

**AN EVALUATION OF SOCIAL SECURITY LEGISLATION AND POLICY IN
ZAMBIA AGAINST INTERNATIONAL LEGAL INSTRUMENTS**

BY

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**A Dissertation Submitted to University of Zambia in partial fulfillment of the requirements
for the award of the Degree of Master of Laws (Taught)**

THE UNIVERSITY OF ZAMBIA

LUSAKA

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DECLARATION

I, **Nancy Chewe Mulenga**, do hereby declare that, this dissertation is the result of my own work and has not previously been submitted for a degree at this or any other university and any other institution of learning. Work that has been used done by other people has been duly acknowledged.

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APPROVAL

This dissertation of Nancy Chewe Mulenga has been approved as fulfilling the partial requirements for the award of the Degree of Master of Laws (Taught) by the University of Zambia.

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ABSTRACT

Zambia's social security system is comprised of contributory and non-contributory social protection programmes, the former requires contribution from both the employer and the employee while the latter is tax financed administered by the Ministry of Community Development and Social Services. Social protection is therefore provided through social insurance and social assistance which requires means testing to determine eligibility. The study evaluated the social security legislation and policy in Zambia against international instruments on social security, particularly Convention 102 (1952) of the International Labour Organisation (ILO). The evaluation was important in order to determine whether the national legislation is in line with international instruments which allude to social security as a fundamental human right to which every human being is entitled.

The main objective of the study was to determine the adequacy of the law in providing social security in line with international instruments. The specific objectives were to determine the adequacy of the law on social security in Zambia and establish whether Zambia is ready to ratify Convention 102 and the benefits of ratification thereof.

The study was doctrinal as it heavily relied on 'black-letter' law to approach, explain and understand the law on social security. The research relied on both primary and secondary sources of information and conducted unstructured interviews with key informants who were purposively selected in order to get more insights on the subject.

The study found that, despite Zambia being a member State of the Universal Declaration of Human Rights and ratifying the International Covenant on Economic, Social and Cultural Rights it has to date not ratified Convention 102 which provides for international standards for social security systems. Convention 102 contains flexibility clauses which make it relevant to all its members regardless of national economic development status. It was also established that, despite the non ratification of Convention 102, Zambia's social security legislation provides coverage for four contingencies out of the five that the ILO recommends a ratifying State to endeavor to provide cover for its citizens. The four contingencies covered are; old age, invalidity, survivor's benefits and employment injury benefits.

It was established that, ratification of Convention 102 would send a clear message of the commitment of the Government to develop social security. The study has thus, emphasised the need to ratify Convention 102 as this will help the country to progressively provide coverage for a those contingencies that are currently not covered by legislation and also progressively increase the population to be covered. The country has further not adopted a national social security policy but relies on the broad social protection policy; this has contributed to the lack of reform on social security law and its institutions. It is therefore recommended that, Institutions should be reformed and the law redrawn and broadened, this is needed in order to align the law on social security to prevailing international standards and best international practices. The study recommends that the failed referendum that sought to include Economic, Social and Cultural rights in the Bill of Rights be revisited and that there is need to come up with a law to govern and regulate social assistance schemes.

Key words: *Social security, legislation, economic, international.*

DEDICATION

This dissertation work is dedicated to my children who have had to remain under the care of other people during the times I would leave home to carry out research.

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LIST OF ACRONYMS

AU	African Union
BSA Co	British South Africa Company
CSO	Central Statistics Office
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
LASF	Local Superannuation Fund
MCDSS	Ministry of Community Development and Social Services
MLSS	Ministry of Labour and Social Security
NAPSA	National Pension Scheme Authority
NPSS	National Social Protection Policy
PSPF	Public Service Pension Fund
PWAS	Public Welfare Assistance Schemes
SADC	Southern African Development Community
SCT	Social Cash Transfers
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNIP	United National Independence Party
WCFCB	Workers Compensation Fund Control Board
ZESCO	Zambia Electricity Supply Corporation
ZNPF	Zambia National Provident Fund

CHAPTER ONE

INTRODUCTION

1.1 Introduction

This study seeks to give an in depth understanding of Zambia's policies and legislation on social security. From time immemorial, societies have recognised the need for social security to protect individuals from uncertainties that would occur in one's life due to among other things, death, retirement and old age. The occurrences of any of these eventualities pose a threat to a person's economic stability and the wellbeing of the family. In this chapter, the study gives a brief background to the concept of Social Security. Thereafter, the statement of the problem, significance of the study, purpose of the study, objectives of the study, research questions, the literature review as well as the methodology are discussed. The chapter then concludes with an outline of the other chapters of the research.

1.2 Background of the Study

The concept of social security has no established definition. The International Labour Organisation (ILO), which has done considerable work in this field, declared in 1949 that there was no internationally accepted definition of social security and that the concept varies from country to country.¹ However, later in the years, ILO adopted a working definition of the concept of social security. According to the ILO, social security is understood to mean, the protection furnished by society to its members through a series of public measures against economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old

¹ Victor N George, *Social security, Beveridge and After*, (London: Routledge and Keegan, 1968),5

age and death; to provide for medical care and to subsidise families with children.² This definition provides a broad conception of social security.

The Universal Declaration of Human Rights (UDHR) adopted on 10th December 1948 and International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the UN General assembly in 1966 have been instrumental in giving recognition to the right to social security. The UDHR does not contain any legally binding obligations unlike the ICESCR which contains legally binding obligations on member States. However, the ILO provides guidelines on the risks for which governments may provide social security. The ILO Social Security (Minimum Standards) Convention,³ which Zambia has not ratified, is the forerunner to all ILO social security Conventions. The ILO (Minimum Standards Convention) established world wide-agreed minimum standards for all nine branches of social security namely; medical care, sickness benefit, unemployment benefit, old age benefit, maternity benefit, invalidity benefit and survivors benefit, family benefit and maternity benefit.⁴

Marius, Nicola and Evance are of the view that, the setting of social security in such a framework by the ILO resulted from the expectation in the period after World War II that all workers would end up in formal-sector employment.⁵ However, this has not been the case for Zambia and many other developing countries as the majority of people are employed in the informal-sector. The Labour Force Survey conducted by the department of Central Statistics shows that about 83.9 percent of the population works in the informal sector whilst only 16.1

²Johannes Jutting, *Strengthening social security systems in rural areas of developing countries*. Discussion papers on development policy. No. 9, (Bonn, centre of development research, June, 1993) 3

³ 1952 (No. 102)

⁴ <http://www.social-protection.org/gimi/gess/ShowRessource.action?ressourceId=313> (Accessed April 26, 2014)

⁵ Marius Olivier, Nicola Smit and Evance Kalula, *Social Security: A legal Analysis* (Durban: LexisNexis Butterworths, 2003), 569

percent of the population works in the formal sector.⁶ This clearly shows that countries like Zambia have difficulties in raising social security schemes based on formal employment.

The ILO has taken a leading role in setting up international standards for social security which member States need to adhere to. It provides the minimum level of protection which should be covered by either non-contributory or contributory schemes. In Zambia, the social security system is based mainly on a social insurance model which requires one to have a record of contribution in order for one to benefit. The social insurance model is designed to protect income earners and their dependants against the occurrence of certain contingencies that would prejudice their capability to earn income.⁷ The income of the social security schemes has to be obtained in one proportion or another, from one or more of the three main sources; employers, insured persons and the Government.⁸

In Zambia, social security falls under a broader social protection which consists of social assistance, administered by the Ministry of Community Development and Social Services (MCDSS), through the department of social welfare. The department of social welfare has been instrumental in providing social assistance to vulnerable members of society, while the Ministry of Labour and Social Security (MLSS) is concerned with broader social security issues. The non-contributory programme run by the Government through the Public Welfare Assistance Scheme (PWAS) is an old intervention that has its roots in the colonial period. The department of Community Development helps to identify clients, prioritise needs and allocate resources to vulnerable members of the community.

⁶ Central Statistical Office - Government of the Republic of Zambia, Labour Force Survey, 2014.

⁷ Winnie S. Mwenda, *Employment Law in Zambia, Cases and Materials*, (Lusaka: UNZA Press, 2011) 239

⁸ Report of the Commission of Inquiry into the existing Schemes of Social Security in Zambia, (Kabwe:31st January, 1983) 2

According to Barrientos, Social assistance provides direct transfers in cash and or in kind to individuals or households experiencing poverty or vulnerability, with the aim of facilitating their permanent exit from poverty.⁹ In Zambia, poverty is longstanding, though its eradication has been a major focus of government pronouncements, poverty has remained extensive, with most of the population subsisting below the minimum standard of living.¹⁰ The eradication of poverty is arguably the greatest concern of the world today. According to Riedel,¹¹ noncontributory schemes like PWAS in Zambia are essential for reaching to the most vulnerable members of society.

Currently, the public social security schemes in Zambia are: The National Pension Scheme Authority (NAPSA), the Public Service Pensions Fund (PSPF) and the Local Authorities Superannuation Fund (LASF). The Workers Compensation Fund, which is under the Workers Compensation Fund Control Board, only deals with occupational disease and work injury. There are also private social security schemes which are regulated under the Pension Scheme Regulations Act of 1996 and the Pension Scheme Regulations,¹² for instance, Mukuba and Kwacha Pension schemes are examples of Private Social Security Schemes in Zambia.

1.3 Statement of the problem

Zambia as a member of the United Nations is obligated to ensure achievements of the ideals of the UDHR which entitles every member of society to social security. Towards this end, Zambia has ratified international human rights instruments such as the ICESCRs which obligates

⁹ Armando Barrientos, *Social Assistance in Developing Countries* (New York: Cambridge University Press, 2013), 3

¹⁰ Zambia. *Social Protection Expenditure and performance review and social budget*, (Geneva: ILO, 2008), 36

¹¹Eibe Riedel, *Social Security as a Human Right; Drafting a General Comment on Article 9 ICESCR-Some challenges*(Newyork: Springer, 2007) , 27

¹² Pension Scheme Regulations (Amendment) Act of 2005

Member States to take steps to achieve progressively the full realisation of Economic, Social and Cultural rights by appropriate means including the adoption of legislative measures. On the African scene, Zambia has ratified, inter alia, the African Charter on Human and Peoples' Rights, which also encourages measures that promote respect and wellbeing of the Peoples of Africa.

As a member of the ILO, Zambia has acceded to most ILO Conventions but for Social Security (Minimum Standards) Convention, 1952 (No. 102) which provides for minimum standards with regard to Social Security. The Convention embodies an internationally accepted concept of social security. In Zambia, the social security legislation that is in place is exclusionary, in the sense that, its applicability is limited to those in formal employment. Further, the contingencies covered fall short of the ILO's prescribed minimum standards of social security which should include the following contingencies: sickness, unemployment, old age, work injury, maternity, invalidity, survivors and family/child benefits. Is the exclusionary nature of our legislation attributable to the non- ratification of ILO's main social security Convention?

It should be noted that, non-ratification of ILO Convention 102 creates a dichotomous position which hampers the development of robust legislation in the field of social security. Given this background, to what extent does Zambia's Social Security legislation and policies encapsulate international norms designed to assist in providing Social Security to its citizens? This study seeks to answer this question by evaluating the Zambian legislation on social security against a backdrop of international instruments particularly ILO Convention 102.

1.4 Purpose of the study

The purpose of this study is to evaluate Zambia's social security legislation and policy against a backdrop of international instruments on social security, particularly Convention 102 of the ILO.

1.5 Objectives of the research

1.5.1 General Objective

1. The general objective of this study is to: assess the adequacy of the law and policy on social security in Zambia in relation to international instruments.

1.5.2 Specific Objectives

The specific objectives of the study include to:

1. Identify the law and policy regulating social security in Zambia
2. Determine how far legislation and policy have gone in meeting the standards set by International instruments on social security.
3. Establish some of the benefits of ratifying international instruments on social security, particularly Convention 102.

1.6 Research questions

1. How adequate is the social security legislation in Zambia?
2. What are some of the benefits of ratifying ILO Convention No 102?
3. Are the Zambian laws on social security and policy in line with international instruments?

1.7 Significance of the study

The research is significant as it comes at a time when the majority of the population is in informal employment and the government is grappling with the issue of broadening the social security base so as to ensure social inclusion thereby reducing the levels of poverty. It is further hoped that, the results of this study may help the Government make an informed decision on ratification of Convention 102 of the ILO and may further contribute to empirical evidence that may guide policy makers. It is hoped too that the study will contribute to available knowledge on social security policies and spur further research on the subject.

1.8 Theoretical framework

The social welfare theory is the guiding theory upon which this research is premised. The theory provides guidance on the responsibilities of the State over its citizens. In a welfare State, the State assumes primary responsibility for the welfare of its citizen, as in matters of health care, education, employment and social security.¹³ The State plays a key role in the protection and promotion of the social and economic well-being of its citizens. According to Stoesz, social welfare implies a society's provision of social, economic and health benefits to members who are unable to obtain such benefits by themselves.¹⁴ This ensures equality among citizens and alleviation of poverty. Social security has been viewed as a key element in alleviating poverty and maintaining people's living standards. Klinck, is of the view that, the perception that the poor are responsible for their predicament underpins reluctance to accept social security

¹³ <http://www.thefreedictionary.com/welfare=theory> (accessed 31st August, 2017)

¹⁴ David Stoesz, *A Theory of Social Welfare*. Social work, (1989) Vol 34 No.2, p 101-107

responsibility or to support empowerment efforts.¹⁵ States must therefore ensure that national laws or policies reflect that which is envisaged by international instruments or conventions they ratify.

1.9 Literature review

There is considerable literature on the subject of social security, as this subject has gained so much recognition world over due to the role that social security plays. Campbell¹⁶ is of the view that, social security is an earnings replacement whose main function is to replace in part earnings from work cut off by retirement, disability or death. Social security has been viewed as a key factor in supporting economic development as it enhances productivity. However, despite its fundamental role and functions, the majority of the world's population has no access to social security protection, or very little.¹⁷ Millar¹⁸ is of the view that, "the absence of comprehensive statutory social security for the informal sector workers raises broader questions about the design of social security systems." She further notes that;

Social insurance schemes require a large proportion of the work force with a regular job whose earnings can be monitored and on which mandatory contributions can be collected. Unfortunately, this condition does not apply to hundreds of millions of workers worldwide whose employment and earnings are irregular.¹⁹

The problem of inadequate coverage has been of great concern the world over and Zambia has not been an exception. There has been great concern on the inadequacy of coverage for social

¹⁵ Elsabe Klinck, 'Transformation and Social Security in South Africa.' A paper presented at an international workshop on social security transformation in South Africa, Johannesburg, January 24-25, 2001

¹⁶ Rita R Campbell, *Social security; promise and reality*, (United States of America: Leland Stanford Junior University, 1977) 103

¹⁷ International Labour Organisation, *Social protection floors for social justice and a fair globalization*. 101st session of the International Labour Conference.

