

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

Oblig Essay

2003

I recommend that the directed research prepared under my supervision

By

TRIPHINE MIYANDA

Entitled

REVIEWING AND EXAMINING THE ROLE AND IMPACT OF EXISTING LEGISLATION ON CHILD LABOUR IN ZAMBIA

be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirement relating to format as laid down in the regulations governing directed researches.

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OBLIGATORY ESSAY

ON

**REVIEWING AND EXAMINING THE ROLE AND IMPACT OF EXISTING
LEGISLATION ON CHILD LABOUR IN ZAMBIA**

By

TRIPHINE MIYANDA

(Computer Number 97104451)

**Submitted to the University of Zambia in partial fulfilment of the requirements
of the Bachelor of Law (LLB) Degree Programme**

School of Law
University of Zambia
Lusaka

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those that this space cannot allow, I value and acknowledge your contribution to my development in life and all I can say is a clear thank you and God bless.

CHAPTER ONE

1.1 OBJECTIVES AND OVERVIEW OF STUDY ON CHILD LABOUR

At international level, presidents and prime ministers from various countries gathered in New York City, on September 29 and 30 1990 to discuss the plight of the world's children. All assembled heads of state and government gathered at the World Summit for Children, to undertake a joint commitment and to make a universal appeal to give every child a better future. Without a doubt, so much has been said about safeguarding the rights and interests of children, but, nonetheless, the existing realities and inequalities especially in many third world countries indicate that there seems to be a growing and unprecedented depreciation in the welfare of children in general.

This academic research is an attempt to closely identify, elucidate and propound upon the multi-faceted, ever increasing child labour phenomenon that exists within the Zambian socio-economic framework. The main focus of this investigation is to determine and explore the impact and effectiveness of existing legal mechanisms, as instruments that attempt to address and combat the child labour ills that have arisen in Zambia. It is, therefore, cardinal and of the essence that this study scrutinizes and evaluates the various child labour laws existing within the Zambian legal framework to assess their role and efficacy in addressing the existing harsh social disparities. The objective therefore, is to assist in advocating and facilitating in the revision of national legislation where necessary and also to provide a medium for promoting practical awareness on the basic legal protection which must be addressed in Zambia and consequently, given to the working children considering the existing socio-economic dynamics.

To provide the reader with a systematic, reasoned and coherent paradigm, this study has been divided into five chapters. This first chapter gives the reader an insight of the research presentation. The second chapter provides a brief social economic background of Zambia to highlight the fact that various factors have contributed greatly to the present day child labour phenomenon. This is of the essence, as it will help the reader appreciate the fact that the problems faced by the working children cannot be examined in a vacuum. It shall then attempt to examine the aspects of definition of child labour, showing the various forms in which it is found to exist, its extent and consequences towards the development of children in general. This chapter will then conclude by providing a theoretical understanding of the role of legislation as a necessary medium that helps mitigate the incidence of child labour. This will enable one appreciate the fact that effective legislation and enforcement is a vital means to an end to child labour.

The third chapter will attempt to highlight and consider the ideal and ultimate standards that have been put in place by international institutions such as the International Labour Organisation, in an effort to eliminate all forms of child labour. From the international perspective, Zambia's response to the child labour problem will be mirrored against the international requirements to determine and investigate the effectiveness and weakness of the existing legal mechanisms.

The forth chapter shall attempt to provide a comparative study with other third world countries that have effectively implemented international standards in their national legislation. The aim is to show that legislation can indeed play a vital role in

combating child labour if the mechanisms and enforcement controls are appropriately set out and adhered to by policy makers and other stakeholders. It is thus vital that one examines national legislation of other countries that have successfully implemented the various child labour policies and have attained a degree of efficacy.

The fifth and concluding chapter shall attempt to analyse and evaluate the strengths and weaknesses of the child labour laws in Zambia. It will conclude by providing practical and feasible recommendations were applicable given Zambia's unique socio-economic framework.

1.2 METHODOLOGY

This research was carried out using various media. Consultation was made with child labour Consultants from the International Labour Organisation, the Assistant Commissioner in the Ministry of Labour under the child labour unit and also with the Resident Magistrate heading the Juveniles Court in Lusaka. Case studies from the internet and literature in the library were some of the other mediums used for the purpose of collecting relevant information.

CHAPTER TWO

2.1 BACKGROUND TO UNDERSTANDING THE ROOTS AND CAUSES OF CHILD LABOUR IN ZAMBIA

Child labour is indeed a multi faceted phenomenon. Generally, it is acknowledged that the incidence of child labour has a lot to do with the socio-economic environment in which children live, both at macro and micro levels.¹ Understanding these factors contributes tremendously to underpinning the salient issues behind the phenomenon. Consequently, it becomes essential for one to understand and appreciate Zambia's unique socio-economic situation.

Zambia's present day poor economic performance has been greatly influenced by inappropriate policies pursued after independence in 1964. The economy had been and still remains heavily dependent on receipts from export earnings of copper. The country relied heavily on the export receipts and tax revenues for the development of its industries, expansion of public sector employment and provision of government services and consumer subsidies. During this period, the enhancement of the agricultural sector as a development strategy was not a priority of the existing government and consequently, the heavy dependence on copper mining meant that the country was vulnerable to external shocks, such that when copper prices fell in the mid 1970s, Zambia's economy fell drastically. Falling export receipts and rise in copper prices, resulted in high balance of payment deficits such that the Zambian government borrowed heavily from external sources to maintain import levels resulting in huge foreign debt. This foreign debt has greatly undermined Zambia's efforts to develop other important sectors such as agriculture and tourism.

¹ Zambia Child Labour Survey Country Report, (1999) Pg 1

To stabilise the economy and redress the existing pitiable socio-economic indicators, new measures such as structural adjustment programmes, liberalisation of the economy based on free market forces and privatisation were adopted by the new democratic government in the early 1990s. These changes in the political and economic scenarios have not achieved their objectives in real terms and as such the reverse has occurred with a negative impact on society. The present existing realities indicate that these policies have resulted in extremely shocking, high levels of absolute and abject poverty, characterised by poor and harsh living conditions in both rural and urban areas, poor and increasingly frightening health conditions, pitiable sanitation, startling high levels of malnutrition, lofty levels of ignorance and illiteracy, alarming increase in prostitution, and so forth. The rise in poverty levels has made children more vulnerable. For instance, according to recent statistics 64% of children between the age of 11 and 17 years were forced to seek solace from the dangerous and dodgy streets of Zambia, often referred to as 'street kids' in order to make ends meet.² The reduced social services and massive retrenchments have resulted in many parents being unemployed forcing children to work and supplement the family income.

Further, these socio-economic changes in Zambia have given rise to an ever-growing informal sector. The evolution of the informal sector where free market dynamics contribute to extremely low wages and bad working conditions in which the government, employer organisations and trade unions have no grip has increased the exploitation of labour, including child labour.³ Almost by definition, child labour is associated closely with the *unregulated informal economy*, which is largely beyond

² Zambia Child Labour Survey Report (1990) pg 98

³ Child Labour in Zambia: Report of Round Table Meeting (1995) International Labour Organisation, pg 9

the reach of formal institutions, including labour inspections. The informal sector is the burgeoning field of economic activity. According to the International Labour Organisation Conference on Decent Work and the Informal Economy,⁴ the informal sector is held to encompass an expanding and increasing diverse group of workers and enterprises in both rural and urban areas operating informally. They share one important characteristic, which is that they are not recognised or protected under the legal and regulatory framework and are consequently characterised by a high degree of vulnerability. The informal sector is where by far the most child labourers are found. It cuts across all economic sectors but in reality is more prevalent in the agricultural sector, most often on small scale family holdings, but also on commercial plantations. While this work in some cases maybe natural, many aspects of it for example long hours, use of poisonous chemicals or inappropriate or dangerous equipment can be extremely hazardous.

