

**SOCIAL SECURITY AND THE LAW IN ZAMBIA; A
CASE STUDY OF THE NATIONAL PENSION
SCHEME AUTHORITY.**

BY

EMELY PHIRI

UNZA

DECEMBER 2004

UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

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EMELY PHIRI

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**SOCIAL SECURITY AND THE LAW IN ZAMBIA; A CASE STUDY OF
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ON

**SOCIAL SECURITY AND THE LAW IN ZAMBIA; A CASE STUDY OF THE
NATIONAL PENSION SCHEME AUTHORITY**

By

EMELY PHIRI

COMPUTER NUMBER 99344882

**SUBMITTED TO THE UNIVERSITY OF ZAMBIA LAW FACULTY IN
PARTIAL FULFILMENT OF THE CONDITIONS FOR THE AWARD OF THE
BACHELOR OF LAWS (LL.B) DEGREE.**

SUPERVISOR: MR. MUMBA MALILA

DECLARATION

I EMELY PHIRI - Computer Number 99344882, do hereby declare that the contents of this directed research paper are entirely based on my own research and that I have not in any manner used any persons work without acknowledging the same to be so. This is the first submission of this work, it is not the subject of any previously submitted work in any University.

I bear absolute responsibility for errors, defects or any omissions therein.

DATE...22 DECEMBER 2004

SIGNATURE.....

DEDICATION

To my mother, who has inspired me with her love, her great achievements and success. Mum, from you I have learnt to never give up, even in the hardest times. May God bless you always.

To the late Bishop Clement Shaba, who was always there when the future seemed bleak. You are greatly missed. May your soul rest in peace.

To Maide, for being the greatest sister. I would never be me, without you, and to Tessa, my new reason for living.

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PREFACE

About eighty percent of the *Zambian* population lives below the poverty datum line. This calls for the availability of social security for the *Zambian* populace. Social security is basically a means to mitigate the greater effects of poverty, upon which the vulnerable may rely in times of need. One way of ensuring such protection is through pensions.

Since Independence, there has been great effort by the *Zambian* government to establish formal programs for the provision of social security through pensions. This is evidenced by the establishment of the National Provident Fund, the Public Service Pensions Fund, Local Authorities Superannuation Fund and the National Pensions Scheme Authority (NAPSA). However, these institutions have not been able to adequately provide pensions due to various problems normally associated with pension funds in Africa and some, such as the *Zambia* National Provident Fund and the Public Service Pensions Fund have since collapsed.

NAPSA was established to address the adverse experiences of the *Zambia* National Provident Fund. It is hoped that this new pension program will provide adequate social protection, which can only be achieved if the legislation regulating the scheme, the management of the funds and government interference are in the best interest of the pension contributors.

LIST OF ABBREVIATIONS

CSPF/PSPF	Civil Service Pensions Fund/ Public Service Pensions Fund
ICESCR	International Covenant on Economic Social and Cultural Rights
ILO	International Labour Organisation
IMF	International Monetary Fund
ISSA	International Social Security Association
LASF	Local Authorities Superannuation Fund
LUSE	Lusaka Stock Exchange
NAPSA	National Pension Scheme Authority
STEP	Social Protection for Excluded People
UDHR	Universal Declaration of Human Rights
UNZA	University of Zambia
WCF	Workmen's Compensation Fund
ZCCM	Zambia Consolidated Copper Mining Company
ZNPF	Zambia National Provident House
ZSIC	Zambia State Insurance Corporation

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CHAPTER ONE

1. Introduction

With more than eighty percent (80%) of the Zambian population living below the poverty datum line,¹ the need for an efficient social security system is of utmost importance. It is very unfortunate to state however that, 'the Pensioners situation in Zambia has been likened to slavery.'² This was pertaining to the Public Service Pensions Fund (PSPF) declaration that it is insolvent after incurring a deficit of K1 trillion, throwing over 90,000 pensioners in a lurch as the Fund has no money to settle their benefits from next year onwards.³ All pension schemes in Zambia have been described as suffering from a series of significant weaknesses reflecting deficiencies in their design, in their financing and in their administration. 'These deficiencies have not only been exposed but also aggravated by the economic crisis and the radical measures necessary to face its structural causes.'⁴

This paper seeks to critically analyze the social security system in Zambia, with particular reference to National Pension Scheme Authority (NAPSA). Considering the failure of public pensions to provide adequate social security in Zambia, the aim of the paper is to analyze whether the widely proclaimed NAPSA really does offer any hope to redeem the deplorable situation regarding pension benefits in Zambia, or whether it is also another inefficient Government program which will prove to suffer the same difficulties as other organizations that have failed to offer this indispensable service to the Zambian people. Such analysis intends to reflect the extent to which NAPSA serves the pensioners through close examination of the

¹ Poverty Reduction Strategy Paper for Zambia. A Civil Society Perspective. Oxford University Press- Published for United Nations Development Programme; June 2002. p128

² The Post Newspaper – Friday July 30, 2004. Business News. Page 8. stated by the Jesuit Center for Theological Studies Research Co-coordinator Mr. Muweme Muweme.

³ Times of Zambia News Paper. July 20, 2004. – www.times.co.zm or allAfrica.com. heading; 90,000 pensioners to lose their pensions.

⁴ Ibid.

National Pension Scheme Authority Act,⁵ NAPSA policies relating to pension contributions, investments of funds, the conditions for payment of pension benefits and many other issues concerning the most efficient means of providing this service.

This chapter begins by defining social security and pensions, and what these two concepts involve. It will then give an insight into the historical background to the social security system in Zambia, highlighting the impact of historical events leading to the system of the unreliable social security services that are apparent in Zambia today. The chapter will go further to outline the contents of the subsequent chapters, followed by a short conclusion.

1.1 Definition

‘Social security is any of various programs designed to provide a population with income at times when they are unable to care for themselves. The aim of social security is to ‘ensure...that everyone is able to enjoy a standard of living much like the rest of the community and thus is able to feel a sense of participation in and belonging to the community.’⁶

The essence is therefore to avoid the experience of social exclusion by individuals as a result of loss of consistent income flow. In Zambia today, exclusion comes in the harsh form of absolute poverty which slowly goes to an unredeemable level. The Government of Zambia should therefore seriously consider social security as ‘a basic human right, an indispensable part of Government policy, and an important tool to prevent and alleviate poverty.’⁷ Social security is not based on proof of absolute destitution, but rather on the recognition of need, which is not always total poverty, with a view to preventing one from being drawn into it. For instance, such need may arise from physical or mental incapacitation due to permanent disablement,

⁵ Chapter 256 of the Laws of Zambia

⁶ Maurice Bruce. *The Coming of the Welfare State*. Routledge and Keegan. London; 1988. p54

⁷ Ibid.

prolonged illness or old age. However, if such needs are not addressed adequately, it may become more difficult to ameliorate the greater effects of poverty in the long run.

There are five 'pillars' of social security which include pensions and survivor benefits, health care, sickness, and disability transfers, family and child benefits, unemployment benefits; and social assistance. However, most Government affiliated social security schemes in Zambia are limited to the provision of protection against loss of income due to retirement, disability, or survivorship, and cover only formal sector workers and their dependants. Such coverage would summarily be referred to as pensions.

With reference to pensions, social security is defined as 'a way of assisting retired workers, in the form of a superannuation scheme that provides an income designed for the protection against the common risks of life which one in his own efforts can not avail to provide, and is derived from moneys that workers have contributed to throughout their working lives.'⁸ The purpose of a pension was summed up by His Excellency, the former President of the Republic of Zambia in his speech at the opening ceremony of the Zambia National Provident Fund (ZNPF) in October of 1966 that it is 'to make you independent in your old age and less of a financial burden on your children and other relations.'⁹ The objective therefore is to create financial independence and avoid one lapsing into destitution due to lack of a sustainable income. Pensions have traditionally been payments made in the form of a guaranteed annuity to a retired or disabled employee, or to a deceased employee's spouse, children, or other beneficiary. A pension created by an employer for the benefit of an employee is commonly

⁸Maurice Bruce. *The Coming of the Welfare State*. Routledge and Keegan. London; 1988. p56

⁹ Donald Bwalya. *The Zambia National Provident Fund; A Lawyer's Perspective*. University of Zambia School of Law Obligatory Essay. 1982 -83

referred to as an occupational or employer pension scheme. Labour unions, the Government, or other organizations may also sponsor pension provision.¹⁰

The Constitution of Zambia (Amendment) Act¹¹ defines pension benefits as ‘any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers, as officers in the department of the clerk of the National Assembly or as members of the armed forces or for the widows, children, dependants or personal representatives of such persons in respect of such service.’ Another legal definition is that ‘a pension is a tax-efficient means of providing for an income in retirement. The amount of income that the pension will provide will depend on the type of pension, the amount of contributions and how long a period those contributions have been made over.’¹²

The provision of pensions by a given state may be either by a public service offered by the Government, or by a private service through private companies to which individual employees may choose to subscribe. Most countries, including Zambia, embrace both public and private pension provisions. In Zambia, public service provision of social security is under the jurisdiction of the Ministry of Labour and Social Security, which operates through NAPSA.

Various private companies provide private pensions. However, the introduction of these private pension plans does not exempt employers from contributing to NAPSA.¹³ The majority of private pension Funds are managed by the Zambia State Insurance Corporation (ZSIC). Other private Funds include; Goldman Insurance Brokers, Professional Insurance Corporation, the American On Line Insurance Options, and others. A good number of Zambian employees in the private sector subscribe to these companies. By 1997, an estimated 40 percent of all formal

¹⁰ lawdictionary.com

¹¹ Chapter one of the Laws of Zambia. Amendment of 1996

¹² www.legaldefinitions.com

¹³ Section 11 of the National Pension Scheme Act Cap 256 of the Laws of Zambia provides for compulsory membership to NAPSA of any person not less than sixteen years but who is under pensionable age and is employed by a contributing employer. A contributing employer under section 13 is any tax paying parastatal, and the Zambian Government.

sector employees in Zambia were enrolled in private occupational schemes.¹⁴ This paper however, only focuses on NAPSA.

1.2 History

‘The desperate nature and scope of pension coverage in Zambia has its roots in the approaches adopted by the colonial power which allowed ‘piece-meal’ development of the social security systems.’¹⁵ During the colonial era, the social security system aimed almost exclusively at protecting the interests of the white settler community working in the colony or those of workers in sectors that were strategic to British interests. The indigenous populations were regarded as migrant workers, moving from mine to mine and thus social security was conceived as temporary concern with respect to the indigenous workers and permanent concern for the settlers.¹⁶ It is conclusive therefore that from the earliest introduction of some form of social security to Zambia, it was not considered as an important aspect of society, or as an integral part of the labour laws and a basic human right with reference to the natives.