¹⁸ Jane Millar, 2nd edition . *Understanding Social Security; Issues for Policy and Practice*. (Britain:University of Bristol Policy Press, 2009), 116

¹⁹ Millar, 2nd edition . *Understanding Social Security*.

security even in Zambia. Munsaka²⁰, notes that the Zambian Government is under pressure from the public to extend the scope of social security. Munsaka is of the view that the injustices of the present social security laws not only constitute a permanent source of insecurity and unrest, but also a paralyzing obstacle to the carrying out of the plans for economic development.²¹ The main focus of his study was on the feasibility of a comprehensive social security system whereby everybody will be covered and not only those in regular employment but those in the informal sector and mainly the rural population. However, Munsaka did not look at the role played by international instruments particularly Convention 102 which provides guidelines on how social security coverage can be enhanced in member countries.

Quisser, Bailey and Woodall in reforming pensions in Zambia note that, Zambia's pension schemes are deficient in design, financing and administration.²² The trio recommend for Zambia to restructure its social protection system to complement its new economic strategy. However, in order to have pension reforms that meet the needs of the majority of the population, there is need to adopt a holistic approach that looks at what is prevailing at the international level and the legal framework that regulates pensions.

As earlier alluded to, Zambia's Social security system is mainly an insurance model also known a contributory scheme under this type of scheme entitlement is based on one having made contributions while the non-contributory scheme consist of programmes financed by the Government for instance, social cash transfers, communities, church organizations, and donors who target specific, rather small, groups in the population who are in need. Most countries

²⁰ Janice S Munsaka, *"The Law governing social security schemes in Zambia"* (LLM thesis, University of Zambia, 1987) 101

²¹ Munsaka, *"The Law governing social security schemes in Zambia"*.

²² Monika Quisser, Clive Bailey and John Woodwall, *Reforming Pension in Zambia, 'An analysis of existing schemes and options for Reform.* Policy Research Working Paper, Financial Sector Development Department, World Bank, January, 1997

operate contributory social security schemes which are limited to workers with employer-employee relationship; the schemes exclude workers in the informal sector due to low productivity and irregular income.

Musonda, looked at the feasibility of introducing a non-contributory pension scheme in Zambia, focusing mainly on the possibilities and challenges of introducing a non-contributory pension scheme for the elderly, he advocates for inter alia; the adoption of a national social security policy to give direction on non-contributory pension scheme for the elderly.²³ Even if Musonda recommends for a national social security policy, Musonda did not look at the role played by legislation and international instruments in extending coverage for social security as minimum standards for social security are provided for by international instruments.

Koyi in his study to investigate how existing social protection schemes in Zambia and governance structures that facilitate their operation are addressing the challenge of exclusion, discrimination and limited coverage notes that, the provision of social security is limited to the provisions of protection against loss or reduction of income resulting from retirement, disability and death. This falls short of the contingencies prescribed by the ILO's minimum standards Convention on social security which include; sickness, unemployment, old age, work injury, maternity, invalidity, survivors and family/child benefits.²⁴ However, he does not go further to elaborate on the provision of the minimum standards convention and the obligations that ratifying States have, this is the gap that this research intends to address.

²³ Chisha Musonda, "*Towards a comprehensive national social security system in Zambia*" (MBA diss., Copperbelt University, 2009)

²⁴ Grayson Koyi, "Social protection in Zambia," in *Social protection schemes in Africa*, ed, Trywell Kalusopa et al. (Cape town: University of Cape town, 2012), 276

Mwiche on the other hand focuses on social security coverage for the urban informal sector workers. Mwiche recommends that in order to provide social security coverage for informal sector workers, there is need to come up with a public policy concerning coverage of the informal sector by extending existing schemes or specifically creating a new scheme for the informal sector.²⁵ Mwiche equally advocates for a public policy. However, it is important in extending coverage to address the practical difficulties that comes with implementation and inclusion of informal workers in the social security system. It is equally important to look at how Convention 102 of the ILO which sets out the minimum standards to be attained for each branch of social security in providing guidelines on the extension of coverage to ensure universality. In looking at the possibilities of extending existing schemes to the informal sector it is imperative to look at the current legal framework regulating the provision of social security which is what this study intends to do.

Midgley and Tracy asserted that;

As the current century comes to an end, it is clear that, Social Security is under pressure and the criticism made of this vital social institution need to be addressed. Supporters of Social Security need to respond vigorously. Many of the challenges facing Social Security are real and require remedial action. A failure to respond effectively to these challenges will only serve to undermine Social security's legitimacy and foster its eventual collapse.²⁶

Midgley and Tracy advocated for a spirited response and remedial action to Social Security challenges as they saw the necessity at the close of the 20th century. Many countries are still faced with the same challenges and Zambia is not an exception. The Social Security System in

²⁵ David Mwiche, "*Social security coverage for urban informal sector workers: A case study of the Copperbelt of Zambia*" (MBA diss., Copperbelt University, 2005) 109

²⁶ James Midgley and Martin B. Tracy, *Challenges to Social Security: An International Exploration* (London: Auburn house Westport, 1996) p.2

Zambia is faced with a number of challenges which need to be addressed comprehensively with the help of the law.

Social security has a very important role to play in society. According to Pieters, those responsible for its regulation and administration need to have a ready ear for all that goes on in society.²⁷ There is thus a need for social security to respond to the growing needs of society. As a mechanism for meeting human needs, social security has achieved nearly universal acceptance. Drolet is of the view that, the realization of the right to social security should be given priority in law and policy, even if it has significant financial implications.²⁸ In addition to international instruments other countries have had the right to social security enshrined in their Constitutions. Examples are, the Republics of South Africa and Kenya. However, the right is of course realised in varying degrees in different countries, the determinants being the level of socio economic development and the prevailing political and social philosophies, which come together to determine who should be the social security winners and losers.²⁹ Ball points out universality of coverage as one of the principles of social security, this implies that there must be gradual extension of social security to the population or citizens not covered by social security.³⁰

Attarian in looking at social security asserts that social security is not insurance at all but a welfare program as it ensures income distribution.³¹ In a welfare program, the government is pivotal in ensuring income redistribution to its citizens. The Government is a key player in the provision of social security to its citizens, social security is therefore underpinned by the social

²⁷ Danny Pieters, *Social Security: An introduction to the basic principles* (Netherlands: Kluwer Law International, 2006) 19

²⁸ Juliet L. Drolet, *Social Protection and Social Development, 'International Initiatives* (London: Springer Dordrecht Heidelberg, 2014) 16

²⁹ John Dixon, *Social security in a global perspective* (Westport- Praeger publishers, 1999) 1

³⁰ Robert M. Ball, *Social Insurance and Social Justice; Social Security, Medicare and the Campaign against entitlements*, Edited by Leah Rogne, et.al, (USA: Springer Publishing Company, 2009) 11

³¹ John Attarian, *Social Security false Consciousness and Crisis* (USA: Transaction Publishers, 2001) 183

welfare theory. Briggs defines a welfare state as a state in which organised power is deliberately used in an effort to modify the play of the market forces by guaranteeing individuals and families a minimum income irrespective of the market value of their work or their property; narrowing the extent of insecurity by enabling individuals and families to meet certain social contingencies.³² Midgley notes that, the expansion of State responsibility for social welfare is one of the most distinctive features of social and political life of this century.³³ Governments worldwide have intervened in promoting the welfare of its citizens, social welfare interventions is more prominent in developed countries.

Many Governments are however, unable to provide social security for the majority of its population due to economic development despite the government being a key player in the provision of social security. Thus advanced welfare States exert attraction on people as their residents are entitled to a wide range of social services and a comprehensive social protection scheme, this can however lead to increased pressure on social protection schemes of advanced welfare States. There is thus need for an internationalisation of the concept of the Welfare State needed to address the adverse social-economic implications of the globalisation process.³⁴ Thus it is the aim of this study to fill up the gaps that have been identified under the review of some of the available literature on the subject.

1.10 Methodology

The research undertook to evaluate the social security legislation and policy in Zambia against international instruments that provide for social security, particularly Convention 102 of the ILO.

³² Asa Briggs, *“The Welfare State in Historical Perspective,” European Journal of Sociology. Vol 2(2)* (1961) 221-258

³³ James Midgley, *Social Welfare in global context* (London: SAGE Publications, 1997) 11

³⁴ Jos Berghman et.al., *Social Protection Globalised* (Belgium: Leuven University Press, 2005) , 146

This study undertook a doctrinal approach, which relies heavily on ‘black-letter’ law to approach, explain and understand the law. Its ultimate objective is to standardise, correct and simplify the law on any particular theme by using a distinctive method of analysis to authoritative texts that consists of primary and secondary sources.³⁵ The research relied on both primary and secondary sources of information. The primary source of data was obtained from international instruments, court judgment and pieces of legislation secondary data was obtained from depositories of research materials from the University of Zambia Library, scholarly articles from online libraries, review of archival documents at national archives, published books, legal commentaries and other publications that have been written on the subject.

In order to get more insight on the subject, data collection by means of field work employed the technique of purposive sampling, specific respondents who possessed knowledge on the subject were selected for interviews. The interviews conducted were unstructured and took the form of informal discussions, this was preferred to allow the respondents who sought anonymity the freedom to fully express their views on the subject of social security. The data collected was analysed using the descriptive and thematic analysis.

1.11 Ethical Consideration

The author has during the study acknowledged the works of other people and only key informants were interviewed, the interviews were unstructured and no personal data has been included in this research. Consent was obtained from the key informants and the purpose for which the information was being obtained for explained to them. The informant’s names have further been kept confidential.

³⁵ Mike McConville, and Wing Hong Chui, *Research Methods for Law* (Edinburgh University Press, 2007), 4

1.12 Organisation of the Dissertation

This comprises of five Chapters. Chapter one has given an introduction of the research, general background of social security and a brief overview on the concept of social security. It has outlined the purpose of the study, its justification, methodology and break down of the study in chapters. Chapter two looked at the historical perspective of social security in Zambia by looking at the development of the law on social security.

Chapter three, reviewed the legal instruments governing social security at international, regional and at national levels. Chapter four of the study looked at an overview of Zambia's social security legislation. This was necessary in order to assess whether the legislation meets international standards as provided by International instruments on social security. The last chapter offers conclusions and recommendations.

1.13 Summary

This chapter has given a brief background to social security. The chapter has identified the problem, given the purpose and objectives of the study and the research questions which this study seeks to answer. This chapter has further discussed the significance of the study, some available literature pertaining to social security has been reviewed. The methodology to be undertaken has also been a subject of discussion under this chapter including the theoretical framework and the organization of the research.

CHAPTER TWO

HISTORICAL BACKGROUND AND EVOLUTION OF SOCIAL SECURITY

2.1 Introduction

This chapter seeks to look at the history of the development of social security in Zambia. In doing so, the paper will give a brief history of the development of social security in Britain. This is justified in that Zambia was colonised by Britain whose laws and policies have influenced Zambia's post-independence developments. The chapter will first examine the historical development of social security in Britain prior to the industrial revolution. This will be followed by the examinations of developments of social security during and after the industrial revolution. Thereafter, the paper will look at the development of social security in Zambia before and after the attainment of independence. Lastly, a conclusion will be drawn.

2.2 Pre-industrial revolution period

Prior to the industrial revolution, labour relations was that resulting from the Master and Servant relationships where the employer reigned. The law of master and servant was rooted in a society in which everyone was presumed to belong somewhere and the great parameters of belonging were kingship, locality, religion, occupation and social class.¹In the master-servant relationship, workers were treated as though they were part of the family, this was known as the household model where the master treated his servants as though they were his children.

Custom and ideology defined the expectations and obligations accepted by all who entered into the master-servant relationship. The servant was seen as contributing personal service, conceived not as specific labour duties but a general contribution to the needs of the enterprise, be it a

¹ Fox A, *Beyond contract: work, power and trust relations* (London:Faber, 1974) 184

household, farm or workshop.² The principal economic activity during this time was agriculture, land was plenty and families lived on small plots of land, growing crops mostly for home consumption. Most people in pre industrial era lived on a subsistence level and hardly saved any money, thus in an instance that they were faced within any economic hardship, there were no safety nets on which they could rely on. The master took the responsibility of providing for some form of social security, the welfare of the servant was the master's sole responsibility.

As societies grew in economic and social complexity, and as isolated farms gave way to cities and villages, Europe witnessed the development of formal organizations of various types that sought to protect the economic security of their members. Merchants who had a common trade came together and formed guilds. The guilds regulated production and employment and they also provided a range of benefits to their members including financial help in times of poverty or illness and contributions to help pay the expenses when a member died.³ The main source of livelihood was agriculture. To a farmer or a peasant, there was no such thing as retirement. One worked alongside one's family almost to the day that one died. And that day frequently came well before old age. If infirmity did come, the family, and perhaps one's religious community, was expected to care for its loved one. In such a world, there was little expectation that a government would step in to help.⁴

Out of the tradition of the guilds emerged the friendly societies which we now call fraternal organisations organized around a common trade, these in addition to the types of economic security provided by the guilds they began to provide actuarially based life insurance to their

² Fox A, *Beyond contract: work, power and trust relations*, 185

³Historical background and development of social security.

