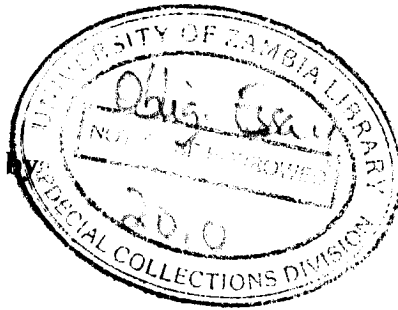


TITLE

Child Labour Laws: The Consistency and Compliance of Zambian Legislation to International Standards and the Role of the Ministry of Labour and Social Security in Implementing and Enforcing the Law on Child Labour



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An obligatory Essay submitted to the Faculty of Law in partial fulfillment of the award of the Bachelor of Laws Degree (L. L. B) at the University of Zambia

UNZA

2010

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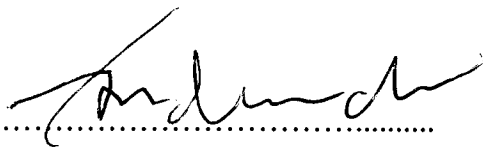
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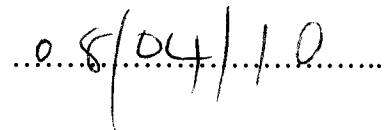
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Abstract

The welfare of children is of utmost importance to the growth and development of society. There is thus need for society to ensure that the proper development of children into productive adults is not inhibited by engaging in child labour. This research study was thus aimed at determining the extent to which child labour legislation complies with international law on child labour and the efficacy of the Ministry of Labour and Social Security in implementing and enforcing child labour legislation. A number of international instruments aimed at increasing the minimum age for at which a child can perform certain types of work and abolishing and preventing child labour have been adopted with the most comprehensive being the ILO Convention on Minimum Age No. 138 of 1973 and the Convention on Worst Forms of Child Labour No. 182 of 1999.

The Zambian government has enacted several laws aimed at eliminating and preventing child labour. It has also taken measures ensuring that the legislation conforms to international standards. However the law on child labour in Zambia still contains provisions that are inconsistent with international standards that need to be amended and aligned with international standards. The Ministry of Labour and Social Security has been mandated to enforce and implement child labour laws such as the Employment of Young Persons and Children Act but has been unable to adequately prevent and eliminate child labour due to insufficient resources and the lack of protection by the law of labour inspectors. Recommendations on eliminating and preventing child labour have thus been made.

Dedication

This Directed Research is dedicated to my Mother, Mrs Annie Kundika Chitendele Nsopela Nyangu (The Queen of my heart) who has stood by me through thick and thin and from whom I have learned the value of education and hard work and to my crazy late Father, Mr George Nyangu from whom I learnt that one is responsible for his or her own destiny.

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First and foremost I am sincerely grateful to Mr F. Mudenda for all the time and effort spent in supervising my research. I would like to thank him for exercising patience when I appeared to be lost and for directing for steering me in the right direction during the course of the research .

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Lastly I would like to express my gratitude to my 'Balfour v. Barty King' crewmates; Alice Chinyimba, Tafara Chenda, Mirriam Kasochi, Mando Kate Munuka, Nsama Annie Chisanga and Natasha Banda for all the good times and support rendered throughout my stay in law school. Thanks you guys!

Statutes

The Constitution of the Republic of Zambia Cap 1

The Defence Act Cap 131

The Employment of Young Persons and Children Act Cap 274

The Employment of Young Persons and Children (Amendment) Act No. 10 of 2004

The Education Act Cap 134

The Factories Act Cap 441

The Juveniles Act Cap 53

The Medical Examination of Young Persons (Underground Work) Act No. 20 of 1973

The Narcotic Drugs and Psychotropic Substance Act Cap 96

The Zambia National Service Act Cap 121

The Penal Code Ca9 87

The Penal Code (Amendment) Act No. 15 of 2005

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Chapter 1

Introduction to the Research Study on Child Labour

1.0 Introduction

From a very young age, many children participate in work activities around the home under the supervision of parents or guardians. Normally this work is designed for the purposes of socialising and training children for normal physical, health, mental and emotional development.¹ However, there are instances where children carry out work under poor conditions which are detrimental and dangerous to the child negatively affecting their proper physical, mental and emotional development such as hawking, hawking, stone crushing, domestic service and farming. Such detrimental work is referred to as child labour which emanates from social, economic and political factors including deliberate exploitations, harmful cultural traditions and gender related discrimination.²

In Zambia, the phenomenon of child labour has increased in recent years due to high levels of adult unemployment. Children have dropped out of school in order to contribute an income towards the sustenance of the family. HIV/ AIDS pandemic has also been a major contributing factor of child labour. It has become the leading cause of orphans in sub- Saharan Africa who are particularly vulnerable to exploitative child labour and other forms of abuse.³ Many have had to

¹ Every Child Counts: New Global Estimates on Child Labour ‘ International Labour Organisation (2002)12-34.

² M. Arole, et al. , Atlas of South Asian Children and Women. (Nepal: UNICEF Regional Office for South Asia), 3-8.

³ R. Mbabazi, ‘Emerging Good Practices of the Community Based Models in Uganda and Zambia’ International Labour Organisation No. 12 (February 2008), 2-1.

take on hazardous labour such as prostitution and street vending while some girls have married early in order to survive. According to a survey conducted in 2005 about 22 percent of all children between the age group 5-17 in the country were estimated to be child labourers engaged in work which was either hazardous or involved long hours of work in the days preceding the survey with 92 percent of all working children belonging to the rural area, and eight percent belonging to the urban sector.⁴

The high prevalence of child labour has led to the call for laws aimed at eliminating child labour so as to promote normal physical, intellectual and emotional development of children creating healthy and productive adults. To this endeavor, the constitution has prohibited the employment of persons in any activities which would be detrimental to their health.⁵ The legislature has further enacted legislation such as the Apprenticeship Act⁶, the Employment Act and the Employment of Young Persons and Children's Act⁷ which was amended by the Employment of Young Persons and Children (Amendment) Act, 2004 with the Ministry of Labour and Social Security implementing and enforcing them.

Exploitation of working children in developed countries has been reported since the 1800s.⁸ However, political awareness of the effects of working on children's physical and psychological well-being gained substantial momentum in the international community only since the start of

⁴ 'Child Labour Survey Report' Central Statistical Office(January 2005), 5-1.

⁵ Constitution of the Republic of Zambia, Cap 1,A. 1(4)

⁶ Cap. 275 of the Laws of Zambia

⁷ Cap. 274 of Laws of Zambia

⁸ H. Cunningham and P.P. Viazzo, *Child Labour in Historical Perspective 1800-1895: Case Studies from Europe Japan and Colombia*. Florence: (Istituto degli Innocenti, 1996), 8-13.

the 1990s leading to the enactment of the International Labour Organisation Conventions on Worst Forms of Child Labour (No. 182) of 1999, the International Labour Organisation Convention on Minimum Age (No. 138) of 1973 , the Optional Protocols to the Convention on the Rights of the Child and the Optional Protocol to Prevent, Suppress and Punish Trafficking in persons , Especially Women and Children of 2000.⁹

The Zambian government has ratified the ILO Convention (No. 138) of 1973 and the ILO Convention (No. 182) of 1999 aimed at eliminating and eradicating child labour and commemorates the World Day Against Child Labour which falls on 12th June in response to the call for the respect and protection of a child from Child Labour which was a cheap source of labour for the industries during the Industrial Revolution of the 18th and 19th Century as well as present day developing countries such as Zambia.¹⁰

1.2 Problem statement

Where the government has ratified an international instrument such as the International Labour Organisation Conventions (No. 138) of 1973 and Convention (No. 132) of 1999, the instrument has to be domesticated before it can be enforced by the courts as international instruments are not self executing.¹¹ The International Labour Conventions No. 138 and 182 therefore are only enforceable once parliament has passed the relevant enabling Legislation which in turn has to be

⁹ The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006) ,55.

¹⁰ H. Cunningham and P.P. Viazzo, Child Labour in Historical Perspective 1800-1895: Case Studies from Europe Japan and Colombia. Florence: (Istituto degli Innocenti, 1996), 5-13.

¹¹ M. Munalula, Legal Process: Legislation and Commentaries. (Lusaka: UNZA PRESS, 2004), 10-30.

consistent with the provisions of the constitution of Zambia.¹² Domestication of Conventions No. 138 and 182 on child labour have thus been achieved through legislation such as the Employment of Young Person's Children Act, read together with the amendment No. 10 of 2004¹³.

There are various mechanisms that have been put in place to implement the provisions on Child Labour. One of these is the Child labour Unit under the Ministry of Labour and Social Security which was established to implement and enforce the Employment of Young Persons and Children Act as amended and derives its authority from section 18 of the Employment of Young Persons and Children (Amendment) Act.¹⁴ Other measures to combat child labor have been developed by individual companies often in cooperation with non-governmental organisations. These initiatives include the promotion of investment and trade principles, demands on suppliers in developing countries, and the labeling of products.¹⁵ The government has faced many hurdles in implementing the international standards such as those laid down by the ILO Conventions (No. 138) of 1973 and (No. 182) of 1999 and enforcing legislation on child labour hence the need to recommend solutions to the above problem which will be achieved in this paper.¹⁶

¹² Article 1(3) of Constitution of Zambia, Cap 1 of the Laws of Zambia

¹³ The Employment of Young Person's and Children(Amendment), 2004

¹⁴ Amendment No. 10 of 2004

¹⁵ The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006), 1-5.

¹⁶ 'Understanding Childrens work in Zambia' ILO, Unicef, World Bank Group (May 2009) ,28.

1.3 Purpose of the study

This research seeks to investigate the nature of child labour and its worst forms and the domestic legislation governing it as well as the steps that the government has undertaken to ensure that it is consistent with international law or International Labour Organisation standards on child labour and meet the international standards. It also seeks to establish and analyse the role of the Ministry of Labour and Social Security in the implementation and enforcement of the child labour laws and the effectiveness of enforcement mechanisms. Furthermore it is an endeavor to trace the origins of child labour and the advent of the related laws in order to understand how it came to be in and thereby eliminating its sources in an effort to end it. In so doing laws to curtail child labour and prevent future forms of it from occurring.