To conclude, it is clear that the afore-mentioned factors and attributes have had a tremendous impact on the development and growth of the child labour phenomenon in Zambia. To appreciate fully the notion of child labour, it becomes imperative that one appreciates and understands the definition and characteristics of child labour.

⁴ A Future Without Child Labour, Global Report Under The Follow Up To The International Labour Organisation Declaration on Fundamental Principles And Rights At Work (2002), pg 22

2.2 CONCEPTS AND DEFINITION OF CHILD LABOUR IN ZAMBIA

In Zambia, the Employment of Young Persons and Children Act,⁵ which regulates the employment of children, defines a child as any person under the age of 14 years old.

Generally, children in almost all societies work in one way or another although the types of work, forms and conditions of their environment vary among societies. In the Zambian context, a child is expected to help adults in various socio-economic activities. A child is expected to perform housekeeping activities, which are seen as part of the child's socialisation into society and are also a part of traditional education. Experts in the social field tend to hold that a distinction between child work and child labour must be drawn.

2.2.1 *CHILD WORK*

The term child labour does not encompass all work performed by children. Michel Jankanish,⁶ submits that child work is one, which increases children's self-worth, confidence and enables them to contribute to the well being of both themselves and their families. It develops and prepares them for adulthood and also helps pass on valuable traditional skills from one generation to the next. More often than not this work instils a sense of pride and responsibility within the child without interfering with schooling, recreation and rest. In the Zambian culture, it is not uncommon for children to work within the nuclear family, extended family and the community. Worldwide, millions of young people legitimately undertake work, paid or unpaid, that is appropriate for their age and level of maturity. This type of work takes various forms and varies over time and space.

⁵ Section 3 of Chapter 273 of the Laws of Zambia

⁶ And Haspel Nellien (2000) Action Against Child Labour, pg 1

2.2.2 CHILD LABOUR

Child labour refers to children prematurely leading adult lives, normally working long hours for low wages under conditions damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful educational and training opportunities that could open up for them a better future.⁷ Child labour constitutes activities that are mentally, physically, socially and morally dangerous and harmful to children. It could be either paid or unpaid and is carried out to the detriment and endangerment of the children in violation of international law and national legislation. Child labour may exist in various forms. In Zambia, known and visible examples of child labour may include heavy domestic chores, children working on commercial farms or working as unpaid family workers, children who crush stones, accompany blind parents, street vending, children who carry heavy blocks or children used as prostitutes.

At international level, drawing on the provision of the Minimum Age Convention⁸ and the Elimination of the Worst Forms of Child Labour Convention⁹, three categories of child labour that need to be abolished have been identified. These include labour performed by a child who is *under a minimum age* specified in national legislation for that kind of work; labour that jeopardises the physical, mental or moral well-being of a child known as *hazardous work* and the *unconditional worst forms of child labour*, which are internationally defined as slavery, trafficking, debt bondage and other forms of forced labour, forced recruitment for use in armed conflict, prostitution, pornography and other illicit activities.

⁷ International Labour Conference (1983)

⁸ (1973) No. 138

⁹ (1999) No 182

Having considered briefly the issues of definition, it is vital that one identifies with the extent of the existing realities of child labour in Zambia. It is upon construing and interpreting such occurrences that the challenge and realisation descends upon scholars and other stake holders to examine all necessary means to be used in alleviating or eradicating the growth of this phenomenon.

2.3 WHEN CHILDHOOD IS A NIGHTMARE: THE EXTENT AND CONSEQUENCES OF CHILD LABOUR IN ZAMBIA

Today, more and more children are forced to work in order to ensure their own or their families' survival due to the increase in poverty and unemployment. The images of child labour show that children work under extremely poor conditions. In Zambia, there tends to be difficulties in defining the nature and extent of child labour due to the fact that accurate statistics on child labour have been difficult to find. However,¹⁰ the picture of the magnitude of the problem is clearly shown through the survey on child labour conducted by the Central Statistics Office (1999). The total number of children in this survey in the target group of 5 to 17 years was 3.8 million, representing 36 percent of the total population of Zambia. The survey showed that the majority of children were found working in agricultural occupations as unpaid family workers, especially in the rural areas. The results show that one of every 10 working children was injured, whilst working children within the age of 15-17 accounted for the highest number of injuries. These children were injured while working as stonebreakers, involved in knitting and forestry. Those engaged in agricultural activities recorded the highest percentage of injuries.

¹⁰ This survey done in conjunction with the International Labour Organisation is the only recent, more accurate report on child labour conducted in all the 9 provinces of Zambia

The survey also collected data relating to the hazardous working environment children were working in.¹¹ These children were asked questions such as whether they carried heavy loads, what sort of environment they worked in, whether they worked with chemicals or machinery and so forth. Twenty-six percent of these children were aware of the hazards, while 73% were not aware of the hazards. Overall, one in every five working children, that is a total of 20.6%, reported that he or she was aware of hazards at work. It is interesting to note from these statistics that there arises, and is indeed a source of grave concern that very few working children were aware of hazards at their work place, thus exposing them further to vulnerability.

Other extreme forms of child labour commonly described as the Worst Forms of Child Labour were also found to exist in Zambia, which include prostitution and other activities done by children in the streets. The results indicate that the percentage of children living in prostitution was higher in smaller towns. The majority of these children were orphans who had never attended school and commonly used drugs. These children earned less than K20 000 per night and considering the risks involved the earnings were not enough. For those street kids who were working for pay, most of them were not getting equal pay with adults doing the same job. The study of street kids indicated that poverty was the major reason for most of them going in the streets. Many of the children face physical and emotional stress whilst on the streets.

The statistics beyond a doubt provide one with a clear indication that child labour is an existing reality in Zambia. The conclusion therefore, is that regardless of the forms and sectors in which child labour is practised, it has adverse implications not only on

¹¹ Zambia Child Labour Survey Report (1999) pg 61

the growth and well being of these children but also the development of the nation in the long term. The realities show that the consequences of child labour are negative and the most widespread risk to children caused by excessive working hours is the inability to benefit from education. Many children are deprived of their universally recognised right to education either because there is not enough time left to go to school or because the child and parent lose interest, as they become dependant on the income earned. The very fact that children have to earn a living or look after their physical well-being has potentially damaging consequences on their development. Some occupations cause serious psychological and social adjustment problems to children. One of these occupations in Zambia is the domestic service, which occupies a large number of children, mainly girls.¹² These children work for routinely long hours, are under pressure while living with unloving adults and almost in total isolation from friends and family.

The combination of these factors is known to represent a profound risk for the psychological development of these children resulting in child delinquency. Child delinquency is truly another factor that is associated with child labour. The Times of Zambia,¹³ article on the dilemma of an ex-street kid clearly highlights a practical insight of the relationship between child labour and child delinquency as observed from the experience of a street kid called Richard Soko. This article gives one an insight of the abuses that most street kids go through whilst on the streets. These children considering their environment are very vulnerable. The independence of these working children easily induces habits, which may easily become aggressive, hostile and delinquent such as drug addiction, alcoholism, sexual perversions and

¹² Paper presented by Assistant Labour Commissioner, Mr Kabwe, Ministry of Labour

¹³ Times of Zambia, July 17 2003 Feature at pg 9 by Kelvin Kachingwe

robbery with violence. It is against this regrettable background that one looks at the law as a means to an end to child labour. The cardinal question from a juristic point of view is, what is the role of the law in aiding the plight of these working children?

2.4 EFFORTS TO SAVE THE WORKING CHILDREN: THE ROLE OF THE LAW AS A MEANS OF ACHIEVING AN END TO CHILD LABOUR

The effective operation of the law is undeniably a necessary mode of attaining social control and the effects that the law has on a person to whom it applies is an essential factor to the development and well being of any society. In the context of the working children, legislation has been the single most important response of governments to the problem of child labour. Although insufficient on its own, legislation can be a powerful instrument in combating this ever- growing trend. The cardinal question to these sentiments is how is this so?