<https://www.ssa.gov/history/briefhistory3.html> accessed on 11th November, 2015 p.1

⁴ Steve Greene Livingston. *U.S Social Security: A reference Handbook*, (England: Santa Barbara-California, 2008) 2

members.⁵ The State slowly began to assume responsibility for economic security. They thus began the development of a series of “Poor Laws”. The early stages of public welfare as characterized by the poor law in England were influenced by the ideology styled repressive individualism, under this ideology; the individual was regarded as capable of maximizing his expectations without the interference of the State.⁶

The English poor law of 1601 was the first systematic codification of English ideas about the responsibility of the State to provide for the welfare of its citizens. The law acknowledged the government’s duty to provide for the welfare of the poor, but it was harsh in the sense that it viewed the poor as highly undesirable characters and treated them accordingly.⁷The benefits provided were either so inadequate or so degrading that even those who had to be assisted enjoyed nothing like full or decent economic protection. It can be said that the aim of public assistance was to repel rather than relieve people from distress. Poverty was tantamount to crime and legislation for combating crime was often similar to legislation dealing with poverty.⁸

2.3 Post industrial revolution period

The industrial revolution began in Britain sometime after the middle of the 18th century. The industrial revolution brought with it profound changes in many economies of the world. During this time, predominantly agrarian societies became industrial and urban; the attitudes and ways of carrying out work changed tremendously. Prior to industrialisation, people used to work in homes using hand tools. Production levels were very low. However, industrialisation marked a

⁵ [Historical background and development of social security](https://www.ssa.gov/history/briefhistory3.html)
<https://www.ssa.gov/history/briefhistory3.html> accessed on 11th November, 2015

⁶ Anthony I Ogus and Eric M. Barendt, *The Law of Social Security*, 2nd edition (London: Butterworths, 1982) 54

⁷ [Historical background and development of social security](https://www.ssa.gov/history/briefhistory3.html)
<https://www.ssa.gov/history/briefhistory3.html> accessed on 11th November, 2015

⁸ Victor N George, *Social security, Beveridge and After*, (London: Routledge and Keegan, 1968) 12

shift to the use of complex machines. Due to the use of machines in the factories, there was a remarkable increase in production. The transformation was huge and hence there was higher standard of living. Every aspect of life was influenced in some way. While industrialization brought about an increased volume and variety of manufactured goods and an improved standard of living for some, it also resulted in often grim employment and living conditions for the poor and working classes.⁹

The effects of industrialization culminated in the modern employment relationship. It was characterised by free labour markets and large scale industrial organisations. The large scale organisation needed a lot of capital and hence unlike it was in the pre industrial era, during this period, workers could no longer aspire to open their own businesses. Workers began a waged struggle against their employers for immediate better working conditions and the state for protective legislation.¹⁰ Industrialization also brought with it exploitation of workers. Workers were totally insecure; this insecurity was social, economic, and political. The intervention of the State was an inevitable consequence of the industrial revolution. Workers were in need of security and protection from the harsh conditions of the time. With time, recognition was made on the need for social security.

The quest by man for protection from the natural hazards, socio-economic insecurity is the base of the development of the social security concept. With the industrial revolution, a new class of ‘workers’ emerged, who were totally dependent on wages and other payments for their existence. Due to exploitation that workers were subjected to in industries, many workers saw

⁹ Industrial revolution-facts and summary. <http://www.history.com/topics/industrial-revolution>. accessed on 26th February, 2016

¹⁰ Ernest M Beele, “Labour Law”, Module LL 19 (Zambian Open University, 2007)

the need for protection against social and economic deprivation and thus workers were in quest for social security.

As men and women moved to towns and began to work in factories, the old support systems came under stress. Advances in health and medicine increased life spans at the same time as the new modes of work became difficult or impossible as one aged. Either by choice or necessity, one eventually had to leave the workforce. Retirement became a stage of life. But these new retirees and their families were suddenly without private pensions or substantial personal savings and often faced a future of impoverishment and humiliation in their 'golden years'. Not surprisingly, many began to call for government action to end this plight.¹¹ States also started to undertake a number of social security measures like pre-natal and maternity benefits, paid leave, medical care, pensions, unemployment benefits, family allowances and old age pensions.¹²This was in response to the plight of workers and the general citizenry.

The beginning of realisation for social security was made at the time of the French revolution when a declaration of rights of man was proclaimed. The declaration of the rights of man later went to serve as a preamble to the French Constitution. The International Labour Organisation (ILO) which has been at the centre of providing standards for worker's working conditions was established under the treaty of Versailles which was signed on 28th June, 1919. The treaty referred to the need for workers to be provided with social security.¹³

¹¹Steve Greene Livingston. *U.S Social Security: A reference Handbook* 3

¹² Sujit Kar, "*History of social security system of the unorganized workers- with special reference to India*" (LLM thesis, University of Sambalpur, 2015) 1

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=255956 (accessed on 12 November, 2015)

¹³ Nirja Matoo, poverty, social welfare and social development, challenges for the 21st century.(Paper presented at the 29th ICSW international conference on social welfare (Cape Town, South Africa 23-27 October, 2000.)

Thus the ILO has been adopting resolutions, recommendations and conventions on various aspects of social security.

2.4 Development and evolution of social security during pre-independence period

Looking further back we can see that colonial policies had an impact on the development of social security in Zambia. The circumstances of this country in the area of social security, was greatly influenced by the strong colonial heritage. The nature and scope of coverage of social security has its roots in the approaches adopted by the colonial masters. Before colonisation, the majority of Africans derived their livelihood from agricultural activities. Different families came together for the well-being of everyone. According to Godfrey,¹⁴ societies such as the pre-colonial African societies approached the problem of destitution and poverty rather differently. In such societies, the traditional bulwark against poverty was the support of the extended family, the clan and the tribe. Families were self-sustaining and provided for those family members who needed assistance.

The family was regarded as the pillar of social protection. Norman, describes this situation in the following words;

when families wandered around the world with their flocks or created tribal settlements to live, nobody needed a pension scheme. Everybody worked as long as he was young enough and fit enough. And as long as he was working, each member helped to provide food and shelter and clothing not only for himself but also for the non producers, the babies, the sick and the aged.¹⁵

¹⁴ Godfrey, V.N, *A broader role for the National Provident Funds: The Zambian experience*, international labour review. Vol 109, No. 2 (February, 1974) 137

¹⁵ Norman Toulson, *Modern Pensions*, quoted in a paper on social security and extended family (paper presented at a seminar of social security in banjul, Gambia, June 1983)

Clearly during this period no one lived in destitution as family members provided for needy members who could not afford to fend for themselves. The welfare and well-being of every member of the family was a concern for all family members.

The British South Africa Company (BSACo) had signed a treaty with a Zambian chief which purported to give it mining rights and control of mining development in the whole of Zambia. Thus, in 1926, when the production of copper began, the labour force was inadequate and thus many blacks were being recruited from villages. There was rapid urbanization after colonisation many Africans started migrating to urban areas in search of jobs, many well bodied men had to leave their families to search for jobs in the mines. However, the majority of Africans who got jobs in urban areas worked as labourers and their labour exploited in many instances. The exploitation of workers that characterized the British industrialized system did not spare Zambia. Semakula is thus of the view that,

all colonial regimes advanced economic justification of empire and the common denominator was a concern for the economic utility of the colonies, african colonies, were colonies of exploitation and the aim was to maximize their resources. Labour policies also had a great deal in common since every colonial regime relied on cheap and often compulsory labour in an attempt to make the colonies pay their own way.¹⁶

Blacks were being exploited by whites and could not benefit from their labour. Due to lack of skills among many Africans, the whites took all the good positions and only engaged Africans as labourers. Consequently, their wages were very low as compared to the white miners. They had no right to negotiate for better conditions as they were considered as migrant workers, the social security systems that were in place almost exclusively protected the interest of the white settlers.

¹⁶ Semakula Kiwanuka, Colonial policies and Administration in Africa: The myths and contrast. African Historical studies. Vol 3 No. 2 (Boston University African Studies Center, 1970) 295-315

Owing to limited resources and the unwillingness of the white settlers to promote higher education for Africans, the majority of Africans were uneducated as there was no policy to train Africans to perform skilled labour, they were mainly engaged to work in very low positions that did not require any skill. Despite formation of apprenticeship for Africans, the non-African apprenticeship still out numbered the African apprenticeship even at independence thus making the majority of the Africans uneducated and unskilled. The lack of education for the Africans had far reaching consequences on Northern Rhodesia; such consequences were heavily felt after the attainment of independence.

Despite the lack of skill and the exploitation, many Africans incurred at the hands of the settlers they had no choice but to work in order to meet their obligations of paying the Hut tax that was introduced by the colonialist. Africans were coerced to work for menial wages in the colonial economy through instruments like the hut and poll taxes.¹⁷ The indigenous population had to abandon their crops and livestock to take up jobs in town so as to enable them meet their obligations of paying tax, this development further contributed to urbanization as most young, able-bodied men were forced to leave their homes and families in rural areas to take up waged employment in towns.

The most akin feature of companies during the colonial era is that, they took no responsibility for Social security. Integral to these racially-motivated policies was the belief that the African mineworkers should look to the village for support and social security in sickness and old age.¹⁸ The companies also reduced the costs of labour in the areas of housing, health, school and social

¹⁷ Ndongwa Noyoo, *Social Policy and human development in Zambia*, (Lusaka: UNZA Press, 2008) 43

¹⁸ Lawrence Mukuka, et al., "Social security Systems in Zambia" *African Journal of Social work*, Vol 17(2) (2002), pp 65-96

security by constantly changing the labour force¹⁹. The companies made sure they would not have to award salary increases that were due to experienced and long-serving workers. This was so evident a fact that colonialism did not have the interest of Africans.

The combination of the emerging cash economy, labour migration and State taxation policies disrupted the entire social structure of Africans. The family which was once considered an economic as well as a social unit was no longer effective due to urbanization. The commercial economy brought about a train of significant changes in the way of life, attitudes and social needs in urban centres.²⁰ This also increased the levels of poverty. The traditional approach to the mitigation of poverty became obsolete and inadequate. The need for social security to cover for aging Africans was slowly being felt. Even if there was no compulsory old age pension scheme in Northern Rhodesia, there was the Workmen's Compensation run by private companies.

The Workmen's Compensation Ordinance,²¹ made it mandatory for every employer to insure his workmen with an insurance company licensed for workmen's compensation insurance. Section 91 of the Ordinance provided for licensing of insurance companies. Workmen's Compensation insurance was compulsory; it was a serious offence to employ labour without insurance. However, the scheme was limited in scope and racial in concept. However, due to social economic developments, there were some amendments that were made to the Workmen's Compensation, the notable one being the Workmen's Compensation Ordinance No. 65 of 1963 which replaced insurance companies licensed to write Workmen's Compensation business with a non-profit making scheme administered and controlled by a Workmen's Compensation Board.

¹⁹ Mukuka, et al., "Social Security Systems

²⁰ Gordon A Hosking, *Pension Schemes and Retirement Benefits*, (London: Sweet & Maxwell, 1968) p.7

²¹ Volume VI, Chapter 188

Thus Workers Compensation is a feature that has been on the statute books from colonial era to date with, of course, a number of legislative changes.

It is imperative to note that during colonial rule, already a social policy framework existed which was however tilted towards the need of the white settlers and not indigenous Zambians, the social policy was driven by racial discrimination, social exclusion and elitism.²² However, before attaining Independence a strong need for social security for the aged was strongly felt, the majority of workers who had moved to urban areas lost their traditional ties, destitution became the order of the day. It was noted that, there was no old age pension scheme for Africans laid down by law but the general policy of the Government was to encourage employers to provide such pensions.

The Government set an example for others to follow by providing a non-contributory pension scheme for African Civil Servants. The Scheme was by the African Civil Servants Pension Regulations.²³ Other non –contributory pension or gratuity schemes for the benefit of African employees were; Rhodesia Railways (Introduced 1954), Zambezi Saw Mills (introduced 1954), Central African Road Services (introduced 1954), The Copper Mining Companies (introduced 1954) and Lever Brothers (Rhodesia) Limited (introduced 1957).²⁴

The non-contributory scheme provided for Africans did not cater for old age pension, the need for old age pension could not be over emphasised. Elderly Africans were living in destitution and thus there was need for the issue to be addressed .The issue of social security was dealt with at

²² Ndongwa Noyoo, *Social policy and human development in Zambia* (Lusaka: UNZA Press, 2008) 67

²³ Extract from the report of the Conference on Urban Problems in East and Central Africa (held in Ndola, February, 1958)

²⁴ Extract from the report of the Conference on Urban Problems in East and Central Africa (held in Ndola, February, 1958)

the International African Labour Conference; it was recommended that consideration be given to the matter of introducing, as far as possible, old age pension schemes, either by mutual agreement between employers and employees.²⁵ It was noted that tribal bonds were weakening and that no amount of artificial resuscitation would revive them. Thus there was need to establish for Africans some scheme of social security.

Further the issue to establish a social security scheme to take care of people who become destitutes after their working life was again recognised by the Northern Rhodesia government, the issue was then raised in the then Legislative Council in 1958²⁶. It became apparent that there was need to meet the insecurity of urban life by some form of social security. However, when the motion was raised for Old age Pensions and Benefits for Dependants Scheme, it was turned down on grounds that the Government could not afford to introduce such a scheme and that there was no evidence that existing social welfare schemes for Africans left those who had been employed in urban areas.

Despite the Motion to establish a social security scheme for old age having not been considered, the Labour Commissioner then expressed disappointment as the Motion was debated without any input from his office when clearly it was a labour matter on which he ought to have been consulted. The Commissioner was of the view that, the Government had not fully examined the recommendations that had been proposed by the committee and he was therefore of the view that it was possible to establish a contributory old age pension scheme, perhaps on a pilot basis in the first instance, which was to apply to workers in receipt of a certain amount of wages and with contributions from workers and employers. He further recommended for the formation of a

²⁵ International African Labour Conference, Lusaka. (August- September, 1957)

²⁶ Northern Rhodesia, Legislative Council Debates (25th November -10th December, 1958)

Working Party to study the problem in Northern Rhodesia, survey the needs of the employed population and make recommendations.²⁷

2.5 Development and evolution of social security post-independence period

Zambia attained its independence on 24th October, 1964. This meant that the country was now free from British rule. At this time the country was under the rule of the United National Independent Party (UNIP) under the leadership of Dr David Kenneth Kaunda. In 1967, UNIP adopted the philosophy of humanism. This political philosophy, stressed communal responses to social issues and commitment to the equitable distribution of resources to the population. The Zambian Government was now in charge of the economy. It was thought necessary to look at issues of social security that had not been considered in the legislative council debates of 1958, on grounds that the need for payment of old age pensions had not yet arisen and that the Government could not afford a scheme of that nature.

As earlier alluded the need for social security scheme to alleviate destitution was already felt in the pre independence era. However, due to lack of good will on the part of colonial Government, the proposal to introduce an old age pension was turned down. Due to urbanisation that Zambians had been exposed to, their consumption patterns changed, many became more dependant on money for their livelihood. The traditional way of living where community resources were shared and care given to needy members was breaking down and becoming unreliable. Individuals in urban areas who occasionally lost their jobs became stranded without resources to meet their basic needs of life. Some failed to return to their villages and they became

²⁷ Northern Rhodesia, Legislative Council Debates (25th November-10th December, 1958)

town vagrants, while most of those who returned to the village lived there in abject poverty.²⁸ This brought about the desire for a social security scheme that would take the needs of retirees into consideration so that people have a decent standard of living despite leaving employment.

After independence, the country witnessed rapid growth in the formal employment sector, especially during the economic boom years (1964-1974); as the extended family which provided for some form of social security had been rendered ineffective due to rapid migration, there was need for a new social security to protect employees and their dependants against loss of income.²⁹ Although the colonial government assisted Africans by sending them back to the villages, there was no one in the villages to look after the aged and some were unwilling to return to their home areas and as earlier alluded to, the intergenerational family support had been weakened by urbanization, most families lost ties with their relatives. Thus even though the jobs in urban areas provided a new opportunity, there was also considerable insecurity that was created as a result.