1.3.1 Study Objective

This study aims at attaining the following core objectives:

- Trace the advent of child labour and child labour laws in Zambia and at International Level
- Establish the role of the government in the fight against child labour
- Identify what steps it has taken to ensure local laws are consistent with international laws
- Identify what steps it will take in the future to ensure compliance
- Identify the mechanisms of enforcement, their achievements and shortfalls
- The efficacy of the ministry of labour in the enforcement of child labour law
- recommend solutions on what steps to be taken in order to meet international standards

1.4 Significance of the Study

This study is important in that it provides information on the phenomenon of child labour which has attracted a significant level of attention due to the realisation of the relevance of children in the sustenance of society thereby prioritizing the rights of a child which was unlike the situation in the bygone era. There is need for the protection and promotion of the well being of a child to ensure that he or she develops into a health productive being who will contribute to the development of society which is hampered when they are exposed to child labour. Furthermore the information compiled after the research will be a source of reference for other researchers as well as for any person looking for information on the subject.

1.5 Literature Review

The purpose of this section is to show the research that has been conducted in relation to the aforementioned topic and to demonstrate what gap is yet to be filled through further research which will be the basis of the research paper. There have been a number of research papers conducted on the welfare of children in general incorporating child labour. In 1989 a study was conducted on child welfare which was aimed at discussing the law on the subject of child abuse and neglect and reviewing the effectiveness of the legal framework governing it in Zambia. Forms of child abuse researched on included those of serious physical abuse, moral abuse, child abandonment and child labour.¹⁷ Further research on the topic of child abuse was undertaken by Chinyawa,¹⁸ where child labour such as stone crushing, street begging and vending was also seen as a form of child abuse. In another study, the thrust of research was centered on a child ranging

¹⁷ M. Mdlalo, 'Child Welfare and the Law in Zambia: Are they Adequate Legal Safeguards' Obligatory Essay(1989)

¹⁸ C. Chinyawa, 'Child Abuse and the Law in Zambia' Obligatory Essay(1994)

from the age of 0-21 years of age and was aimed at reviewing the law regulating maintenance, education and property rights.¹⁹

The international community including Zambia in recognizing and protecting the rights of a child are parties to the United Nations Convention on the Rights of a Child (CRC) of 1989. This has led to research by scholars in order to determine the obligations of the state under the CRC and the obstacles experienced by the government in implementing the provisions of the CRC and national legislation.²⁰ In 2008 a study aimed at raising the awareness on the interests of an orphaned child in light of the CRC propounded on the rights to health, education and housing as well as the significance of the African Charter on the Rights and Welfare of a Child.²¹ These studies have shown the steps that the government has undertaken in order to achieve the goals of the CRC and provided recommendations on how it can improve the welfare of the child.

In relation to the above, the aspect of child labour been a cause for concern and has garnered widespread interest as a field of research. This is as a result of the high prevalence of children in the formal and informal sectors leading to their poor development of children. In response to eradicate this phenomenon the international community promulgated the fight against child labour via the Conventions on worst forms of Child Labour and Minimum Age. At National level this is achieved through various legislation such as the Employment of Young of Person's and Children's Act and the Apprenticeship Act.

¹⁹ D.P.Soko, 'Review of the Law Affecting the Welfare of the Child in Zambia' Obligatory Essay(1989)

²⁰ A. Tembo, 'Convention on the Rights of a Child and it's Implementation in Zambia' Obligatory Essay(2008)

²¹ G.N. Akupela, 'The CRC and the Marginalised Child' Obligatory Essay(2008)

One of the contributions made towards this study was by Moses Phiri in his Directed Research titled 'Child Labour in Zambia: Legislative Attempt to Eliminate Work Hazardous to Children'²² which was based on national law practices and the efficacy of the law regulating child labour. He achieved this by listing and discussing national legislation and International Conventions such as the World Declaration and Plan of Action on the Survival, Protection and Development of Children 1996 and the ILO Conventions on Minimum Age (No. 138) of 1973 and on Worst the Forms of Child Labour (No. 182) of 1999.

Another study to this effect was undertaken analysing the weaknesses and strengths of the child labour laws. It also highlighted and considered the ideal and ultimate standards put in place by the international labour organization and the Zambian government's response to child labour in relation international requirements. It also aimed at making a comparative study with third world countries such as Mali that have effectively implemented International standards in their national Legislation.²³

Studies on child labour have been initiated on different aspects as illustrated above. Others have been centred on the work-family Conflict concept as a source of child of child labour. One such study posed the question 'Is the existing Zambian Legislation adequate for curbing Child Labour and Work Family Conflict: An analysis of the legal framework in Zambia?' The aim of the paper was to bring forth issues of child labour vis 'a-vis work family conflict in Zambia which refers to

²² M. Phiri, 'Child Labour in Zambia: Legislative Attempt to Eliminate Work Hazardous to Children' Obligatory Essay(2000)

²³ T. Miyanda, 'Reviewing and Examining the Role and Impact of Existing Legislation on Child Labour' Obligatory Essay(2003)

the difficulties that exist in reconciling work and family and to determine whether Zambian Legislation is adequate for curbing work- family conflict and thus child labour.²⁴

The above studies were conducted in order to establish National and International laws on child labour, the efficacy of national law and its shortfalls, to compare the laws of other third world countries that have effectively implemented them with Zambian Laws in order to derive lessons from them. Furthermore one of the studies illustrated the role of work family conflict in bringing about and eliminating child labour. This paper will seek to expand the information base of child labour by outlining the advent of child labour and child labour laws from the period of the industrial revolution to date and elaborating on its nature as it is important to know the history and the course of every important subject.

Another diverging point in this study will be aimed at outlining and establishing the role and of the Ministry of Labour and Social Security in the elimination of child labour through mechanisms such as the Child Labour unit. It will also look at the measures that the government has taken to ensure that national laws are in compliance with the international conventions and what improvements can be made in order to achieve this goal. Furthermore it will seek to establish the nexus between national laws and international laws as well as provide an analysis of how and why the western world has succeeded in eliminating child labour and its differences from third world countries such as Zambia that has led to this achievement.

²⁴ C.C. Mushota, ' Is the Existing Zambian Legislation Adequate for Curbing Child Labour and Work Family Conflict: An Analysis of the Legal Framework in Zambia' Obligatory Essay(2006)

1.6 Chapter Outline

The research study undertaken on child labour is contained in the subsequent four chapters to the present chapter as outlined below.

Chapter 2

This chapter looks at the selection of definitions of child labour from different authorities and gives an overview of the nature of child labour. It further discusses the type of work performed by children as well as the causes and effects of child labour.

Chapter 3

The third chapter at looks and discusses the international law and Zambian legislation on child labour laws such as the ILO Conventions No. 138 of 1973 and No. 182 of 1999 and the Employment of Young Person's and Children's Act respectively. It also provides an evaluation of the Zambian Legal framework in relation to international law and international standards.

Chapter 4

This chapter provides an outline of the Ministry of Labour and the role it plays in the implementation and enforcement of child labour encompassing the mechanisms of enforcement such as the Child labour unit, its mandate, constitution and effectiveness and reformations to be made in the role it plays in eliminating child labour.

Chapter 5

Chapter five comprises of suggested recommendations that may be used to improve on the shortfalls identified in the elimination of child labour in Zambia and outlines the conclusions drawn from the material in the text.

1.7 Methodology

This research incorporates secondary and primary data which consists of information from books, journals, Legislation, international instruments and through interviews with relevant officials such as experts on the subject and any other relevant authority. A major portion of the research was conducted through desk research and qualitative research derived from interpreting data such as statistics as well as authoritative works from the internet.

Chapter 2

The Concept of Child Labour

Societies have long sought to eliminate child labour due to the negative impact it has on the development of the child.²⁵ This has been as result of the large percentage of children that have been exploited for economic gains worldwide including Zambia resulting into children becoming unproductive the adult members of society who contribute very little or nothing to the economic and social development of their individual societies.²⁶ This chapter therefore discusses the nature of child labour, to what extent it exists as well as its causes and effects in light of the Zambian experience. In discussing child labour, it is imperative to note that child labour is distinguished from child work which is not illegal.²⁷

2.1 Conceptual Definitions

2.1.1 Child Labour

Child labour is understood and defined differently according to each society.²⁸ There is no universal definition for child labour as each international instrument and domestic legislation define it differently depending on the age of a child due to the difference in the distribution and

²⁵ Every Child Counts: New Global Estimates on Child Labour ‘ International Labour Organisation (2002), 5.

²⁶ ‘Understanding Childrens work in Zambia’ ILO, Unicef, World Bank Group (May 2009), 1.

²⁷ Child Labour Survey Report, Central Statistical Office ,(January 2005) , 5.

²⁸ J. Boyden, B. Ling, and W. Myers, What Works for Working Children. (Stockholm: Rädda Barnen and UNICEF, 1998), 3.

conditions of child labour which vary from region to region.²⁹ It should be noted that not all work in which children participate is child labour and is therefore not prohibited. This is evident from section 4(2) of the Employment of Young Persons and Children Act which provides :

“The provisions of this section shall not apply to work done by children in technical schools or similar institutions, provided that such work is approved and supervised by the Permanent Secretary, Ministry of Education, or some person appointed by him for that purpose.”

Such work is referred to as Child work and is defined as “work that is done by children for purposes of socializing and training for normal development under supervision by parents within the family setting or any other authorised guardian.”³⁰ Such work is beneficial and essential for the proper development of a child as opposed to child labour.

Various authors have attempted to define the concept of child labour in light of the many pieces of legislation that have been enacted to reduce and eliminate it. Child Labour has been defined as “work carried out by children under conditions which are stifle, detrimental and dangerous to the child and affects proper physical, emotional and intellectual development in violation of international and national legislation.”³¹ It has also been defined as all economic activity for children under 12 years, any work for those aged 12-14 of sufficient hours per week to undermine their health or education, and all "hazardous work" which could threaten the health of

²⁹ The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006) ,13.

³⁰ Child Labour Survey Report, Central Statistical Office ,(January 2005), 5.

³¹ Child Labour Survey Report, Central Statistical Office ,(January 2005), 4.

children under 18.³² It is used to refer to that subset of children's work that is injurious, negative or undesirable to children and should be targeted for elimination.

