State has enacted a number of laws and policies pertaining to the rights of Persons with Disabilities to work. These included the Workers’ Compensation Act (1999), which regulates workers’ compensation for impairments acquired in the workplace; the National Employment and Labour Market Policy 2006, which provided for improved care and support services to Persons with Disabilities, among other groups; the Citizens Economic Empowerment Commission Act (2006), which aimed at empowering Persons with Disabilities economically through start-up businesses; and the Employment Code Act No. 3 of 2019[[19]](#footnote-19).
3. Despite the existence of international and national legal frameworks for the protection of the rights of persons with disabilities, there were still some barriers to employment such as low levels of education, lack of workplace support, and lack of awareness by employers on tax exemptions for employing persons with disabilities and more importantly stigma and economic prejudice.
4. There were also no detailed specific provisions in Employment Code Act No. 3 of 2019 that sought to protect and promote the rights of Persons with Disabilities in line with obligations specified in the Convention. This may have inadvertently allowed systemic discrimination of persons with disabilities in the labour market. Statistics, for example, show that in 2005, the employment rate of persons with disabilities was 45.5 per cent of the population, a lower rate compared to employment rate of 58 per cent among persons without disabilities[[20]](#footnote-20).
5. Even though the State was the major formal employer of persons with disabilities through the education sector, preliminary data from the National Disability Survey indicates that persons with disabilities were disproportionately less engaged in formal employment than those without disabilities. In fact majority of persons with disabilities (80%) were employed in agriculture[[21]](#footnote-21).
6. The Persons with Disabilities Act No. 6 of 2012 and National Policy on Disability of 2015 provided for employment quota for persons with disabilities, however, the State had not provided for enforcement mechanisms by way of Statutory Instrument. Further, the Special Rapporteur on the rights of persons with disabilities observed that employers were haste in retiring employees who became impaired during the course of their employment on medical grounds instead of integrating them and providing reasonable accommodation within the company or establishment.
7. The education system including tertiary level institutions were systemically discriminatory and limit the range of skills persons with disabilities could acquire to be able to work in diverse fields resulting in confinement of knowledge and skills among persons with disabilities mostly in the education sector.

**Recommendations**

1. Amend labour laws and policies to include specific provisions and incentives that address State obligations in domesticating Article 27 of the Convention.
2. Address inadequacy or lack of access to education, discriminatory attitudes and practices among employers and inaccessible work places which significantly affects employment and employability of persons with disabilities in Zambia. Other sectors (other than education) should be encouraged to offer apprenticeship and employment opportunities for persons with disabilities and tertiary institutions should correspondingly diversify range of knowledge and skills beyond traditional areas like education.
3. Publicise all available incentives aimed at encouraging the labour market to employ Persons with Disabilities.
4. Amend the Constitution to remove targeted legal disqualification for election to some public positions on the basis of disability (physical or mental).

# Article 28: Adequate Standards of Living and Social Protection

1. The Persons with Disabilities Act No. 6 of 2012 under Section 36, mandated responsible State institutions to prescribe necessary safeguards to promote the rights of persons with disabilities to social protection and an adequate standard of living and continuous improvement of living conditions to ensure their independent living and enjoyment of their rights.
2. The State Report indicates that about 10 percent of the beneficiaries under the Social Cash Transfer Scheme were persons with disabilities (16,532 females and 13,667 males respectively out of the total number of 242, 000 beneficiaries).[[22]](#footnote-22)
3. The State also created a National Trust Fund for Persons with Disabilities (NTFPD) which provided loans to persons with disabilities aimed at improving their livelihoods. ZAPD also empowered individuals and groups of persons with disabilities with grants to assist in uplifting their standards of living. It supported farmers with disabilities by providing free farming inputs. However, those initiatives were poorly funded and unable to sustainably provide meaningful loans and grants to Persons with Disabilities. According to State Report, majority (62%) of loan recipients under the NTFPD were males and female recipients only constituted 38%.

**Recommendations**

1. Increase funding to ZAPD to enable it effectively execute its mandate.
2. Address inequalities between males and females in accessing loans under the NTFPD and increase funding to enable the fund sustainably and adequately provide loans to persons with disabilities.
3. Persons with disabilities must automatically qualify for inclusion under Social Cash Transfer programme even though the long term objective of the State should be focused on empowering persons with disabilities to sustainably live independently.

# Article 29: Participation in Political and Public Life

1. The State in its report makes a strong case on the basis of Article 45 (1) (c) of the Constitution, other laws, policies and administrative measures that it has sufficiently domesticated Article 29 of the Convention. However, in reality persons with disabilities were unable to participate in political and public life on an equal basis with others due to existing environmental, structural and attitudinal barriers. In particular, the existing electoral laws and practices undermined the full enjoyment of the right to electoral participation particularly the right to vote and be elected by persons with disabilities. Barriers such as inaccessible buildings, lack of electoral information in appropriate formats, limited voting methods, distance to registration and polling stations coupled with inadequate public transportation facilities all contribute to low levels of participation in the electoral process among persons with disabilities.
2. For instance, Section 9 (1) (c) of the Electoral Processes Act No. 35 of 2016 prohibited persons with mental disabilities to register as voters without providing sufficient safeguards for challenging such disqualification. In that regard, the law failed to respect the provisions of Article 29 of the Convention.