There was an obvious need for a National Scheme to deal with the problem of destitution. Alongside this, another scheme was required to assist individuals in time of unemployment, sickness, disability, widowhood, old age and lack of livelihood.³⁰ These social needs had already been spelt out in 1948 in the Universal Declaration of Human rights; however, developing countries in Africa did not know how to translate the principle contained in the declaration into

²⁸ Godfrey, V. N, The ability of Provident Funds to meet social needs: The Zambian experience. East African Symposium of the relationship of social security. Social Planning and economic Development. (Dar-es Salaam 1-19 October, 1973)

²⁹ Mukuka, et al., "Social security Systems in Zambia" 75

³⁰ Godfrey, V. N, The ability of Provident Funds to meet social needs: The Zambian experience. East African Symposium of the relationship of social security. Social Planning and economic Development. (Dar-es Salaam 1-19 October, 1973)

legal rights.³¹ To date many developing countries are still faced with this problem. Many governments provide social security for formal employees only.

The need for social security scheme was identified in the colonial period. Due to social and economic challenges that workers of Northern Rhodesia faced, the colonial government had to critically examine the practicability of having a social security scheme that was going to benefit all regularly employed workers. This was done through the working party that had been formed. A State system of social security was predicted as inevitable, the vulnerability of the aged who after leaving employment remained in destitution, necessitated government's intervention in considering the issue of social security scheme with urgency soon after independence.

The Working Party that had been formed prior to independence had looked at the needs of the population, they came to a conclusion that a National Provident Fund was appropriate for the country. Thus with the assistance of an expert on insurance and National Provident Fund, a report was done on how the fund was to operate on principles which included the following:- Membership of the Provident fund should be open to all regularly employed persons over the age of 18 years but coverage had to be achieved in stages; The employer and employee was to contribute to the fund which contribution was to be credited to the individual workers account and earn interest; Contributions of the fund had to be invested to promote development in Zambia; Administrative expenses were to be met out of investment income.³²

The Government agreed with the recommendations that were made and thus enacted the Zambia National Provident Fund (ZNPF) in 1965. During its operational years, the ZNPF had its shortcomings in that, it was unable to provide adequate retirement benefits to its members as it had no

³¹ Godfrey, The ability of Provident Funds to meet social needs:

³² Republic of Zambia Annual Report of Zambia National Provident Fund, Quoted in Janice S. Munsaka, "The law governing Social security Schemes in Zambia" (LLM thesis, UNZA, 1987) 29

insurance element to protect members coupled with the high administrative costs in terms of high expenditure as compared to returns from investments. 'measured as a share of investment income, administrative expenses reached a peak of 254 percent in 1992.³³ Thus the government decided to reform the social security system. The National Pension Scheme Act³⁴ which came into effect in 2000 was thus enacted to remove the weaknesses of the ZNPF.

2.6 Summary

The roots of a social security system in Zambia can be traced to the development of the colonial economy that demanded labour for the urban areas. Urbanisation led to the disintegration of the traditional support system that had been in place in African societies. With the breakdown of the traditional system, destitution owing to age became visible. Despite these early signs, the colonialist refused to adopt a motion on establishment of an old age pensions and benefits for dependants for Africans. The refusal was without any justifiable bases but merely motivated by their own selfish interest as their attitudes towards Africans were racially motivated. It was not until the attainment of independence that the plight of indigenous Zambians was seriously considered. Two years after the attainment of independence, the ZNPF Act was enacted as there was a desire need to provide protection to formal sector employees. The ZNPF had a chequered history and was replaced in 1996 by the National Pension Scheme Authority which was established after parliament passed the National Pension Scheme Act. However, the Authority became operational only on 1st February, 2000. The details of this piece of legislation along with others are the subject of the next chapter.

³³ Jean V Gruat, *Social security schemes in Africa. Current trends and problems.* (International Labour Review, Vol 129, N04 1990). 40

³⁴Act No 40 of 1996

CHAPTER THREE

REVIEW OF LEGAL INSTRUMENTS GOVERNING SOCIAL SECURITY AT INTERNATIONAL, REGIONAL AND NATIONAL LEVEL

3.1 Introduction

This chapter highlights the law on social security at the international, regional and national levels. The paper will begin by looking at international instruments on social security, this is important as the social security legislation in Zambia will be evaluated against a backdrop of international instruments. The chapter will then look at the Regional instruments provided by the African Union (AU) and the Southern African Development Community (SADC). The chapter will lastly look at the National law on social security in Zambia. Thereafter a conclusion will be given.

3.2 International instruments

There is a plethora of legal instruments providing protection against social risks and insecurity at international level. The ILO has been pivotal in promulgating Conventions and recommendations on social security that address issues to do with old age, invalidity, survivors, employment injury, sickness, unemployment and maternity benefits among others. The following are some of the international instruments on social security:

3.2.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was proclaimed by the United Nations General Assembly on 10th December, 1948. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human

beings are inherently entitled.¹ According to the preamble of the UDHR, every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for the rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.² The instrument, among other rights, provides for the right to social security. It recognises the right to social security as being universal and thus applicable to all. It specifically provides that:

Everyone, as a member of society, has the right to social security and is entitled to realisation, 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.³

Further Article 23 and 25 of the UDHR also provides for some form of social security. The instrument guarantees everyone the right to security in the event of one facing certain contingencies such as unemployment, sickness, disability, old age and widowhood among other things.⁴ It is important to note that the declaration is the most universal human rights document which provides a yardstick to Member States. It recognises and guarantees the right to social security to every member of society.

3.2.2 International Covenant on Economic, Social and Cultural Rights

The international Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the General Assembly of the United Nations in 1966, it came into force on 3 January, 1976. The

¹ https://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights. Accessed on March 8th, 2016

² Universal Declaration of Human Rights Preamble

³ Article 22 of the Universal Declaration of Human Rights

⁴ Article 25 (1) of the Universal Declaration of Human Rights

Covenant is underpinned by the principles proclaimed in the Charter of the United Nations and the Universal Declaration of Human Rights. The Covenant provides that, ‘the State parties to the present Covenant recognise the right of everyone to social security including social insurance.’⁵ From the wording of the Covenant, social security is recognised as a right that is to be enjoyed by everyone and not only those in the formal sector. This implies that the exclusionary nature of the social security system in Zambia is against the spirit of the ICESCR. The Covenant further provides that;

State parties to the Covenant are required to recognise every person’s right to an adequate standard of living for himself and his family. This includes adequate food, clothing and housing, and the continuous improvement of living conditions.⁶

It is important to note that many countries have signed and ratified the Covenant, Zambia in particular acceded to this Covenant on 10th April, 1984. The right to social security that is explicitly articulated in Article 9 of the ICESCR clearly provides that, social security should be enjoyed by all without any discrimination. This imposes an obligation on the State to take up measures within the available resources to ensure the provision of social security to all, no one should be marginalised as social security is an essential tool to alleviate poverty and promotes social inclusion.

3.2.3 Social Security (Minimum Standards) Convention, 1952 (no.102)

The International Labour Organisation (ILO), which is a specialized agency of the United Nations (UN) in charge of implementing the right to social security is very important as its goal

⁵ Article 9 of the International Covenant on Economic, Social and Cultural Rights

⁶ Article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

is to adopt international standards to address both labour and social problems.⁷ The ILO establishes and adopts international labour standards at its annual International Labour Conference (ILC). The ILO has adopted a number of Conventions and recommendations to do with social security. The conventions and recommendations offer a wide range of options and flexibility clauses which allow the goal of universal coverage to be reached gradually. There is growing consciousness that in a globalising world, where people are increasingly exposed to global economic risks, a broad-based national social protection policy can provide a strong buffer against many of the negative social effects of personal crises.⁸

The Social Security (Minimum Standards) Convention 102 adopted by the ILC of the ILO in 1952 is considered the flagship of all ILO social security conventions, as it is the only international instrument based on basic social security principles that establishes worldwide-agreed minimum standards for all nine branches of social security, namely: medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors' benefit.⁹

Convention 102 of 1952 defines the nine branches of social security and sets minimum standards for the level of social security benefits (standards concerning scope of coverage, type of benefits, etc.) as well as the conditions under which they are granted.¹⁰ The Convention offers states the possibility of ratification by accepting at least three of its nine branches and subsequently

⁷ Lethokwa G Mpedi and Mathias A.T Nyenti, *Key International, Regional and National Instruments Regulating Social Security in the SADC, A general perspective* (Pretoria, Sun Media Metro, 2015) 17

⁸ International Labour Organisation, undated. International Labour Standards on Social security. http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm#P49_9596 (Accessed: 2 April 2015).

⁹ ILO, 2010. Social Protection. [Online] Available at: <http://www.social-protection.org/gimi/gess/ShowRessource.action?ressource.ressourceId=313> [Accessed: 2 February 2016].

¹⁰ ILO, undated. International Labour Standards on Social security. [Online] Available at: http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/socialsecurity/lang--en/index.htm#P49_9596 [Accessed: 21 January 2016].

accepting obligations under other branches, thereby allowing them to progressively attain all the objectives set out in the Convention. The level of minimum benefits can be determined with reference to the level of wages in the country concerned.

Temporary exceptions are also envisaged for countries in which the economy and medical facilities are insufficiently developed. For instance, under Article 3 of Convention 102 of 1952, a member state of which the economy and medical facilities are insufficiently developed may, if and for so long as the competent authority considers necessary, avail itself of the temporary exceptions provided for therein for every branch of social security. This therefore gives some flexibility on the part of developing countries to provide some exemption due to financial constraints.

3.2.4 The Employment Injury Benefits Convention, 1980 (no.121)

Employment injury benefits are the oldest form of social security coverage and the most widespread in the world. They cover benefits to workers who are injured and those who develop occupational diseases, as well as survivors benefits for families of victims of occupational fatalities.¹¹ The Convention provides guidance and standards to national legislation providing for employment injury. The contingency covered by the Convention includes: a morbid condition, incapacity for work, invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease, and the loss of support as a result of the death of the breadwinner following employment injury.¹²

¹¹ Ariel Pino, *Employment Injury Schemes-ILO perspective*, ILO: Geneva, 2

¹² Article 6 Convention, 1980 (N0.121)

The Convention envisages that all employees, including apprentices in the public and private sectors, and in cooperatives, are to be protected.¹³The Convention lays down the three types of benefits that one is entitled to in case of any work injury which include; medical care, cash benefits in the event of incapacity for work and loss of earning capacity (invalidity), and also cash benefits in the event of the death of the breadwinner. Employers are responsible for ensuring effective compensation of injured workers and access to health care. In Zambia, the workers compensation fund board has been instrumental in providing compensation to injured workers of employers who subscribe.

3.2.5 Invalidity, old age and survivor's benefits convention, 1967 (no. 128)

The Convention covers for people who are incapacitated by any reason to engage in employment, the contingency covered by the Convention includes, incapacity to engage in any gainful activity, to an extent prescribed, which incapacity is likely to be permanent or persists after the termination of a prescribed period of temporary or initial incapacity.¹⁴ The Convention envisages that all employees, including apprentices and those classes of the economically active population, constituting not less than 75 percent of the whole economically active population are to be protected.¹⁵ The benefits covered by this convention do not differ in so many respect with those covered under the preceding convention.

3.2.6 Medical Care and Sickness Benefits, 1969 (no.130)

The Convention provides guidance on provision for medical care and sickness benefits to member States. The Convention has flexible clauses, for instance, it provides for exemptions to

¹³ Article 4

¹⁴ Article 8 Convention, 1967 (N0.128)

¹⁵ Article 16

member States whose economy and medical facilities are insufficiently developed.¹⁶ This accords an opportunity for developing countries to ratify the Convention as certain temporary exemptions are provided for. It further provides that, any Member whose legislation protects employees may, as necessary, exclude from the application of this Convention.

The contingencies covered include; medical care of a curative nature and, under prescribed conditions, need for medical care of a preventive nature and incapacity for work resulting from sickness and involving suspension of earnings.¹⁷ Persons who are in receipt of a social security benefit for invalidity, old age, death of the breadwinner or unemployment, and, where appropriate, the wives and children of such persons, shall continue to be protected.¹⁸ This ensures that no hardship is faced by an employee or his or her dependants. It is important to achieve the highest standard of health for individuals as a healthy work force is corollary to economic development.

3.2.7 The Employment Promotion and Protection against Unemployment Convention, 1988 (no. 168)

Convention 168 promotes the creation of employment especially vocational guidance and training. The Convention provides that;

Each Member shall take appropriate steps to co-ordinate its system of protection against unemployment and its employment policy. To this end, it shall seek to ensure that its system of protection against unemployment, and in particular the methods of providing unemployment benefit, contribute to the promotion of full, productive and freely chosen employment, and are not such as to discourage employers from offering and workers from seeking productive employment.¹⁹

¹⁶ Article 2 Convention, 1969 (No.30)

¹⁷ Article 7

¹⁸ Article 12

¹⁹ Article 2, Convention 168

The convention recognises that involuntary unemployment exists and thus governments should promote and provide opportunities for employment. Social security systems should provide employment assistance and economic support to those who are involuntarily unemployed.²⁰ The Convention offers the best practice against the adverse effects of involuntary unemployment as persistent unemployment has very adverse social effects. Developing countries whose economies cannot afford to provide unemployment benefits should endeavor to provide opportunity instead of dependence. It is also important to protect those already working against the risk of unemployment. Protection against the risk of unemployment is provided not only by benefits but also by measures of employment protection such as protection against dismissal.²¹

3.2.8 Maternity Protection Convention, 2000 (no.183)

Maternity protection at the workplace is a legal and social recognition of the contribution that women make, most countries of the world have enacted maternity protection legislation at national level. In Zambia for instance, the Employment Act²² provides for maternity leave for female employees. During this period a nursing mother continues to receive a salary thus maintaining ones living standards. In accordance with the Convention, the term woman applies to any female person without discrimination whatsoever and the term child applies to any child without discrimination whatsoever.

The Convention applies to all employed women including those in atypical forms of dependent work.²³ From the foregoing, it is clear that the Convention is applicable to all women whether

²⁰ Frans Pennings. (ed.) *Between Soft and Hard Law: The impact of International Social Security standards on National Social Security Law* (Netherlands: Kluwer Law International, 2006) 303

²¹International Labour Conference, *Social Security: Issues, Challenges and Prospects, Report VI* (ILO: Geneva, June, 2001) 12

²² Chapter 264 of the Laws of Zambia

²³ Article 2 Convention, 2000 (No. 183)

married or not and regardless of the type of work. The convention is very important as it provides expectant and nursing mothers time to recover and protection against loss of employment on grounds of pregnancy or maternity leave. It further ensures that there is continuation of income which is necessary for the well-being of the entire family. ILO recommendation 202 of 2012 further provides that; access to a set of goods and services constituting essential health care including maternity care are among the other things that national social protection floors should consider.