2.1.2 Forms of Child Labour

To the international community as well as in the Zambian Community, the term "Child Labour" does not encompass all work performed by children under 18 Years. Work that falls within the legal limits and does not interfere with children's health and development or prejudice their schooling can be a positive experience.³³ Hence work which falls within the legal limits and interferes with children's welfare thus amounting to child labour has been classified into three categories at international level. These are labour performed by a child who is under the minimum age specified for that kind of work, Hazardous Work and the Unconditional Worst Forms of Child Labour.³⁴ According to the Global report on the End of Child Labour "Labour performed by a child who is under the minimum age specified for that kind of work (as defined by national legislation in accordance with accepted international standards), and that is thus likely to impede the child's education and full development is prohibited."³⁵

³² P. Van berg, *Eliminating Child Labour: Guides for Employers*. (International Labour Organisation, 2007) ,28.

³³ *The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work* (2006) ,75.

³⁴ *The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work* (2006), 50.

³⁵ *The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work* (2006) ,78.

Hazardous work refers to any work done by children which has the potential to do harm.³⁶ It is work that is done in unhealthy conditions that could result in a child being killed or injured (often permanently) and or is made ill as a consequence of poor safety and health standards and working conditions. It is work that is undertaken at high and extreme temperatures.³⁷ A hazard is anything with the potential to do harm such as power driven agriculture machinery in which a child can get trapped or entangled in the moving parts or chemicals. It is closely associated with risk which is the likelihood of potential of harm from that hazard being realized.³⁸ Hazardous Child Labour is therefore based on the conditions under which children work.

The Unconditional Worst Forms of Child Labour on the other hand is that labour which is extremely hazardous to the child due because of the nature of the tasks given to the extent that the conditions of work are physically demanding. Worst forms of child labour include child slavery, debt bondage and other forms of forced labour, commercial sexual exploitation, trafficking and forced recruitment of children for use in armed conflict.³⁹

This concept of child labour is based on the International Labour Organisation Convention on Minimum Age (No. 138) of 1973, which represents the most comprehensive and authoritative international definition of minimum age for admission to employment or work, implying economic activity. From the above definitions it can be noted that work which is detrimental to the physical, health, emotional and mental welfare of a child is child labour.

³⁶ Every Child Counts: New Global Estimates on Child Labour, International Labour Organisation (2002), 23.

³⁷ Every Child Counts: New Global Estimates on Child Labour, International Labour Organisation (2002), 20.

³⁸ P. Van berg, 'Eliminating Child Labour: Guides for Employers'. International Labour Organisation, 2007), 10-13.

³⁹ 'Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009) ,21.

2.2 The Nature of Child Labour

Child labour exists in different forms and degrees. On one end of the spectrum is light work which harms children such as domestic work, on the other end are extremities such as child slavery and sexual exploitation. Child labour is exploitative in nature as it is abusive to a child's health. It is regarded as a cheap source of labour as employers ordinarily pay a child less than they would an adult.⁴⁰ In a number of cases the child does not even receive any wages for his or her efforts as is the case in Zambia where most children working in the domestic sector are not paid. It is for this reason that some multinational corporations operating in developing countries prefer to employ children as they can be recruited for less pay, more work can be extracted from them and there is no union problem with them.⁴¹

Child labour is also either economic or non economic in nature. In Zambia most of the research on child labour is focused on economic activity as opposed to non economic activity.⁴² Economic activity is a broad concept that encompasses most productive activities undertaken by children, whether for the market or not, payment in cash or in kind, profit or family gain, for a few hours or full time, on a casual or regular basis, illegal or legal;⁴³ it excludes chores undertaken in the child's own household and schooling.

⁴⁰ J. Boyden, B. Ling, and W. Myers, What Works for Working Children. (Stockholm: Rädda Barnen and UNICEF, 1998), 5.

⁴¹ ' Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009), 24.

⁴² Understandig Childrens Work in Zambia' ILO, Unicef, World Bank Group (May 2009) ,17.

⁴³ The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006), 75-40.

An estimated 47 percent of children aged 7-14 years, over 1.2 million children in absolute terms, were economically active in the 2005 reference year.⁴⁴ Some 866,000 children under the age of 12 years were at work in economic activity, the absolute minimum working age specified by the country upon ratification of ILO Convention No. 138 (Minimum Age) in 1976, and 715,000 children aged less than 10 years were economically active.⁴⁵ Non economic activity is defined as any productive activity falling outside the System National Accounts production boundary and consists mainly of work activities performed by the household and its members. Non economic activities include work of a domestic nature performed within the household as well as voluntary and charitable activities⁴⁶ However it is typically excluded in public estimates even though a larger percentage of children participate in it more than they do in economic activity.

2.2.1 Types of Work Performed by Children

There are various sectors in Zambia in which child labour is employed. These are the agricultural sector which has the highest prevalence of child labourers⁴⁷, the fishing, forestry, fishing, manufacturing, trade, transport and communication, community, social and personal services, mining and quarrying, construction, hotels and restaurants, finance, insurance and real estate.⁴⁸ As mentioned above the vast majority of working children are found in the agriculture sector

⁴⁴ 'Understanding Childrens Work in Zambia' ILO, Unicef, Unicef, World Bank Group (May 2009), 1.

⁴⁵ ' Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009), 39.

⁴⁶ ' Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009) ,26.

⁴⁷ G. Thijis, Tackling Hazardous Child Labour Practice in Agriculture: Guidance on Policy and Debate. (ILO, 2006) ,1.

⁴⁸ Child Labour Survey Report' Central Statistical Office (January 2005), 43.

which accounts for 70 percent of working children under the age of 15.⁴⁹ Much of child labour in this sector goes unnoticed and unacknowledged as children working on a family farm is viewed as family solidarity as is principally evidenced in the rural areas which accounts for 95 percent of all child labourers working in the agricultural sector in Zambia.

Agriculture is still under regulated all over the world and where child labour laws in this sector exist they are not strictly applied. At national level there is historically a view that child labour exists in urban and industrial settings such as transport and communication, manufacturing, mining and quarrying.⁵⁰ This proposition applies to Zambia as is illustrated in the Employment of Young Person's and children's Act which does not include commercial and agricultural activities in its definition of "industrial undertaking".⁵¹

Manufacture, trade, and domestic services are less hazardous but also count a smaller proportion of laboring children. Children employed in construction, transportation, and mining are exposed to very high health and safety risks, but the proportion of children in these business sectors is relatively small.⁵² The unpaid work that most children undertake within the family does not generally appear to be safer or more favorable to their health than paid work.

⁴⁹ ' Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009),25.

⁵⁰ The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006) ,35-50.

⁵¹ The Employment of Young Persons and Childrens, Cap 274, s. 3 (e)

⁵² Child Labour Survey Report, Central Statistical Office, (January 2005), 35.

2.3 Causes of Child Labour

There are many factors that lead to an increase in the number of children exploited for labour. These causes are relative and dynamic and are dependent on the environment from which one is exposed to. Some common causes of child labor are poverty, parental illiteracy, social apathy, ignorance, lack of education and exposure, exploitation of cheap and unorganized labor. The family practice to inculcate traditional skills in children also pulls children inexorably in the trap of child labor, as they never get the opportunity to learn anything else.⁵³ Others include ineffective enforcement of the legal provisions pertaining to child labour, non-availability of and non accessibility to schools, irrelevant and non attractive school curriculum and the employers preference in some cases of child works as they constitute cheap labour and are not able to constitute themselves into unions.

The most common cause of child labour is poverty.⁵⁴ In order to survive poor families may send their children to work in order to increase the income of the family. The need for children to work may be as a result of an insufficient income of the breadwinner or on the death of a bread winner.⁵⁵ Monetary constraints and the need for food and shelter drive children into premature labour. Child labour in turn contributes to the perpetuation of poverty as children do not acquire the necessary skills needed to contribute towards the economic growth of the society. For example findings by the World Bank from Brazil demonstrate that early entry of children into

⁵³ 'Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009) 27.

⁵⁴ Handbook for Community Child Labour Committees: Zambia TB support Project Community Action' ILO IPEC (2008), 20-15.

⁵⁵ Handbook for Community Child Labour Committees: Zambia TB support Project Community Action' ILO IPEC (2008), 13.

the labour force reduces the future earnings by about 13 to 20 percent, increasing significantly the probability of being poor.⁵⁶ However poverty is not the only cause of child labour.

Illiteracy of parents contributes towards child labour in that parents who have not had a proper education do not understand the need for wholesome proper physical, cognitive and emotional development of their child. They are unexposed and do not understand nor for see the benefits of a good education and so do not realize the importance of education for their children.

Over the years the HIV and AIDS pandemic in sub-Saharan Africa where Zambia is located, has grown and become one of the leading cause of orphans on the continent. The pandemic has added a new dimension to child labour.⁵⁷ Many of the orphaned children drop out of school due to the lack of resources or support from anyone as their guardians or care taker has died. These children resort to child labour in an effort to meet their day to day needs. This has led to the mushrooming of the phenomenon of street kids who have been displaced from their homes.⁵⁸ Girls are particularly affected as they are more frequently expected to provide care and support including the nursing of sick relatives. Some girls have had to marry at an early age in order to survive.

Furthermore cultural and traditional beliefs influence the increase of child labour as society believes that children should share in the family responsibilities. Poor families consider working

⁵⁶ N. Ilahi, P. Orazem, G. Sedlacek, 'How does Working as a child affect wage, income and Poverty as an adult?' World Bank (May 2005), 3-1.

⁵⁷ The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006), 55.

⁵⁸ R. Mbabazi, ' Emerging Good Practices of the Community Based Models in Uganda and Zambia', International Labour Organisation 12 (February 2008), 3.

of children natural as they contribute towards the livelihood of the family.⁵⁹ Many cultures favour sending a male child to school over female children since it is believed that men are more likely to get employment outside the home where as women take on domestic work.⁶⁰ It is believed that educating a male child will benefit the family whereas educating a female child will only benefit the family into which she marries.⁶¹ These beliefs sideline the female child in the acquisition of an education. These factors have adverse effects on children and the society as a whole.

2.3.1 The Effects of Child Labour

Work may have positive effects on children's health in some situations for the poorest of children. However the positive effects are superficial as they contribute to the mere means of production and not to the future welfare of the child.⁶² The result of children participating in the labour market is that they reduce on the number of hours spent on school work or simply altogether stop going to school early in life.

Many children are at risk of sexual, emotional and physical abuse by the adult labourers with whom they interact. This is especially so in the case of orphans and children who have resorted

⁵⁹ The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006), 69.

⁶⁰ Handbook for Community Child Labour Committees: Zambia TB support Project Community Action' ILO IPEC (2008), 17.

⁶¹ Handbook for Community Child Labour Committees: Zambia TB support Project Community Action' ILO IPEC (2008), 20-15.

