

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

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'CHILD ABUSE AND THE LAW IN ZAMBIA'

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D E D I C A T I O N

To mum and dad. To both I owe more than
I can express.

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INTRODUCTION:

The aim of this paper is to look at the issue of child abuse and the Law in Zambia. Child abuse is a problem which is found in most countries of the world. The children of the world are innocent, vulnerable and dependant. They are also curious, active and full of hope. Their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and co-operation. Their lives should mature as they broaden their perspective and gain new experieces. But for many children the reality of childhood is altogether different¹. Each day countless children around the world are exposed to dangers that hamper their growth and development. Child abuse, among other things, is one of the main causes of such dangers.

In this paper we shall therefore endeavour to examine the scope of child abuse in the world and Zambia in particular. That is, to see how serious this problem is. We shall also examine the existing legal safeguards against this complex and recurrent problems in Zambia. Are these safeguards adequate and effective? Further we shall look at the judicial attitudes towards child abuse as manifested through case law. In conclusion, we shall make recommendations as to whether we need any law reforms concerning child abuse in Zambia.

1. First call for children "World Decleration On The Survival, Protection And Development of Children" 30th September 1990. New York.

CHAPTER ONE

CHILD ABUSE: DEFINITION, HISTORICAL CONTEXT AND SCOPE:

A) CHILD ABUSE - DEFINITION:

According to the Oxford dictionary², child abuse is the maltreatment of a child. Who is child? The Juvenile Act³ states that a child is a person who has not attained the age of 16 years. As to what constitutes 'maltreatment' of a child, Henry Kempe in his definition of child abuse stated that this a situation in which a child is suffering from serious physical injury inflicted upon him by other than accidental means, suffering harm by reason of negligent, malnutrition, or sexual abuse, is going without necessary and basic physical care or is growing under conditions which threaten his physical and emotional survival. One public health physician argues that abortion is also a form of intra uterine child abuse. However, please note that for our present discussion we shall limit our selves to Kempe and the Oxford dictionary's definitions of child abuse.

B) CHILD ABUSE - THE HISTORICAL CONTEXT:

The history of child abuse goes back to the 19th Century. The formation of societies for the prevention of cruelty to children and the crusade against child labour in the nineteenth century reflected changing societal attitudes towards children in general and mistreatment of children in particular⁵. Among the most relevant change in society's attitude is the shift from the view of children as the exclusive property of their parents to the view that children have intrinsic and even special rights. A corollary historic change was the establishment of the doctrine of 'parens patriae' which entails that the state assumes responsibility for assuring that children's needs are met⁶. These concepts have led to changing views about the mistreatment of children and about those who are responsible for their protection and care.

Periodically, other events have also occurred and discoveries have been made that stimulate or accelerate further change in societal attitudes. For example, in the 1940s and 1950s radiological studies revealing multiple,

2. The Concise Oxford Dictionary, 8th Ed. R E Allen, Clarendon Press Oxford 1990, USA

3. Juvenile Act Cap 217 of Law of Zambia 52(1)
Henry Kempe. The Battered Child (2nd Ed. Chicago, University of Chicago Press 1994) P21

5. Samuel X Radbill "A History of child abuse and infanticide" in Ray E Helfer and C Henry Kempe Eds. The Battered child (2nd Ed. Chicago University of Chicago Press 1974) P13

6. Ibid. P14

healed fractures in children stimulated concern about children who were physically abused by their care takers.

However, the problem of child abuse became a focus of professional and public concern in the early 1960s. Henry Kempe for example coined the term "battered child syndrome" and from this the current national activities were mobilized⁷. These historical trends in social attitudes concerning children have led to the growing importance of children and childhood and "to a filocentric orientation conducive to the development of child welfare services"⁸.

C) CHILD ABUSE - AN INTERNATIONAL PROBLEM/CONCERN:

It is a fact, however, that thousands of children in the world today are still being abused. Child abuse is far from being an exchange preserve of few countries. It is indeed a phenomenon that transcends cultural, economic, political and other differences. The problem exists in varying degrees in both developed as well as under developed societies.

In some countries, deliberate attempts have been made with a view of legitimizing child abuse. In the United States Of America's New York City, a Gay Activists Alliance (G.A.A.), a successor to the Gay Liberation Front and Prototype Activist Group was founded in December 1969 with the objective of opposing legal restrictions on sex based on age.

In 1979, another Gay Community in America argued that the ultimate goal of gay liberation is the achievement of sexual freedom for all. That is to say, not just equal rights for lesbians and gay men, but also freedom of sexual expression for young people and children⁹.