3.3 Regional instruments on social security

The African region has been concerned with issues of social security and has thus come up with regional instruments to provide guidance on issues of social security. It is worth noting that for purposes of this paper, only instruments under African union and Southern African Development Community with regard to social security will be considered.

3.3.1 African Charter on Human and Peoples' Rights (1981)

The African Charter on Human and Peoples' Rights seeks to protect the human rights and basic freedoms of Africans. Although it was inspired by other international instruments and contains many of the rights protected in such instruments, it does not follow the traditional distinction between civil/political rights and social/economic rights.

The Charter enshrines 'third generation' rights or 'rights of solidarity', such as the right to Economic, Social and Cultural Development, the right to National and International Security and Peace²⁴ and the right to a General Satisfactory Environment.²⁵ It guarantees collective rights of

²⁴ Article 23 of the African Charter

²⁵ Article 24 of the African Charter

the community instead of individual rights, and lays down obligations/duties on individuals, families and communities.²⁶ This implies that the Charter envisages multi-actor responsibility to realise social protection rights (the obligation vests not only in the state but also with other non-state actors, including individuals, families and communities). Despite affirming the interrelated, interconnectedness and mutually-supporting nature of civil/political rights and social/economic rights²⁷ and reaffirming its commitment to the Universal Declaration of Human Rights,²⁸ the African Charter does not directly guarantee a right to social security. Although the right to social security is not expressly protected in the African Charter, it can be derived from a combined reading of a number of rights guaranteed under the Charter such as the rights to life, dignity, liberty, work, health, food, protection of the family and the right to the protection of the aged and the disabled. The protection of the rights ensures a dignified standard of living which is the ultimate aim of social security.

In addition, the African Commission recognises the indivisibility and interdependence of the rights protected in the Charter. In **Social Economic Rights Action Center (SERAC) V Nigeria**²⁹, the Complainants alleged that, the Nigerian Government violated the right to health and the right to clean environment as recognised under Article 16 and Article 24 of the African

²⁶ In terms of Article 27, every individual shall have duties towards his family and society, the state and other legally recognised communities and the international community. The individual also has the duty to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need [Article 29(1)]; and to preserve and strengthen social and national solidarity, particularly when the latter is threatened [Article 29(4)].

²⁷ The Preamble of the Charter states that “[. . .] Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights [. . .]

²⁸ According to the Preamble, member states reaffirm the pledge they solemnly made “[. . .] to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights [. . .]”. Promotion of the Charter of the United Nations and the Universal Declaration of Human Rights entails promotion of the rights enunciated therein (including social protection rights).

²⁹ (2001) AHRLR 60

Charter by failing to fulfill the minimum duties required by these rights by directly participating in the contamination of air, water and soil and thereby harming the health of the Ogoni population. The Commission stated that, governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties and that this duty calls for positive action on the part of governments in fulfilling their obligation under human rights instruments. The commission found the Nigerian government to have been in violation of the provisions of the African Charter.

It is clear from the decision of the case that government should respect and fulfil their obligations under the various human rights instruments that they ratify as the protection of human dignity is at the core of international instruments. It is further clear that, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa.

3.3.2 The Treaty of the Southern African Development Community

The SADC Treaty is the cornerstone of the SADC social security framework. This view is largely informed by the fact that the SADC Treaty is ‘hard law’, that is, it is legally binding on all SADC member states. Furthermore, its provisions, particularly those concerning the SADC’s objectives, have a social security orientation. The objective for instance, is to alleviate poverty and improve the standard and quality of life of the people of the region.³⁰ The SADC region also aspires to support the socially disadvantaged and marginalised through regional integration.³¹ To this end, SADC member states have committed themselves to developing policies directed at the progressive elimination of obstacles for the free movement of capital and labour, goods and

³⁰ Article 1(a) of the SADC Treaty.

³¹ Article 1(a) of the SADC Treaty.

services, and for the peoples of the region in general.³² SADC has been instrumental in providing guidance to member States on issues of social-economic development.

3.3.3 Charter of Fundamental Social Rights in the Southern African Development Community (2003)

The objectives set out in the Charter of Fundamental Social Rights in the Southern African Development Community include inter alia; the promotion, establishment and harmonization of social security schemes.³³ The Charter in Article 10(1), obligates Member States to create a favourable atmosphere so that workers in the region, in spite of the type of employment, enjoy adequate social protection and social security benefits. Further, Article 10(2) provides that; ‘persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance.’ Article 10(1) of the Charter is couched in mandatory terms; this implies that member States must comply with the provision by ensuring that all persons regardless of the type of circumstances are provided with some form of social security. However, this is difficult for countries whose economies are still developing like Zambia, in as much as social assistance is provided in form of social cash transfers. It is economically impossible to cover all those who are unable to enter or re-enter the labour market.

3.3.4 Code On Social Security in the Southern African Development Community (2007)

In addition to the Charter and the Treaty, the region also has a Code on social security which was approved in June 2007. The Code on social security is not a binding document, it merely provides member States with strategic direction and guidelines in the development and

³² Article 5(2)(d) of the SADC Treaty.

³³ Article 2 (e) Charter of Fundamental Social Rights in SADC

improvement of social security schemes, in order to enhance the welfare of the peoples of the SADC region.³⁴ In addition, it aspires to provide member states with a set of general principles and minimum standards of social protection, as well as a framework for monitoring of social protection at national and regional levels, and an effective instrument for the coordination, convergence and harmonisation of social security systems in the region.³⁵ The Code in Article 4, provides among other things the fact that everyone in the SADC has the right to social security and that member States should progressively raise its system of social security to a higher level. However, as earlier alluded to, the provisions of the Code are not legally binding.

Despite its non-binding nature, the Code is useful in providing guidelines on how Member States are to develop their social security systems. It is important to policy makers as their have to ensure that social security policies formulated are in harmony with those prevailing in the region and in accordance with the Code.

3.4 National level

At National level, there are a number of pieces of legislation that provide for Social security, which are; The Constitution, the National Pensions Scheme Act, The Public Service Pensions Act, the Local Authorities Superannuation Act and the Worker's Compensation Act. The benefits provided by the different legislation on social security cover different categories of workers.

³⁴ Mathias Nyenti and Letlhokwa George Mpedi, "The impact of social protection instruments on the setting up of a minimum social protection floor in Southern African countries." Vol 15 No.1 (2012): 244, accessed November, 5, 2015, <http://dx.doi.org/10.4314/peij.v15i1.8>

³⁵ Article 1(5) of the Code on Social Security in the SADC

3.4.1 The Constitution of Zambia

Social security in Zambia is not underpinned by a constitutional framework. The regulation of social security was one of the “directive principles of state policy” in the Zambian Constitution before the amendment. The Directive Principles of State Policy guided the Executive, the Legislature and the Judiciary in the development of national policies; implementation of national policies; making and enactment of laws; and in the application of the Constitution and any other law.

In addition, the Directive Principles of State Policy could only be applied only depending on the available State resources to sustain their application, or if the general welfare of the public so unavoidably demanded, as was to be determined by Cabinet. This implied that the Directive Principles could not be enforced as a fundamental right, and therefore government could not be compelled to extend social protection. The fact that the directive principles of State policy were not justiciable hampered the full realisation of social security as a right in Zambia.

To the extent that social security is associated with issues on alleviation of poverty, the Constitution has given guidance in the following way:

The Government shall create an economic environment which encourages individual initiatives and self-reliance among the people, so as to promote investment, employment and wealth

The Government shall promote the economic empowerment of citizens so that they contribute to sustainable economic growth and social development.³⁶

Though we do not have direct reference to social security, the concern for the general welfare and its promotion is clear. The Constitution provides that, an employee, including a public

³⁶ Article 10 of the Constitution of the Republic of Zambia, Act No. 2 of 2016

officer and Constitutional officer holder, has the right to a pension benefit³⁷. The drawback in this right to pension, at least from a constitutional perspective, more specifically, is its limitation to those in formal employment. As a way of addressing the limitation, the Zambian government had proposed for broader social and economic rights in the draft Constitution which however failed. Until this is achieved, the Constitution of Zambia will have very little to say on matters of social security.

3.4.2 National Pension Scheme Authority

The National Pension Scheme Authority is established under National Pension Scheme Act³⁸ which provides for Social insurance to the majority of Zambian workers. Membership of NAPSA is compulsory for all formal sector workers who began working after 1 February 2000.³⁹ Self-employed or informal sector workers can enroll on a voluntary basis.⁴⁰ The Act exempts certain categories of people from membership of the Scheme, for instance, members of the armed forces, public officers appointed before the National Pension Scheme Act came into force who were on pensionable employment under the Public Service Pension Fund (PSPF) or the Local Authorities Superannuation Fund (LASF).⁴¹ This implies a reduction in membership especially for LASF which has not had new members since the enactment of the NAPSA Act.

³⁷ Article 189, Constitution of Zambia

³⁸ Chapter 256 of the Laws of Zambia

³⁹ Section 14 of the National Pension Scheme (Amendment) Act, 2000, and shall be read as one with the National Pension Scheme Act, 1996

⁴⁰ Section 15 of the National Pension Scheme (Amendment) Act, 2000,

⁴¹ Act No. 40 of 1996 Second Schedule

3.4.3 The Worker's Compensation Fund Control Board

The Worker's Compensation Fund Control Board is established under the Worker's Compensation Act⁴². The Workers Compensation Act deals with the compensation due to injury which occurs whilst in the course of employment. The Workers Compensation Fund control Board is a statutory scheme for the provision of compensation to workers who have been disabled or killed during an accident at work, or who contracted an occupational disease.⁴³ It is an employer-liability social insurance scheme, involving compulsory insurance with a public carrier. It is open to all employed persons, including casual workers, household workers, and apprentices, self-employed, and public-sector employees not covered under the special system for public sector employees.

3.4.4 The Local Authorities Superannuation Fund Board

The Local Authorities Superannuation Fund (LASF) Act in section 5(1) establishes a Board which is a body corporate with perpetual succession known as the Board of Local Authorities Superannuation Fund. The Act, in accordance with its preamble was established to make provision for the establishment of a Superannuation Fund for employees of local authorities and other public bodies, who joined prior to 1st February, 2000. All new employees joining the member organizations on or after 1st February, 2000 contribute to the National Pension Scheme Authority (NAPSA) as a national basic scheme on a compulsory basis. In accordance with Local Authorities Superannuation Fund (Amendment) Act No. 8 of 2015, Pensionable age was revised from the age of 55 years to the age of 60 years as the mandatory retirement age. However, a member who wishes to retire at 55 years or at 65 years is obliged to do so for as long as one

⁴² Act No. 10 of 1999

⁴³ Social Security Administration. *Social Security Programs Throughout the World: Africa, 2013*. 194.

notifies the employer twelve months earlier of his or her intention to retire at either of the optional retirement ages and the employer approves.

3.4.5 Public Service Pensions Fund

The Public Service Pensions Fund (PSPF) is established under section 9 of the Act.⁴⁴ The Public Service Pensions Act (PSPA) was established in 1996 to consolidate the law relating to pensions for persons employed in the public service.⁴⁵ The PSPF is established to administer the Public Service Pension Scheme (PSPS) and set forth eligibility criteria and a formula for calculating benefits which is dependent on the mode of retirement in the public service. According to the Public Service (retirement age) regulations, 2014, public service means, the Judicial Service, the Civil Service, the Defence Force, the Police and Prisons Service, the Teaching Service and the Zambia Security Intelligence Service.⁴⁶ In accordance with Statutory Instrument (SI),⁴⁷ the age of retirement was increased to sixty years. However, an Officer may retire on attaining the age of fifty five or sixty five by giving twelve months' notice and subject to approval by the President.⁴⁸ However, the regulations do not apply to members of the Defence Force, an officer of or below the rank of Chief inspector in the Police force and an Officer of or below the rank of Chief Officer III in the Prison Service. Therefore, the mandatory retirement age of the classes of people exempted is still at fifty five years.

⁴⁴ Chapter 260 of the Laws of Zambia

⁴⁵ Winnie Sithole Mwenda, *Employment Law in Zambia: Cases and materials*, (Lusaka: UNZA press, 2011) 246

⁴⁶ Regulation 2, Statutory Instrument No. 63 of 2014

⁴⁷ No 24 of 2015

⁴⁸ Regulation 4(2), public service (retirement age)

3.4.6 National Social Protection Policy

The government of Zambia in a bid to ensure that citizens of Zambia are healthy and happy formulated the National Social Protection Policy (NSPP). The policy shows the commitment of government with regards to providing social protection services to its citizens. The NSPP is broad covering a range of social services such as, social assistance and social security. Zambia has to date not formulated a national social security policy to specifically deal with the issue of social security. The Ministry of labour who are mandated to deal with issues of social security rely on the broader NSPP which policy falls and was formulated by the Ministry of Community Development and Social Services (MCDSS).

3.5 Summary

This chapter has looked at the law regarding social security at international, regional and national levels. At international and regional level, social security is regarded as a human right to which everyone is entitled. The instruments provide a useful reference and framework for the design of national laws on social security. We also saw how the ILO has been instrumental in providing labour standards for member States. It has provided an outline of the law on the subject of social security. Chapter four will now discuss the extent the Zambian legal framework is in tandem with the international and regional regimes and whether ratification is the answer.

CHAPTER FOUR

AN OVERVIEW OF ZAMBIA'S SOCIAL SECURITY LEGISLATION

4.1 Introduction

This chapter evaluates the social security legislation in Zambia against a backdrop of international instruments that have affirmed the right of everyone to social security. This will be achieved by discussing the findings with regard to the social security system in Zambia and legislative provisions dealing with social security. In doing so, the chapter will first look at the importance of social security and the effects of ratification of international instruments particularly, Convention 102 before undertaking an evaluation of the social security legislation in Zambia. The focus here will be placed on the International Labour Organisation (ILO) Convention 102 which is considered to be the benchmark for all social security systems and standards. Thereafter a brief summary will be given concluding the chapter.

4.2 The importance of social security

The right to social security is central in guaranteeing human dignity when certain contingencies covered by legislation befall an individual. Social security has been regarded as a human right by a number of countries, these include, South Africa and Kenya who have had the right to social security enshrined in their Constitutions. A number of international and regional instruments have affirmed the right to social security. Social security has received pre-eminence and attention in the recent past due to the impact it has on society as it plays an important role in the prevention and alleviation of poverty thereby ensuring that a minimum standard of living is maintained. For instance, it exerts an important influence on society through the distribution of economic wealth and guarantees economic security as well as mitigating the adverse effects of

social risks. George defines social security as the securing of an income to take the place of earnings when they are interrupted by unemployment, sickness or accident, to provide against loss of support by the death of another person, and to meet exceptional expenditure, such as those concerned with birth, death and marriage.¹ Defined and understood this way, social security provides cash benefits to meet certain contingencies and thus contributes to the economy by raising labour productivity and creating social stability.