⁶² N. Ilahi, P. Orazem, G. Sedlacek, 'How does Working as a child affect wage, income and Poverty as an adult?' (May 2005), 3.

to living on the streets.⁶³ Child labour therefore results in the gross violation of children's rights as they are denied the right to an education, health, shelter and other basic needs. The children's physical development is also affected resulting in stunted growth, exposure to injury, illness, and permanent or temporary disabilities and in extreme circumstances, death due to dangerous working conditions.⁶⁴

Furthermore the nature of some work such as domestic labour and trafficking keeps children in isolation thereby preventing them from developing social skills as well as learning how to interact with others.⁶⁵ This leads to feeling of low self esteem and a lack of confidence in children. Children are forced to become adults early in life before they are ready doing work that requires an adult level of maturity. Ultimately these effects have an overall negative effect on the community as a whole as the children do not develop into self sufficient members of the society who can contribute towards the economic growth of the community. Finally, although long-term effects of child labour cannot be clearly identified, there seems to be a correlation between inferior health standards in adulthood and child labor, particularly for women.⁶⁶

⁶³ 'Handbook for Community Child Labour Committees: Zambia TB support Project Community Action' ILO IPEC (2008), 17.

⁶⁴ M. Weisbrot, 'Can Developing Countries Afford to Ban or Regulate Child Labour?' Centre for Economic Policy and Research (2000), 1.

⁶⁵ 'Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009), 23.

⁶⁶ N. Ilahi, P. Orazem, G. Sedlacek, 'How does Working as a child affect wage, income and Poverty as an adult?' (May 2005), 11-6.

2.4 Conclusion

In conclusion, there is need to reduce and eliminate child labour due to the negative impact it has on children and the society at large as evidenced from the effects of child labour. It impedes the physical, emotional and mental development of children as they do not live in an environment that enables them to do so. In order to eradicate child labour it is important that stringently applicable laws on the elimination of child labour are enacted at both national and international level. Other measures such as prevention, withdrawal of children involved in child labour and providing alternatives such as educational support, protection and integration of children can be implemented in the community to address the issue of child labour.

Chapter 3

Zambian and International Laws on Child Labour

Child Labour was one of the first and most important issues to be addressed by the international community.⁶⁷ It first emerged as a public policy issue when the impact of the industrial revolution was felt. Many of the actions that were initiated by the first wave of industrialised countries have become the standard element of the universally recognised package of intervention which include advocacy campaigns, public inquiries, minimum age legislation, labour and schools inspection and education provisions for working children.⁶⁸ The International Labour Organisation and the United Nations International Childrens Emergency Fund under the auspices of the United Nations and the World Bank stand for a world where no child is forced to work at the expense of their health and development and their future prospects of decent work.⁶⁹ To this end International law aimed at eliminating child Labour has been adopted from which developing countries such as Zambia have benefited by adopting international standards in their legislation which is the focus of this chapter.⁷⁰

3.1 Advent of International Labour Laws

The history of Child Labour can be traced in some dark realms of industrialization. But a more detailed study of this heinous, shameful practice can reveal that child labour was there much

⁶⁷ 'The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006) 1.

⁶⁸ 'The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006) 5.

⁶⁹ J. Boyden et al, What Works for Working Children. (Stockholm: Radda Barnen and Unicef, 1998) 11.

⁷⁰ ' Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009) 55.

before industrialization in various forms like child slavery.⁷¹ In earlier times child labour was not considered a controversial issue as children used to accompany their parents in agriculture and other jobs. However in the late 1700's and early 1800's, power driven machines replaced hand labour for the making of most manufactured items. Factories sprung up everywhere first in England and then the United States of America. The owners of these factories needed a new source of cheap labour which they found by employing children.⁷²

By 1810, about 2,000,000 school-age children were working 50- to 70-hour weeks. By the mid 1800's child labour became a problem as children were working 12 to 18 hours a day, 6 days a week for a minimal wage.⁷³ In 1778, more than 60% of workers in textile mills of England and Scotland were children. Children working in mines had to crawl through tiny pits to reach the coalface with very poor ventilation working for long hours which inhibited their mental, health and emotional development and welfare.⁷⁴ By 1810, about 2,000,000 school-age children were working 50- to 70-hour weeks.⁷⁵

Pessimists such as Alfred, Engels, Webb and Marx, argued that children worked under deplorable conditions and were being exploited by the industrialists.⁷⁶ Church, labour groups, teachers and many other people became outraged by the cruelty experienced by children and

⁷¹ J. Boyden et al, What Works for Working Children. (Stockholm: Radda Barnen and Unicef, 1998) 5.

⁷² P. Deane, The First Industrial Revolution. (Cambridge: Cambridge University Press, 1965) 8.

⁷³ J. Boyden et al, What Works for Working Children. (Stockholm: Radda Barnen and Unicef, 1998) 6-7.

⁷⁴ H. Cunningham et al., Child Labour in Historical Perspective 1800- 1895: Case Studies from Europe, Japan and Colombia. (Florence: Unicef, 1996) 1-15.

⁷⁵ P. Deane, The First Industrial Revolution. (Cambridge: Cambridge University Press, 1965) 6-10.

⁷⁶ H. Cunningham et al., Child Labour in Historical Perspective 1800- 1895: Case Studies from Europe, Japan and Colombia. (Florence: Unicef, 1996) 7.

began to press for reforms as many people became aware of the demand for an educated workforce and schooling became more important and concepts of labourers and rights of children were developed.⁷⁷ Britain was the first to pass laws on child labour, with other European countries following suit.⁷⁸ A series of laws from 1802 to 1878 gradually shortened working hours, improved conditions, and raised the age at which children could work. These laws include the British Factory Act of 1802, Cotton Factories Act of 1819 and the Regulation of Child Labour Law of 1833.⁷⁹

3.2 International Law on Child Labour

A number of international conventions and instruments have been adopted through which national governments are obligated to promote and protect the rights of children. These instruments range from United Nations Conventions, International Labour Organisation Conventions and the African Charter on the Rights and Welfare of the Child.⁸⁰

3.2.1 International Labour Organisation Conventions

The International Labour Organisation was created in 1919, to improve the conditions of workers. It was the first specialized agency to be affiliated with the United Nations in 1946. The International Labour Organisation adopted an international standard aimed at the elimination of

⁷⁷ P. Deane, *The First Industrial Revolution*. (Cambridge: Cambridge University Press, 1965) 6-10.

⁷⁸ H. Cunningham et al. *Child Labour in Historical Perspective 1800-1895: Case Studies from Europe, Japan and Colombia*. (Florence: Unicef, 1996) 8-10.

⁷⁹ H. Cunningham et al., *Child Labour in Historical Perspective 1800- 1895: Case Studies from Europe, Japan and Colombia*. (Florence: Unicef, 1996) 1-5.

⁸⁰ The End of Child Labour: Within reach Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006) 55.

child labour at its first conference 1919.⁸¹ The conference, which is the body of the ILO that sets policy, adopts conventions and recommendations, and monitors progress in the application of labour standards has adopted several standards on child labour culminating in its most recent standards establishing an immediate obligation to eliminate the worst forms of child labour.⁸²

3.2.1.1 Convention No. 138 of 1973 on the Minimum Age for Employment

The Convention on the Minimum age for Employment was adopted in 1973 and was the first Convention on child labour that covered all economic sectors where children are exploited for labour.⁸³ It lays down the minimum ages at which children can be admitted for employment as well as the minimum age at which certain types of work can be performed. It prohibits any young person below the age of 18 from engaging in any type of labour in its worst forms such as prostitution.⁸⁴ It however allows the national laws of member states to provide for the employment of children aged 13-15 on light work which is not likely to be harmful to their health or development and prejudicial to their school attendance.⁸⁵

The convention further stipulates the minimum age at which a child can be employed in full time work in Article 2 which states as follows:

⁸¹ Ghebali, Victor- Yves, *The International Labour Organisation: a Case Study on Evolution of U.N Specialised Agencies*. (Boston: London Maritimes Nijhoff Publishers, 1989)12.

⁸² The End of Child Labour: Within reach Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006) 1-4.

⁸³ The End of Child Labour: Within reach Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006) 28.

⁸⁴ Article 3 of the ILO Convention No. 138 of 1973

⁸⁵ Article 7 of the ILO Convention No. 138 of 1973

“(3.) The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

Where a member state does not have the economic capacity to set the minimum age at 15 it may set the minimum age at 14 provided it has liaised with the relevant parties mentioned in article 3.⁸⁶ All signatories to the convention are obligated to ensure that their national laws are in conformity with the labour standards established by Convention No. 138 of 1973.⁸⁷ The Zambian government ratified the Convention in 1976 and domesticated it by aligning its legislation with international standards contained therein.⁸⁸ The definition of age of a child in the Constitution was amended from a person below 14 to one below 18 in 1991.⁸⁹

3.2.1.2 Convention No. 182 of 1999 on the Elimination of the Worst Forms of Child Labour

The year 1999 was a pivotal year for child Labour in that the Convention on the Worst Forms of Child Labour was adopted by the ILO. It affirmed the commitment of the international community in the fight against child labour. It is aimed at the urgent prohibition and elimination of the worst forms of child labour through immediate and effective measures which all

⁸⁶ Article 4 of the ILO Convention No. 138 of 1973

⁸⁷ Article 9 of the ILO Convention No. 138 of 1973

⁸⁸ Internationally Recognised Standards in Zambia, Report for the WTO General Council Review of Trade Policies in Zambia (2009), 4-6.

⁸⁹ Understanding Childrens Work In Zambia’ ILO, Unicef, World Bank Group (May 2009) , 45-59.

signatories have the duty to take.⁹⁰ The worst forms of child labour as found in Article 3 are defined as:

- “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

Worst forms of child labour such as sexual exploitation and trafficking are also referred to as unconditional forms of child labour as their status cannot be changed regardless of change in working conditions.⁹¹ They are absolutely proscribed by law for all children below the age of 18 unlike hazardous forms of child labour which can be done by children falling within certain age groups. The types of work referred to are to be determined by national law taking into consideration relevant international standards set out in the Worst Forms of Child Labour

⁹⁰ Article 1 of the ILO Convention No. 182 of 1999

⁹¹ The End of Child Labour: Within reach Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006) 55-23.