Legislation as a means to an end, can serve as a deterrent to the economic exploitation of children being the basis for both preventive measures and punitive action against violators. Indeed, even though critics can argue to the contrary, it has long been said that although the fight against child labour will not be won through legislation, it certainly cannot be won without it.¹⁴ Appropriate child labour laws can play a catalytic and supportive role in efforts to establish a more humane order and in prodding society to give the child the best it has to offer. The argument being advanced is that through legislation, the broad aspects of national policy towards the

¹⁴ International Labour Organisation: Child Labour Law and Practice in Conditions of Work; Digest (Geneva ILO), Vol 1 1991

elimination of child labour can be defined accordingly. As advanced by scholars,¹⁵ legislation can play a vital role in combating child labour in various ways. These though not conclusive are that: -

- a) *Legislation can set the principles, objectives and priorities for the appropriate national policies and can provide a conducive environment for the development of national capacities to combat child labour.*
- b) The law as a medium of social control can place the authority of the state behind the protection of children. The authority of the state can be brought to bear on behalf of protecting the child.
- c) The law can clarify society's values and commitments towards children and provide a yardstick for evaluating performance. Thus, legislation will help move towards ensuring the observance of universal standards established in international instruments to protect children and also create specific legal duties and responsibilities.
- d) Legal instruments can help identify and focus attention on hazards to children and also provide a basis and procedure for complaints and investigations. The law can provide legal redress for victims and provide sanctions for violators.

From the foregoing, one is moved to appreciate and acknowledge the fundamental role that the law can play in addressing the problem of child labour. However, it is not enough to merely identify the importance of legislation, for the law cannot and

¹⁵ Michael Jankanish and Haspel Nellien identify these 10 mentioned roles of legislation in their publication on the Action Against Children (2000), pg 14

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¹⁵ Michael Jankanish and Haspel Nellien identify these 10 mentioned roles of legislation in their publication on the Action Against Children (2000), pg 14

will never operate in a vacuum. There is need for other factors to be put in place. There has to be commitment from policy makers and all stakeholders. An efficient medium for enforcing the law must be put in place and among other essentials, the existence of an appropriate court, which deals and specialises in child welfare may be a necessary enforcement medium that will enhance and promote the upholding of the law. Given the theoretical understanding of the importance of the law and also the need for appropriate enforcement mechanisms, the practical application of these academic ideals will be examined at length and tallied against the Zambian response to the incidence of child labour.¹⁶

To conclude this chapter, it is submitted that child labour does exist in Zambia and owing to the country's unique socio-economic backwardness and levels of underdevelopment, which is a characteristic of many third world nations, the problem is definitely an ever growing phenomenon. Thus, if left unchecked, this problem may be catastrophic on the development of the whole society in the long run. It is, therefore, necessary to evaluate the role of legislation in Zambia. For this reason, the questions that may linger on the readers mind are: what exactly has the Zambian government done to address this problem in terms of legislation? Is the authority of the state brought to bear on behalf of protecting the child? These and other related issues will be construed appropriately in the next chapter.

¹⁶ These sentiments are aimed at giving the reader a general understanding of the fact that other facts must be put in place in order for the law to operate effectively. This will be examined at length in chapter 3.

CHAPTER THREE

3.1 INTERNATIONAL STANDARDS AND ZAMBIA'S NATIONAL LEGISLATION

This chapter outlines the actual national legislation that have been put in place in Zambia to address the ills of child labour. It contains information on some of the international instruments and conventions to which Zambia is party, so as to determine the system's legislative commitment and effectiveness at national level. For the purposes of coherence and easy understanding, the first part of this chapter will attempt to highlight the international mechanisms and response to child labour. It will then go to show some of the existing legislation that relate to employment of children in Zambia, as well those under criminal law. The scrutiny will elucidate the fact that despite there being some form of legislation, there are still some shortcomings in the coverage of the law. The chapter will conclude by giving a critic on the existing legislation in Zambia to highlight the fact that there is a serious gap and deficiency in the application and enforcement of the various laws due to lack of effective monitoring systems.

3.2 THE INTERNATIONAL COMMUNITY'S LEGISLATIVE RESPONSE TO CHILD LABOUR

Without a doubt, mankind owes to the child the best it has to give and in acknowledging this fundamental responsibility, the international community of nations has declared that¹⁷

"The child shall enjoy every special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, morally,

¹⁷ Declaration of the Rights of the Child (1959) Principle 2

spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.”

Furthermore, it is recognised that the child shall be protected against all forms of neglect, cruelty and exploitation.¹⁸

Evidently, there is a strong broad based international commitment to the elimination of child labour and the protection of children who work. In recognition of the problem of child labour, the world community has drawn up various agreements and legislation for the abolition of child labour. Some of these agreements are long standing such as those under the International Labour Organisation (ILO),¹⁹ whose policies have been a cornerstone of current international child labour laws.

The ILO is a unique forum in which governments and social partners of member states can freely and openly confront experiences and national policies. One of the most important tools available to the ILO for improving the legislation and practice of its members in the fight against child labour is the adoption and supervision of international labour conventions and recommendations. These conventions are international treaties subject to ratification by ILO members. While recommendations are not binding instruments, they often deal with the same subject as conventions. Both forms however, are intended to have a concrete impact on working conditions and practices in every country of the world. The ILO Minimum Age Convention 1973 (No. 138)²⁰ remains one of the fundamental international tools, which aim at achieving the total abolition of child labour.

¹⁸ Declaration of the Rights of the Child (1959) Principle 9

¹⁹ The International Labour Organisation Booklet, What It Is And What It Does, pg 7

²⁰ Which came into force in 1976.

This convention to which Zambia is signatory, is broad in scope and applies to all sectors of economic activity and whether or not children are employed for wages. Ratifying members undertake to pursue a *national policy* designed to ensure the effective abolition of child labour and to rise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.²¹ The specific merit for national policy is that it articulates societal objectives and commitment and if pursued faithfully, provides a coherent framework for an associated programme of action. Such a national policy must contain a definition of national objectives regarding child labour, a description of the nature and context of the problem, identification and description of the target group and designation of institutional actors. In this regard, a reliance on the legislative process as a means of developing national policy is ideal.

The convention further establishes that the *minimum age* should not be less than the age of completing of compulsory schooling and, in any case not less than 15 years of age.²² It allows for a developing country to specify initially a general minimum age of 14 years instead of 15. It also establishes that a higher minimum age of at least 18 years or lower age of 16 must be set for *hazardous work*,²³ that is employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons. The convention allows a lower age for *light work* from 13 to 15 years of age provided that the work is not hazardous to the child's development, and does not hinder the child's education.²⁴

²¹ Article 1, Minimum Age Convention, 1973

²² Article 2 (3)

²³ Article 3

²⁴ Article 7

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²¹ Article 1, Minimum Age Convention, 1973

²² Article 2 (3)

²³ Article 3

²⁴ Article 7

In 1991, Zambia further ratified the United Nations Convention on the Rights of the Child, which comprehensively legislates on the protection and promotion of children's rights. This convention clearly recognises children's right to protection from work that interferes with their education, health, mental, spiritual, moral and social development.²⁵ It demands that state parties must put in place legislative, administrative, social and educational measures to ensure the implementation of the article including *minimum age requirements for employment, regulation of hours, conditions of employment and adequate penalties or sanctions to ensure effective enforcement of the law.*

Other international instruments that aim at eradicating child labour have also been introduced and put in place. A more recent convention and recommendation was discussed for the first time and adopted at the International Labour Conference. These are the Worst Forms of Child Labour Convention²⁶ and Recommendation.²⁷ This convention to which Zambia is party, calls on ratifying states to take immediate and effective measures to prohibit and eliminate all the worst forms of child labour. Among these forms include all forms of slavery or similar practices, the use, procuring or offering of a child for prostitution or for pornographic purposes, the use procuring or offering of a child for illicit activities and any 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.²⁸ It is against this background that one should attempt to scrutinise and analyse Zambia's national legislative response towards the elimination of child labour.