1. Arguably, the enjoyment of the right to political and public life was highly dependent on enjoyment of the other rights such as education, health, assistive devices, access to public buildings and other areas. Evidence showed that very few persons with disabilities fully enjoyed such rights[[23]](#footnote-23) which resulted in them not also enjoying the right to participation in political and public life, even though the Constitution and subsidiary legislation so provided.

1. There was no available data on challenges faced by persons with disabilities in claiming the right to participate in political and public life. Such information would help in ensuring relevant duty bearers targeted their interventions to specific barriers which when addressed would enhance persons with disabilities enjoyment of the right to participate in political and public life.
2. Even though the State had made substantial accommodations to facilitate participation of persons with disabilities in political and public life, more still needed to be done including training of electoral staff on how to work with persons with disabilities during electoral processes.

1. The Constitution barred persons with disabilities (physical and or mental) to contest elections or continue to hold office of Member of Parliament (Article 70 (2) (d), Councilor (Article 157 (2) (f) or appointment as Cabinet Minister (Article 116 (3) (f).
2. In addition, the State did not provide for more inclusive voting methods or procedures such as advance, mobile or electronic ballots among others which could enable Persons with Disabilities participate more in political and public life.
3. There was also need to take pragmatic steps such as to have persons with disabilities where not elected by popular be nominated where possible.

**Recommendations**

1. Review laws, policies and administrative measures to ensure provision of incentives to encourage the education, employment and participation of persons with disabilities in political and public life. Research should also be undertaken to ensure adequate data is generated to allow for effective decision making.
2. Critically review legislative and administrative arrangements governing electoral processes to ensure that persons with disabilities could more fully and equally participate in the governance process, including claiming the right to cast a secret ballot freely and independently and to be elected into public office.

# Article 30: Participation in Cultural Life, Recreation, Leisure and Sport

1. HRC applauds measures taken by the State to ensure that persons with disabilities had the right to participate in cultural life, recreation, leisure and sports including legislative measures to protect that right. Section 48 of the Persons with Disabilities Act No 6 of 2012 provided that Persons with Disabilities shall enjoy the right to participate in cultural life, recreation, leisure and sport. The National Policy on Disability made providing equal opportunities to persons with disabilities a priority. .
2. However, the reality was most infrastructure in Zambia was not built to provide reasonable accommodation for persons with disabilities and the Paralympic Committee was not adequately funded to facilitate participation of persons with disabilities in Paralympic games, for example.
3. Persons with disabilities continued facing many challenges to privately and independently enjoy their right to cultural life, recreation, leisure and sport. Most buildings, sites and other facilities did not have ramps and other accommodations including assistive devices to allow for private and independent enjoyment of their rights. Other than a few public institutions providing essential services and some Disability Organisations, there were limited organisations providing sign language services and very few documents were available in braille even where critical information was required especially to persons with visual and hearing impairments.
4. Persons with disabilities were not adequately encouraged and supported to pursue a passion or career in the arts and sports, nor were they sufficiently considered, promoted and supported as valid career paths.

**Recommendations**

1. Strictly enforce the Persons with Disabilities Act to ensure all public buildings including cultural, recreation, leisure and sporting facilities provided for accessibility and other accommodations including assistive devices to facilitate private and independent enjoyment of their right to cultural life, recreation, leisure and sports.
2. Adequately fund the Paralympic Committee to ensure effective development and participation of persons with disabilities in sport. Persons with disabilities who chose to pursue arts and sport be encouraged and supported with all necessary devices and equipment to make meaningful careers in art and sport.

# Article 31: Statistics and Data Collection

1. HRC has noted efforts by the State in collecting segregated data in most researches that showed statistics on persons with disabilities. For example, the National Disability Survey of 2015 conducted by the Zambia Statistics Agency (formerly Central Statistical office) and the University of Zambia provided disaggregated data on persons with disabilities on a number of variables. The survey incorporated the International Classifications of Functioning (ICF) and Washington Group Six set of questions on disability. Organizations of and for persons with disabilities were also involved at the planning stage of the survey as well during the awareness raising campaigns on the study.
2. However, as indicated under Article 29 above, there was very little or no disaggregated data that highlighted key issues relating to persons with disabilities including challenges encountered in accessing education, health, recreation, leisure and sports facilities and services at all levels including employment opportunities and linkages between incidence of disability and the risk of poverty and actual hardship. There was also no available disaggregated data on challenges faced by persons with disabilities in claiming their human rights.

**Recommendations**

1. Develop nationally consistent measures for the collection and public reporting of disaggregated data across the full range of obligations contained in the Convention and that data collection tools for future surveys on persons with disabilities cover a full range of questions as provided for in the Washington Group Six.
2. Collected data be available free of charge to people with disability in all formats recognizing disability needs through their representatives and advocacy organizations.