Recommendations, 1999.⁹² Convention No. 182 of 1999 was ratified by Zambia in 2001 and domesticated by amending the Employment of Young Persons and Children Act⁹³ in 2004 in order to make it consistent with the provisions of the Convention.⁹⁴

3.2.2 The United Nations Convention on the Rights of the Child of 1989

The United Nations Convention on the Rights of the Child (CRC) which was adopted by the United Nations General Assembly on 20 November 1989 and came into force on 2 September 1990, is the most widely ratified human rights convention in history with only Somalia and the United States of America as the only exceptions.⁹⁵ It is the first legally binding document to give universally accepted norms and standards for the protection and the promotion of children's rights in a single text.⁹⁶ The convention as embodied in several articles there under calls for the eradication of child labour in its various forms. Article 6 of the Convention on the Rights of the Child provides

“ State Parties recognize the rights of the child to be protected from economic exploitation and from performing such work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”

⁹² Article 4 of the ILO Convention No. 182 of 1999

⁹³ Cap 247

⁹⁴ ‘Child Labour Survey Report’ Central Statistical Office(January 2005), 5-1.

⁹⁵ The End of Child Labour: Within reach Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006) ,55-23.

⁹⁶ Handbook for Community Child Labour Committees: Zambia TB support Project Community Action’ ILO IPEC (2008), 14-17.

Each state party has the duty to take legislative, administrative, social and educational measures to ensure the implementation of this article which provides for a minimum age for admission of employment, appropriate regulation of the hours and conditions of employment and appropriate penalties or other sanctions to ensure the effective enforcement of the above article.⁹⁷

Article 34 of the Convention calls for the prevention and the protection of a child from the worst forms of child labour such as sexual exploitation and sexual abuse. It implores member states to take measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices and the exploitative use of children in pornographic performances and materials. Other worst forms of child labour prohibited by the convention are the abduction of or traffic in children for any purpose or in any form.⁹⁸ The convention goes further in protecting the child by making it obligatory for member states to protect children from all other forms of exploitation prejudicial to any aspects of the child's welfare.⁹⁹ The Convention further has two Optional Protocols on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography which were adopted in 2000 by the United Nations General Assembly.¹⁰⁰

3.2.3 The Palermo Protocol

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, was adopted by the United Nations General Assembly resolution 55/25 and entered

⁹⁷ Article 33 of the UN Convention on the Rights of the child of 1989

⁹⁸ Article 35 of the UN Convention on the Rights of the Child of 1989

⁹⁹ Article 36 on the UN Convention on the Rights of the Child of 1989

¹⁰⁰ Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009) 51-53.

into force on 23 December 2003. It is the first universal Instrument that addresses all aspects of human trafficking and aims to prevent and combat trafficking in persons while paying particular attention to women and children.¹⁰¹ The Protocol is one of the three supplements to the United Nations Convention against Transnational Organised Crime which was opened for ratification in Palermo, Italy hence it being called the Palermo Protocol. It is the first global legally binding instrument with an agreed definition on trafficking in persons.¹⁰² It defines trafficking in persons in Article 3 (a) as

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹⁰³

¹⁰¹ Article 2 of the Palermo Protocol of 2000

¹⁰² Handbook for Community Child Labour Committees: Zambia TB support Project Community Action' ILO IPEC (2008), 20-15.

¹⁰³ Article 3 of the Palermo Protocol of 2000

The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in person's cases.¹⁰⁴

3.2.4 The African Charter on the Rights and Welfare of the Child

Global international standards on child labour contained in the ILO Conventions and the United Nations Conventions on child labour have been affirmed by the African Union and incorporated in the African Charter on the Rights and Welfare of the Child which came into force on 29 November 1999.¹⁰⁵ The Charter is aimed at improving the welfare of the African child by protecting all forms of child rights as contained in the Convention on the Rights of the Child including the protection of the child from child labour.

Article 15 of the Charter is centered on the protection of the child from child labour. It requires state parties to take appropriate legislative and administrative measures to ensure the full implementation of this article and providing through legislation, minimum wages for admission to employment, regulation of hours, and conditions of employment.¹⁰⁶

3.3 Legal Framework of Child Labour in Zambia

It has been argued that developing countries cannot afford to ban or regulate against child labour because they are too poor to take the measures that were taken by developed countries to

¹⁰⁴ Handbook for Community Child Labour Committees: Zambia TB support Project Community Action' ILO IPEC (2008), 20-16.

¹⁰⁵ Preamble to the African Charter on the Rights and Welfare of the Child of 1990

¹⁰⁶ Article 15 of the African Charter on the Rights and Welfare of the Child of 1990

eliminate child labour.¹⁰⁷ However when one compares the income of developed countries such as the United States of America at the time legislation against child labour was enacted with that of developing countries such as Peru where child exploitation is prevalent, developing countries have a higher per capita income than today's developed had at the time they first took measures to eliminate child labour.¹⁰⁸ This suggests that a general claim that developing countries are too poor to regulate against child labour is without economic foundation. Furthermore legislative bans eventually change the customs of a society, making it socially unacceptable to exploit children.

To this end Zambia, a developing country, has enacted several laws against child labour spread across various pieces of legislation ranging from the Constitution to the Penal code with the most comprehensive law regulating employment of children being the Employment of Young Persons and Children Act.¹⁰⁹

3.3.1 The Constitution of the Republic of Zambia

The Constitution is the supreme law on which all other laws in Zambia are founded. A law that is inconsistent with any of the provisions of the constitution will thus be declared null and void to the extent of its inconsistency.¹¹⁰ The Bill of Rights, part III of the Constitution provides for the protection of fundamental rights and freedoms of an individual. It provides, *inter alia*, for the

¹⁰⁷ R. Naiman et al, 'Can developing countries afford to ban or Regulate child labour?'. Centre for Economic Policy Research(1999), 1-2.

¹⁰⁸ R. Naiman et al, 'Can developing countries afford to ban child labour. Centre for Economic Policy Research (1999), 1-9.

¹⁰⁹ Child Labour Survey Report' Central Statistical Office (January 2005), 1-4.

¹¹⁰ The Constitution of the Republic of Zambia, Cap. 1, A. 1(3)

protection of young persons under the age of 15 from exploitation in Article 24. It proscribes against the employment of young persons in any occupation which might be prejudicial to their health, education, physical, mental or moral development provided that an Act of parliament may provide for the employment of a young person for a wage under certain condition.¹¹¹ However trafficking of a young person in any form is absolutely forbidden regardless of the conditions in which it is performed.¹¹² The Constitution thus provides for the elimination of child labour in all its forms by protecting young persons from exploitation.

3.3.2 The Employment of Young Persons and Children

The Employment of Young Persons and Children Act¹¹³ protects and regulates the employment of children. It is the most explicit law on working children covering a broad range of issues on employment. In 2004 the government amended the Act to bring it in line with the ILO Conventions No.138 of 1973 on the Minimum Age for Employment and No.182 of 1999 on the Elimination of the Worst Forms of Child Labour. Section 2 of the Act was amended by the Employment of Young Persons and Children (Amendment) Act, 2004, in the definition of child by substitution of 14 years with 15 years. A child according to the amendment is now a person under the age of 15. A young person on the other hand “ means a person aged between fifteen and eighteen years old.”¹¹⁴

¹¹¹ The Constitution of the Republic of Zambia, Cap. 1, 24 (1)

¹¹² The Constitution of the Republic of Zambia, Cap. 1, A. 24 (3)

¹¹³ Cap 274

¹¹⁴ Amendment Act No. 10, of 2004, s.3

A child cannot be employed in any private or public industrial undertaking or any branch whether or not only members of the same family are employed.¹¹⁵ A child aged between 13 and 15 may be lawfully engaged in light work which is not likely to be harmful that child's welfare or prejudicial to attendance at an institution of learning or participation in vocational training or training which has been approved by a competent authority.¹¹⁶ A child cannot however be employed in any type of work or employment which by its nature or the circumstances in which it is carried out constitutes a worst form of child labour. According to the Amendment Act, worst forms of labour includes all forms of slavery, use of a child for prostitution, pornography, or using a child for illicit activities.¹¹⁷

The Employment of Young Persons and children Act limits the number of hours that a child or a young person can work in a day and prohibits children and young persons from working at night.¹¹⁸ Any person or employer who breaches any of the provisions of the Act is guilty of an offence under the Act and shall be liable upon conviction to a fine or imprisonment or both.¹¹⁹

3.3.3 The Penal Code Chapter 87 of the Laws of Zambia

The Penal Code¹²⁰ is the piece of legislation defining crimes and specifying punishment. The penal code criminalises offences committed against the child in various sections. Among the

¹¹⁵ Amendment Act No. 10, of 2004, S.4 b1

¹¹⁶ The Employment of Young Persons and Children, Cap. 274, s. 4 A (1)

¹¹⁷ The Employment of Young Persons and Children(Amendment) Act, No. 10 of 2004, s. 4B(1)

¹¹⁸ The Employment of Young Persons and Children Act, Cap. 274,s. 8

¹¹⁹ The Employment of Young Persons and Children Act, Cap. 274

¹²⁰ Cap 87

many sections relating to children, sexual exploitation of children in its many forms is criminalised. Section 140 of the Penal Code¹²¹ criminalises the procurement of any child or other person for purposes of having carnal knowledge, pornography, bestiality or any other purpose. It also proscribes against the procurement of a child or other persons for purposes of becoming a common prostitute or for becoming an inmate of or frequent brothel elsewhere.¹²²

The Penal Code Cap 87 further criminalises against procuring defilement of children or any other persons by threats, fraud or administering drugs. It also forbids any person from knowingly permitting defilement of a child in a household of which he is owner, occupier or acting in control thereof. In both instances the offender would have committed a felony and is liable upon conviction for a term of not less than twenty years to life imprisonment.¹²³

In addition, the Penal Code legislates against trafficking of children which is one of the worst forms of child labour. Section 143 of the Penal Code provides

“Any person who sells or traffics in a child or other person for any purpose or in form commits an offence is liable, upon conviction, to imprisonment for a term of not less than twenty years:....”

Any person who detains any child or any person unwillingly with intent of having unlawful carnal knowledge or in a brothel will also be susceptible to the same punishment as sections 140,

¹²¹ Penal Code (Amendment) Act, No. 15 of 2005

¹²² The Penal Code, Cap. 87, s. 140 (b) and (c)

¹²³ Penal Code (Amendment) Act, No. 15 of 2005, s. 141 and 142

141, 142, 143 of the Penal Code as amended.¹²⁴ Before the amendment of the Penal Code in 2005, the law only provided for the protection of a female children and any person found guilty under sections 140, 141, 142, 143 and 144 of the Penal Code was only found guilty of a misdemeanor.¹²⁵ However with the recognition that the male child also needed protection and the need for the elimination of child labour, the law was amended to protect all children regardless of sex and the perpetrators of the offences became guilty of a felony which attracts stiffer sentences.