²⁵ Article 32 of Convention on Rights of the Child

²⁶ 1999 (No. 182)

²⁷ 1999 (No 190)

²⁸ Article 3 of the Worst Forms of Child Labour Convention, 1999

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²⁷ 1999 (No 190)

²⁸ Article 3 of the Worst Forms of Child Labour Convention, 1999

3.3 CHILD LABOUR IN ZAMBIA: REVIEWING NATIONAL LEGISLATION

The main focus is directed towards analysing how Zambia has applied the international standards with regard to eradicating child labour. The first part of this section will attempt to determine the existing legislation on child labour. To this end, it is observed that there are many statutory regulations governing the welfare of children in Zambia (almost 24 in total). However, only a selected number of these shall be examined so as to give the reader a concise but understandable insight on the legislative response to child labour. The second part will attempt to bring out the legal deficiencies in the Zambian system.

3.31 FEATURES OF THE EXISTING LEGISLATION ON CHILD LABOUR

A) THE CONSTITUTION OF ZAMBIA

The starting point is article 24 of the Zambian constitution, which provides the most basic legal principle guiding Zambian legislation on child labour. This article states that²⁹: -

- 1) A young person shall not be employed and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his 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 conditions.
- 2) All young persons shall be protected against physical or mental ill treatment, all forms of neglect, cruelty or exploitation.
- 3) A young person shall not be the subject of traffic in any form

²⁹ Article 24 of the 1996 Constitution of Zambia

- 4) In this article “young persons” means any person under the age of fifteen years.

The constitution clearly guarantees the right of children to be protected from the ills of child labour and in line with this spirit, various subordinate laws have been adopted. It thus becomes imperative to consider some of these pieces of legislation to determine their efficacy and effectiveness in alleviating child labour.

B) THE EMPLOYMENT OF YOUNG PERSONS AND CHILDREN ACT³⁰

This is one major legislation that clarifies the employment of children and directly attempts to deal with the issue of child labour. It was enacted as far back as 1933 to regulate and protect children from working in circumstances detrimental to their development.³¹ This law provides that a young person shall not be employed in any type of employment or work, which by its nature or the circumstances, in which it is carried out, is likely to jeopardise the health, safety or morals of that young person.³²

It is against this background that specific mention is made of industrial undertakings that are perceived hazardous. These include³³

- a) mines, quarries and other works for the extraction of minerals from the earth
- b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or

³⁰ Chapter 505 of the Laws of Zambia

³¹ This act defines a child as person under 14 years and young persons are those under the age of 18. Under the constitution a child is 15 years old, under the marriage Act its 16, while the Adoption Act defines an infant as being below 21. There is no uniform definition of child under Zambian law but it may be argued that since the constitution is the supreme law then the definition of a child being under the age of 15 applies.

³² Section 17 (1)

³³ Section 2

demolished, or in which materials are transformed, including ship building and the generation, transformation and transmission of electricity or motive power of any kind

- c) construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well telegraphic or television installation, electrical undertaking, gasworks, waterworks or other work of construction as well as the preparation for or laying the foundations of any such work or structure.
- d) transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves and warehouses but excluding transport by hand.
- e) cordwood cutting

But, it is cardinal to note that the above provisions do not include commercial or agricultural undertakings.³⁴ This Act thereby excludes children working in the informal sector.

C) THE EMPLOYMENT ACT³⁵

This legislation provides for children working in the formal sector. Section 12 of this Act clarifies the minimum contractual age and provides that, notwithstanding the provisions of the Employment of Young Persons and Children Act, no person shall, except under conditions to be prescribed, employ or cause to be employed, any person under the age of fifteen years, and any person who contravenes the provisions of this subsection shall be guilty of an offence. Where any contract of service is entered into between an employer and an employee or a casual employee who has not attained the age of sixteen years,³⁶ the contract shall be deemed to be a daily contract

³⁴ This provision is cardinal as it results in serious deficiencies to be examined in the critic of this study

³⁵ Chapter 268 of the Laws of Zambia

³⁶ Section 12 (2)

demolished, or in which materials are transformed, including ship building and the generation, transformation and transmission of electricity or motive power of any kind

- c) construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well telegraphic or television installation, electrical undertaking, gasworks, waterworks or other work of construction as well as the preparation for or laying the foundations of any such work or structure.
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³⁵ Chapter 268 of the Laws of Zambia

³⁶ Section 12 (2)

notwithstanding any agreement, whether oral or in writing to the contrary; and the employer shall cause the contract to be attested by the proper officer.

D) THE APPRENTICESHIP ACT³⁷

This legislation regulates the employment of apprentices in various trades. To this end, it provides a penalty for employing minors and holds that no person shall, without the written permission of the Controller, employ in a designated trade any minor who is eligible for service as an apprentice under this Act for a longer period than six months, or for a period which, when added to any period or periods during which such minor has been employed in a trade, exceeds six months, unless a contract of apprenticeship has been entered into in accordance with this Act.³⁸ Furthermore, the employment of minors needs to be regulated and controlled to avoid abuse and on this premise, the permission of the Controller may be given in respect of any individual minor or any class of minors or in respect of all minors employed in any particular class of work. Section 12 establishes the obligation of contract for apprentices and holds that no contract of apprenticeship in a designated trade made after the commencement of this Act shall be binding unless it is in the prescribed form; at the time it was entered into it was reduced to writing; it has been signed by or on behalf of the employer, and by the apprentice, and, in the case of a minor, by his guardian; and it has been registered by the Controller.

³⁷ Chapter 275 of the Laws of Zambia

³⁸ Section 9

As a means of ensuring enforcement, an inspector may, inter alia, and at any reasonable time enter upon any premises in which he has reasonable cause to believe that an apprentice or minor is employed or is being trained in any designated trade and take with him any interpreter or other assistant or police officer. Any employer who contravenes any provision of a contract of apprenticeship or any condition of apprenticeship, which is binding upon him, shall be guilty of an offence and liable to a fine or imprisonment.³⁹ In particular, any person who employs a minor contrary to the provisions of act shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand penalty units, or to imprisonment for a period not exceeding twelve months, or to both.

E) THE JUVENILES ACT⁴⁰

This is another piece of legislation that aims at protecting minors' interests. It provides for the custody and protection of juveniles in need of care and also the correction of juvenile delinquents. In the context of child labour, it is argued and submitted that this Act protects children from any forms of cruelty, which maybe encountered within the course of employment. It is therefore, against the law for one to expose children to hazardous conditions or an environment, which is detrimental to health. Section 46(1) of this act provides that if *any person* who has attained the age of sixteen years and has the custody, charge or care of any juvenile wilfully assaults, ill-treats, neglects, abandons or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental suffering), that person shall be

³⁹ Section 21

⁴⁰ Chapter 53 of the Laws of Zambia

liable to a fine not exceeding six thousand penalty units or to imprisonment for a term not exceeding two years, or to both

Furthermore, as regards commercial exploitation of children, prostitution as the worst form of child labour is dealt with under criminal law. Section 47 of the Juveniles Act,⁴¹ provides that 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. In the same spirit, section 144 of the Penal Code provides that any person who detains any woman or girl against her will in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or in any brothel is guilty of a misdemeanour.

The above-mentioned pieces of legislation are among some of the laws that attempt to guard and save the interests of children. They all attempt in one way or the other to help promote the welfare and well-being of the child but as will be seen, more should be done to ensure that the rights of the child are adequately and fully protected, especially as they relate to child labour.