# Article 32: International Cooperation

1. The State cooperated with the UN agencies and other Cooperating Partners working in Zambia to promote the rights of persons with disabilities. There were many activities related to persons with disabilities implemented with international support.
2. However, the State should further seek and engage Cooperating Partners and other stakeholders based on long term strategy to address issues raised through human rights mechanisms including the Universal Periodic Review (UPR) relating to persons with disabilities.

**Recommendations**

1. Seek international technical and financial support to address barriers in the promotion and protection of the inherent dignity and rights of Persons with Disabilities.
2. Prioritise planning, programming and funding of programmes and activities relating to promoting and protecting the rights of persons with disabilities.
3. Provide for inclusion of persons with disabilities in development cooperation agreements and strategies. The State should consider engaging UN agencies and Cooperating Partners especially regarding capacity building of ZAPD and NPD implementation plan.

# Article 33 & 35: National Implementation, Monitoring and Reports by State Party

1. The measures taken by the State to develop a National Implementation Plan/National Disability Mainstreaming Plan and designating Disability Focal Point Persons (DFPP) in all ministries and spending agencies were highly commendable.
2. The State established a National Mechanism for Implementation, Reporting and Follow up (NMRF) which will coordinate and work with line Ministries, Departments and agencies in implementing recommendations from human rights mechanisms including monitoring and timely reporting to relevant bodies. There was already some evidence that the move will improve human rights reporting. This year alone two State reports to the treaty bodies and one report to Universal Periodic Review mechanism were prepared and submitted. However, there was need to train Officials from the NMRF and responsible Ministries on how to prepare better reports to ensure they comply with reporting standards and capture issues relevant to rights holders.
3. Focal point persons have not been adequately mainstreamed in terms of job descriptions and required formal training and tools to effectively perform their duties. Coordination between Focal Point Persons and the coordination mechanism (ZAPD) still required further strengthening and funding.
4. The State had also not complied with Article 33 (2) requiring a formal recognition of the national human rights institution to monitor the implementation process as implied under the Convention and as recommended in the report by the Special Rapporteur on the rights of persons with disabilities.

**Recommendations**

1. Strengthen mainstreaming of Disability Focal Point Persons by prescribing responsibilities in their job descriptions including how they work with ZAPD.
2. Provide adequate training of Disability Focal Point Persons to ensure their effectiveness.
3. Implement Special Rapporteurs recommendation to officially designate the Human Rights Commission as monitoring mechanism in compliance with Article 33 (2) of the Convention.
4. Ensure regular and consistent monitoring and reporting on domestication of the Convention by both State and Non-State actors.
5. Implement fully the National Mechanism for Implementation, Reporting and Follow up (NMRF) including providing adequate funding to implement mandate.
1. Committee on the Rights of the Child’s Concluding Observations on the combined second to fourth periodic reports of Zambia. [↑](#footnote-ref-1)
2. Report of the Special Rapporteur on the rights of persons with disabilities mission to Zambia [↑](#footnote-ref-2)
3. Mental Health Act No. 6 of 2019 [↑](#footnote-ref-3)
4. General Comment No. 1 of 2014 by the Committee on the Rights of Persons with Disabilities at pp. 2-3. Online: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement [↑](#footnote-ref-4)
5. State report paras. 68 – 77, Article 5 (page 19-20). [↑](#footnote-ref-5)
6. Committee on the Rights of the Child’s Concluding Observations on the combined second to fourth periodic reports of Zambia. [↑](#footnote-ref-6)
7. See State report paras 78 -85 (pages 20-21) [↑](#footnote-ref-7)
8. Report of the Special Rapporteur on the rights of persons with disabilities on her last mission to Zambia [↑](#footnote-ref-8)
9. Report of the Special Rapporteur on the rights of persons with disabilities mission to Zambia [↑](#footnote-ref-9)
10. ibid [↑](#footnote-ref-10)
11. ibid [↑](#footnote-ref-11)
12. Report of the Special Rapporteur on the rights of persons with disabilities mission to Zambia [↑](#footnote-ref-12)
13. See State Report Article 12, para 127 (page 27) [↑](#footnote-ref-13)
14. General Comment No. 1 of 2014 by the Committee on the Rights of Persons with Disabilities at pp. 2-3. Online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement> [↑](#footnote-ref-14)
15. Refer to the State of Human Rights Report for 2017/18. [↑](#footnote-ref-15)
16. See State Report Article 21, para180 (page 32) [↑](#footnote-ref-16)
17. See para.76 under Article 5 of Zambia’s State report to the CRPD (page 20). [↑](#footnote-ref-17)
18. See State Report under Article 27, Paras 214 – 226 (page 38-39) [↑](#footnote-ref-18)
19. See page 14 of Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia [↑](#footnote-ref-19)
20. Inclusion of People with Disabilities in Zambia, ILO, 2013. [↑](#footnote-ref-20)
21. Ibid. [↑](#footnote-ref-21)
22. See corresponding Article in State Report [↑](#footnote-ref-22)
23. See last two paragraphs of the first page of ILO publication on Inclusion of People with Disabilities in Zambia, 2017. <https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_115100.pdf> [↑](#footnote-ref-23)