The earliest pension fund to be established was in 1954, and this catered for the settler community working in local authorities. Between 1954 and 1965, other schemes were established to cover those in the public sector and the mining industry. Schemes in the mining industry covered contingencies arising from disability, health, and old age.¹⁷ It was not until 1966, that an attempt was made to establish a system for the universal coverage of all formal

¹⁴ Monika Queisser, Clive Bailey and John Woodall. Reforming Pensions in Zambia- An Analysis of Existing Schemes and Options for Reform. World Bank Policy research working paper. 1997.

¹⁵ Musonda .C., Ndilla.M, Kalenga, E. Mumba .G Zambia – A Synopsis of the Economic and Legislative Environment and Place of the Insurance Industry. A Conference Paper submitted to the Strategic Insurance Conference for Senior Executives - 16th September – 5th October, 2001 Stockholm – P21

¹⁶ Ibid.

¹⁷ Ibid.

sector employees by the establishment of a national Provident Fund, ZNPF which was formed as a compulsory retirement savings scheme. It operated as a defined contribution scheme, which meant that the Fund had no predefined obligations with respect to the level of old age, retirement and survivor's benefit.

'At its peak, the Provident Fund covered some 400,000 workers out of a total population of about 6 million, representing less than 10 % of the population but representing about 80 % of the population in formal employment.'¹⁸ Like numerous pension schemes available to this day, ZNPF covered the formal sector extensively with regard to pensions. In addition to the coverage offered by the Provident Fund, workers were allowed to belong to supplementary schemes offered by the private sector. One such private insurance company was the ZSIC, which at the time managed the majority of the private sector. Other companies such as the Zambia Consolidated Copper Mining Company (ZCCM) managed its own pension fund for their workers, which was called the Mukuba Pensions Fund, and the Ministry of Local Government operated the Local Authorities Superannuation Fund (LASF). Besides ZNPF, the Ministry of Labour and Social Security was also responsible for the supervision of the Workmen's Compensation Fund (WCF), and the Pneumoconiosis Compensation Board.

The Government in 1968 established another pension scheme to provide retirement pensions to permanently employed civil servants, the Civil Service Pensions Fund (CSPF) or PSPF, which

¹⁸Musonda .C.,Ndilla.M, Kalenga, E. Mumba .G Zambia – A Synopsis of the Economic and Legislative Environment and Place of the Insurance Industry. A Conference Paper submitted to the Strategic Insurance Conference for Senior Executives - 16th September – 5th October, 2001 Stockholm – P21

was under the supervision of the cabinet office. Within three decades of independence, there was adequate awareness for the necessity of social security and as such by 1994, it was estimated that there were 675,000 members of the various social security services available at the time. The table below stipulates the distribution of pension services in Zambia by 1994.

1.3. TABLE 1: COVERAGE UNDER PENSION SCHEMES (INCLUDING ZNPF)

(ESTIMATION FOR 1994)¹⁹

<u>SCHEME</u>	<u>MEMBERSHIP</u>	<u>NUMBER</u>
<u>STATUTORY SCHEMES</u>		
ZNPF	Private sector parastatals	355,000
CSPF/PSPF	Civil servants	
	Armed forces	
	Teachers	100,000
LASF	Local Government employees	22,000
TOTAL=		477,000
<u>NON-STATUTORY OCCUPATIONAL SCHEMES</u>		
ZSIC and Private Insurance Companies		180,000
Mukuba Pension Fund		
SUM TOTAL=	Private sector parastatals	657,000

The country’s experience with the Provident Fund was rather disappointing leading to early calls for reform. Typically, the problems centered on a number of issues such as inadequate

¹⁹ Monika Queisser, Reforming Pensions in Zambia. An Analysis of Existing Schemes and Options for Reform. Financial Sector Development Department of the World Bank. Senior World Bank Policy Research Working Paper. Social Security International Labour Office. Geneva. 1995. p34

benefits, in that the total sum that a pensioner received after retirement was not enough to sustain him for long.

Another problem was that of high administrative costs in terms of high expenditure as compared to returns from investments. 'Measured as a share of investment income, administrative expenses of ZNPF reached a peak of 254 percent in 1992.'²⁰ This means that the Fund used up 254 percent of the total investment income in 1992. Basically, more money was spent than was returned from the investment income. Furthermore in 1995, 102 percent of the contributions revenue went to administrative expenses.²¹ Other administrative expenses arose from the Fund being considerably overstaffed, leading to more expenses going to the payment of salaries for its employees. By 1994, the Fund was estimated to have had 1,300 employees.²²

One major problem was the fiscal pressure from the Government that the Fund encountered, mostly in relation to investment where by the Government regulated the investment of the funds. 'For a long time since inception, the Fund had a fixed guideline assigning 50 percent of the reserves to the Government, 35 percent to parastatals and 15 percent to the private sector.'²³ Towards the Government, investment was channeled in the form of long term loans at fixed interest rates, most of which were never paid back, leading to low returns from investments for the Fund. The parastatals present during the one party era were Government owned, and usually making a lot of losses but the Fund was required to buy shares in such companies.

When the fixed guideline was no longer in use by 1995, the Fund had 50 percent of its investments in real estate, most of which was residential property occupied by its employees and therefore was earning little or no income, while others were office buildings leased to the

²⁰ Gruat, J.V. Social Security Schemes in Africa. Current Trends and Problems. International Labour Review, Vol. 129, No.4. (1996) p405

²¹ Ibid.

²² Ibid.

²³ Ibid. p 406

Government, from which the rent was difficult to collect. The Fund was still required to invest in Government securities to which it had invested 27 percent of its total investments. Only 22 percent of its total investments had no Government influence, 16 percent of which was in fixed deposit and 6 percent in equity.²⁴

Some of the problems were due in part to the poor performance of the economy, which resulted in the severe decline in the real value of workers earnings. The contribution rates were not regularly adjusted to take into account inflation. Until 1995, the contribution rate was 5 percent of gross monthly earnings. During the Second Republic which was reflected by high inflation and low incomes for most of the civil servants, the real contribution receipts were consequently very low, leading to low member balances. As a result, the total pension for a member was usually not enough to sustain one for more than ten years. Such factors together with the administrative lapses of the Provident Fund tended to build a negative consensus against the scheme resulting in its failure.

‘In spite of the well-documented policy responses to these and related social security problems, the political environment was not conducive for reform.’²⁵ The one party Government required everything to be under Government’s direct supervision where it controlled the investment of funds. Positive reform however required a liberal Government where a scheme would be able to manage its investments free of Government strict supervision, in a free market economy where investments would yield more returns. With the dramatic political changes starting in

²⁴ Gruat, J.V. Social Security Schemes in Africa. Current Trends and Problems. International Labour Review, Vol. 129, No.4. (1996) p405

²⁵ Musonda .C., Ndilla.M, Kalenga, E. Mumba .G Zambia – A Synopsis of the Economic and Legislative Environment and Place of the Insurance Industry. A Conference Paper submitted to the Strategic Insurance Conference for Senior Executives - 16th September – 5th October, 2001 Stockholm – P2

1991, which led to a change of Government, it became possible to undertake such reform. This was initiated with the enactment of the National Pension Scheme Act²⁶ to create a social security institution to not only replace ZNPF but also to spearhead the reforms.

The paper will, in chapter two, highlight the nature and role of social security in a given society, its importance, and the relevance that has been attached to the necessity of social security on a global basis. Examples will be drawn from the various organizations such as the International Labour Organization (ILO) and other conventions that have been held regarding social security. It will further center on an analysis of the Zambian laws regarding social security, more specifically a close examination of the National Pension Scheme Act, highlighting its merits and its weaknesses. It will also critically analyze the efficiency of the legal system with regard to cases involving social security in Zambia.

Chapter three will give an analysis of the investments and potentials of NAPSA, by examining and comparing whether its policies and strategies offer a more lucrative pension scheme in comparison to ZNPF. It will further compare NAPSA to other pension schemes on a global level, highlighting whether the strategies of NAPSA are on the same level as other successful pension schemes world wide.

Chapter four will give recommendations on the improvement of the social security system in Zambia, and the legal force in providing this service. Specific recommendations will be with reference to the NAPSA, highlighting the reforms needed for its improvement where necessary, and finally a conclusion will sum it all.

This paper therefore will analyze whether the idea to create a pension scheme which is efficient in management of funds, productive in its investment returns, and capable of providing

²⁶ Chapter 256 of the Laws of Zambia.

adequate pensions to the Zambian people is possible with NAPSA, in view of the current failure of PSPF and ZNPF. This paper therefore seeks to analyze the institution of social security in Zambia with specific reference to pensions and survivor benefits in Zambia by paying particular regard to NAPSA as a case study.

CHAPTER TWO

2.Introduction

Human rights are a matter of international concern as the international community has come to realize that the promotion and protection of basic rights are an integral and essential element for the preservation of world peace and stability. One such recognized right is that of social security. This chapter therefore deals with international human rights standards in relation to social security, by highlighting the various international instruments and organizations that recognize social security.

The legislative framework of a particular state is most fundamental in protecting an individual's rights. The paper therefore further discusses the legislative framework which regulates social security in Zambia particularly the National Pensions Scheme Act²⁷, and analyses the weaknesses of the Act by highlighting particular sections that are not beneficial to the pensioner. Finally the paper lists some precedents that have been established by the courts in Zambia regarding pensions.

2.1. Global Perspective of Social Security

‘World labour force coverage by publicly managed pension schemes is estimated at approximately 800 million. This is roughly one third of total world labour force. Of this 800 million, about 49 and 32 percent is covered by mandatory, publicly managed defined benefit pay-as-you-go, and partially Funded schemes, respectively. The rest of the workforce is covered by a mix of public defined benefit and private defined contribution.’²⁸ The larger workforce therefore, is covered by publicly managed schemes, and for that reason, it is of

²⁷ Chapter 256 of the Laws of Zambia

²⁸ Gregorio Impavido. The Governance of Public Pension Fund Management. World Bank paper series. August 2002 . page 1

utmost importance that they are managed in the most efficient way. However, the background of such social protection has not been impressive, and consequently, the larger population does not have adequate social security. ILO estimates that ‘more than half of the world's population has no social protection. Only one out of five enjoys adequate coverage.’²⁹

The global perspective of social security encompasses old age, disability, death, sickness, maternity, employment accidents, occupational diseases, unemployment, and employment promotion. The term social security is used to cover all collective programs, public and private which are responsible for income transfer to households lacking such income due to various reasons. The great necessity for social security has been categorized on a global basis both as a poverty reduction strategy and as a fundamental human right. Keir Starmer, a human rights activist in Britain proclaims that;

‘every recognized human right demands protection.’

