

Challenging Zambia's 1949 "Mental Disorders Act": Mwewa and Others v the Attorney General and Others

Two persons with mental disabilities and the Mental Health Users Network of Zambia (MHUNZA) have brought a legal petition in the Zambian High Court to repeal the Mental Disorders Act of 1949.

The Petitioners argue that the Act unconstitutionally infringes on the rights of persons with mental and psychosocial disabilities.

Who are the parties?

The 1st Petitioner is Mr Gordon Madox Mwewa, a gospel musician and songwriter. The 2nd Petitioner is Mr Mulima Santa Kasote, a graphic designer and psycho-social counsellor. The 3rd Petitioner is Mr Sylvester Katontoka, the Executive Director and founder of the Mental Health Users Network of Zambia (MHUNZA). All three Petitioners are persons living with mental or psychosocial disabilities who have experienced the impact of the Mental Disorders Act.

The Attorney General is the 1st Respondent and does not oppose the Petition. The Zambia Agency for Persons with Disabilities is the 2nd Respondent and opposes only the relief sought in relation to it.

Disability Rights Watch has been admitted as *amicus curiae* (a friend of the court).

What is the Petitioners' case?

The Petitioners argue that the Mental Disorders Act, enacted in 1949, perpetuates an outdated and oppressive system of treatment and care for persons with mental and psychosocial disabilities.

- They argue that the Act violates their human rights to dignity, equality, non-discrimination, freedom from torture, inhuman and degrading treatment, to personal liberty, to protection from deprivation of property, and to constitutional protection of the law.
- The Petitioners' case is that the Mental Disorders Act is unconstitutional and is therefore invalid.
- They argue in addition that the Mental Disorders Act has been effectively repealed by the 2012 Persons with Disabilities Act that domesticates the UN Convention on the Rights of Persons with Disabilities Act.

What are the Petitioners asking from the Court?

The Petitioners are asking that the Court make the following orders:

1. To declare that the Mental Disorders Act is unconstitutional and therefore void.
2. To declare that the Act is incompatible with the Persons with Disabilities Act and therefore invalid.
3. To declare that persons with mental and psychosocial disabilities enjoy the same right to informed consent to treatment and admission to healthcare facilities as all other persons.
4. To declare that the detention of persons with mental and psychosocial disabilities on the grounds of their disability is unlawful.
5. To direct the Zambia Agency for People with Disabilities to monitor the enforcement of the judgment and report to the Court on its implementation.

What is the Mental Disorders Act?

- The Mental Disorders Act was enacted in Zambia in 1949, during the colonial era.
- The Act refers to people with mental and psychosocial disabilities in derogatory language and enforces a system of indiscriminate arrest, indefinite detention (including in prisons) and forcible treatment without procedural protections.
- The Act perpetuates a two-tier healthcare system: mental health users are not able to access care at primary healthcare level and are forced to engage services available only in centralized psychiatric institutions in coercive and abusive circumstances.
- The Petitioners attest to how the Act has enforced a system of abuse, violence, confinement, isolation, the unregulated use of physical and medical restraints, and the denial of people's legal capacity and human dignity.

What is the Persons with Disabilities Act?

- The Persons with Disabilities Act was enacted in 2012.
- The Act seeks to domesticate the UN Convention on the Rights of Persons with Disabilities (CRPD), which Zambia ratified in 2010.
- It establishes a legal framework to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities and promote respect for their inherent human dignity.
- Amongst others, the Act secures the right to legal capacity, promotes community-based rehabilitation and integration, engages a human rights-based and social understanding of disability, and imposes mandates on a range of actors to ensure persons with disabilities are accommodated to exercise their rights equally in all areas of life.
- The Petitioners argue that the Mental Disorders Act contradicts Zambia's constitutional protection of human rights, as interpreted through the CRPD and Persons with Disabilities Act.



Who are the people and organisations involved in the case?

- MHUNZA and Disability Rights Watch (DRW) are advocates for the rights of persons with mental disabilities.
- Chipso Nkhata and Felicity Kalunga of Mushota and Associates are the Petitioners' legal representatives.
- Katindo Mwale and Brian Mwanza of the Legal Resource Foundation (LRF) are the legal representatives of the amicus curiae, DRW.
- The Southern Africa Litigation Centre (SALC) is providing technical and financial support.
- The Mental Disability Advocacy Centre (MDAC) is providing technical support.