3.3.2 WEAKNESS IN THE EXISTING LEGISLATIVE FRAMEWORK

It is clearly evident that there exists many protective regulations governing the employment of children and as such this may and has resulted in legal deficiencies. The law is sufficient to embrace the child labour scourge but is *scattered* in many statutes. It is such a multiplicity of statutes that invites confusion and

⁴¹ Chapter 153 of the Laws of Zambia

misunderstandings thereby adversely affecting enforcement. The relevant legal provisions are so numerous and in different parts of the law such that even those responsible for enforcing them can easily get confused. There are no less than 24 pieces of legislation on child welfare, all scattered and found in various pieces of legislation. Glaring problems associated with their interpretation, enforcement and implementation of these various legislations are bound to occur and actually do occur. To illustrate further, it is noted that most of these subsidiary legislations are contradictory to the Zambian Constitution itself in the sense that the definition of minimum age varies from one statute to another. Under the constitution "young person" means any person under the age of fifteen years. The Employment of Young Persons and Children Act,⁴² defines a child as any person under the age of 14 years old. Under the Juveniles Act,⁴³ a "child" means a person who has not attained the age of sixteen years. Under the Apprenticeship Act,⁴⁴ a "minor" means any person under the age of twenty-one years.

This existing state of affairs is indeed without a doubt confusing to employers, administrators and enforcement officers. It is contradictory especially from a layman's perspective, leaving one to venture into the difficult confines of legal interpretation that is only familiar to lawyers and judges and not the perpetrators at large. This truly is unfortunate and should not be the case. For a law to achieve a certain degree of efficacy, it must be certain or else it may leave open the possibility of further abusive child labour practices. More so under the unique guise of customary law or tradition or any other commercial undertaking. Consequently, as regards the minimum age threshold, it is necessary for all the subordinate legislation to be in

⁴² Section 3 of Chapter 273 of the Laws of Zambia

⁴³ Section 2 of Chapter 53 of the Laws of Zambia

⁴⁴ Section 2 of Chapter 275 of the Laws of Zambia

conformity with the definition of a child as laid in the constitution considering that it is the supreme law of the land.

The Employment of Young Persons and Children Act, being the major instrument that directly attempts to deal with child labour was enacted during the colonial administration and has remained basically the same in content resulting in major deficiencies. To this, Roscoe Pound's sentiments that even though law must be stable, it cannot and must not stand still, are indeed an expression of a lasting and irrefutable truth when construed within Zambia's socio-economic paradigm.⁴⁵ In a fluid world like Zambia, law cannot function effectively if it is conceived solely as an instrument of permanence. If the Employment of Young Persons and Children Act is to retain its place in Zambia as an instrument of attaining justice, then it cannot stand still whilst everything moves on but must develop and adapt itself to the new conditions. These propositions of law are clear when one examines the inadequacies existing within this law. Firstly, the term *hazardous work* for minors is not clearly defined to suit the existing scenario. The Minimum Age Convention establishes an obligation to set a higher minimum age for hazardous work and defines it as "any type of employment or work which by its nature or circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons." Under the Employment of Young Persons and Children Act, sections 3 and 6 do not necessary define hazardous industrial undertakings but merely describes instance of such undertakings. Section 17 then goes to prohibit employment of young persons in employment or work detrimental to health, safety and morals. The definition of hazardous is not spelt out clearly in black and white. In all its provisions there is no actual or clear-cut provision

⁴⁵ Edgar Bodenheimer (2001) Jurisprudence: The Philosophy and Method of the Law, pg 111

that actually defines hazardous work or protective conditions of work and this may result in grave injustices. One has to read into the act to determine what constitutes hazardous work. It is submitted that for efficient legal system to prevail, the law that governs that system must be simple, clear and certain especially from a layman's perspective but this is not the case under the Employment Young Persons and Children Act.

Secondly, it is evident in Zambia that child labour is largely an informal sector phenomenon.⁴⁶ There is a strong increase of employment and self-employment in the informal sector, where free market dynamics contribute to extremely low wages and dreadful working conditions. The government, employer's organisation or the trade unions do not seem to have any grip on the sector, hence the increasing child labour exploitation. Eighty-seven percent of economically active children in Zambia are found in the agricultural sector, with the majority of children being within the ages of 10 – 14 years and this is more prevalent in the rural areas.⁴⁷ In the urban areas, children working in the domestic service found between the ages of 15 – 17 years are also facing major escalating exploitation. Within the Zambian setting, it is in the agricultural undertakings that child labour is rampant. Traditional subsistence farming adversely affects children through long hours of work, harsh climate exposure and harsh forms of work are some of the aspects that represent the hazards faced by children. In the commercial setting, there is a growing trend of employing children as domestic servants under very cruel and unjust working conditions. There is also an increase in children being employed as stone crushers and many other inequalities within the growing informal sector.

⁴⁶Stanely Kamocha et al (1997) The Incidence of Child Labour in Zambia, Report to World Bank

⁴⁷ Zambia Child Labour Survey Report (1999) pg 22

However, the legislative response to these inequalities is none existent because the law does not cover the informal sector where child labour is eminent, its practices visible and its effects horrendous on the children. Section 6, which defines the industrial undertakings for the purpose of the Employment of Young Persons and Children Act, does not include commercial or agricultural undertakings. It is an obvious and inexcusable weakness in the law that the activities in which child labour is prevalent are completely excluded. This is contrary to the spirit of Minimum Age Convention, which is broad in scope and covers all economic sectors and all employment instances. This is a clear instance that brings out jurisprudential issues, which occur when the living law is inconsistent with the realities existing in society. The effect of this if left unchecked is that injustices are bound to occur.

The Employment of Young Persons and Children Act further allows for children to be employed in family undertakings. This in itself may result in grave inequalities, as there is no undue regard to the consequences on the physical and mental development of the child. This reasoning is premised on the fact that the Zambian extended and nuclear family is influenced by various traditional cultural norms and regulations in which children are treated as inferior beings. If left unregulated, the result of not placing check and balances within the family setting does lead to children being exploited, ill treated and forced to work with no regard to their educational development.

Another gap in the law is that there is no legislative provision for light work by minors. Light work is defined as work which is not likely to be harmful to the health

or development of young persons and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instructions received.⁴⁸ Light work according to the convention maybe permitted between the ages of 12 and 14 if the country has specified basic minimum age of 14. Zambia does not have this provision, despite specifying minimum age of 14. The lack of definition is prejudicial to the development of children as it consequently may result in a child being forced to do work that is not proportional to their age and as such cruel.

Although, the Employment Young Persons and Children Act, ⁴⁹ empowers any Labour Officer and any Police Officer of or above the rank of Assistant Inspector to enter upon any land or premises of any industrial undertaking affected by the provision of the Act, to examine, either alone or in the presence of any other person as he thinks fit, with respect to any matter under the any person affected by the provisions of this Act; to exercise such other powers as may be necessary for carrying this Act into effect. The Act fails to comprehensively provide adequate basis for enforcement or guidance relating to child labour

Further, it is observed that the penalties prescribed for contravening the provisions of the Act are paltry. The penalties in most legislation are not harsh enough to demonstrate any serious attempt to abolish child labour. From the investigations carried out by this author, it was found that the absence of any attempt to abolish child labour is further underscored by the fact that since its inception no one has been charged with contravening the Act in spite of the existence of the problem.

⁴⁸ Article 7 of the International Labour Organisation, Convention 138

⁴⁹ Section 18

According to the Chairperson for the Child Justice Forum⁵⁰ and the Assistant Labour Commissioner,⁵¹ no one has ever been prosecuted as regards child labour. These administrators agree and recognise the fact that the problem does exist, that it is an ever-increasing reality growing at alarming levels. Despite this, it is observed that difficulties arise in attempting to enforce the law. The argument is that the victims are passive. The economic crisis has seriously aggravated the problem and as such many communities in society are of the view that it is better to have minors working, than hanging around in the streets without receiving any education, guidance, health services or food and forming outcast gangs of juveniles. On this economic premise, the victims will not bring child labour matters before court and it becomes difficult to even produce proof before court, constraining enforcement and consequently, the perpetrators go unpunished.