And speaks of social security that

‘Universally recognized as a basic human need, social security makes a decisive contribution to establishing greater social justice, without which no lasting peace would be possible.’³⁰

From this point of view, social security is therefore important for preventing the greater effects of poverty such as starvation and lack of basic necessities which would inevitably lead to the disturbance of peace by means of civil wars and military take over of the Government, (coup d’état), where a Government fails to provide adequate social protection.

²⁹ ILO: **Social Security: Issues, Challenges and Prospects** International Labour Conference, 89th Session, 2001, Report VI. Geneva, 2001, 84 p.

³⁰ Ibid. p86

In view of this, international law upholds the importance of social security through internationally recognized instruments and covenants such as the Universal Declaration of Human Rights (UDHR) and the International covenant on Economic Social and Cultural Rights (ICESCR). These two instruments are part of the International Bill of Rights.

Adopted in 1948 by the United Nations General Assembly, the UDHR is the foundation of contemporary human rights discourse. The UDHR is not an international legal document but is regarded as such due to its wide acceptance by the international community evidenced in frequent references made to it at international fora and in international, regional, and national human rights documents.³¹

The preamble to the UDHR states that ‘recognition of inherent dignity and the equal and inalienable rights of all members of human family is the foundation of freedom, justice and peace in the world.’ It recognizes the need for social security in Article 22 and 23 by stating that

‘everyone as a member of the society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic ,social and cultural rights indispensable for his dignity and the free development of his personality.’³²

And also that

³¹ Keir Starmer .Blackstone’s Human Rights Digest. Blackstone Press Limited, London. 2001.p189

³² article 22 and 25 of the Universal Declaration of Human Rights. United Nations Document of the International Bill of Human Rights. Entered into force in 1948.

‘ everyone has the right to...necessary social services and security in the event of unemployment, sickness ,disability, widowhood, old age and other lack of livelihood in circumstances beyond his control.’³³

The ICESCR recognizes this right in Article 9 by stating that

‘ the state parties to the present covenant recognize the right of everyone to social security, including social insurance.’³⁴

The right to social security as enshrined in these instruments is among every individual's inalienable rights and therefore every state party to these instruments has the duty to protect this right by ensuring social protection. Various international organizations have been formed to ensure the provision of social security and to develop better ways of maintaining the various schemes in the world in such a condition that they would be able to provide adequate social security.

One such organization is the International Social Security Association (ISSA), which was founded in 1927. ‘With 386 member organizations from 149 countries, ISSA is the largest and the most representative international organization in terms of social security. ISSA General Assembly is held every three years.’³⁵ The ISSA has held various international meetings addressing issues concerning social security such as the set up of better institutions and policies, discussion on the investment of social security funds has taken place in many forums including the ISSA's Fourteenth African Regional Conference held in Tunis, Tunisia, in June

³³ Article 25 of the Universal Declaration of Human Rights. United Nations Document of the International Bill of Human Rights. Entered into force in 1948.

³⁴ Article 9 of the International Covenant on Economic, Social and Cultural Rights.No. 16 of U.N. Documents of the international Bill of Human Rights. Entered into force January 3,1976.

³⁵ Richard Woodbury. Pensions and Health in South Africa. Butterworths.London. 1995. p35

2002³⁶. ISSA has clearly been very diverse in its efforts to improve social security on a global basis, most importantly by encouraging the participation of pension schemes and Funds in Africa. Zambia a member and was invited to the 28th ISSA General Assembly, dubbed as the most important worldwide social security forum, which was held from September 12 to 18 in Beijing, China.

Another global organization which is making efforts towards the improvement of social security provision is ILO. The Most recent ILO Convention regarding social security is the Maintenance of Social Security Rights Convention 157 of 1982, which provides guidelines for the provision of social security for the member states. Other conventions include the Social Security (Minimum Standards) Convention of 1952, and the Equality of Treatment (Social Security) Convention of 1962.

The ILO has invented an innovative program called STEP³⁷, which, is aimed at fighting social exclusion and poverty and promoting social protection world-wide. Social exclusion is a multi-dimensional term. It may be defined as ‘a process of long term involuntary non-participation in the economic, civic and social norms that integrate and govern the society in which an individual resides, which occurs with the breakdown of social systems.’³⁸ The first priority of the STEP programme is to extend social protection to poor and excluded people. The reasoning behind this program is that ‘Social protection is becoming more and more recognized as an essential tool in the fight against poverty and social exclusion and for promoting decent work. People who lack social protection suffer from a broader social exclusion, particularly with regard to access to education and training, to credit or employment. To reduce exclusion in a lasting manner, it is necessary to tackle its causes and symptoms. STEP combines its efforts

³⁶The investment of social security Funds: New approaches. ISSA fourteenth African Regional Conference Held in Tunis, Tunisia from 25th -28th June 2002.

³⁷ Social Protection For Excluded People

³⁸ World of Work Magazine No. 49-A Universal Challenge: Social Security for the World. ILO Paper Series. Geneva. 2002.

towards extending social protection with more efficient measures aimed at reducing social exclusion.’³⁹ Overall, STEP attaches special attention to the most vulnerable groups of the informal economy, particularly women, and to excluded people. STEP also attaches great importance to excluded people's participation and to the strengthening of their organization

From the foregoing, it can be rightly concluded that the global perspective of social security is very broad, and evidently, as earlier submitted, it is a very important topic which has been taken with considerable seriousness, both as a Fundamental human right and a poverty reduction strategy.

2.2. Legal Regime Regulating Social Security in Zambia

There are various pieces of legislation which regulate social security in Zambia. On the international level, Zambia has ascended to the International Bill of Human Rights which as stated above has two conventions that recognize social security as a basic Human Right.

There are basically three important legislation which regulate social security in Zambia that are relevant to this study namely,

- the Constitution of Zambia (Amendment) Act⁴⁰
- the Pension Scheme Regulation Act⁴¹
- National Pension Scheme Authority Act⁴²

³⁹ ILO: **World Labour Report 2000** - income security and social protection in a changing world- efforts for improvement. ILO paper series. Geneva, 2000, 321p.

⁴⁰ Chapter 1 of the Laws of Zambia

⁴¹ Chapter 255 of the Laws of Zambia

⁴² Chapter 256 of the Laws of Zambia

Pension laws and protection in the Constitution are provided for under Article 124.⁴³ It provides for the continued enforcement of the pension laws that were in place at the time of its coming into force.

The Pension Scheme Regulation Act⁴⁴ is the legislation which governs private pension schemes in Zambia. Currently it is the only legislation governing more than fifteen private pension schemes in Zambia which insure more than 300,000 employees in the private sector.⁴⁵ Its preamble cites it as ‘an Act to provide for the prudential regulation and supervision of pension schemes; to provide for the appointment of the Registrar of Pensions and Insurance; to provide for the Registrar's powers and functions; and to provide for matters connected with or incidental to the foregoing.’

The Act does not apply to NAPSA, as it states in section 2 that ‘the Act shall apply to any institution or company that establishes or manages a pension scheme except the National Pension Scheme established under the National Pension Scheme Act.’ However the Authority is under a legislative obligation to ensure that the scheme is managed in accordance with the prudential management principles specified in the Act, as stated in section 40 (2) of the National Pension Scheme Act.

Among other things, the Pension Scheme Regulation Act provides for the appointment of the Registrar of Pension Schemes⁴⁶ and the registration of pension schemes.⁴⁷ Furthermore, any

⁴³ The Constitution of Zambia (Amendment of 1996) Act. Chapter 1 of the Laws of Zambia

⁴⁴ Chapter 255 of the Laws of Zambia

⁴⁵ Musonda Cheta and Mark Ndilli ZAMBIA - A synopsis of the Economic and Legislative Environment and Place of the Insurance Industry. A conference paper submitted at the Strategic Insurance Conference For Senior Executives in Insurance. Held in Stockholm from 16th September to 5th October 2001.

⁴⁶ Section 4 of the Pension Scheme Regulations Act. Chapter 255 of the Laws of Zambia

pension scheme to which this Act applies is entitled to tax exemptions provided for under the Income Tax Act.⁴⁸ This is to encourage investment in areas that would enhance the economic growth of the country. Such exemptions include reduced tax on dividends that the schemes receive from investing in Government affiliated institutions and the Lusaka Stock Exchange (LUSE). According to section 23 an auditor shall be appointed who shall audit the accounts of the pension fund for the financial year for which he was appointed, to ensure compliance with the Act. Such auditor shall not be bound to take directions from the manager, or the trustees, and shall be financially independent from any such person. Such independence is to ensure that the auditor is not under any coercion from the manager or the trustees and will give an independent opinion of the accounts. This helps to prevent any abuse of funds by the managers.

Under section 24, the manager is required to prepare and submit to the Registrar a statement of existing and proposed investments for the pension scheme. The scheme can only make investments that have been approved by the Registrar. This is to ensure that the scheme makes profitable investments. The Registrar under section 29 is also entitled to examine the pension scheme's accounts books. This is normally to determine the viability of the scheme, to ensure correct actuarial assessment, analyze the capacity of the institution to pay pension benefits when they are due, to provide effective service and to comply with any provision of, or requirements under the Act or the pension plan rules. The Registrar also has power to stop a scheme from pursuing any business practice which in his opinion is an unsafe business practice.

Under section 32, the scheme is required to take out liability insurance with a recognized insurance company against the negligence or dishonesty of the directors, officers or employees of a pension scheme in order to safeguard its member's contributions. This is a very important

⁴⁷ Pension Scheme Regulation Act, Chapter 255 of the laws of Zambia. Section 8

⁴⁸ Chapter 323 of the Laws of Zambia

provision in that the interests of the contributor are taken into account so that one will not be affected in case of any misuse of Funds by the directors of the scheme.

In conclusion, the Pension Scheme Regulation Act is a very important legislation for the regulation of private pension schemes in Zambia to ensure their good administration for the effective provision of this service to the Zambian people. The Act is very intensive and outlines strict regulations for the management of the funds in the best interest of the contributors. In this way, the Act ensures the establishment of reliable pension schemes which may offer an alternative to NAPSA, in case of any unforeseen predicament in terms of its liquidity output or its investment choices.