3.3.4 The Juveniles Act, Chapter 53 of the Laws of Zambia

The Juveniles Act provides for the custody and protection of juveniles in need of care, for the correction of juvenile delinquents and matters incidental or connected to the following.¹²⁶ A juvenile is a person of 18 years and below. The Juveniles Act prohibits the commission of offences against juveniles. Any person who encourages or causes the prostitution of girls under 16 commits a criminal offence under section 47 (1) of the Juveniles Act which provides

“If any person having the custody, charge or care of a girl under the age of sixteen years causes or encourages the seduction, unlawful carnal knowledge, or prostitution of, or the commission of an indecent assault upon, her, he shall be liable to imprisonment for a term not exceeding two years.”

¹²⁴ Amendment Act, No. 15 of 2004

¹²⁵ The Penal Code Act, Cap. 87

¹²⁶ Cap. 53, s. 2 (1) a

Section 47 (1) of the Juveniles Act is only intended for the protection of girls under 16 years of age. This is inconsistent with international standards which aim to protect juveniles of both sexes below 18 from sexual exploitation, one of the worst forms of child labour which no child should perform regardless of age or conditions in which it is performed. However it is admitted that girls experience more incidences of sexual exploitation than boys do.¹²⁷

3.3.5 Other Pieces of Legislation

There are other instruments in Zambia that contain provisions aimed at protecting children and young persons from exploitation. These are the Apprenticeship Act Cap 275, the Education Act of 1966 as amended, Chapter 134, the School (Compulsory Attendance) Regulations No. 118 of 1970, The Busaries Committee Regulations, the Medical Examination of Young Persons (Underground Work) Act No. 20 of 1973, Chapter 216 and the Factories Act, Chapter 441.¹²⁸ Others include the Dangerous Drugs Regulation, the Narcotic Drugs and Psychotropic Substances Act,¹²⁹ the Narcotic Drugs and Psychotropic Substances (Trafficking) Regulation¹³⁰ and the Defence Act of 1964 Cap 134 and the Zambia National Service Act of 1971 Chapter 121 of the Laws of Zambia.¹³¹

¹²⁷ Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009),30-50.

¹²⁸ Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009),55.

¹²⁹ Cap 96

¹³⁰ S.I. 84 of 1994

¹³¹ Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009),49-60.

3.4 Evaluation of Zambian Legislation in Light of International Standards on child labour

Zambia has made a number of important legal commitments in the area of child labour.¹³² The government ratified the UN Conventions on the Rights of the Child of 1989 in 1992 and acceded to the Palermo Protocol of 2000 in 2005. It has ratified all the core international conventions on child labour such as the ILO Convention No. 138 of 1973 and Convention No. 182 of 1999 which were ratified in 1976 and 2001 respectively.¹³³ The government has taken measures to ensure that domestic legislation such as the Employment of Young Persons and Childrens Act (herein after called the 'Act')¹³⁴ conforms to international standards established by the Conventions. In 2004 the Act was amended by the enactment of the Employment of Young Persons and Children (Amendment) Act, 2004 to bring align it line with the ILO Conventions No. 138 of 1973 and Convention No. 132 of 1999.¹³⁵

The definition of a 'child' was amended by the deletion of the word fourteen and the substitution of the word 15.¹³⁶ A child is therefore a person below the age of 15 for purposes of the Employment of Young Persons and Childrens Act in accordance with the ILO Convention on Minimum Age (No. 138) of 1973. Section 2 of the Act now defines 'Worst forms of Child Labour' in similar terms as that provided under the ILO Convention on the Worst Forms of Child

¹³²Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009) , 55.

¹³³ Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009),55.

¹³⁴ Cap 274

¹³⁵ Employment of Young Persons and Childrens (Amendment) Act, No. 10 of 2004,s. 2

¹³⁶ Employment of Young Persons and Childrens (Amendment) Act, No. 10 of 2004,s. 3(a)

Labour (No. 182) of 1999. The Act has also extended its scope of application to commercial, agricultural and domestic workers as well as family undertakings.

Despite the measures taken by the government in ensuring legislation conforms to international standards, there is still need for the government to amend various pieces of legislation.¹³⁷ Current legislation does not contain a list of the types of work that by nature or circumstances in which they are carried out are likely to harm the health, safety, or morals of children and Young Persons which contravenes the Conventions.¹³⁸ Compulsory education for children of 15 years and below does not still exist despite international law on child labour calling for compulsory education of children of 15 years and below. Furthermore child trafficking still exists even though trafficking is punishable with stiffer sentences under the Penal Code with only three cases having been prosecuted by 2009.¹³⁹

The effectiveness of imposing international standards in reducing child labour has been questioned by some scholars.¹⁴⁰ This is due to the fact that child labour continues unabated in developing countries such as Zambia despite the existence of legislation prohibiting against child labour. Scholars are of the view that international activism is partially to blame because reducing the use of child labour in the formal sector decreases domestic pressure to prohibit it throughout the economy. Furthermore developing countries are said to ratify child labour conventions and

¹³⁷ Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009) , 58-32.

¹³⁸ Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009) 60.

¹³⁹ 'Internationally Recognised Standards in Zambia' Report for the WTO General Council Review of Trade Policies in Zambia (2009), 5-9.

¹⁴⁰ M. Doepkie, F. Ziliboti, ' Child Labour: Is International Activism the Solution or the Problem?' CEPR Research (2009), 1-7.

take measures against it due to fear of enforcement via trade sanctions that will reduce its export earnings.¹⁴¹

3.5 Conclusion

As noted above elimination of child labour continues to be a challenge and a serious problem in Zambia despite the measures that have been undertaken by government and the international community in enacting legislation and adopting conventions on against child labour. Child labour including its worst forms such as sexual exploitation, trafficking and forced labour still persists. This is because the enforcement and monitoring of child labour laws is poorly done owing in part to limited financial resources and related practical restraints. There is need to improve the welfare of children through more resources and more efficient implementation of social programs and making education compulsory amongst others.

¹⁴¹ M. Doepkie, F. Ziliboti, ' Child Labour: Is International Activism the Solution or the Problem?' CEPR Research (2009), 1-7

Chapter 4

Institutional Enforcement Mechanisms of Child Labour Legislation in Zambia: The Ministry of Labour and Social Security and the Child Labour Unit

Making laws to prevent and eliminate child labour is a step in the right direction.¹⁴² However enacting international laws and national legislation on the exploitation of children is not by itself enough to prevent child labour as laws need to be enforced for them to be effective.¹⁴³ Specific measures against child labour must therefore be taken at national level in order to achieve the goals set out in the law. There must be an institutional mechanism such as a ministry or department within the government to formulate, execute national policy and to monitor enforcement of child labour laws.¹⁴⁴ This chapter therefore looks at role of the Ministry of Labour and Social Security as an institutional mechanism which seeks to eliminate child labour.

4.1 The Ministry of Labour and Social Security

The Ministry of Labour and Social Security is the government body charged with the responsibility of administering labour matters.¹⁴⁵ It is responsible for labour policy, programming and standards administration and the protection of the welfare of employees. It is further mandated to protect the interests of the working child as well as ensure that no child is

¹⁴² 'Internationally Recognised Standards in Zambia' Report for the WTO General Council Review of Trade Policies in Zambia (2009), 5-10.

¹⁴³ Handbook for Community Child Labour Committees: Zambia TB support Project Community Action' ILO IPEC (2008), 20-15.

¹⁴⁴ The End of Child Labour: Within reach' Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006), 60-75.

¹⁴⁵ Child Labour Survey Report' Central Statistical Office (January 2005), 1.

employed in the worst forms of child labour. The mission of the Ministry of Labour and Social Security is

“to promote and facilitate the development of an efficient and effective labour market system so as to enhance productivity in the economy.”¹⁴⁶

In the performance of its functions, it is divided into five departments. These are the Labour department, Social Security Department, National Productivity Development department, Occupational Safety and Health Departments, Planning and Research Unit and the Human Resources and Administration Department.¹⁴⁷ The Department of Labour is headed by the Labour Commissioner whose office has the responsibility for the enforcement of labour legislation, collecting, analyzing and compiling labour statistics, promoting and maintaining sound industrial relations, operating a free employment placement service, implementing , controlling and managing programs on the elimination of child labour and conducting labour inspections.¹⁴⁸

4.2 Legislation Administered by the Ministry of Labour and Social Security

The Labour Department is the division of the Ministry of Labour and Social Security whose function is to administer and enforce the Labour laws to ensure that required standards of employment are adhered to and to ensure proper action is taken for the protection of workers’

¹⁴⁶ M. Mulwanda. Labour Officer. Interview (17/ 01/ 2010)

¹⁴⁷ Labour Administration and Inspection Programme, International Labour Organisation, Zambia (July 2009), 1.

¹⁴⁸ ‘Internationally Recognised Standards in Zambia’ Report for the WTO General Council Review of Trade Policies in Zambia (2009), 4-6.

rights as well as employers' rights.¹⁴⁹ It conducts inspections of employment bodies such as factories so as to ensure compliance with labour laws. Labour administration is governed by various pieces of legislation which provide the legal framework necessary to regulate the labour market in its operation. Labour legislation administered by the labour department consists of the Employment Act, Cap 268, the Industrial and Labour Relations Act, Cap 269, the Employment (Special Provisions) Act, Cap 270, the Employment of Young Persons and Children's Act, Cap 274, the Minimum Wages and Conditions of Employment Act, Cap 276, the Factories Act, Cap 441 and the Workers Compensation Act, Cap 271.¹⁵⁰

4.2.1 Child Labour Legislation Administered by the Ministry of Labour and Social Security

As alluded to, the Labour department under the Ministry of Labour and Social Security administers the Employment of Young Persons and Children's Act which is the most comprehensive and explicit legal framework on working children, and the Amendment Act No. 10 of 2004.¹⁵¹ The Ministry of Labour and Social Security is responsible for ensuring that the Act conforms to international standards on child labour as contained in the ILO Convention No.

¹⁴⁹ Labour Administration and Inspection Programme, International Labour Organisation, Zambia (July 2009), 1.

¹⁵⁰ Labour Administration and Inspection Programme, International Labour Organisation, Zambia (July 2009), 1-3.

¹⁵¹ ' Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009), 56.