To conclude, it is observed that the present regulatory mechanisms addressing child labour problems are characterised by serious ineptness and ineffectiveness due to the blurred and to some degree inapt laws concerning employment of children as it relates to child labour. The problems arising from the employment of children have been identified as a veracity and undeniable reality and as such remedial and protective legislation is inevitable. Beyond a doubt, it has been shown that the Zambian approach towards child labour is very weak in practical terms.

It has also been shown that the concerns of child labour are a worldwide concern.

To this effect, the practical approaches adopted by other nations may provide administrators with a realistic framework, which will guide them and help change

⁵⁰ Ms Mwamba Chanda, also Principal Resident Magistrate, Chikwa Court

⁵¹ Mr. Kabwe, Assistant Labour Commission, Ministry of Labour

their attitudes towards the problem of child labour. It is therefore, of paramount importance that one observes the legislative response of other countries so as to obtain some form of practical guideline and insight. On this premise, the cardinal question is, how have other countries approached this issue and what can the Zambian administrators learn from their experiences

CHAPTER FOUR

4.1 CHILD LABOUR: THE PRACTICAL EXPERIENCES AND INITIATIVES OF OTHER COUNTRIES IN IMPROVING CHILD LABOUR LEGISLATION

The present estimates by the International Labour Organisation put the worldwide number of working children at a staggering 250 million, of which at least 120 million between the ages of 5 and 14 years are working full time. Much higher than early estimates, the figures are the outcome of improved methods of data collection being pioneered by the ILO. These statistics underline two basic facts: firstly, the magnitude of the challenge facing the international campaign against child labour is far greater than was earlier realised, and secondly, a correspondingly stronger emphasis on data collection and analysis is required.

Nonetheless, action towards improving national legislation is being undertaken by many nations in the world to help reduce the magnitude of child labour. The starting point in eradicating this problem is seen by the level of commitment and the political will power of existing governments in different countries irrespective of the levels of economic development. Governments recognise that they have a social, moral and legal responsibility and duty to take positive measures that will bring about change. A succinct insight of the experiences and response of other third world countries shall be endeavoured upon, to show what has been done by some administrators in these nations to combat the scourge of child labour. To this end, a few highlights and developments in specific nations will be provided to give the reader a more practical

and comparative understanding of what some developing or third world countries have done in order to deal with child labour.

In dealing with the child labour problem, it is generally viewed that as regards legislation, the rationale is that a country should review its legal situation, determine if there are inconsistencies, confusion and insufficiencies in the law and identify priority areas for change.⁵² Consequently, as part of its strategy, towards the elimination of child labour, the government of Nepal held a national workshop on policy and programmes on child labour. The preparatory work included an analysis of the national legislative framework and recommendations for change.⁵³ It identified relevant national legislation, which included the Children's Act of 1992, the Labour Act of 1992 and Labour rules of 1993, the Common Law Code of 1963, the Foreign Employment Act of 1985, the Flesh Trafficking (control) Act 1986, Citizens Rights Act of 1955, Begging (Prohibition) Act of 1962 and the Prisons Act of 1963. These numerous laws contained provisions on the employment or work of children. In the process, the government identified anomalies in the law, identified areas where harmonisation was needed for example concerning age and definitions and other areas for strengthening the law. It was concluded that the legislative scheme needed further review and improvement by for example consolidating into one Act, as far as possible the provisions on employment and self-employment of children, work done by children in the domestic service and work in the family undertakings, by applying the provisions to all work including self-employment, by progressively extending labour inspection to cover all work places, by raising the minimum age as the economy and

⁵² Jankanish Michael and Haspel Nellien (2000) Action Against Children, pg 55

⁵³ Kathmandu (1995) Child Labour in Nepal, Volume II, An Overview And Proposed Plan Of Action

educational facilities develop and by making the penal provisions more stringent to act as a deterrent.

In addition, it was recommended that legislation should be adopted to implement the constitutional provisions on bonded labour, including the establishing of an effective agency for enforcing the law and providing the rehabilitation of bonded labourers. To facilitate enforcement of child labour provisions, it was also recommended that the implementation of the Birth, Death and Other Personal Incidents (Registration) Act 1976 be strengthened so that authentic records of the age of the child would be available.

With the ratification of the Minimum Age Convention, and the Worst Forms of Child Labour Convention, Mali has amended its Criminal Code and the Penal Code to include more severe measures to deal with trafficking in children for labour exploitation.⁵⁴ New instruments are being drawn up to address the re-organisation of the Employment Directorate Services, to equip them to deal with issues of surveillance and control of child labour. Its national programme has the following objectives; conducting surveys and research on the living working conditions of working children, undertake action programmes which address the priority needs of vulnerable families and communities, withdraw children the worst forms of labour and consider how to re-integrate them socially, economically, awareness raising, information and education campaigns to promote and extend action, strengthen the institutional capacity of the implementation structures to maximise the impact of action programmes, provide decision makers with quantitative and qualitative

⁵⁴ A Future Without Child Labour, Global Report Under the Follow Up to the ILO Declaration on Fundamental Principles and Rights at (2002), pg 80

information to facilitate action plans to combat child labour. These objectives are aimed at providing a practical framework that will strictly address issue of child labour.

On the other hand, India and Pakistan have adopted specific laws on bonded labour and call for the setting up of vigilance committees. Such committees are to be set up at the district level and comprise elected representatives of the area, representatives of the district administration, bar associations, press, recognised social service, labour departments of federal and provincial governments. The functions of these committees include advising the district administration on matters relating to the effective implementation of the law, helping in the rehabilitation of freed bonded labourers, monitoring the application of the law and providing bonded labourers with necessary assistance to achieve the objectives of the law. It was pointed out that social monitoring was needed at the local level to make the law work more effectively.

The Dominican Republic ratified the Minimum Age (Agriculture) Convention, 1921 in 1933.⁵⁵ In its 1991 observation, the committee of experts noted that the country's labour code excluded young persons employed in agricultural work from the scope of section 232 of the labour code prohibiting the employment of young persons under the age of 14 years (the minimum age in agriculture is 10 years). The committee of experts requested the government to supply information on measures taken to give effect to the convention as well as copies of the report of the inspection services, including data on the violations reported and the sanctions imposed in relation to the

⁵⁵ Conditions of Work Digest, 1991, Volume 10

employment of young persons. The government indicated to the conference committee in 1991 that section 232 of the Labour Code would be repealed.

Further, the need for an *integrated approach* to children's issues, in which government has a major role to play is frequently acknowledged but less frequently found in the structures of governance.⁵⁶ A child-focused approach helps to bring about an integrated framework for action as reflected in children's policies that create an improved basis for different ministries to focus together on meeting the various development needs and rights of the children. This approach has been successfully adopted in Colombia, Kenya, Mexico and Philippines. Child labour policies often direct that a formal structure be created with a mandate to oversee the work on this issue. The combinations of the ILO International Programme on the Elimination of Child Labour and the provisions of the United Nations Convention on Rights of the Child have resulted in many countries, establishing national steering committees, national commissions for child labour or child labour units to co-ordinate actions, investigate consultations and create a critical mass of knowledge and expertise at the national level. In Colombia, for example the National Commission for the Elimination of Child Labour, active since 1995 monitors the country's national policy across a wide range of economic sectors and government institutions. It extends to the work by the Colombian Institute of Family Welfare, and the NGOs working with it to provide psychological counselling, training and income earning opportunities. Action by trade unions complements the national plan by urging employers not to take on anyone under the age of 15 years. As a result of this work Colombia has seen a reduction in child labour in several sectors.