NAPSA was established and is regulated by the National Pension Scheme Authority Act.⁴⁹ The preamble to the Act states the purpose of the Act as to establish the National Pension Scheme Authority; to constitute the National Pension Scheme and to provide for matters connected with or incidental to the foregoing. The Act was passed in 1996, repealing the Zambia National Provident Fund Act.⁵⁰

The type of pension service offered by NAPSA is that of social insurance. Its coverage is very vast as it includes all employed persons in Zambia, extending to agricultural workers, domestic servants in urban areas, apprentices, private sector employees and all employees who joined the Public Service and Local Authorities on or after February 1, 2000. Membership of the scheme is basically compulsory for every Zambian citizen in formal employment and below pensionable age but above sixteen years of age. This is pertaining to firstly, section 11(1), which

⁴⁹ Chapter 256 of 1996 of the Laws of Zambia

⁵⁰ Chapter 273 of 1966 of the Laws of Zambia

provides that every member of the abolished ZNPF shall be a member of the scheme, secondly, subsection two of section 11 assimilates ‘every person who, on the commencement of this Act, is not a member of the existing Fund under subsection (1) and is not less than sixteen years but who is under pensionable age and is employed by a contributing employer,’ into membership of the scheme. Section 12 defines a contributing employer as a person, association, institution or firm registered as a tax payer with a contract of service with an employee; and the Government of the Republic of Zambia, local authority or parasitical or statutory body.

This also means that every employee who was a member of the PSPF is accordingly a member of the scheme. Therefore, basically every Zambian citizen in formal employment falls within this ambit and is therefore a member of the scheme, unless one is exempted by the Act in the second schedule.⁵¹

According to Section 5(2), the Authority is not subject to control or direction by any person or body in the performance of its functions. The Authority is headed by a director general who is responsible for the daily administration of the scheme.⁵² The director general is appointed by the Minister of Labour and Social Security for a three year renewable term.⁵³ Such appointment is likely to undermine the independence of the director from the influence of the Government since the Minister has power not to renew the term if such director opposes any Government propositions such as investment of funds in Government affiliated institutions.

⁵¹ exempted people include; an employee earning less than K 15,000; the spouse of the employer: a member of the family of the employer who ordinarily resides with the employer, an employee of an international organisation who is not a citizen of Zambia; an employee of a foreign Government who is accorded diplomatic or equivalent status and who is not a citizen of Zambia; a member of the armed forces; and a public officer appointed before this Act comes into force and who is on pensionable employment under the Public Service Pensions Fund or the Local Authorities Superannuation Fund.

⁵² Section 6(1) of the National Pension Scheme Act, Chapter 256 of the Laws of Zambia.

Additional membership of the administrative body of the Authority includes representatives appointed by the Minister of Labour and Social Security from; such associations of employees and employers as the Minister shall designate.⁵⁴ These include the Ministry of Finance, Ministry of Labour and Social Security, Bank of Zambia, Bankers Association of Zambia and the Pension Managers Association.⁵⁵ The administrative body basically consists of people of the Minister's choice. The Minister therefore has great opportunity to choose representatives who would make decisions that are influenced by the needs of the Government such as investing in non-profitable Government affiliated institutions.

The Authority appoints inspectors in accordance with section 7(3), who have power to inspect any book, register, account, receipt or any document relating to contributions to the scheme, to ensure that the records are in fulfillment of the provisions of this Act.⁵⁶ This is to ensure that there is no abuse of the funds. The source of funds for the scheme, as stated in section 10 of the Act, includes the funds of the abolished ZNPF and its assets, and all income and capital appreciation derived from the holding of assets of the scheme in any form. Further funds are sourced through any contributions, grants or donations, loans, collection of fees for services offered by the authority, contribution payments by members, and also from any investments of such moneys.⁵⁷

In accordance with section 14, it is the responsibility of the contributing employer to remit to the scheme the employee's contribution by deducting from the employees earnings, and also the employer's contribution at the prescribed percentage of 5%.⁵⁸ Such contribution should be done at the end of every month, submitted with all prescribed supporting particulars concerning

⁵⁴ National Pension Scheme Act- chapter 256 of the Laws of Zambia. Section 6(2)

⁵⁵ Ibid. Section 1 of Part 1 of the first schedule (section 3)

⁵⁶ section 7(5) and (6) of Chapter 256 of the Laws of Zambia.

⁵⁷ Ibid. first schedule-part II. Section 11.

⁵⁸ Ibid. Section 14(1) and (2)

the identity, period of employment and the earnings of the member to whom such contributions relate.⁵⁹ If the contributing employer fails to submit such contributions, he is liable to a penalty for each unpaid month, which shall be recoverable as a debt owing to the scheme by the employer, as stipulated in section 15(2). Furthermore, where an employee's contribution has been deducted from his earnings but the employer fails to pay this contribution together with the employer's contribution, the unpaid contributions will be treated as wholly or partially paid for the purpose of any claim to the benefits by an employee, provided that this shall be without prejudice to any action to recover the amount due from the employer.⁶⁰ This provision is essential in ensuring that the pensioner is not affected by the employer's failure to remit the contributions which were deducted from his pay.

Section 51 prescribes the penalties and offences under the Act which include evasion of payment of contributions, and making any false statement or representation there to, failure to register within the period specified under the Act, or to disclose any relevant information required under the Act without lawful excuse, or to furnishing information which is false, or to pay to the Scheme within the period specified any contribution which one is liable to pay under the Act, and without lawful excuse failure to produce documents which one has been required under the Act to produce obstruction of any inspector, officer or servant of the Scheme in the discharge of his duties⁶¹. Deducting from a member's wages any amount by way of the member's share which is in excess of the amount due to be deducted under the Act, or contravening any other provision of the Act. The penalty for the stated offences is that one shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand

⁵⁹ Chapter 256 of the Laws of Zambia, section 15(1)

⁶⁰ section 16 of the National Pensions Scheme Act, Chapter 256 of the Laws of Zambia.

⁶¹ Section 13 (6) of National Pension Scheme Act. Chapter 256 of the Laws of Zambia. Any employer who belongs to a category of employers exempted under subsection (1) shall with the consent in writing of the majority of his employees, apply to the Authority in the prescribed manner, to register under this Act.

penalty units or to imprisonment for a term not exceeding three months or to both.⁶²

With respect to the stated offences, the court before which any person is convicted of an offence under this Act has power to order that person to pay to the Scheme the amount of any contributions. Together with any interest or penalty, certified to be due from that person to the Scheme at the date of conviction; to be recovered in the same manner as a fine and shall be paid into the Scheme for the credit, where applicable, of the accounts of the members concerned. Section 18 prescribes the conditions for the award of a retirement pension which include the attainment of 55 years of age, described as the pensionable age, and one must have made not less than one hundred and eighty monthly contributions. The amount of the monthly payment is prescribed by the Minister,⁶³ but the minimum payment should be twenty percent of the national average earnings.⁶⁴

According to section 21, a member who has attained pensionable age but does not meet the other requirements is entitled to the payment of a lump sum as may be prescribed by the Authority. This is to ensure that all retired personnel who had made any contributions to the Fund manage to get their pension even though they did not fulfill the required number of contributions. It is a good provision which encourages one to join the scheme at any time without fear of not being able to get their money back after retirement. In section 26, the Act also provides for an invalidity lump sum payment to a member who as a result of illness can no longer perform his employment duties. This provision is beneficial in that an invalid member is given a chance to get his pension without attaining the pensionable age which perhaps, as a

⁶² Section 51 of the NAPSA Act. Chapter 256 of the Laws of Zambia

⁶³ National pension Scheme Act- Chapter 256 of the laws of Zambia. Section 19(1)

⁶⁴ Ibid. section 19 (4)

result of the illness might not have lived up to it. It is a very fair provision as the scheme ensures that such a person does not die and leave behind his pension.

However, this provision only applies to one who has been certified as such an invalid by the scheme's medical board. Therefore, it caters only for those who suffer from long term illnesses. Additionally, a member may qualify for early retirement if he is within five years of pensionable age and has paid contributions for at least one hundred and eighty months. The duration of the retirement pension stated in section 18 extends from the time one attains pensionable age, to his demise,⁶⁵ and it is free from any attachment of a member's property in the event of bankruptcy, in accordance with section 49 of the Act. Furthermore section 38, declares as void any assignment or charge on benefits This is to enable a pensioner to still be able to earn an income in spite of any accrued debts which would otherwise lead to abject poverty.

As stated in section 29 of the Act, if a member dies, a survivor's benefit shall be paid to a member of the family or a dependant if at the time of death, the member was in receipt of the retirement pension, or had reached pensionable age and had made a claim to his benefits. This provision ensures that after the demise of a member, the survivors can still be provided for by way of the pension. The authority also provides a funeral grant for a member who, upon his death had paid at least twelve monthly contributions during the thirty-six months preceding his death.⁶⁶ This helps to reduce the funeral expenses of the family.

Therefore, the Act basically caters for all matters concerning pension benefits and is designed in the best interest of the pensioner. However, there are certain provisions which although

⁶⁵ section 20 of the National Pensions Scheme Act. Chapter 256 of the Laws of Zambia.

⁶⁶ Ibid. section 34(1)

legislated for the pensioners good, are not exactly beneficial to them. This negative effect is not usually felt in the short term, but is more destructive to the long term operation of the scheme in achieving its ultimate goal of delivering adequate and effective pension benefits as promptly as possible.

2.3. Weaknesses of the National Pension Scheme Act

The most apparent weakness is stated in section 5 (2) which explicitly states that the authority in its performance of its functions, shall not be subject to control or direction of any person or authority. As a result of this provision, even the Pensions and Insurance Authority (PIA) a regulatory body which looks into the management of funds in all pension schemes in Zambia does not have jurisdiction to monitor the management of the funds by NAPSA. The stated Section 5(2) is efficient to avoid Government interference in the administration of the Fund which may hinder its progress. However, it leaves room for abuse of office by the management of the Fund because the authority is not obligated to submit financial reports to any supervisory body as is required by the private schemes in the Pension Schemes Regulations Act. Lack of supervision of the management of the funds may lead to misappropriation. It would be more beneficial to the scheme if it can be supervised by a board consisting of members who do not have any personal interest in the Fund, such as non Zambians, and any one amongst the people exempted from the Fund who would give unbiased opinions considering the management of the Fund.

Another issue is the law regarding the conditions for award of a pension stated in section 18 (a) and (b), which include the attainment of the pensionable age of 55. With the current level of

poverty in Zambia estimated to be at 80% of the total Zambian population⁶⁷, and the adverse impact of the HIV/AIDS pandemic, the life expectancy at birth in Zambia has dropped to a disturbing level of 37 years of age.⁶⁸ This is also pertaining to the low spending power of most Zambians due to high taxes resulting in high cost of living and unstable diets, and additionally, inadequate health facilities. In view of this, the pensionable age is no longer easily attainable and therefore, many people die before they can claim their pension. This is clearly an unfair legislative provision which should be amended to allow one to get his benefits at whatever age one decides to retire from work as it is with private schemes. That way, every one would have an opportunity to get their pension when they decide to, rather than die before the pensionable age and leave what is due to them.