138 of 1973 and Convention No. 182 of 1999.¹⁵² Labour officers are empowered by section 18 of the Employment of Young Persons and Children Act¹⁵³ which provides

“Any labour officer and any police officer of or above the rank of Assistant Inspector shall have power

- (a) at all reasonable times to enter upon any land or premises of any industrial undertaking affected by the provision of this Act;
- (b) to examine either alone or in the presence of any other person as he thinks fit, with respect to any matter under this Act any person affected by the provision of this Act;
- (c) to exercise such powers as may be necessary for carrying this Act into effect.”

The Ministry of Labour and Social Security can make regulations which enable it to efficiently administer the Act¹⁵⁴. These regulations may be made by statutory instruments. Section 20 of the Employment of Young Persons and Children Act empowers the Minister of Labour and Social Security to make regulations by statutory instrument for all or any purposes prescribing the ages under which young person's shall not be employed in particular trade occupations and generally for carrying into effect the purposes and the provisions of the Act. Article 17A of the Employment of Young Persons and Children Act¹⁵⁵ provides for the prohibition on the employment of young persons in any type of employment or work which by its nature or the

¹⁵² ‘Internationally Recognised Standards in Zambia’ Report for the WTO General Council Review of Trade Policies in Zambia (2009),4-6.

¹⁵³ Cap 274

¹⁵⁴ Employment of Young Persons and Children Act, Cap. 274, s.20

¹⁵⁵ Cap 274

circumstances in which it is carried out is likely to jeopardize the health, safety or morals of that young person. The government through the Ministry of Labour and Social Security released a draft statutory instrument called the Employment of Young Persons and Children (hazardous forms of Child Labour) Order 2006, listing specific types of hazardous work which is yet to be signed.¹⁵⁶ The draft list includes excavation, drilling, stone crushing, block making, building, roofing, painting, and tour guiding, selling and serving in bars, animal herding, fishing, and working in tobacco and cotton fields, spraying of pesticides, herbicides and fertiliser application amongst others.¹⁵⁷

4.3 Mechanisms of Implementing and enforcing Child Labour Laws

The Ministry of Labour and Social Security has put in place various child labour law enforcement mechanisms to eliminate child labour and its worst forms pursuant to section 18 of the Act.¹⁵⁸ In its effort to combat child labour the Ministry of Labour and Social Security collaborates with other stakeholders such as the Ministry of Education; Ministry of Youth, Sport and Child Development; Zambia Congress of Trade Unions; Zambia Federation of Employers, Non Governmental Organisations, UNICEF and the International Labour Organisation.¹⁵⁹ The National Steering Committee on Child labour which is composed of various ministries, organisations of employers and various organisations dealing with children was established under the auspices of the Ministry of Labour and Social Security in 1999. It provides policy

¹⁵⁶ 'Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009), 57-60.

¹⁵⁷ Draft Employment of Young Persons and Children (hazardous forms of Child Labour) Order 2006

¹⁵⁸ Employment of Young Persons and Children Act, Cap. 274

¹⁵⁹ Child Labour Survey Report' Central Statistical Office (January 2005),4.

guideline on the elimination of child labour in Zambia.¹⁶⁰ Difficulties in determining the extent of child labour pushed the government to launch the steering committee.

4.3.1 The Child Labour Unit

The Ministry of Labour and Social Security which is responsible for enforcing labour laws established a Child Labour Unit (herein after called the ‘Unit’) to specifically address issues relating to child labour in 2003.¹⁶¹ The Child Labour Unit performs various functions aimed at eliminating child labour and regulating working children. It has the function of coordinating child labour intervention activities among various stakeholders in the country and acting as the secretariat to the National Steering Committee on child labour. It is also mandated to enforce child labour legislation through Labour officers.¹⁶² The Unit performs its functions through labour officers empowered by the Employment of Young Persons and Children Act. They carry out workplace inspections on employment of children and young persons in order to ensure that employers comply with the provisions of the Employment of Young Persons and Children Act and to determine the number of working children. Where children are employed contrary to the provisions of the Act, such children are withdrawn from employment.¹⁶³

The Child Labour Unit works in close collaboration with the International Program for the Elimination of Child labour (IPEC) and is the focal point for the country on child labour issues.

¹⁶⁰ Individual Direct Request Concerning Minimum Age Convention 1973 (No. 138) Zambia Ratification, CEACR (2008)

¹⁶¹ Individual Direct Request Concerning Minimum Age Convention 1973 (No. 138) Zambia Ratification, CEACR (2008)

¹⁶² Individual Direct Request Concerning Minimum Age Convention 1973 (No. 138) Zambia Ratification, CEACR (2008)

¹⁶³ Labour Administration and Inspection Programme, International Labour Organisation, Zambia (July 2009), 2-5.

The Unit receives a grant from the central treasury which it uses for its operations.¹⁶⁴ Issues of child labour are also being addressed in the overall National Employment and Labour Market Policy which requires the government to commit financial resources to the implementation of the child labour programs at national level.¹⁶⁵ The Child Labour Unit submits its annual planned activities to the Ministerial Budget which are funded by the Ministry of Finance and National Planning.¹⁶⁶

Other measures complementing the Child Labour Unit in eliminating child labour and its worst forms have been taken by the government. District Child Labour Committees have been established with the mandate of monitoring the implementation of the programs on the elimination of worst forms of child labor.¹⁶⁷ The Lusaka District Child labour committee aimed at withdrawing fifty percent of children found in the worst forms of child labour by end of 2008 and eliminating all worst forms of child labour in by 2015.¹⁶⁸ The Ministry of Labour and Social Services has also adopted a policy framework called the National child Labour Policy which provides core guidelines for improving the welfare of children. It proposes a number of specific measures aimed at stopping the economic exploitation of the child. The National child policy once launched will form the basis for interventions against child labour detailing strategies for

¹⁶⁴ M. Mulwanda, Labour Officer. Interview (17/01/ 2010)

¹⁶⁵ ‘ Understanding Childrens Work In Zambia’ ILO, Unicef, World Bank Group (May 2009) 60.

¹⁶⁶ M. Mulwanda, Labour Office. Interview (17/01/ 2010)

¹⁶⁷ ‘Internationally Recognised Standards in Zambia’ Report for the WTO General Council Review of Trade Policies in Zambia (2009), 5-10.

¹⁶⁸ Tamala Namukobo, Labour Officer. Interview (23/09/ 09)

the prevention of child labour and for the withdrawing, rehabilitating and reintegrating children already involved in work.¹⁶⁹

4.4 Efficacy of the Ministry of Labour and Social Security in Implementing Child Labour Laws

The Ministry of labour and social Security has taken several steps to mitigate the issue of child labour by setting up institutions which work to eliminate the economic exploitation of children such as the National Steering Committee and the Child Labour Unit.¹⁷⁰ The Labour officers who have been given the task of ensuring that child labour laws such as the Employment of Young Persons and Children Act have actively conducted inspections of workplaces to ensure that employers abide by the provisions of the Law as mandated by section 18 of the Act.¹⁷¹

However despite the measures that have been put in place by the Ministry of Labour and Social Security in collaboration with other stake holders, child labour still remains a serious problem in the country.¹⁷² In the Survey Report of 2005, the incidence of child labour was estimated at 895, 000 children of which 46 percent were between the ages of 10 and 14. An estimated 785, 712 children aged from 5 to 17 years were found to be in hazardous work with 674 children working in the mining and quarrying sector.¹⁷³

¹⁶⁹ ‘ Understanding Childrens Work In Zambia’ ILO, Unicef, World Bank Group (May 2009), 60

¹⁷⁰ Individual Direct Request Concerning Minimum Age Convention 1973 (No. 138) Zambia Ratification, CEACR (2008), 1.

¹⁷¹ ‘ Understanding Childrens Work In Zambia’ ILO, Unicef, World Bank Group (May 2009), 60.

¹⁷² Labour Administration and Inspection Programme, International Labour Organisation, Zambia (July 2009), 3-5.

¹⁷³ Child Labour Survey Report, Central Statistical Office, (January 2005), 35.

The high prevalence of children in the workplace despite the measures taken by the Ministry are as a result of the failure of labour inspectors to fully enforce the Employment of Young Persons and Children Act due to their incapacity to conduct the targeted number of workplaces.¹⁷⁴ Inspectors decide by themselves when and which companies and industries will be inspected, which are usually limited to enterprises that are easily accessible and are located in the formal sector.¹⁷⁵ This is regardless the fact that most child work is performed in the informal sector such as stone crushing, begging, domestic work and farming where 92 percent of child labourers are found. Children are often reported to work in the unregulated economy which is often dangerous or harmful.¹⁷⁶

The inspections which are supposed to be conducted regularly and systematically are arbitrarily undertaken due to lack of in house planning and monitoring mechanism.¹⁷⁷ The number of inspections done in a month is below the international norm particularly in the agricultural sector which has the largest percent of child labourers. This is as a result of the understaffing in the department of Labour which undermines the effectiveness of the Child Labour Unit and the Inspectorate.¹⁷⁸

¹⁷⁴ Labour Administration and Inspection Programme, International Labour Organisation, Zambia (July 2009), 3-5.

¹⁷⁵ Labour Administration and Inspection Programme, International Labour Organisation, Zambia (July 2009), 3-5.

¹⁷⁶ ' Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009), 28-50.

¹⁷⁷ Labour Administration and Inspection Programme, International Labour Organisation, Zambia (July 2009), 3-5.

¹⁷⁸ Labour Administration and Inspection Programme, International Labour Organisation, Zambia (July 2009), 3-5.

Furthermore the financial resources allocated are not adequate for the Ministry of Labour and Social Security to conduct investigations and inspections.¹⁷⁹ For example only 12,000,000 United States Dollars was allocated in the 2003 budget for carrying out child labour investigations which was considered inadequate to cover the basic administrative costs.¹⁸⁰ According to the report on understanding children only one case has been brought before the court on child Labour and only a very limited number of workplace inspections are conducted each year as a result of limited resources allocated to the Ministry of Labour and Social Security.¹⁸¹

4.5 Conclusion

The effective implementation of prevention and protection measures against child labour requires appropriate legal and regulatory framework which are administered by institutions such as the Ministry of Labour and Social Security. The Ministry has established institutional structures such as the Child Labour Unit, the National Steering Committee and the District Child Labour Committees which work hand in hand to regulate child work and eliminate the worst forms of child labour. However for the Ministry of Labour and Social Security to effectively enforce and monitor child labour laws such as the Employment of Young Persons and Children Act, there is need for the government to allocate adequate resources towards the elimination of child labour as well as employ more labour officers to enable the inspectorate to conduct systematic inspections of workplaces in both the informal and formal sectors.