Social security is regarded as one of the social services that is deemed indispensable to stimulating national prosperity. According to the ILO, social security is an economic necessity when well designed and linked to other policies, it enhances productivity, employability and supports economic development.² However, despite its fundamental role and functions, social security is still far from being a reality for the vast majority of the world's population.³ The situation is not different in Zambia where the legislation on social security covers only those in the formal sector, this is in spite of the importance of social security to enhance economic development and reduce vulnerability on the part of the citizens.

Despite the importance of social security as highlighted, there is considerable controversy about social and economic effects of social security, and most of the current debate is focused on its supposed negative effects. Social security is said to discourage people from working and saving, to reduce international competitiveness and employment creation and to encourage people to withdraw from the labour market prematurely.⁴ These are some of the demoralising effects that opponents of social security allege. Some people opt to leave the labour market early, knowing

¹ Victor N. George, *Social security: Beveridge and After*, (London: Routledge and Keegan, 1968) 5

² ILO Report (IV) (1) Social Protection Floors for the social justice and a fair globalization 101st session of the International Labour Conference. (Geneva: International Labour Office, 2012) 6

³ ILO Report (IV) (1)

⁴ Social security: A New Consensus. (Geneva: ILO, 2001) 42

that an early retirement package would be paid while others just look up to the retirement package than to engage in any productive activity.

4.3 The International Labour Organisation and social security

The International Labour Organisation (ILO) has been instrumental in the adoption of labour standards, including social security. It has played a major role in developing an international normative framework guiding the establishment, development and maintenance of social security systems across the world and has become the world's leading point of reference for efforts to this end.⁵ The ILO is a specialised agency of the United Nations Organisation (UN), it has a tripartite structure which comprises government, employers and workers. This entails that, governments, employers and workers are represented and their delegates can vote at the annual International Labour Conference. This conference is important for the reason that it establishes and adopts international labour standards.⁶ The adopted labour standards are to be adhered to by all member States that ratify the Conventions adopted by the ILO. When social security is considered, the ILO's work and the standards it has developed remain the most important source of interpretation and definition of the right to social security.⁷ The ILO has prioritised Social security issues due to the profound effect that social security has on society.

The adoption of international social security standards by the ILO is evident in the preamble of the ILO's Constitution which acknowledges the extension of social security worldwide as one of

⁵ Social security and Human rights. United Nations

⁶ Letlhokwa George Mpedi and Mathias Ashu Tako Nyenti, *Key International, Regional and National Instruments Regulating Social Security in the SADC. A general perspective* (South Africa: Sunpress, 2015), 17

⁷ Lucia Lamarche, "The right to social security in the International Covenant on Economic and social and Cultural rights," in *core obligations: Building a framework for economic, social and cultural rights*, ed. Audrey Chapman and Sage Russell (New York: Oxford, 2002) 61

the ILO's objectives. Article 111(f)⁸ reaffirms the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care. It is clear that the aim of the ILO is to extend social security provision not only to workers but all those in need of social security. The Decent Work Agenda in recognizing the increased need for social security in a volatile economic situation and the pressure exercised on existing social security systems underscores the necessity of adjusting to social change, extending social security, improving governance of social security and linking labour market and employment policies with social security.⁹

The ILO has enacted a number of Conventions dealing with social security issues. However, it is important to note that the effectiveness of the ILO supervision with regard to social security issues is bound up closely with the difficulties which Governments encounter in implementing the Conventions they ratify.¹⁰ It is therefore important that at the stage of drafting conventions, different economic developments are taken into consideration so as to have a Convention that would be accepted by all and be applicable regardless of the different levels of economic development. This is what makes most international social security standards set by the ILO flexible and universal as member states are provided with the latitude to select between alternative standards. Some instruments permit developing countries, although for a brief period, to adopt lower standards than their developed counterparts. Further, the standards provided by the ILO to some extent, provide for identical minimum standards which apply to almost all the countries of the world thereby making them universal.

⁸ ILO Constitution(1919), Article 111(f)

⁹ Setting social security standards in a global society: An analysis of the present state and practice and of future options for global social security standards setting in the international labour organization. Social security department. Geneva ILO (2008)

¹⁰ Ernest Alfred Landy, *The Effectiveness of International Supervision: Thirty years of ILO experience*, (London: Stevens and Sons, 1966), 79

4.4 Social Security coverage in Zambia

The National Pension Scheme Act, the Public Service Pensions Act, the Local Superannuation Act and the Worker's Compensation Act are the legislation that provide for social security benefits in Zambia. It is imperative to look at the membership, benefits and risks that are provided under each Act.

4.4.1 Membership, risks and benefits under the National Pension Scheme Act

The National Pension Scheme is the basic Pension Scheme applicable to employees in Zambia. It serves as a compulsory scheme for all regularly employed persons in the private and public sector. The Act in section 11 provides for membership of the scheme. The Second Schedule to the Act further excludes certain categories of employees from coverage for instance;

- (a) an employed person whose monthly earnings are less than K15.00, such employees are excluded as the amount of contribution one would have to make would be too little to even meet the amount that is to be paid as benefits. Moreover this provision does not reflect the real situation on the ground as no employer pays an employee such an amount in Zambia, it falls way short of the minimum wage.
- (b) the spouse of the employer; the spouse of the employer is excluded as one is assumed to be a member of the family and thus derive benefit from the spouse
- (c) a member of the family of the employer who ordinarily resides with the employer; such a one is considered to derive benefits from the employer.

(d) an employee of an international organisation who is not a citizen of Zambia; Usually such people work on contract and thus it becomes difficult for them to meet the required threshold of contributions as stipulated in section 18 of the NAPSA Act.

(e) an employee of a foreign government who is accorded diplomatic or equivalent status and who is not a citizen of Zambia, such officers are assumed to have their own arrangements in their own countries.

(f) a member of the armed forces; and, members of the armed forces are excluded as these are covered under the Public Pension Scheme Act.

(g) 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. ¹¹ Public Officers who were contributing to the Public Service Pension Fund or the Local Authorities Superannuation Fund before the enactment of the NAPSA Act did not migrate to join the National Pension Scheme Fund unless those who joined the public service after the Act came into force. The only exception provided are, the members of the Defence Forces. Members of the Defence Forces who joined after the NAPSA Act came into force continue to contribute to the Public Service Pension Fund. The National Pension Scheme provides for three kinds of benefits, these are:

(a) Old age pension

The contingency covered is survival beyond a prescribed age, initially it was fifty five (55) years but with the amendment on the retirement age, it now means survival is now beyond the age of sixty (60) with the exception of members of the Defence Force and Zambia

¹¹ Pension Scheme Act, Chapter 256 of the Laws of Zambia

Prisons and Police Officers below the rank of Chief Inspector in the Police Force and Chief officer III in the Prison Service whose prescribed age is still at fifty five (55) years. In accordance with section 18 of the National Pension Scheme Act, chapter 256 of the laws of Zambia, one should attain the pensionable age and must have made not less than hundred and eighty monthly contributions in order to receive old age pension. All this means a person should have had a total of fifteen (15) years of Service.

(b) Invalidity pension

The contingency covered is the inability to engage in any gainful activity where such inability is likely to be permanent. In order to be entitled to invalidity pension, a person should suffer from permanent invalidity and be under pensionable age. Further, either the provisions of section 18 of the NAPSA Act should be satisfied, that is, the attainment of pensionable age and not having made less than one hundred and eighty monthly contributions or that the member should have at least sixty monthly contributions of which twelve or more were paid in the period of thirty-six months immediately preceding the date the invalidity began.¹² A board of medical officers is usually constituted to determine the nature and extents of claims of invalidity.

(c) Survivor's benefits

The contingency covered is the loss of support suffered by the loss of a breadwinner. According to section 29¹³, survivors' benefit is paid to a member of the family or a dependant if at the time of the death the deceased was in receipt of a retirement pension or an invalidity pension. Survivor's benefit would be paid where the deceased would have been

¹² Section 23, Chapter 256 of the Laws of Zambia.

¹³ Chapter 256

entitled to an invalidity pension for permanent invalidity at the time of death or that the deceased qualified to receive old age pension pursuant to the provisions of section 18 of the NAPSA and the deceased had actually made a claim for such Pension.

4.4.2 Membership, risks and Benefits under the Public Service Pension Act

The Public Service Pension (PSP) Act establishes the Public Service Pensions Fund Board (PSPFB) which is responsible for the matters of all public service employees contributing to the Public Service Pension Fund (PSPF). However, its membership base was lost in February, 2000 by virtue of the enactment of the NAPSA. All Public Service employees who were engaged after the enactment of the NAPSA Act are now members of NAPSA with the exception of Members of the Defence Force and Police. The PSP Act like the NAPSA Act provides for retirement benefit, Section 33¹⁴ provides for the age of retirement which is 60 years under the Public Service (Retirement Age) (Amendment) Regulations.¹⁵ On the other hand, part VIII¹⁶ provides for the mode of calculation of the retirement benefits depending on the type of retirement. Retirement can either be in Public interest or National interest. A person retired in National interest is paid retirement benefit as though one had attained the mandatory retirement age and no reason is given for the retirement while public interest denotes a connotation of discipline.

Survivor's benefits are provided for under the PSP Act. Part IX¹⁷ provides for benefits of spouses and children of deceased pensioners, meaning in case of death of a Pensioner his or her dependants as defined in the PSP Act are entitled to a survivor's benefit. This helps to cushion dependants from income shocks that might arise due to the death of the bread winner. This

¹⁴ Public Service Pensions Act , Chapter 260 of the Laws of Zambia

¹⁵ No. 24 of 2015

¹⁶ Public Service Pensions Act

¹⁷ Public Service Pensions Act

prevents destitution which is one of the many things social security aims to prevent. The other benefit covered by the PSP Act is invalidity benefit, in order for a person to be retired on medical grounds there is need for medical evidence to the satisfaction of the appropriate authority that one is by reason of infirmity of mind or body is unable to discharge the duties of his office and that such infirmity is likely to be permanent.¹⁸ The amount of invalidity benefit paid is dependent on whether the infirmity is attributable to the employer or its due to the employees own default. Those whose infirmity arises in the course of employment are paid compensation for the infirmity.

4.4.3 Membership, Risks and benefits under The Local Authorities Superannuation Fund Act

The Local authorities Superannuation Fund (LASF) Act was enacted to make provision for the establishment of superannuation Fund. It covers employees of local authorities, Zambia Electricity Supply Corporation Limited (ZESCO), National Housing Authority and employees of water utility companies created before 1st February, 2000. Those employees who joined after the enactment of the NAPSA Act joined NAPSA. This is a development that has affected the membership base of the LASF. Like the two schemes discussed above, LASF provides for retirement benefits. Section 25¹⁹ provides for retirement benefit upon one attaining the mandatory retirement age of Sixty (60) years. Section 27²⁰ further provides for invalidity benefit paid depending on whether the ill health or infirmity of mind is attributable to the employee or not. This is similar to what is provided for under the PSPF Act.

¹⁸ Section 40 Public Service Pension Act

¹⁹ Local Authorities Superannuation Act, Cap 284 of the Laws of Zambia.

²⁰ Local Authorities, Cap 284

With regard to survivors benefit, section 35²¹ though not being gender sensitive in the way it is couched is instructive on how dependants of a deceased bread winner will be paid and how the benefit will be calculated depending on the number of years served by the deceased bread winner. The Fund has been adversely affected by the declining membership as it has more pensioners than active contributing members as a result of being closed to new entrants.

4.4.4 Membership, Risks and benefits under Workers Compensation Act

The Workers Compensation Act²² is a broad piece of legislation on compensation of workers for disabilities and diseases contracted during the course of employment. The objective of the Act as can clearly be deduced from its preamble is to provide compensation to workers for employment injury and also survivor's benefits to dependants of workers who die as a result of injury that occurs during the course of employment. It provides for protection to workers and or their dependants against loss of income attributed to injury that causes disablement or death of a bread winner as a result of injury arising in the course of employment. Section 51 of the Act²³ is clear as to when one can claim the right to compensation under the Act, it must be clearly established that one was a worker and that the accident or disease that led to disablement or death of the worker arose out of and in the course of employment. The Act²⁴ stipulates how survivor's benefits or compensation will be paid where a worker dies as a result of the accident or disease. The scheme makes it mandatory for all employers except government to register with them. The reason for exempting government is that, the government provides medical schemes for its employees and thus providing free medical facilities in case of sickness or injury.

²¹ Local Authorities Superannuation Act

²² Act No. 10 of 1999 of the Laws of Zambia

²³ No 10 of 1999

²⁴ Section 71 of the Worker's Compensation Act , NO 10 of 1999

4.4.5 Benefits under the Employment Act

In terms of coverage for other contingencies provided for by the ILO, such as, maternity and sickness benefits. The Employment Act²⁵ in section 15(A) 1 provides for 12 weeks paid maternity leave for female employees after at least two years of continuous service from the date of engagement or since the last maternity leave. It has been argued that, the two year qualification period limits the entitlement to women who are permanently employed; this is in contravention with Convention 103 discussed in chapter three, which does not limit the entitlement. With regard to sickness benefits, the Employment Act provides that, an employee who is temporarily incapacitated as a result of illness or an accident is entitled to paid sick leave for a maximum of 26 working days in any period of twelve months. Medical care is also provided for by employers through medical schemes. Despite not meeting the ILO standards, Zambia has given recognition to the contingencies as envisaged by the ILO conventions though according protection to a limited extent.

4.5 Effects of ratifying Conventions

The ILO's aim is to come up with Conventions and Recommendations setting up labour standards for member States. Conventions are often considered as containing the internationally accepted standards on the contents and minimum protection levels of social security.²⁶ In order to become legally binding on Member States, Conventions must be ratified as they are designed with a view to being ratified. Ratification is the process by which a State becomes legally bound to a ratified instrument. Before ratification, the State need to carefully consider the implications

²⁵ Chapter 264 of the Laws of Zambia

²⁶ Frans Pennings, and Bernd Schulte, *International social security standards: An overview*. 13

of ratification as once it occurs, the State need to conform to all the obligations set down in the instrument as the obligations cannot be generally avoided for lack of a good reason.²⁷

Ratification is entirely voluntary, no sanctions are imposed for non-ratification and no time limit is set. By ratifying the Conventions, ratifying member States make binding commitments to adhere to the standards laid down in the Conventions. States that ratify ILO Conventions are required by both International law and by the ILO Constitution to bring their internal law and practice into conformity with the Conventions. States have to take such action as may be necessary to make effective the provisions of the Convention.²⁸ Following ratification, the most direct obligation which arises for a member state is to report at regular intervals on the application of the convention in legislation and practice.²⁹ The reports are the principal information sources that enable the ILO perform its supervisory role.