⁵⁶ Ibid pg 80

Another essential feature of ILO in the elimination of child labour relates to technical co-operation. To this end, action against child labour in other countries, has been made more effective due to the tripartite action involving governments, employers and workers organisation and other stakeholders in society for it is viewed that when these become involved in the fight to eliminate child labour, then success is all the more likely.⁵⁷ Collective bargaining, a means by which trade unions and employers come together is an effective way of combating child labour. One such example of this agreement signed between the National Union of Plantation and Agricultural Workers and the Kakira Sugar Works in Uganda, which include a clause stating that the company shall employ no child under the age of 18. Another example is the work of the National Confederation of Workers in Agriculture in Brazil, which conducts training courses for trade union leaders on how to incorporate clause on children's rights including child labour, into their collective bargaining agreements. A review of existing clauses on child labour found that they focused on the prohibition of employment of children under the age of 14. Certain agreements included educational provisions for children of workers.

4.2 THE LESSONS LEARNT FROM OTHER COUNTRIES EXPERIENCES

Even though, child labour legislation in most third world countries is deficient due to their unique economic situations, what is clear and emanating from the given experiences is that these countries upon recognising that the problem is existing, they attempt to deal with it as a priority despite their poor economies. These nations ratify various international conventions relating to child welfare and their desire to deal with

⁵⁷ A Future Without Child Labour, Global Report Under The Follow Up To The ILO Declaration on Fundamental Principles And Rights At Work ((2002) pg 86

the issue does not end there. They are not passive in the fight against child labour due to their pitiable economies nor do they use it, as an excuse but are strongly committed and devoted towards its elimination. National commitment is the key to specific and effective abolition of child labour. The sense of political will and attitudes of these governments does not end at just ratifying international instruments but drives them to take positive action and to do everything that is within their power and budget to help aid child workers. Their laws though not totally effective seem to change with the dynamics in society and may help reduce the scourge. The law in this sense is alive to the needs of the child workers and is being or has been revised to suit the existing socio-economic environment. The point being made is that after ratifying these conventions at least something in the affirmative is being done. It is clear and apparent that because of their political commitment and will, these nations are focused and action oriented in that some form of immediate and effective action has or is being undertaken in their domestic laws.

To conclude, this chapter has clearly demonstrated something that the Zambian government and other third world nations can ponder and reflect on. The lesson gained from this insight is that if administrators develop an urgent sense of commitment to the elimination of child labour coupled with a more aggressive stance in dealing with the problem in all sectors of the economy, then indeed the scourge may not be eliminated totally but may be reduced or managed accordingly.

CHAPTER FIVE

5. 1 CHILD LABOUR LAWS IN ZAMBIA: THE STRENGTH, WEAKNESS, OPPORTUNITY AND THREAT ANALYSIS

This academic investigation has revealed beyond a doubt that the problem of child labour in Zambia is a disputably existing and to a large extent growing inclination. Consequently, there is no better way of aiding the reader and concluding the investigation than by giving one a more objective and precise reasoning on the child labour features in Zambia. To this end, it is proposed that one ventures into applying the SWOT (Strength, Weakness, Opportunity and Threats) matrix in interpreting and the understanding the issues posed in examining and in reviewing the country's national policy on child labour. From this analysis, the study will then conclude by provide recommendations were necessary.

5.1.1 STRENGTHS

Taking into consideration that the study has outlined the fact that the child labour scourge is a problem, which is on the increase, it is difficult to objectively identify any strong points in both the legal system and its institutional arrangements. The Employment of Young Person's and Children Act, which directly relates to child labour, has not been revised since its inception. However, a positive attribute and development noted at the time of this academic investigation is that the government has recognised that there are existing deficiencies in the legislation and is presently formulating a legislative policy that will hopefully bring about some positive change.

5.1.2 WEAKNESSES

This will be construed in two ways. Firstly the challenges first by the researcher in the study will be highlighted to show the weakness in the procedural system existing in the institutions that deal with child labour and secondly, mention shall be made to the substantive weakness in the actual legal instruments.

The challenge posed to the researcher in this study, is that even though there is a realisation of the problem by stakeholders, it is difficult to pinpoint, find or trace specific reported records of actual or practical cases of child labour. The logical explanation is that the problem faced by many child workers is of an invisible nature especially in the informal sector, agricultural sector and domestic household. This is one study, where one as an individual living in the Zambian community can actually observe that there are serious exploitations and injustices occurring to child workers but then the information on the actual practices is quite difficult to prove and this worsened by the fact that accessing factual case studies is a problem. The reasoning is twofold. Firstly, it is observed and can safely be concluded that not many victims officially report incidences of child labour due to economic and also customary traditional reasons.⁵⁸

Secondly, the few cases that are reported to the appropriate authorities are not properly documented. Upon quizzing appropriate administrators and defenders of the law, or specialised institutions and experts on child labour, one finds that they agree that the problem does exist and are aware of certain reported instances but cannot

⁵⁸ Customary in the sense that many families for example will not view the fact that they are utilising and exploiting a child's labour without regard to its development in a domestic household setting or agricultural setting as child labour. The child is being made to work under extreme and unfair circumstances, sometimes working without a wage and is not expected to complain as long as he/she is fed and sheltered by the people looking after that child.

avail one with specific records making the analysis of the problem more or less difficult. Truly, the Zambia statistics office has released a report on child labour, which is a more recent, comprehensive and consolidated attempt to statistically analyse child labour. It has gathered relevant statistics but, nonetheless, it is submitted that more should be done in obtaining information on child labour incidences in Zambia. In order to deal with the problem effectively, there must exist records of actual reported instances and incidences from which the legislator and the community at large is able to understand fully the degree of the actual inequalities that these working children are facing. This in turn will promote transparency, awareness and debates not only among stakeholders but also to the wider masses at large in both the rural and urban setting.

Upon examining the legislative response to child labour, it is clear that even though some form of legislation does exist and has been enacted, there are shortcomings in the coverage of the law. Despite the Zambian government having ratified various international treaties, the legislative provisions on child labour do not meet the international standards. Serious gaps in the application of the law are persisting. Legislative commitment is dormant due to lack of resources for effective monitoring and enforcement, lack of political will and also maybe due to the fact of authorities not knowing how to tackle the problem given the invisibility of many child workers and the fact that poverty, discrimination and cultural attitudes that foster it are so deeply entrenched in society.

5.1.3 OPPORTUNITIES

The Zambian government has ratified many international treaties among them being those under the International Labour Organisation. At international level, the International Labour Organisation has indeed been instrumental in the fight against child labour. It has explored the ever-changing manifestations of child labour throughout the world, and building up on these explorations and experiences has responded by presenting various mechanisms to governments, that will help eliminate the problem of child labour. The ILO has conducted research on child labour and through accurate analysis of the situation on child labour has helped many countries devise appropriate policies. As pointed out, an essential feature of the ILO is technical corporation among partners, which helps in shaping national and international policies, and programmes and to this end, the International Programme on the Elimination of Child Labour was launched as a major ILO technical co-operation programme on child labour. Zambia being a member of ILO has risen to the challenges it is facing in combating child by using the opportunities that ILO has to offer. However, in practice whether the Zambian government is *effectively* using and applying these prospects and opportunities under ILO is a question and interpretation of fact.

5.1.4 THREATS

The effective abolition of child labour is one of the most urgent challenges of our time and as such national political commitment is the key. As alluded to, in the absence of firm policy, commitment by government, backed by resources and translated into effective action, the best efforts of other partners in the fight against child labour are likely to result in making little more than a small dent in the problem. The Zambian government is trying to respond to the injustices faced by working children, but then

what is threatening is that its response to the problem is slow. Even though, a framework is being devised, this action - oriented goal will probably take time to materialise due to heavy bureaucracy. In this regard, government's obligations and political commitment seems to be questionable.⁵⁹ The obligation to establish, implement and monitor policies and legislation and to translate international commitments into domestic action, rests firmly with the government. It is submitted that inclusive, accountable systems of governance and sound macro-economic management provides the basic foundation on which effective, well resourced policies and programmes to combat child labour can be well built and sustained. On the Zambian plane, the government's obligation is threatened by its bureaucratic, lethargic and sluggish response to the working children's exceedingly urgent problem. Considering the invisible nature of the working children in the informal sector, the injustices being faced are probably enormous and petrifying. Consequently, it is vital that the government hears and acts on the cries of these children at a burning pace.