¹⁷⁹ Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009)55-60.

¹⁸⁰ Bureau of International Labour Affairs, Zambia

¹⁸¹ Understanding Childrens Work In Zambia, ILO, Unicef, World Bank Group (May 2009), 55-63.

Chapter 5

Conclusion and Recommendations

5.1 Conclusion

The study was aimed at determining the consistency and compliance of Zambian Legislation to international standards and the role of the Ministry of Labour and Social Security in implementing and enforcing the law on child labour. The definition of child labour was provided in order to determine what work performed by children amounted to child labour which was the basis of the research. Child labour was stated to be work that is detrimental to the mental, health, physical and emotional development of children preventing them from becoming productive adults contributing to the development of the society in which they live. The material provided shows that child labour is exploitative in nature and has negative effects on children that are disadvantageous to their welfare. It has been observed that child labour is caused by numerous factors such as poverty, cultural beliefs, little or no education of children and parents and poor enforcement of child labour laws.

As allude to in the third chapter, a number of international instruments have been adopted with the objective of preventing and eliminating child labour such as the ILO Conventions on Minimum Age (No. 138) of 1973 and on the Worst Forms of Child Labour (No. 182) of 1999 which are the most comprehensive documents on child labour. They establish international standards on which the eradication of child labour should based. The third chapter further outlined the Zambian Legal Framework on child labour which comprises of the Constitution, Penal Code, Juveniles Act and the Employment of Young Persons and Children Act which is the

most comprehensive law exclusively protecting and regulating the employment of young persons and children.

The research study showed that the government has ratified the ILO Conventions on Minimum Age (No. 138) of 1973 and on Worst Forms of Child Labour (No. 182) of 1999 and taken measures to ensure that child labour legislation conforms to international standards set out in the Conventions by amending the Employment of Young Persons and Children Act. However it was observed that Zambian legislation on child labour requires extensive amendment in order to align it with international standards on child labour despite the amendment of the Employment of Young Persons Act as a number of provisions in the law are still inconsistent with international standards on child labour.

Furthermore the government is yet to ratify other instruments such as the Optional Protocols to the Convention on the Rights of the Child and the Palermo Protocol of 2000 whose ratification is important in showing that the government is committed to preventing and eliminating child labour. There is further an absence of legislation regulating child labour in the agricultural sector which is the largest employer of child labourers with 70 percent of the children engaged in child labour

Chapter four discussed the enforcement mechanisms of child labour legislation particularly the Ministry of Labour and Social Security which is mandated to administer the Employment of Young Persons and Children Act *inter alia*. It was shown that the Ministry collaborates with other stakeholders such as the Ministry of Community Development and Social Welfare in preventing and eliminating child labour. The Child Labour Unit under the Ministry of Labour and Social Security was shown to be responsible for enforcing and eliminating child labour.

However it has been ineffective and inefficient in the elimination of child labour due to inadequate funding by the government, poor planning and an insufficient number of labour inspectors who are responsible for the collection of information on child labourers as well as carrying out inspections.

Therefore despite the numerous measures that have been taken against child labour such as enacting legislation and domesticating international law on child labour and conferring power on the Ministry of Labour and Social Security to enforce child labour laws, work that is disadvantageous to the mental, physical, health and emotional development of children still exists in Zambia. In order to reduce and eliminate child labour and thus improve the welfare of children, there is need for further action against it. The real solutions to child labour thus lies in holistic sustainable measures which include prevention, withdrawal, protection of and integration of children who have experienced child labour as recommended below.

5.2 Recommendations

There are different measures that can be implemented to address child labour. The following recommendations are made.

As poverty is the main cause of child labour, efforts should be made to towards its reduction and subsequent elimination. Parents are forced to send their children to work even when they know it is wrong due to monetary constraints and the need for shelter, food and clothing. Child labour issues should therefore be mainstreamed into development and poverty reduction strategies of the government for it to be eliminated.¹⁸²

¹⁸² Child Labour Survey Report, Central Statistical Office ,(January 2005) ,58.

Education must be made compulsory up to the age of 15 years as children who remain in school are less likely to fall into child labour.¹⁸³ The quality of education given must be appropriate and empowering that helps children learn skills that will help them earn a living. For it to become a solution to child labour schools must be located close to where children live. Furthermore formal education alternatives such as vocational and life skills training should be made available to children that are unable to cope with formal schooling as this equips children for the future and enables them to contribute to the development of society. Literacy of parents should also be encouraged as educated parents' value education of their children.¹⁸⁴

Sensitisation of the public about what constitutes child labour and the negative effects it has on the development of children and to the society as a whole is an important aspect of preventing child labour. Knowledge of the public as to the negative effects of child labour will help change the cultural attitudes towards child labour. Communication of child labour to the public needs to take place at international and national level and can be achieved by inclusion in the Labour Day celebrations, commemoration of the World Day Against Child Labour and through press briefings.¹⁸⁵

Fair trade among states should be promoted as this will result in the decrease of child labour. There is a worldwide rise in commercial agreements which must include basic norms for guaranteeing basic human rights and respect such as the protection of children from exploitation.

¹⁸³ 'Internationally Recognised Standards in Zambia' Report for the WTO General Council Review of Trade Policies in Zambia (2009), 9.

¹⁸⁴ The End of Child Labour: Within reach Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006), 30-50.

¹⁸⁵ R. Mbabazi, ' Emerging Good Practices of the Community Based Models in Uganda and Zambia', International Labour Organisation 12 (February 2008), 13-20.

Implementing these fair trade norms help prevent child labour as fair trade practices guarantee a fair price to small scale producers who make up a substantial percentage of income generators.¹⁸⁶

Employment of children should be replaced with that of adults. The law on minimum wages should be enforced by the relevant authority as this will result in the increase of adult wages.¹⁸⁷

An increase of adult wages reduces the prevalence of child labour as the higher income of guardian reduces the need for children to contribute towards the sustenance of the family. The resulting rise in production costs of the employer due to increase in wages will have little impact on exports as the requirement of child labour free products imposed as a condition for trade would have been met.¹⁸⁸

Legislation on child labour such as the Employment of Children and Young Persons Act¹⁸⁹ should be strictly enforced in order to eliminate child labour. Mechanisms of enforcement such as the Ministry of Labour and Social Security in collaboration with other stake holders should be supported for them to discharge their functions. The finances allocated to the Ministry towards the prevention and elimination of child labour in the budget should be increased in order to enable it to fully enforce the law. The Child labour Unit must be capacitated in terms of staff and logistics for effective coordination and monitoring of the child labour elimination program. The government through the child labour unit must establish an integrated child labour

¹⁸⁶ The End of Child Labour: Within reach Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work, (2006), 40-60.

¹⁸⁷ R. Naiman et al, 'Can developing countries afford to ban child labour. Centre for Economic Policy Research (1999), 1-9.

¹⁸⁸ The End of Child Labour: Within reach Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006), 40-60.

¹⁸⁹ Cap 247

inspection system involving labour inspectors, agricultural extension officers and the Department of Social Welfare and Community Development officers.¹⁹⁰

The development of the role of labour inspectors is necessary as they have a key role to play in combating child labour. The capacity of labour inspectors should be improved in collecting information, identifying and assessing work hazards and in coordinating with others.¹⁹¹ They should conduct regular and systematic inspections within both the formal and informal sectors. The salaries of labour officers should be increased and career prospects developed which will motivate them to perform better in their work thus bringing about stability and effectiveness of enforcement of child labour laws. As the number of inspectors is not adequate to allow them to conduct the targeted number of inspections, the Ministry of Labour and Social Security should employ more labour officers.¹⁹² The law further needs to provide for the prosecution of any person who obstructs or delays labour officers in the performance of their duties.

Immediate action aimed at eliminating the worst forms of child labour must be taken by the Ministry of Labour. The draft Statutory Instrument of Zambia, The Employment of Young Persons and Children (Hazardous forms of Child Labour) Order 2006 must be signed by the government which will enable the enforcement institutions to work towards the elimination and prevention of the Worst Forms of child labour.¹⁹³ The government should ratify the Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed

¹⁹⁰ Child Labour Survey Report, Central Statistical Office ,(January 2005) ,58.

¹⁹¹ The End of Child Labour: Within reach Global Report Under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work (2006), 45.

¹⁹² Labour Administration and Inspection Programme, International Labour Organisation,Zambia (July 2009), 3-5.

¹⁹³ Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009), 78-90.

*Conflict and on the Sale of Children, Prostitution and Pornography and domesticate international law on child labour that has been ratified as this important as a statement of national intent and on the movement towards action against child labour.*¹⁹⁴ The government should further enact legislation making agriculture a priority area for elimination of child labour.¹⁹⁵

Programs aimed at eradicating child labour should be developed in partnership with children.¹⁹⁶ Participation of children when decisions regarding them are being carried out is necessary as children themselves can define work that they can and cannot do which will enable the legislature and the enforcement mechanisms to develop lists of what children can and cannot do as seen within the framework of children's developmental milestones. Children should therefore become an integral part of the monitoring processes of child labour and can participate through peer networks, child labour clubs, child right clubs and school clubs.

Eradication of child labour cannot be achieved without the rehabilitation and integration of ex child labourers. Interventions focusing on helping ex child labourers reintegrate into their families, community and schools. There is need to provide for psycho-social counseling, legal support, family tracing and assessment, medical care, emergency shelter and post reintegration counseling which are critical to the recovery and reintegration of the child. The Ministry of Community Development and Social Welfare must be should be adequately funded for it to rehabilitate and reintegrate ex-child labourers effectively.

¹⁹⁴ Understanding Childrens Work In Zambia' ILO, Unicef, World Bank Group (May 2009), 78-90.

¹⁹⁵ G. Thijis, Tackling Hazardous Child Labour Practice in Agriculture: Guidance on Policy and Debate. (ILO, 2006) , 1.

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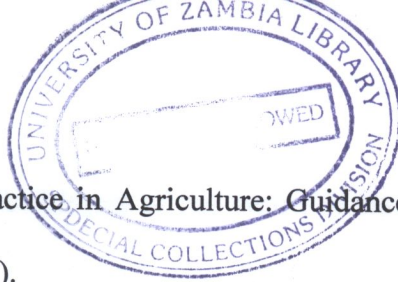
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