Ratification therefore creates legally binding obligations for ratifying States to adhere to the ratified Convention. Recommendations on the other hand often supplement corresponding Conventions and are not subject to ratification. Standards therefore serve as globally backed guidelines for national social policies. When ratified, they also prevent countries from retracting, that is, from losing what has already been achieved.³⁰

²⁷ Natalia Baird, *To ratify or not to ratify. An assessment of the case for ratification of international human rights treaties in the Pacific*. A paper presented at the 10th Pacific Islands political studies Association Conference. (Port Villa: University of the South Pacific, 2007) 5

²⁸ Virginia A. Leary, *International Labour Convention and National Law: The effectiveness of the automatic incorporation of treaties in national legal systems* (London: Martinus Nijhoff Publishers, 1982), 10

²⁹ Article 22 of the ILO Constitution

³⁰ Ursula Kulke and Lopez Morales quoted in, *Setting Social Security Standards in a Global Society: An analysis of present state and practice and of future options for global social security standard setting in the International Labour Organization*(Geneva: International Labour Organisation, 2008), 7

Convention 102 which is the flagship of all ILO Conventions classifies social security systems into nine standard branches, namely; health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability and survivors and orphans. To ensure that it could be accepted in all national circumstances, the Convention offers States the possibility of ratification by accepting at least three of its nine branches and subsequently accepting obligation under other branches, thereby allowing them to progressively attain all the objectives set out in the Convention.³¹ According to Olivier, of the three branches that a ratifying State should accept, one branch should either be from; unemployment, old age, invalidity, employment injury or survivor's minimum standards of coverage and benefits.³²

By providing such conditions, the ILO remains relevant to all its members regardless of national economic development. Jef has argued that, by the ILO Convention 102 allowing member countries to choose, when ratifying the convention, between covering a certain percentage (typically 50%) of industrial workers or a lower percentage of the active population (20%), or a certain percentage of all residents, the Convention falls short of the principle of the UDHR, which is to make the right to social security a fundamental right of everyone as a member of society.³³ This implies that, the issue of universality of coverage may be an illusion. The ICESCR has equally been criticized for seemingly limiting the general human right in Article 9 to work-related contexts and limited sectoral coverage typical of ILO standards.³⁴

³¹ Letlhokwa George Mpedi and Mathias Ashu Tako Nyenti, *Key International, Regional and National Instruments Regulating Social Security in the SADC. A general perspective* (South Africa: Sunpress, 2015), 17

³² Marius Olivier, Nicola Smit and Evans Kalula, *Social Security: A Legal Analysis* (Durban: LexisNexis Butterworths, 2003), 30

³³Jef Van Langendonck, The meaning of the right to social security.(Institute of social law) 4 www.peacepalacelibrary.nl/plinklet/index.php?ppn=30232822X (accessed 12 November, 2016)

³⁴ Ben Saul, David Kinley, Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural rights. Commentary, cases and materials* (London: Oxford University Press, 2014) 694

Despite wide ranging coverage, there are several important restrictions. Benefits are often conditional on meeting special requirements and there are common exclusions on the basis of age, nationality and personal situation.³⁵

4.6 A Critical Review of Zambia's Social Security Legislation

A critical review of the social security legislation clearly shows that the benefits that are provided by the NAPSA Act are not different from those provided under the PSPF and LASF, what distinguishes the schemes are the classes of people covered. However, the Workers Compensation Fund Control Board (WCFCB) introduces only one new head of vulnerability not dealt with by NAPSA which is employment injury. It is further clear that of the three branches that a ratifying State is mandated to comply with one is supposed to come from unemployment, old age, invalidity, employment injury and survivor's benefits, Zambia has complied with four out of the nine contingencies and four out of the five most important contingencies to which a ratifying State that accepts at least three of the nine branches should have one branch from the five most important. Clearly, Zambia has four out of five which is progressive and encouraging in meeting international standards considering that Zambia is categorized as a developing nation.

With regard to the ILO scales, Zambia has avoided to provide protection against unemployment benefits as provided in industrialized countries where unemployment benefits are paid monthly to a person who is out of employment up to the time one is in gainful employment. It has been argued that Zambia offers some unemployment benefits which are mainly negotiated by trade unions, whose main features relate to redundancy, early retirement and medical discharge, the

³⁵ Paul Spicker, *How social security works, an introduction to benefits in Britain*, (Britain: Policy press, 2011), 53

benefits here are paid upon termination of employment.³⁶ Unemployment is one of the greatest social risks facing people who depend for their livelihood on the sale of their labour. Protection against the risk of unemployment is provided not only by benefits but also by measures of employment protection such as protection against dismissal.³⁷ According to the ILO, unemployment benefits provide workers with the breathing space they need in order to find suitable work which makes full use of their talents and potential.³⁸ In Zambia, one does not have the luxury to sit home and wait till they get a job that makes full use of their talents and potential as it is not easy to find employment. Provision of unemployment benefits would restrain financial resources of the jurisdiction. Thus unemployment benefits would not be sustainable for a developing nation like Zambia.

The Social security legislation in Zambia is exclusionary in its application covering only workers in formal employment. The extension of social security coverage has been of great concern to the Government of Zambia. The majority of the population is in the informal sector and not covered by any form of social security. According to the Labour Force Survey,³⁹ in the year 2014, there were 5,859,225 employed persons of which 944,256 persons were working in the formal sector representing 16.1 percent while 4,914,969 persons were in the informal sector representing 83.9 percent. This is a clear proof that the majority of the population is not covered by social security legislation. It has been argued that, although social security in many developing countries caters primarily for those in formal employment and not those in urban informal sector, it is believed

³⁶ Report of the Commission of inquiry into existing schemes of social security in Zambia (Lusaka: 1983) 146

³⁷ International Labour Conference, *Social security: Issues, Challenges and prospects*, report VI (ILO, Geneva, June, 2001) 25

³⁸ International Labour Conference, *Social security: Issues, Challenges and prospects*, report VI (ILO, Geneva, June, 2001)

³⁹ Republic of Zambia, Central Statistics Office Labour Force survey of 2014

that the social security coverage will expand as economic development creates job and transfers labour from subsistence to the modern sector of the economy.⁴⁰ This raises so much hope even for the social security system in Zambia which is predominantly of a social insurance, covering only those people in the formal sector employment.

Despite Zambia ratifying the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), social security has not yet been given the recognition of a human right to which everyone is entitled. It is important to note that the UDHR does not contain any legally binding provisions. The ICESCR however places obligations on State parties that ratify it to take steps to achieve progressively the full realisation of Socio, Economic and Cultural rights.

From the contingencies covered by the Zambian legislation, it is clear that Zambia meets the conditions set out by the ILO convention 102 which state that a ratifying State should at least accept three branches of which one branch should be from unemployment, old age, invalidity, employment injury or survivor's pension. As highlighted from the provisions of the four social security schemes in Zambia, four contingencies are covered, namely; Retirement/old age benefits, invalidity benefits, survivor's benefits and employment injury which is covered by the Workers Compensation Act. The four contingencies covered are all among those recommended by the Convention to which ratifying States should endeavor to provide cover for its citizens.

Despite the fact that the benefits covered under the social security schemes are among those recommended by the Convention, it is important for the country to consider ratifying Convention 102 as this will send a clear message of the commitment that the country has in ensuring that it

⁴⁰ James Midgley and Martin B Tracy, *An International Exploration*, (London: Auburn House, 1996) 1

upholds international standards set with regard to social security. It is important to note that international standards are suitable mechanisms for improving national conditions and constitutes an essential framework for implementing change.

Convention 102 has had an impact on a number of regional human rights and social security instruments; it has been a model for the adoption of regional social security instruments such as the Southern African Development Community (SADC) Code which has been inspired by the nine branches of social security laid down in the Convention. Further Government policy documents of many African countries contain references to Convention 102.⁴¹ Zambia has not ratified Convention 102. However, the contingencies covered by the NAPSA Act and other pieces discussed are among those envisaged by the ILO Convention which members States should endeavor to provide protection for. This shows that, ratification may not be the only solution to enacting legislation that is in line with international standards. However, due to the effects that come with ratification of international instruments on member States, it is important to ratify Convention 102. It is clear from the covered contingencies by the NAPSA Act and the other legislation on social security in Zambia that, the legislation is somewhat inspired by Convention 102.

Despite Zambia being a developing country, ratification of convention 102 would not prejudice the country in any way but would actually send a clear message of commitment by the Government to the citizens on the willingness of the Government to develop social security. The Convention takes cognizance of the fact that countries have different levels of economic development and thus contains flexibility clauses to allow developing countries to progressively

⁴¹ Setting Social Security Standards in a Global Society: An analysis of present state and practice and of future options for global social security standard setting in the International Labour Organization, (Geneva -International Labour Office, 2008) 16

attain coverage and contingencies covered in accordance to what their available resources can allow at a particular time. The Convention sets out a framework for a gradual, integrated social security policy that can be adapted and fine-tuned.⁴²

It is imperative to note that international standards are appropriate mechanisms for improving national conditions. It has been stated that, international standards help member States in the review, design and implementation of social security policies.⁴³ Thus if Zambia is to ratify Convention 102, this would assist in the formulation of a National social security policy. Currently, Zambia does not have a National social security policy to deal with the specific issue of social security, the country relies on the broad National Social Protection Policy. It is important for the country to come up with a National Social Security Policy which will specifically deal with the issue of social security and social security systems that will address the needs of the people.

The ILO convention encourages Members States to come up with non-contributory schemes, such schemes are aimed at providing social assistance to those in need. The means test is used to select those whose needs are greatest and is meant to reduce leakages in the system. However, no means test is foolproof, so some people who are not eligible nevertheless succeed in obtaining benefits, particularly in countries where there is a thriving informal economy.⁴⁴ Zambia has a thriving informal economy, efforts have been made by the Government in providing for the most vulnerable members of society through the Social Cash Transfers (SCT) and the Public Welfare Assistance Schemes (PWAS). However, due to lack of legislation to regulate the provision of

⁴² Bernd Von Maydell and Rachid Filali Meknassi, "Relevance of International social security standards in the South –Eastern Mediterranean Countries," in *Social security: A factor of social cohesion* .(proceedings Euro –Mediterranean conference 27 and 28 May, 2004) 60

⁴³ Albrecht Otting, "A framework for social security", Volume 132, (1993) No. 2. International labour review, 163

⁴⁴ Social Security: A New Consensus (Geneva-ILO, 2001), 65

social assistance, there is a perception of bias as the system is subject to administrative discretion, opening the way to favoritism, clientism and discrimination.⁴⁵

Zambia has made strides in assisting vulnerable members of society through the provision of social assistance under the ministry of community development and child health. In contrast with social security, social assistance is generally funded from the revenue of the State rather than individual contributions. Social assistance tries to ensure that a minimum standard of living is achieved by all citizens, what determines entitlement is an individual's indigence. The Government attaches so much importance to the provision of social protection; this can be evidenced by the increased allocation for social protection by 85 percent, to K2.7 billion to cushion the vulnerable groups.⁴⁶ However, the population covered by either social security or assistance still remains an issue of great concern and thus Convention 102 remains relevant to those that ratify the Convention in providing guidance on the population to be covered.

In Zambia, unlike other countries that have enshrined the social and economic rights in the constitution and have legislation that regulate social assistance schemes, there is no law in Zambia regulating social assistance. Thus the identification of the needy that require social assistance is more at the discretion of the providers of social assistance. Thus for the system to be more efficient, reliable, fair and achieve its objectives, there is need for legislation to govern the operation of the system in terms of providing guidelines on identification of the needy as earlier alluded to, no mean testing is infallible.

⁴⁵ Social security: A New Consensus (Geneva-ILO, 2001), 66

⁴⁶ Republic of Zambia 2017 Budget speech presented by the Minister of Finance, Honourable Felix C Mutati, MP on 11th November, 2017

4.9 Summary

This Chapter has highlighted the importance of social security in guaranteeing human dignity. It has further outlined the role that the International Labour Organisation plays in setting social security standards. These are standards that give direction as to how national legislation is to be formulated and implemented. It is clear from this chapter that the contingencies covered by the National Pension Scheme Act are in line with the International Labour Convention No. 102 which is the flagship of all ILO Conventions of social security. Despite not having ratified the Convention, Zambia to some extent meets the requirement of the Convention and therefore it is important that Zambia ratifies the Convention as this will doubtlessly show the commitment of the country in gradually meeting and upholding the standards set up by the Convention in terms of the contingencies covered and the percentage of the population. The Convention has flexibility clauses that allow countries to gradually improve their social security systems in accordance with the economic development, and this is a feature that makes it attractive to most countries. It has further been highlighted that the means test that is used to identify beneficiaries of social assistance is not perfect, thus legislation maybe the best way of regulating social assistance schemes in a way that creates credibility in the system.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This study set out to evaluate social security legislation and policy in Zambia against International instruments, particularly Convention No. 102 of the ILO as it defines the classical branches of social security and sets minimum standards for each branch. This was important in order to establish the extent to which legislation has gone in meeting international standards in the area of social security. This chapter concludes and gives recommendations of the study. The conclusion and recommendations will be presented in relation to the objectives of the study and the research questions as set out in Chapter One. The Recommendations will be divided into two, namely, general recommendations, and recommendations for future research. The recommendations are premised on the lacunae identified during this study.

5.2 Conclusion

Chapter One of the dissertation gave a general introduction of social security and gave the basis for undertaking the research. It outlined the purpose and objectives of the study, the statement of the problem, the available literature on the subject of social security thereby identifying the gap that the research intended to address. The chapter further looked at the methodology that was to be employed in the conduct of the research.

The Historical background to the development of social security was then given in Chapter Two, this was important as it gave a clear picture as to how social security has evolved from the time of colonial rule to date. It was noted the white settlers never had the interest of the Africans, most of the African became destitutes due urbanization which led to the disintegration of the

traditional support system that had been in place in African societies. It was not until the attainment of independence that the plight of indigenous Zambians was seriously considered, this was done by the enactment of the ZNPF Act two years after the attainment of independence to provide protection to formal sector employees.

Chapter Three looked at the various social security instruments at the international, regional and national levels, this was important in order to have an understanding as to what the position is with regards to social security at different levels. This was necessary for assessment of our national legislation as instruments provide a useful reference and framework for the design of national laws on social security. We also saw how the ILO has been instrumental in providing benchmarks for the development of social security.

Chapter Four gave an analysis and overview of Zambia's social security legislation, the chapter highlighted the importance of social security in guaranteeing human dignity. It further outlined the role that the International Labour Organisation plays in setting social security standards. The standards are important in providing direction as to how national legislation is to be formulated and implemented. It was further shown that Convention 102 has flexibility clauses that allow countries to gradually improve their social security systems in accordance with the economic development, and this is a feature that makes it attractive to most countries.