Additionally, the conditions for a survivors benefit are unconscionable because the Act does not take into consideration the possibility of death before the age of 55 since they specify that a survivors benefit can only be paid to the member of the family if the deceased pensioner was in receipt of a retirement pension or an invalidity pension at the time of death, or if he would have been entitled to an invalidity pension for permanent invalidity. It can be construed therefore that the Act does not take into consideration unexpected death such as by involvement in a road accident, or perhaps short illnesses which may cause death.

Furthermore, the Act requires that one should have reached pensionable age and was entitled to a retirement benefit and had made a claim to such benefit for his survivors to get the survivor's pension.⁶⁹ Clearly, this provision applies only to pensioners who die after reaching

⁶⁷ Poverty Reduction Strategy Paper for Zambia. A Civil Society Perspective. Oxford University Press- Published for United Nations Development Programme; June 2002. p130

⁶⁸ Ibid. p132

⁶⁹ section 29 of the National Pensions Scheme Act. Chapter 256 of the Laws of Zambia

pensionable age and is therefore unfair because the survivors benefits are not available to the family of a pensioner who dies before attaining the pensionable age.

An additional drawback to the achievement of the scheme's goal, is that the duty to remit membership contributions is borne by the employer, as stated in section 14 of the Act. The problem arises from the fact that the larger percentage of the members are employed by the Government. With reference to the experience of the Public Service Pensions Fund in particular, the Government has not been a co-operative contributing employer. At the time of its liquidation, the Government owed the Fund K307 Billion in unremitted contributions. A more effective method would be by Bank electronic debit from the Government's account whereby the stated sum of money required to be remitted to the Fund is debited directly from the Government account to prevent arrears in contributions, or that pension contributions should be the responsibility of every individual, failure to which will be a penalty under the law, as it is in the United States of America where tax and pension contributions are an individual's responsibility.

The law should also stipulate for the provision of prompt and adequate pension benefits failure to which the Scheme should be challenged in a court of law. The experience of pensioners with the abolished ZNPF and the currently liquidated PSPF has been that 'pensioners in Zambia have been subjected to every imaginable frustration, ranging from delayed or non-payment of pensions, to deliberate loss of files and even direct physical and verbal abuse at the hands of pension officials.'⁷⁰ In the end, even though the pensioner does get the benefits, it is a very minimal amount which is not adequate to sustain a balanced stable diet and an average standard of up keep.

⁷⁰ Legal Resources Foundation Newsletter. Issue Number 5. October 1998. p7

The Act should also ensure the protection of the funds from any misappropriation or abuse of by the director or the trustees by providing for liability insurance as it is under section 32 of the Pension Scheme Regulations Act. This is important to ensure that in case the funds are abused, the pensioner will not be affected.

Finally, neither the National Pension Scheme Act nor the Income Tax Act⁷¹ prescribe for any tax exemptions for pensioners. The Income Tax Act in section 18(1) (d) specifically provides for the taxing of any pensions given to an individual within the Republic. Some delegates who attended the National Conference on Labour and Social Security which was held in Zambia in August 2004 expressed sentiments about the current tax regime, where taxes are generally very high. African Life chief executive officer Muna Hantuba said the current tax regime was not favorable as pensioners were taxed heavily on their benefits, making them become destitutes. He further added that there is need for tax benefits to those that are retiring but nothing at the moment is forthcoming."⁷²

Another contribution came from a University of Zambia (UNZA) lecturer Mataa Mwiya who described the current tax regime as having caused resentment from the people and expressed concern that even after retirement there was no social security because retirees were living in abject poverty as a result of high taxes. He urged Government to consider the plight of retirees by exempting them from paying tax, as the current situation was unbearable, unfair and unjust to those coming out of employment.⁷³ Therefore, to ensure the receipt of adequate benefits, the Act needs to address tax benefits for pensioners who are taxed during their employment and

⁷¹ chapter 323 of the Laws of Zambia

⁷² discussions conducted at the National Conference on Labour and Social Security held at the Mulungushi International Conference Centre in August 2004.Lusaka

⁷³ Ibid.

further taxed on their benefits, resulting into low income expenditure power, and conclusively, an increase in the poverty level.

Although the National Pension Scheme Act provides laws regulating pensions which are beneficial to the contributors such as the low contribution rate of 5% of one's earnings, survivors benefit and invalidity pension, for it to be effective in the provision of adequate and sustainable pension benefits, there is need for amendment in the stated areas of the Act. The scheme should also have an independent body such as the Pensions Insurance Authority to look into the management of the public funds that it is entrusted with.

2.4 Zambian Adjudication regarding Pensions

There have been few cases adjudicated upon with reference to pensions in Zambia. Although in a handful of cases, the courts have still been able to lay down some precedents with reference to the provision of pensions in Zambia. The purpose of this section is to show that the Zambian Judicial system has been responsive to grievances regarding pensions in Zambia, and has in the process laid down important principles of law.

Annard Chibuye v Zambia Airways Corporation⁷⁴,

According to the Supreme Court Holding in this case, an employee should receive not only what he had contributed but also that part of the fund representing the employer's contribution. The principle in this case therefore is that an employee is entitled not only to his contribution but also to that contribution made by the employer if the jurisdiction allows it. Marsh and Soulsby⁷⁵ affirm this by stating that 'in some jurisdictions, the employee upon pension gets his contribution and the employer's contribution, and there can not be any deductions unless

⁷⁴ (1985)ZR 4 (SC)

⁷⁵ S.B. Marsh and J. Soulsby. Business Law. Stanley Thornes; 1992. 5th Edition.p 253

agreed upon in the contract.’ The employees contribution though, is not available to an employee who retires voluntarily before attaining the pensionable age.⁷⁶

The court in the same case further stated that the accepting of terminal benefits does not make a retirement legal, and therefore declared the retirement in the case, null and void, even though the appellant had accepted the terminal benefits. This case therefore lays down a precedent that acceptance of pension benefits does not stop one from contesting the legality of his dismissal from employment. This principle was later up held in the case of *Jacob Nyoni v Attorney – General*.

Jacob Nyoni v Attorney -General⁷⁷

where the appellant had been given a choice to either retire at 55 years of age or at the pensionable age in the Amendment of the Civil Service(Local Conditions) Pensions Act⁷⁸ which was at 60. The appellant exercised his option to retire at age 60 but was prematurely retired at the age of 55. He then brought an action seeking a declaration that the termination of his employment was wrongful. He sought damages for loss of income for the next five years that he was supposed to be earning. The court held in his favour that the plaintiff having exercised an accrued right to retire at 60, the termination of his employment was wrongful and he was awarded damages in the form of two years salary at the rate he was holding before his premature retirement, with 30 percent interest.

⁷⁶ *Wilson Simwanza V Tap Zambia Limited*. Industrial Relations Court – Judgment Number 46 of 2001

⁷⁷ S.C.Z. /11/ 2001 unreported

⁷⁸ Chapter 410 of 1972- The Laws of Zambia

Gumbo v Land and Agricultural Bank of Zambia⁷⁹

In the case a deceased pensioners only surviving brother sought to get the survivor's pension following the customary law of inheritance. The court denied him the pension benefits on the grounds that he did not have locus standi as only the deceased's spouse and children could be *eligible for a survivors pension, and ordered that such benefits be paid to the surviving wife.* For any other relatives besides the spouse and children, the National Pension Scheme Authority Act provides a funeral grant in the form of a lump sum,⁸⁰ but not the survivor's pension.

David Lubasi Muyambango v Zesco Limited⁸¹

The complainant was asked to resign from his position as the Company's Training Director after working for the company for seven years. The reason for him to resign was not stated and so he refused. Two days later he was dismissed. He asked the court for the payment of benefits to him by the company up to the age of 55 when he would retire. The Industrial Relations Court granted his plea and he was paid his pension by NAPSA even though he had not yet attained the pensionable age, but on grounds that he was forcibly retired. Thus the court takes into consideration that some circumstances may lead an individual to retire before he reaches pensionable age. With court redress therefore, one should be entitled to his pension when the circumstances force him to retire before attaining the age of 55.

Standard Bank Limited v Brocks⁸²

In the case, the plaintiff brought an injunction in the High Court against the defendant to recover the sum of four hundred and seven Kwacha as moneys lent to the defendant. The plaintiff applied for an injunction to prevent waste, damage or alienation of the sum of K500

⁷⁹ (1968) ZR 50 (HC)

⁸⁰ section 34 (3) of the National Pensions Scheme Act, Chapter 256 of the Laws of Zambia.

⁸¹ Industrial Relations Court Judgement Number 17 of 2003

⁸² (1972) ZR 306 (HC)

which was held by the Ministry of Finance on behalf of the defendant as terminal benefits. The Court ruled that according to the Defence Regulations Act, Rule 6, there is no attachment of pension benefits unless it is a debt owed to the Government. The National Pensions Scheme Act⁸³ in Section 49, also excludes attachment of benefits and does not make any exception towards Government debt.

Wilson Simwanza v Tap Zambia Limited⁸⁴

The complainant was employed on permanent and pensionable basis. There was provision that he or the employer could give three months notice of termination of employment. The complainant resigned after working for the company for eleven years during which he was receiving his gratuity annually. At the time of retirement he had not reached pensionable age but asked the court that he be paid his pension contributions. The court ordered that he be paid his pension contributions, exempting the employer's contribution since he had retired voluntarily. This serves to show that the court takes into consideration that it would be unjust for one to be denied his entire pension solely because he had not attained pensionable age at the time of his retirement.

Edith Tshabalala v Attorney-General⁸⁵

The appellant was originally a Zimbabwean citizen who was employed as an enrolled nurse of the Government of Zambia. She managed to acquire Zambian citizenship in 1992, and a question arose as to her eligibility for pension under the Civil Service(Local Conditions) Pensions Act.⁸⁶ The Supreme Court Held that it was not illegal by statute, nor contrary to any written law for a non-citizen to be on permanent and pensionable terms when she was lawfully

⁸³ chapter 256 of the Laws of Zambia
⁸⁴ Industrial Relations Court –Judgement Number 46 of 2001
⁸⁵ S.C.Z. Judgment Number. 17 of 1999
⁸⁶ Chapter 410 of the Laws of Zambia

a permanent resident , even by virtue of marriage to a Zambian. The precedent in this case was that a non-Zambian citizen can be on pensionable employment if he becomes a Zambian citizen by application or by marriage to a Zambian, or by any legal permanent residence.