5.2 RECOMMENDATIONS

First and foremost, the Zambian government should call for the immediate suppression of child labour and must commit itself to pursue a national policy to its effective abolition. This *urgent sense of commitment* as has been shown in the foregoing is a cardinal element that will bring about change in the existing system as regards child labour.

⁵⁹ Truly, if the law on motor theft could be amended in speed record on baseless subjective reasoning then surely on a more objective and calculated reasoning the plight of the working children could be reduced if the government responded as it did on the motor theft legislation.

Secondly, within the Zambian legal system it is regrettably observed that there is a proliferation of laws scattered in different legislations, which consequently, leads to confusion among those responsible for enforcement. These legal provisions are not only scattered but also inconsistent with one another. Consequently, it is submitted that there is need to consolidate and harmonise all legislation on child welfare. Of great importance is that the definition of a child or young person must be made uniform and must conform to the Constitution. The Minimum Age Convention, which is the guiding tool in this regard, is a very flexible instrument. As such in adopting and defining a minimum age, it allows countries to take into account the different socio-economic levels of development so long as it is reasonable. Thus, if the constitution having taken the socio-economic growth of Zambia has identified the age of 15years, as the minimum standard then this must be highlighted in all the subordinate legislation.

In addition, legislation should include provisions that call for periodic studies and reports, setting up of statutory advisory committees or bodies and requiring periodic reviews of prohibited types of work. Even though, the Employment of Young Persons and Children Act gives the Minister various discretionary powers for the effective implementation of the government's objectives, the need for setting up advisory bodies or specialised institutional arrangements who shall have, inter alia, a mandatory obligation of preparing periodic reports is of the essence. These bodies will help reform the system and make the law on child labour known to the masses at large. These entities should be given a mandate of working and liaising with

employers, employer organisations, NGOs, communities and other segments of civil society in both the urban and rural informal sectors. This will help promote transparency and awareness, enhance the monitoring of the invisible working children, promote participation of the different segments of society in the implementation of the law and encourage the mobilization of organised groups for the rights of the working children.

Thirdly, it is evident from this investigation that there is need for the Zambian legislation to expand the coverage of its laws on child labour. The present nightmares that these working children are facing are a direct result of the fact that the law does not protect them adequately, as it does not cover the informal sector in which child labour is most rampant and prevalent. To this effect, the law must extend to all sectors where child labour occurs, particularly the agricultural sector, domestic service, informal sector and family undertakings.

Fourthly, it is submitted that law is not static and must evolve with time along with the changes in economic circumstances, social structures. Since its inception, the Employment of Young Persons and Children Act has never been reviewed. There is an urgent requirement to revise and amend this law. This Act in its preamble states that its objective is to regulate the employment of young persons and children and to provide for matters incidental thereto. This preamble clearly gives one an insight of society's objectives and commitment and goes on to provide a preface of the contents of the Act itself. It is this objective that must be re-examined because the result is that the substantive law itself is vague, questionable and inappropriate as it cannot meet the requirements of present day society. It is vital that this law demonstrates a proper

and specific working definition of national objectives regarding child labour within the present socio-economic environment. This legislation must anchor unambiguously in law, the aspirations on behalf of the children. It must define and send a clear signal of what is permissible and what is not, it must establish a basis for legal action by governments, parents or other interested parties, it must provide a framework for conducting public awareness campaigns against child labour and for taking action on behalf of children working under abusive conditions, it must facilitate and promote the formulation and designing of programmes and projects for working children and must provide a basis for monitoring and assessing progress in the attainment of the objective of the effective abolition of child labour. For the purposes of specificity and logical understanding the following facts and recommendations on this legislation must be observed:-

- a) The process of reviewing, amending and drafting legislation must clearly address the question of child labour and hazardous work. Section 17 of this Act, gives some working definition as regards the prohibition of employment of employment of young persons in employment or work detrimental to health, safety and morals. But, in this regard it is not so clear for the lame man on the street in the informal sector to grasp what hazardous implies. The law must be simple, to the point and clear. It must be plainly define and clearly indicated that hazardous work is one, which by its nature or circumstances in which it is carried out is likely to jeopardise the health, safety or moral of that young person. If possible this definition should be included in section 2 under the interpretation part of the Act. Further, child labour is nowhere defined in the Act and it would therefore be beneficial for the Act to define it within the

Zambian context and must draw a working distinction between child labour and child work. Such a working definition should clearly be expressed so that people will be able to understand the concept fully.

- b) Considering that light work is not provided for in the Act, it is submitted that the aspect of light work should be specifically addressed and defined in the legislation. The law must designate which activities are allowed, the hours for such work and conditions.
- c) The Act also provides for the employment of young persons over the age of 16 years in night work but is very vague in that it does not set out the conditions of such employment, which may leave room to serious abuse. It is strongly recommended that these young people should only be allowed to work if the employer meets certain prescribed working conditions and environment. The law should provide for measures to ensure that the night working conditions for these young persons are maintained at satisfactory level and supervised closely.
- d) This legislation should also provide the conditions under which children of legal age can work. There must for instance be a requirement of medical examinations to prove fitness for employment and continued medical supervision, a requirement that attempts to establish a linkage between educational, vocational, fulfilment and continuation of work.

e) Legislation is meaningless if it is not observed. Because child labour is hidden from the public eye there is need to review the inspection services. Child labour laws are traditionally enforced through a general system of labour inspection as provided for under the Act and usually manned by specialists working for the Ministry of Labour. But, it is obvious that these inspections are neglected and thus weak due to a number of reasons. It is evident that they will require very substantial upgrading, especially if they have to penetrate into inspection of the informal sector and other places that have been so difficult to reach that they are often considered as difficult areas that cannot be inspected.

Other than the need for improving the inspectors working conditions, facilitating their training and other logistics, it is proposed that a potentially powerful way to improve the enforcement of labour laws is to link the inspection service to community interest and organisation. Labour inspection services could do much to alert communities on the importance of protecting their young against hazardous work and help them report violations of child rights in the workplace. Thus, in addition to the powers given to labour offices under section 18, it is submitted that the role of the labour inspector must be transformed to include that of an organiser and outreach person. The model of community responsibility with assistance from labour inspectors may be a useful element or alternative for extending effective oversight of children's working conditions in the rural areas, informal sector or domestic service.

- f) Additionally, as regards enforcement of the law and in particular penalties for contravening the act, the law holds that every person who contravenes the provisions shall be guilty of an offence and shall be liable on conviction thereof to a fine of six hundred penalty units or to imprisonment for three months, or to both.⁶⁰ It is seen that the offence is clearly not defined and must therefore be subject to review. Additionally, the penalty for contravening this law in comparison to the magnitude and effects of child labour seems to be very lenient on the offenders. It must be revised so that it is made in such a harsh manner that will help deter responsible adults from mistreating children and consequently help reduce and prevent the child labour scourge in society.

5.3 CONCLUSION

To conclude, this investigation has shown that within the existing system, child labour does exist and as such, legislative reforms are indispensable and of paramount importance. These must immediately be conducted in order for Zambia to promote the working children's rights and also in order for it to meet and satisfy the international standards. Without a doubt, it is conceded that the law cannot and will never operate in a vacuum and as such regard needs to be had to other socio-economic factors. Nonetheless, a lack of economic resources should not be viewed as an excuse for not doing anything about the problem. The administrators must show a sense of commitment and urgency and together with the all the stakeholders involved and the community at large, the problem will not be eradicated but may be reduced and mitigated accordingly.

⁶⁰ Section 19 of the Employment of Young Persons and Children Act

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