The dissertation highlighted the importance of social security for the well-being of workers, their families and the community as a whole. In case of old age for those in the formal sector, a retirement or old age benefits are paid so that their lives do not fall below certain standards. In case of death of a breadwinner who is a member of a particular social security scheme, survivor's benefits are paid to dependants so that they are not left in destitution. Similarly, in

case of employment injury, invalidity benefits are paid. This enhances productivity and economic development in that older workers who are unable to cope with the pressures of the labour force find it easy to leave knowing that they will not live in destitution. The income security given to workers enables them to make plans for their families as social security replaces earnings from work cut off by death, disability, employment injury and retirement.

With regard to the adequacy of the law on social security, it has been established that, in terms of risks and benefits covered, the country has made progressive efforts in meeting ILO standards. It is important to note that, out of the five most important contingencies as identified by the ILO, namely; unemployment, old age, invalidity, employment injury and survivor's benefits, the Zambian legislation has accorded protection to four out of the nine contingencies provided by Convention 102. Further out of the five most important contingencies to which a ratifying State must accept at least three branches, Zambia has accepted four, this is a step in the right direction. The Employment Act has also been instrumental in providing maternity protection to female employees. Thus in terms of covered benefits the legislation is somewhat already consistent with Convention 102 of the ILO.

In terms of the population covered, the legislation excludes people in the informal sector who are actually the majority of the population as could be seen from the 2014 Labour survey from Central Statistics Office (CSO). This is attributable to the fact that Zambia has not ratified Convention 102. This Convention is flexible and provides guidelines on the population to be covered by ratifying States. Further, the lack of a National Social Security Policy to inform the legislation has had negative impact on the coverage of social security schemes. Social security is one of the mainstays of the social protection policy. The MCDSS which has a broader National Social Protection Policy (NSPP) has been instrumental in providing social assistance to the under

privileged. However, the only challenge is that there is no legislation governing social assistance programs or the identification of vulnerable people. This leaves the system susceptible to corruption.

As regards ratification of Convention 102, it is clear that ratification of the Convention will send a clear message on the Government's commitment to extend the coverage of social security to all in line with the UDHR and the ICESCR to which Zambia is a member State. The problem in the case of Zambia is not the contingencies covered by the legislation, the issue is also on universality of application. Convention 102 draws its inspiration from the UDHR which affirm the right of every one to security in the event of facing certain contingencies such as unemployment old age and sickness among others. The ICESCR on the other hand affirms the right of everyone to social security including social insurance.

As earlier alluded to Convention 102 recognises the difficulty that may arise in the implementation of the universal coverage of the right to social security. Therefore, it is for this reason that Convention 102 does not contain stringent clauses that impose strict adherence by ratifying States but has flexible clauses. The flexible clauses take into account the different national situations. It is therefore possible for ratifying States to take exemptions for a specified period of time. This is especially beneficial for developing countries like Zambia whose economies are still growing as it ensures progressive realisation of the right to social security and extension of coverage. Universality of coverage should be the theme and ratification will ensure that necessary steps are taken to progressively achieve universal protection to the satisfaction of the citizens.

Enhancement of social security legislation and policy is critical in the attainment of universal coverage to meet standards set at the international level. As already alluded to, Zambia does not have a National Social Security Policy, although the process of developing a national social security policy has been underway from as far back as 2010. There is therefore dire need to have a social security policy that will inform the law. Legal restrictions, administrative and enforcement problems were identified as attributing to the exclusion from statutory schemes. It is therefore important to enhance the law by ratifying Convention 102 which should then inform the national social security legislation on how the law can extend coverage. As earlier stated, in terms of the contingencies covered, the legislation is in line with the requirement of Convention 102. However the lack of ratification has hindered Zambia from progressively complying with the other branches not covered by the legislation. It is therefore hoped that the referendum on Bill of Rights wherein the Government proposed to include social and economic rights will be revisited. Once the rights are enshrined in the Constitution which is the supreme law of the land, it is reasonable to assume that the Government in Zambia is prioritising the extension of social security to all depending on the available resources.

5.3 Recommendations

Based on the findings and conclusions that were drawn by this study, the following recommendations are made;

5.3.1 General recommendations

The Government of the Republic of Zambia should consider ratifying Convention 102 of 1952 of the ILO. The Convention is a guiding principle for the country to review and reform the social security legislation in extending coverage. The Convention prescribes the minimum standards for

the nine branches of social security which standards are to be achieved progressively taking into consideration the economic development. Ratification of the Convention would provide a solid and sustainable basis for the development and progressive extension of social security.

Ratification will show Zambia's commitment to improving social security standards through a legislative framework as Convention 102 can serve as a road map for reform as it acts as a powerful tool for the maintenance of the worldwide agreed minimum standards for social security at the national level.

The Government should consider revisiting the failed referendum that sought to include Economic, Social and Cultural rights into the Bill of Rights. There is need for more sensitisation on the public to make them understand the reasons why those rights should be in the Constitution. This will help achieve the universality of the application of social security as the exclusionary nature of social security mirror a failure to meet its obligations under the ICESCR which Zambia acceded to on 10th April, 1984. The Covenant recognises the right of everyone to social security including social assistance.

The Ministry of Labour and Social Security (MLSS) should come up with a sound National Social Security Policy (NSSP) that takes into account the wider context in which social security has to operate. The inadequate coverage of social security is attributed to the lack of a coherent national social security policy. This should be done with a view of the reforms occurring at international level as international standards are essential mechanisms for improving national standards.

There is also need to come up with a law to govern and regulate social assistance schemes, this will clearly provide guidance on eligibility criteria. The current position where social assistance

schemes are unregulated legally leaves room for corrupt practices, as the means test that is used to determine eligibility is not foolproof.

5.3.2 Recommendation for future research

It is recommended that, further research is conducted to look at the possibility of having unemployment benefits, the best social security scheme to manage such benefits and the impact that such a scheme would have on a country like Zambia.

BIBLIOGRAPHY

BOOKS

Attarian John, *Social Security false Consciousness and Crisis*, USA: Transaction Publishers, 2001.

Ball M. Robert, *Social Insurance and Social Justice; Social Security, Medicare and the Campaign against entitlements*, Edited by Leah Rogne, et.al, USA: Springer Publishing Company, 2009.

Bennet Fran, Millar Jane, *Understanding social security: issues for policy and practice: Social security reform and challenges*, Jane Millar, Britain: Policy Press, 2009.

Berghman Jos, et.al., *Social Protection Globalised Belgium*: Leuven University Press, 2005.

Campbell R. Rita, *Social security; promise and reality*, United States of America: Leland Stanford Junior University, 1977

Dixon John, *Social security in a global perspective*, Westport- Praeger publishers, 1999.

Drolet L. Juliet, *Social Protection and Social Development, 'International Initiatives,'* London: Springer Dordrecht Heidelberg, 2014.

Fox Allan, *Beyond Contract: work, power and trust relations*, London: Faber, 1974.

George N Victor, *Social Security: Beveridge and After*, London: Routledge and Keegan, 1968.

Hosking A Gordon, *Pension Schemes and Retirement benefits*, London: Sweet & Maxwell, 1968.

Koyi Grayson, "Social Protection in Zambia." In *Social Protection Schemes in Africa*, edited by Trywell Kalusopa, Rudi Dicks and Clara Osei-Boateng, 273-300. Cape town: University of Cape town, 2012.

Lamarche Lucia, *The right to social security in the international covenant on Economic and social and cultural rights, in core obligations: building a framework for the economic, social and cultural rights*, ed Audrey Chapman and Sage Russel, Newyork: Oxford, 2002.

Landy A Ernest, *The effectiveness of International Supervision: Thirty years of ILO experience*, London: Stevens and Sons, 1966.

Leary A Virginia, *International Labour Convention and National Law: The effectiveness of the automatic incorporation of treaties in national legal systems*, London: Martinus Nijhoff Publishers, 1982.

Livingston Steve Greene, *U.S Social Security: A reference Handbook*, England: Santa Barbara-California, 2008.

McConville Mike and Chui Wing Hong, *Research Methods for Law*, Edinburgh: Edinburgh University Press, 2007.

Millar Jane, ed. *Understanding Social Security; Issues for Policy and Practice*. Britain: University of Bristol Policy Press, 2009.

Midgley James, *Social Welfare in global context*, London: SAGE Publications, 1997.

Midgley James and Tracy B. Martin, *Challenges to Social Security: An International Exploration*, London: Auburn house Westport, 1996.

Mpedi G Letlhokwa and Nyenti Ashu T Mathias, *Key international, regional and national instruments regulating social security in the SADC*, A general perspective, Pretoria, Sun Media Metro, 2015.

Mwenda S Winnie, *Employment Law in Zambia, Cases and Materials*. Lusaka: UNZA Press 2011.

Noyoo Ndangwa, *Social Policy and human development in Zambia*, Lusaka: UNZA Press, 2008.

Ogus I Anthony and Barendt M Eric, *The Law of Social Security*, 2nd Edition, London: Butterworths, 1982.

Olivier Marius, Smit Nicola and Kalula Evance , *Social Security: A legal Analysis*, Durban: LexisNexis Butterworths, 2003.

Pieters Danny, *Social Security: An introduction to the basic principles*, Netherlands: Kluwer Law International, 2006.

Pennings Frans and Schulte Bernd, *International social security standards: An Overview*. In Pennings, F. (ed) *Between Soft and Hard law: The impact of international social security standards on national social security law*, Netherlands: kluwer law international, 2006.

Saul Ben, Kinley David, Mowbray Jacqueline, *The International Covenant on Economic, Social and Cultural rights. Commentary, cases and materials*, London: Oxford University Press, 2014.

Spicker Paul, *How social security works, an introduction to benefits in Britain*, Britain: Policy press, 2011.

JOURNALS

Briggs Asa, The Welfare State in Historical Perspective,” *European Journal of Sociology* (1961), Vol 2(2) 221-258

Godfrey V N, A broader role for the National Provident Funds: The Zambian experience, *International Labour review* (1974), Vol 109, No. 2, pp 137-152

Gruat, V Jean, “Social security schemes in Africa”. Current Trends and problems. *International Labour Review*, (1990), Vol 129, No. 4, pp 405-421

Kiwanuka Semakula, Colonial policies and administration in Africa: the myths and contrast, African historical studies, *Boston University African studies centre* (1970) vol 3 No. 2, pp 295-315

Mukuka Lawrence, et al, “Social Security Systems in Zambia”, *African Journal of Social Work* (2002) VOL. 17, No. 2, pp 65-96

Otting Albrecht, “A framework for social security” *International labour review* (1993) 132, no 2, pp 163-172

DISSERTATIONS

Chisha Musonda, “*Towards a comprehensive national social security system in Zambia*” MBA thesis, Copperbelt University, 2009

Janice S Munsaka, “*The Law governing social security schemes in Zambia*” LLM thesis, University of Zambia, 1987

Mwiche David, “*Social security coverage for urban informal sector workers: A case study the copperbelt of Zambia*” MBA thesis, Copperbelt University, 2005

OTHER PUBLICATIONS

Baird Natalia, *to ratify or not to ratify. An assessment of the case for ratification of international human rights treaties in the pacific*. A paper presented at the 10th pacific islands political studies association conference. Port Villa: University of South pacific, 2007

Ginneken V. Wouter. , *Extending Social Security: Policies for developing Countries*. ESS paper No. 134 Geneva International Labour Office, 2003

Godfrey V N, The ability of provident funds to meet social needs: The Zambian Experience. East African Symposium of the relationship of social security. Social planning and economic development, Dar-es Salaam, October, 1973

Jutting Johannes, *Strengthening Social Security Systems in Rural areas of developing countries*. Discussion papers on development policy. No. 9, Centre for development research, Bonn, June, 1993

Klinck Elsabe, 'Transformation and Social Security in South Africa.' A paper presented at an international workshop on Social Security Transformation in South Africa, Johannesburg, January 24-25, 2001.

Mattoo Nirja. Poverty, social welfare and social development challenges for the 21st century." paper presented at the 29th ICSW international conference on social welfare Cape Town, South Africa, October 23-27, 2000.

Maydell V Bernd and Meknassi F Rachid, *Relevance of international social security standards in the South –Eastern Mediterranean Countries, in social security: A factor of social cohesion*, proceedings Euro-Mediterranean Conference, 27 and 28 may, 2004

Pino Ariel, *Employment Injury Schemes- ILO Perspective*, ILO, Geneva

Thandika Mkandawire, Social policy in a Development Context Occasional Paper No. 7 (Geneva: UNRISD, 2001)

Quisser Monika, Bailey Clive and Woodwall John, Reforming Pension in Zambia, 'An analysis of existing schemes and options for Reform. Policy Research Working Paper, Financial Sector Development Department, World Bank, January, 1997

International Labour Conference, Social Security: Issues, Challenges and Prospects, report VI (ILO, Geneva, June, 2001)

International Labour Organsiation, Social protection floors for social justice and a fair globalization. 101st session of the International Labour Conference.

ILO resolution and conclusions concerning the recurrent discussion on social protection, 2012

Social security administration, social security programs throughout the world. Africa, 2013

Setting social security standards in a global society: *an analysis of the present state and practice and of future options for global social security standards setting in international labour organization*, Geneva: ILO, 2008

Conference report on urban problems in East and Central Africa, Ndola, February, 1958

International African labour conference, Lusaka, August- September, 1958

Northern Rhodesia, Legislative Council debates, 25th November -10th December, 1958

Central Statistical Office - Government of the Republic of Zambia, Labour force survey, 2014

Zambia. Social Protection Expenditure and performance review and social budget, Geneva: ILO, 2008

CASES

SERAC vs Nigeria (2001) AHRLR, 60

WEBSITES

<http://www.ilo.org/global/standards/subjects-covered> by international instruments.

<http://www.social-protection.org/gimi/gess/ShowRessource.action?ressourceId=313> (Accessed April 26, 2014)

<http://www.history.com/topics/industrial-revolution> (accessed 26 February, 2016)

<http://en.wikipedia.org/wiki/universaldeclaration> of human rights. (accessed 8 March, 2016)

http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang-en/index.htm#P49_9596 (accessed 2 April, 2015)

<http://www.social-protection.org/gimi/gess/shoeresource.action?resource.resourceId=313> (accessed 2 February, 2016)

<http://www.peacepalacelibrary.nl/plinklet/index.php?ppn=30232822X> (accessed 12 November, 2016)

INTERVIEWS

Kaziya Chanda, Telephone Interview, 19 December, 2016

Mwanza, Christian, Ministry of Labour and social security office, 14 December, 2016

Chimuka, M, Pensions and Insurance Authority office, 20 December, 2016