From the few available cases to date, it is evident that many issues regarding pensions in Zambia do not reach the courts. This is mostly due to the lengthy process of litigation in Zambia and is therefore very discouraging. High legal fees which most pensioners can not afford is another discouraging factor. In light of this, some pensioners seek help from organizations such as the Legal Resources Foundation of Zambia, a non profit making Foundation, providing legal aid, promoting human rights and litigating in the public interest. It functions in areas which directly affect the disadvantaged sectors of society in relation to violations of their fundamental rights and enhancement of justice.⁸⁷

2.5 Conclusion

What can be observed from the conducted research is that the international community considers social security as a very important part of society and as an essential human right, denial of which is a great injustice. Consequently, international organizations such as ISSA have been formed to guide social security schemes in the provision of this service. The Zambian Republic has also taken the subject with considerable seriousness in terms of the legislation which recognizes the need for social security. There is however need for more awareness by people about their pension rights, and the amendment of some pension laws to adequately address the rights of the pensioner to income protection after retirement.

⁸⁷ The Legal Resources Foundation News Letter. Lusaka; Issue Number 42 of August 2002.

CHAPTER THREE

3. Introduction

The subject that is of utmost significance to social security schemes is the investment and management of the funds. How the funds are managed is extremely crucial as any mismanagement and poor investment strategies would have greater effects of poverty on the pensioners. The Pension Schemes therefore have a duty to make profitable investments in the sole interest of the pensioners. In view of the problems that ZNPF experienced in attaining adequate and profitable returns from its investments, the transformation to NAPSA has posed a range of investment challenges for the Authority in its bid to ensure that the scheme is actuarially sound and that the value of the assets of the scheme are at all times adequate, and able to cover the value of the underlying liabilities.

NAPSA has therefore implemented investment strategies that are intended to address the adverse experience of ZNPF. Consequently, the legislative framework for investments for NAPSA also reflects the same aspirations for the attainment of profitable returns. This chapter analyzes the investment of funds by the scheme, and the legislative provisions that regulate such asset allocation.

3.1. Legal framework regulating the investment of NAPSA Funds

There are two laws that impinge on the running of investments namely the National Pension Scheme Act of 1996⁸⁸ and the Pension Scheme Regulation Act.⁸⁹ The latter regulates the management of private pension funds. The National Pension Scheme Act, gives broad powers to the Trustees of the scheme to invest funds but restricts investments of any liquid assets of the

⁸⁸ Chapter 256 of the Laws of Zambia, Act No. 40 of 1996

⁸⁹ Chapter 255 of the Laws of Zambia, Act No. 28 of 1996

Scheme to ‘a savings account of any bank or institution which is governed by any written law of Zambia or by the law of the United Kingdom of Great Britain and Northern Ireland, or on fixed deposit or at call with any such bank or institution, real estate, stocks, securities or Funds issued by or on behalf of the Government or in stocks, securities or funds guaranteed by the Government; and also allows such other investment as may be approved generally or specially, by the Authority.’⁹⁰ It is noticeable therefore that whilst allowing for external investments, the law nonetheless restricts eligible countries to those governed by English or similar law.

The Act in Section 40 prescribes that the scheme should be managed in accordance with the prudential management principles specified in the Pension Scheme Regulation Act⁹¹. As stated in section 24, the principles include an investment policy to achieve secure and profitable investments and maintain at any time the real value of its members' accrued portable benefits. The manager of a pension scheme shall, at such times as the Registrar may require, prepare and furnish to the Registrar, a statement of existing and proposed investments for the pension scheme. Section 25 specifies that a manager’s investments must be approved by the Minister, and that the Minister may issue investment guidelines.

3.2. NAPSA Investment Guidelines

Paying due regard to section 41 of the National Pensions Scheme Act and sections 25 and 26 of the Pension Scheme Regulations Act, NAPSA notified the public of its investment guidelines adopted by resolution through the Government gazette notice No. 457 of 2001.⁹² The Investment objectives are; safety considerations, to ensure that the risks associated with investing in a particular area are within acceptable levels which would not prove extremely

⁹⁰Section 41 of the National Pension Scheme Act, No. 40 of 1996, Chapter 256 of the Laws of Zambia
⁹¹ No. 28 of 1996, Chapter 255 of the Laws of Zambia. this Act however does not apply in totality because it is meant for the private pension Funds
⁹² Government Gazette No. 5027. Published in Lusaka, Thursday 13 September, 2001. Vol. XXXVII, No. 57. Copy available before the bibliography

detrimental to the scheme in case of failure; liquidity considerations, aiming at reserving enough liquidity to pay out to pensioners by not subjecting all the available liquid cash to investment risk and rather invest it in fixed deposit accounts; venture into investments that will yield profitable returns to improve the interest on the pension contributions; increase its investment options through diversification of areas of investment such as the new policy to invest 30% of its assets to foreign jurisdictions; and to ensure capital preservation to maximize investment returns.

3.3. Types of investments

The Authority has a policy to invest 30% of its total (portfolio) investments outside Zambia, and 70% locally. The principal financial instruments accepted for investment by the National Pension Scheme are those that have the highest potential to preserve capital for reinvestment, provide a decent yield and are liquid. The definitions of the asset categories are as indicated below:⁹³

Cash equivalents: Bank deposits, treasury bills, certificates of deposit, promissory notes, bills of exchange, money market Funds, short-term income funds, commercial paper, banker's acceptances, etc. **Fixed income securities:** Treasury bills/bonds – longer dated Government bonds, corporate notes and bonds, Municipal bonds, etc. **Equity Securities:** Ordinary shares of listed companies, Convertible notes and bonds, Convertible preference shares, etc. **Real Estate Holdings:** Commercial property – offices, shopping malls, Residential property, Industrial property, Land, etc. and **Mutual Funds or collective invest schemes.** The table below shows the approved asset allocations.

⁹³ Dann Kunda Musenge. The investment of social security Funds: New approaches. Conference paper submitted to the ISSA fourteenth African Regional Conference held in Tunis, Tunisia, 25-28 June 2002. p5

3.4 Table 2

NATIONAL PENSION SCHEME AUTHORITY

APPROVED ASSET ALLOCATION

2001 -2005⁹⁴

ASSET ALLOCATION						
CURRENT HOLDING	PREFERRED HOLDING			CEILING		
	2001	2002	2002	2004	2005	
DOMESTIC PORTFOLIO						
CASH EQUIVALENT	71%	50%	35%	25%	12%	10%
FIXED INCOME SECURITIES	5%	25%	40%	50%	60%	90%
EQUITY SECURITIES	3%	5%	6%	7%	10%	20%
REAL ESTATE	21%	18%	16%	14%	13%	10%
COLLECTIVE INVESTMENT SCHEMES	0%	2%	3%	4%	5%	10%
TOTAL	100%	100%	100%	100%	100%	
INTERNATIONAL PORTFOLIO						
CASH	0%	2%	2%	2%	2%	0%
FIXED INCOME SECURITIES	0%	38%	38%	38%	38%	60%
EQUITY SECURITIES	0%	30%	30%	30%	30%	30%
REAL ESTATE	0%	0%	0%	0%	0%	0%
COLLECTIVE INVESTMENT	0%	30%	30%	30%	30%	40%
TOTAL	100%	100%	100%	100%	100%	
GEOGRAPHICAL SPLIT						
INTERNATIONAL PORTFOLIO	0%	5%	10%	20%	30%	
DOMESTIC PORTFOLIO	100%	95%	90%	80%	70%	
TOTAL	100%	100%	100%	100%	100%	

It is noticeable from the given table that the scheme intends to invest most of its assets in fixed income securities, with a preferred holding of 60% by 2005. It should be noted that the investment of fixed income securities by the scheme is restricted to Government securities in

⁹⁴ NAPSA, Lusaka Office. Corner of Lumumba and Mbembela Road. Courtesy of the Investment Management Section. A copy of the original is attached at the end, after the bibliography.

accordance with section 41 of the National Pension Scheme Act.⁹⁵ The second largest portfolio is investment in real estate in which the scheme intendeds to reduce substantially due to the losses experienced by ZNPF. Such loses were as a result of inability to pay rent by the lessees, mostly the Government, and a good number of the residential estate being used by the company as accommodation for its employees. As stated in the asset allocation table, the preferred investment by 2005 is only 13% of the total assets. With reference to foreign investments, the preferred allocation by 2005 is estimated at 30% of the total assets.

3.5. Prohibited investments

At the time of establishment of the criteria and the definition of the classes of assets deemed suitable for investment, the Board also outlined the assets that are detrimental to the long-term health of the scheme. Therefore through the Government gazette, NAPSA is prohibited from lending directly to the Government of Zambia unless such lending is conducted through Treasury Bills or Government bonds sold on the open market through the Bank of Zambia; Investments in state-owned or state controlled enterprises, direct lending to non-public companies – as this is primarily a banking function; leasing operations – as this is the business of leasing companies, equity investments in non-public companies – as this is primarily a venture capital function, speculative investments involving forward contracts, futures, options, or other types of derivative securities, unless used specifically to hedge against specific forms of risk such as currency fluctuations, in which case prior approval must be sought from the Board of Trustees.⁹⁶

⁹⁵ Chapter 256 of the laws of Zambia, Act No. 40 of 1996

⁹⁶ Government Gazette No. 5027. Published in Lusaka, Thursday 13 September, 2001. Vol. XXXVII, No. 57. A copy is attached after the bibliography

3.6. Inherent Problems of the Investment Prohibitions

The restriction of investment of pension Funds through such prohibitions, some of which are stipulated in legislative provisions greatly limits the investment opportunities of the scheme. For instance, investment in fixed income securities and equity is restricted to Government bonds and public companies. However, as exemplified by Gregorio, 'the bonds are usually specially issued non-marketable instruments with substantially below-market yields to the extent that they are not subsequently traded, effectively forcing the social security institutions to hold these assets until maturity.'⁹⁷ These bonds are usually long-dated with minimal interests, and therefore mature with low yield over a long period of time and may eventually pose further liquidity problems when the market value falls, leading the scheme to lose out on its money.⁹⁸ If such funds are invested in other fields such as successful private multi-national companies, and given the long duration of the Government bonds, the funds are more likely to mature substantially.

Furthermore, 'although equities and mutual funds have long been thought to offer better returns and hedging mechanisms, the underdeveloped nature of the capital markets in these countries have virtually precluded investments in these portfolios to any meaningful degree.'⁹⁹ In Zambia, for instance, transactions regarding Government securities and pension assets are conducted on LUSE which is still in its early inexperienced stage and may not be the safest market to centralize the investments with the best interest of the pensioners in mind.

⁹⁷ An example of such an experience is the Philippines Social Security System: Gregorio Impavido. On The Governance Of Public Pension Fund Management . World Bank Paper Series. World Bank .20 August 2002.p 12

⁹⁸ In Uganda, there is now greater emphasis on safety and liquidity rather than yield, reflective of the bad experience which the scheme had when it invested heavily in Government securities: Gregorio Impavido. On The Governance Of Public Pension Fund Management . World Bank Paper Series. World Bank. August 2002.p17

⁹⁹ Dann Kunda Musenge. The investment of social security Funds: New approaches. Conference paper submitted to the ISSA Fourteenth African Regional Conference held in Tunis, Tunisia, 25-28 June 2002. p5

Firstly, it is unfortunate to state that LUSE is not categorized as an emerging capital market.¹⁰⁰

This means that it is still not substantially recognized as an adequate market by the international community. One important factor to note is that the set up of the exchange market in 1994 was to accommodate the structural adjustment program and the privatization of state owned enterprises as part of the IMF/World Bank economic recovery conditions.¹⁰¹

The legal framework for public distribution of securities in Zambia therefore, was to facilitate the introduction and implementation of privatization strategies. Although this approach was beneficial in helping the market develop and become more liquid, it was a very risky movement considering the trend of most foreign investors in Zambia closing down their companies and leaving. Those who also participate in the securities market will eventually move their assets from LUSE. This would in turn reduce the liquidity available and may cause the market values to fall. The heavy reliance on privatization as a source of capital growth is very risky to the sustainability of the growth of the stock market.

‘Another illustration of market imperfections in emerging stock markets is that these markets e.g. LUSE are relatively illiquid and are heavily regulated.’¹⁰² The illiquidity may be attributed to the heavy reliance on foreign investors who exit as soon as the incentives expire, and the regulation is with reference to Banks regarding restrictions on where the banks must place their reserves. In Zambia, for example, the 1994 *Zambian Financial Services Act*¹⁰³ was amended to include a banking code which strongly emphasizes investor protection. Furthermore, the *Bank of Zambia Act, 1985* requires banks to place a statutory stipulated minimum as reserves by way

¹⁰⁰ K.K. Mwenda. *The Dynamics of Market Integration : African Stock Exchanges in the New Millennium*. .Brown Walker Press. USA.2000.p35

¹⁰¹ Ibid. p36

¹⁰² Kenneth Mwenda. *Securities Regulation And Emerging Markets: Legal And Institutional Issues For Southern And Eastern Africa*, in *E LAW – Murdoch University Electronic Journal of Law*. World Bank. Volume 7. 2000. p20

¹⁰³ Chapter 387 of 1994- Act No. 21 of 1994

of demand deposits in current account in the Bank of Zambia. Such regulations are not beneficial to the market as most of the liquid assets that the companies on the stock exchange would have access to are not available.

An additional problem, as outlined by Mwenda, K.K. is that

... Pension assets are limited to domestic investment because a goal of the plan is to aid in the mobilization of capital sources to support the nation's growth. When such restrictions are imposed, they increase the risks faced by workers because the domestic economies in many developing nations are very narrow and are exposed to high local market risk. Thus, an explicit trade-off is enacted between the needs of the nation for capital on the one hand and the desire to reduce pension-holder risk on the other."¹⁰⁴

The funds from the pension schemes are therefore used to provide sufficient money to meet the demands for Government debt to finance public expenditure. This is usually done by limiting investment within borders, with the implicit rationale that local savings should be used to develop the local economy. However, this is very disadvantageous to the pension assets in view of the risks of the local investment atmosphere ranging from unstable macroeconomics with balance of payment problems, unstable exchange rates, underdeveloped securities markets, and limitations on investment opportunities owing to the unavailability of successful and viable companies in which to invest.

The scheme would ensure both safety and sufficient yield for the pension funds if it invested in politically stable, thriving economies with strong financial sectors to provide profitable

¹⁰⁴ Kenneth Mwenda. Securities Regulation And Emerging Markets: Legal And Institutional Issues For Southern And Eastern Africa, in E LAW – Murdoch University Electronic Journal of Law. World Bank. Volume 7. 2000. p24 He enlists Zambia, Uganda, Nigeria and India amongst the basic examples, as countries that have experienced such problems.

investment opportunities, such as South Africa, Australia and Great Britain. With good interest on the investments, and safety from the local political influence, the scheme can contribute to the economic development of Zambia by providing security from poverty which the larger population may still be prone to if the Funds were invested locally, yielding low interests and long maturity periods through Government bonds.

As earlier stated, the Scheme intends to invest at least thirty percent of its total assets in foreign countries. To achieve this objective, it is important that policymakers should allow substantial foreign investment by public pension schemes in order to diversify away local risks, and gain more interest for the good of the pensioners. NAPSA should also appoint and train personnel to effectively manage the foreign investments in stable growing economies with many investment opportunities.

3.7. Conclusion

To sum, the investment of pension assets in Zambia is highly restricted and inhibited to be specifically within Zambia. Such restriction is greatly disadvantageous to the scheme and the pensioners at large. Firstly, diversification within borders such as letting the Fund invest in private companies and engage freely in the stock market would increase its investment opportunities and free it from indirect Government interference. Secondly, the Fund would yield substantial interest if it invested in outside economies to escape the local risks, thereby contributing to the development of the economy by providing adequate pensions to mitigate the exposure of the pensioners to poverty.

CHAPTER FOUR

4. Introduction

From the foregoing discussion, it is clear that NAPSA in its current state , may not offer hope for an efficient and adequate public social security scheme. Unless NAPSA undergoes considerable reform, it will not be able to address the adverse experience of ZNPF, and to provide the kind of social protection that the people of Zambia need in this economically under developed poverty stricken state in which Zambia is today. To attain a viable social security scheme, such reformation should not only be with respect to NAPSA and its legislative provisions, but must extend to Government policy, and also the attitude of the Zambian people towards social security.

4.1 Recommendations for reform of the National Pensions Scheme Act

In view of the highlighted weaknesses of the legislation in Chapter Two there is need to amend the provisions thereto. Most of the suggestions for amendment were stated in Chapter Two. The recommended amendments include; section 5(2), to provide for an independent body to provide checks and balances on the scheme such as the way the Pensions and Insurance Authority overlooks private schemes; its also desirable to amend section 18 (a) and (b) to provide for an alternative for one to retire at any time as long as they have accrued a certain minimum amount of pension benefits with the scheme, considering the current difficulty of attaining the pensionable age of 55 years, section 29 to enable survivors of to get their deceased's pension even if he had not yet reached the pensionable age; section 14 to provide for the Schemes ability to get the contributions through bank electronic debit or to shift the duty to remit contributions to the employee failure to which one should be subject to penalty.

Finally, section 41 should be amended in order that the scheme may be able to manage the Funds independent of Government influence. The legislation should offer provisions which advocate for investment guidelines that are beneficial to the pensioners and not only to the Government. Therefore, the National Pension Scheme Act should be amended in the stated provisions to enable the Scheme provide adequate social protection to the pensioners.

4.2. Options for Reform for NAPSA

With reference to the Scheme, the board should appoint internal and external asset managers to govern the local and foreign investments respectively. The asset managers should be trained personnel, able to identify key investment strategies which are associated with good performance in terms of returns and safety of the assets. Furthermore, the scheme should ensure efficient administrative governance. For instance, the administrative costs should not outrun the investment returns and the contributions received so as to incur a deficit. The Scheme should further under go actuarial assessment by an independent accountant as it is done in private schemes, to ensure that the Funds are not mismanaged. Additionally, as in private schemes, NAPSA should have a policy to insure the Funds with a good insurance company so that the pensioners should not be affected in case the Scheme collapses.

4.3. Recommendations to the Government for the reform of NAPSA

A substantial reduction in the role of the state in pension Fund management has been linked to good performance.¹⁰⁵ To ensure adequate social protection for the Zambians therefore, the Government should leave the Scheme to operate independently without any direct or indirect influence. The Scheme should therefore be given the authority to diversify its investment options and extend to foreign economies and equity participation in successful and profitable

¹⁰⁵ Gregorio Impavido. The Governance Of Public Pension Fund Management. The World Bank paper series. 20 August 2002

companies and not to be restricted to local investments and Government bonds on the premise of developing the local economy. As much as the Government bonds may offer asset safety, a minimal percentage of the assets should be invested to increase yield.

The Government should also seriously consider privatization of the whole scheme or half of it. As a result of the evident nature of bankrupt state run pension systems around the world, many are considering such a movement, which was spearheaded by Chile in the early 1980's.¹⁰⁶ Since the reform, Chile has experienced a 50 to 100 percent increase in pension benefits , and also an improved growth rate of the economy.¹⁰⁷ Such success of has led other countries such as Argentina, Peru and Colombia to follow suit. Even the Unites States of America is beginning to seriously debate privatizing its pension scheme.¹⁰⁸ The Chilean experience can therefore be instructive to countries around the World, including Zambia.

The reasoning behind privatization is that individuals should be able to manage their pension assets through selected Government approved, insured, investment management companies.¹⁰⁹ The Government should still impose significant incentives to the management companies, and social security contribution should be compulsory, subject to penalties. Each individual pension contributor should have a pension savings account to which he must remit the specified percentage of his income to reach a stated threshold, and may on his own volition remit more to increase his pension benefits. The amount of his benefits is determined not by the state pension scheme but by the workers contributions and his returns from the investments through an investment manager of his choice. The system should therefore shift from a Government run pension scheme to a national system of savings accounts.

¹⁰⁶ Jose Pinera. Empowering Workers: The Privatisation of Social Security in Chile, in The Cato Journal. Volume 15. No. 3. page 2

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid. p 3

The investment management companies should be approved by the Government, and should be subject to Government regulation only to guarantee a diversified ,low-risk portfolio to prevent theft and fraud, and should follow legislation which would provide regulations to protect the interests of the pensioners such as a requirement for such companies to contribute to a mutual fund as an insurance scheme for the pension assets in case one company collapses, but not to regulate their investment decisions. The companies should therefore be free to diversify their investments without Government restriction but should be regulated to a minimal degree, to prevent mismanagement of funds.

The benefits for privatizing social security include for example, that pensions would cease to be a Government issue, thus depoliticizing a huge sector of the economy and giving individuals more control of their pension assets. Through the investment management companies, even low-wage workers would become shareholders in affluent economies and accrue substantial assets during their life time, and yield much more that they would under a Government run pension scheme. It would also ensure individual ownership of pension savings accounts, and accumulated assets could be used at retirement or passed on to family members without regulations that the deceased must have acquired pensionable age. Such increased savings and investments would in turn improve the overall economy by protecting people from poverty through individual wealth accumulation.

4.4 Conclusion

Firstly, the paper focused on establishing the objective of pensions as a Fund to ensure financial independence in times of inadequacy, in order to mitigate the greater effects of poverty in the long run. The paper further outlined the history of social security in the form of pensions in

Zambia, and how it has impacted on how Zambian Governments perceive pensions. It has been observed therefore that if the colonial Government had considered pensions as an integral part of each citizen's life, whether settler or indignant, to assist one in times of inadequacy, perhaps the post independence Government would have also considered it as such, and not as another source of Government tax fund to finance its projects. In lieu of this, the paper further outlines how such an approach led to the down fall of ZNPF.

The paper has also acknowledged the importance attached to social security from a global sphere, extending from its recognition as a basic human right in internationally recognized human rights instruments, such as the International Bill of Rights, to its acceptance both as a human right and a poverty reduction strategy by the whole world. In view of this, extensive international organizations such as ISSA have been formed to help countries effectively manage social security schemes, and other world recognized organizations such as ILO have taken up that task. With such global importance attached to social security, each state therefore has an inherent duty to adequately protect such a right, and therefore provide adequate social security.

Adequate social protection can only be available if the local legislation recognizes and protects it as a basic human right. The paper acknowledges the local legislation which regulate the provision of social security but goes further to analyze the inherent weaknesses of such legislation which render it ineffective in protecting social security rights. The paper thus highlights how such weaknesses deny the pensioners what is rightful to them, and how they impede on the achievement of the objectives of NAPSA in providing adequate social protection through pensions. Such lack of legislative support in ensuring the provision of adequate social

protection is very unfortunate, and calls for amendment of such legislative provisions. The paper therefore offers suggestions to such amendment to ameliorate the current situation.

The paper goes further to acknowledge that the judiciary has not been docile in protecting social security rights, but the minimal number of the cases adjudicated on the subject reflect the lack of knowledge of this important human right among the Zambian populace. This is a very unfortunate situation which calls for widespread education of the masses on the importance of social security, and also that it is a basic human right to which they are entitled. Such public awareness should go together with reassurance that their contributions will be saved and invested in their best interest and not to finance Government activities or end up being mismanaged and squandered.

In addition, the paper also analyses the laws regulating the investment of funds by NAPSA. While acknowledging the safety of assets related to investing in Government securities which is provided for in the laws, the paper also highlights the dangers and risks associated with restricting investments to local markets and the inherent inadequacies of the securities markets in developing countries. The paper further offers some advantages which some pension schemes in other countries have accrued from diversification of investments, with less Government interference.

Finally, the paper offers recommendations for reform of the National Pensions Scheme Act in order for it to provide adequate social protection, including some suggestions for the Government to consider such as the privatization of the scheme. on the basis of the observation that most private schemes world wide operate more efficiently than the Government schemes,

privatization would therefore offer a better solution to the bankrupt, politicized nature of public pension schemes.

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NATIONAL PENSION SCHEME AUTHORITY

APPROVED ASSET ALLOCATIONS

2001 – 2005

Asset Allocation						
	Current holding		Preferred Holding			Ceiling
	2001	2002	2003	2004	2005	
Domestic Portfolio						
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Fixed Income Securities	5%	25%	40%	50%	60%	90%
Equity Securities	3%	5%	6%	7%	10%	20%
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Collective Investment Schemes	0%	2%	3%	4%	5%	10%
Total	100%	100%	100%	100%	100%	
International Portfolio						
Cash	0%	2%	2%	2%	2%	0%
Fixed Income Securities	0%	38%	38%	38%	38%	60%
Equity Securities	0%	30%	30%	30%	30%	30%
Real Estate	0%	0%	0%	0%	0%	0%
Collective Investment	0%	30%	30%	30%	30%	40%
Total	0%	100%	100%	100%	100%	
Geographical Split						
International Portfolio	0%	5%	10%	20%	30%	
Domestic Portfolio	100%	95%	90%	80%	70%	
Total	100%	100%	100%	100%	100%	

Dated theday of2004

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AUTHORITY SECRETARY



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GAZETTE NOTICE No. 457 OF 2001 [000718876]

The National Pension Scheme Act
(Act No. 40 of 1996)

The National Pension Scheme Authority Investment Guidelines

IT IS HEREBY NOTIFIED for Public Information that the National Pension Scheme Authority in exercise of the powers contained in section *forty-one* of the National Pension Scheme Act and in accordance with its obligations under section *forty* of the Act to manage the National Pension Scheme in accordance with the prudential management principles specified in the Pension Scheme Regulation Act (No. 28 of 1996), has by resolution adopted the following Investment Guidelines:

Prudential Principles

1. The Authority shall prudentially manage the National Pension Scheme and shall –
 - (a) act prudently and in the sole interest of its members;
 - (b) maximise its investment returns consistent with acceptable levels of risk;
 - (c) diversify its portfolio and limit its risk of loss attributable to investment in any one company or group of companies;
 - (d) ensure sufficient liquidity;
 - (e) invest with due regard to the duration or term of its liabilities;
 - (f) ensure that suitably qualified professionals are appointed for the management of the Scheme and the investments of the Fund; and
 - (g) not make investments in entities in which it has an interest.

Fiduciary Duties

2. (1) The Authority shall discharge its fiduciary duties as trustees of the National Pension Scheme in accordance with subsection (2) of section *eight* of the National Pension Scheme Act, and to preclude conflict of interest, the Authority shall-
 - (a) not invest in any company in which members of the Authority, the Director-General, Secretary or other members of staff of the Authority or an immediate blood relative of such a person, holds more than five per centum of the outstanding shares;
 - (b) not invest in any company which acts as an asset manager on behalf of the Authority or is a substantial service provider to the Authority or is associated to any company referred to in paragraph (a); and
 - (c) ensure that members disclose interest on any matter before the Authority in accordance with paragraph 9 of the First Schedule to the National Pension Scheme Act.

- (2) In these Guidelines two persons are associated if-
 - (i) one person is a company of which the other person is an officer or director;
 - (ii) one person is a company that is controlled *de jure* or *de facto* by the other person;
 - (iii) one person is a partnership of which the other person is a partner;
 - (iv) both persons are members of a voting trust or other arrangement relating to the shares of a share user.

Prohibited Investments

3. The Authority shall not engage in-
 - (a) equity investments or direct lending in companies that-
 - (i) do not have a minimum net asset size and revenue as determined by the Authority in accordance with internationally recognised good practice for pension fund investment;
 - (ii) do not have widely distributed ownership and have a single dominant shareholder;
 - (iii) have not operated profitably for the immediate past three years as confirmed by financial statements audited by an international accounting firm;
 - (iv) have not achieved returns on capital employed for the immediate past three years that meet the criteria established by the Authority in accordance with internationally recognised good practice for pension fund investment; or
 - (v) do not meet any other requirements that may be prescribed by the Authority;
 - (b) speculative investments involving forward contracts,
 - (c) leasing operations;
 - (d) lending to the Government of the Republic of Zambia not conducted through Treasury Bonds sold on the open market;
 - (e) investments in State owned or State controlled enterprises including enterprises whose shares are held by the Zambia Privatisation Trust Fund except where such investment is part of the divestiture process;
 - (f) direct lending to non-listed companies where indebtedness to the Authority is subordinated to a substantial portion of the company's other liabilities;
 - (g) holding a stake of more than 5% in any one company or group of associated companies;

- (h) having more than 5% of its assets in any asset class invested in any one instrument unless-
 - (i) in bonds where there is only one issuer;
 - (ii) commercial banks for cash deposits and certificates of deposit of up to 35% in any one bank or financial institution.

Provided that the Fund may invest in listed companies in Zambia and on the Johannesburg Stock Exchange as well as in securities offered in the OECD Countries.

Investment Objectives

4. (1) The Authority shall establish and maintain coherent and consistent investment objectives and the primary investment objective will be capital preservation, investment returns and liquidity and the Authority shall ensure that funds are managed prudently within acceptable parameters of risk and shall-
 - (a) segregate its investment fund into separate portfolios each governed by its own investment guidelines;
 - (b) develop a list of asset classes which the portfolio will be permitted to hold;
 - (c) establish detailed asset allocation rules for its investment managers and the allocation rules shall:
 - (i) limit how much of the portfolio can be invested in any one class of assets;
 - (ii) contain other provisions, as determined by the Authority, designed to ensure that the investments conform to the portfolio's investment objectives;
 - (iii) contain provisions for the rebalancing of the portfolio over time and giving investment managers a reasonable time within which to attain compliance.
- (2) Without prejudice to the generality of subparagraph
- (1) the Authority shall-
 - (a) segregate its investment fund into separate portfolios each governed by its own investment objectives;
 - (b) develop a list of asset classes (government bills, corporate bonds, equities, real estate, etc) which the portfolio will be permitted to hold; and
 - (c) establish detailed asset allocation rules for its investment managers
- (3) The asset allocation rules established under this paragraph shall -
 - (a) limit how much of the portfolio can be invested in any one class;
 - (b) contain provisions designed to ensure that investments conform to the portfolios investment objectives; and
 - (c) contain provisions specifying how the portfolio shall be rebalanced over time such that investment managers are given a reasonable amount of time to attain compliance.
 - (d)

Appointment of Managers

5. (1) The Authority shall appoint investment managers to manage the investment portfolio of the Scheme on the basis of a competitive tender process which shall take into account history and

past performance, training and experience, size and assets to be under management, quality and proposed fee structure, but the managers shall not have access to the actual funds or securities.

- (2) The Authority shall not appoint as investment managers persons who have a financial or blood relationships with the members of the Trustees or its management.

Establishment of Market Bench Marks

6. The Authority shall develop and establish market bench marks to assess the performance of its investment managers.

Communication with Members

7. The Authority shall communicate with its members-
 - (a) in the form of a booklet that explains the provisions of the Scheme, summarises the rights of members and delineates the responsibilities of the Authority;
 - (b) by providing annually to its members benefit statements and at such intervals as the Authority may decide;
 - (c) by publishing audited financial reports on an annual and timely basis;
 - (d) by publishing its investment performance on an annual and timely basis.

Appointment of Custodians

8. The Authority shall appoint global custodians for its investment activities of the Fund

Appointment of Auditor

9. (1) The Authority shall appoint an auditor for each financial year who shall not-
 - (a) be a shareholder in a company or in any way be associated with any person providing asset management or other services to the Authority;
 - (b) have any financial relationship with any member of the Authority, the Director-General, Secretary or staff of the Authority or to any provider of substantial services to the Authority.
- (2) The Auditor appointed by the Authority shall audit the Scheme and the Fund in accordance with international accounting standards.

Appointment of Professional Advisor

- (10) The Authority shall appoint an independent international advisor with appropriate trustee experience to advise the Authority in relation to the prudential principles and fiduciary duties outlined in these Guidelines and the advisor shall attend the meetings of the Authority in accordance with paragraph 6(8) of the First Schedule to National Pension Scheme Act

A.J. CHIRWA,
Permanent Secretary,
Ministry of Labour and Social Security

S.M. CHIBANDA (MRS),
Chairperson,
National Pension Scheme Authority