In Canada, a lesbian and gay rights coalition, across Canada also favoured abolising the age of consent to sex in children. Many activists showed the view that the state had no business regulating sex between consenting partners whatever their age.

However, the campaign to give children freedom and choice, that is whether they should have sex or not has nothing to do with the totally progressive

7. Henry Kempe "The battered Child Syndrome" Journal of the American Medical Association 181 (July 1962) P18.

8. Alfred Kadushin, Child Welfare Services (2nd ed. New York MacMillan Co. 1974)P54.

9. David Thorstand M.A. Man/Boy Love & The American Gay Movement. New York City. Haworth Press Inc 1991.

stance of defending the rights of teenagers not to be penalised for their sexual activity. On the contrary, the advocates for the repeal of the laws pertaining to the age at which children can consent to sex are primarily adult men and women who believe that there should be no restrictions in having sex with children. The primary motive of these men and women seems to be a selfish desire to take advantage of children without attracting the wrath of legislation tending to protect children.

According to the world declaration and plan of action from the world summit for children held in December 1990 in New York, each day, 40,000 children die from malnutrition and diseases including Acquired Immune Deficiency Syndrome (AIDS) and from the lack of clean water and adequate sanitation and from the effect of drugs and that at present over 100 million children are without basic schooling.

In India, poor and irrational parents are rushing their young daughters into early marriages according to the Times of India News Services¹⁰. This and many other child abuses have made the number of school drop outs among girls adversely high in India.

A survey by Index, a local magazine in Zimbabwe suggested that at least two out of every five male street children younger than 15 years had been sexually abused¹¹. The same survey revealed that many girls ran away from their homes because of sexual harrasement and incest.

Child abuse is a matter of concern to the international community. The aspirations of the internatinal community for the well being of children are best reflected in the convention on the rights of the child which was unanimously adopted by the General Assembly of the United Nations in 1989. This convention sets universal legal standards for the protection of children against among other things, abuse. On 30th September, 1990, countries again agreed at the world summit for children in New York that they would work towards the protection of the rights of the children "We have gathered at the World Summit for children to under take a joint commitment to give every child a better future. We do this not only for the present generation but for all generations to come. There can be no task nobler than giving every child a better future".¹²

10. Sports Mirror, June 19-25 1994. P12

11. The Weekly Post, February 8 1994. P17

12. UNICEF. The World Summit for Children, held at the United Nations New Yrok on the 30th September, 1990.

In line with the growing international consensus in favour of greater attention to the human dimension of development in the 1990s, there was set up a plan of Action which calls for concerted national action and international co-operation to strive for the achievement, in all countries of major goals for the survival, protection and development of children by the year 2000.

It was stated at the summit that the Plan of Action was intended as a guide for national Governments, international organisations, bilateral and agencies, non-governmental organisations (NGOs) and all other sectors of society in formulating their programmes of action for ensuring the implementation of the declaration of the World Summit for children. The needs and problems of children vary from country to country and indeed from community to community. However, parents, elders and leaders at all levels throughout the world have certain common aspirations for the well-being of their children. This plan of action deals with these common aspirations suggesting a set of goals and targets for children in the 1990s, strategies for reaching those goals and commitments for action and follow up measures at various levels.

Zimbabwe's President, Robert Mugabe, said that 'Children are the most vulnerable members of our society who none the less carry the hopes and aspirations of the entire nation for a better and more just future. The tools which we give them to build this future should include physical and mental well being, a caring and protective environment in which to grow, and an appropriate education designed to meet the increasing complexity of our modern day world.'¹³

D) CHILD ABUSE IN ZAMBIA:

Until fairly recently, the phenomenon of child abuse did not pre occupy the country's news media. In the last decade or so however, the problem of child abuse has increased to such levels that it can no longer go un noticed. The newspapers cry out almost on a daily basis with such headings as "Zambian Children still abused"¹⁴, father fined K90,000.00 for pregnating daughter¹⁵, blind beggers guilty of child abuse" etc.

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13. The Weekly Post. February 8, 1994. P17
 14. Zambia Daily Mail, March 21st, 1994. P6
 15. National Mirror, June 19 - 25, 1994. P16

Child abuse in Zambia manifests itself in varying forms such as an increase in the number of malnutrition cases in the country's hospitals and health centres. A recent case study revealed that the number of malnutrition cases reported in hospitals and health centres jumped from 58, 545 in 1981 to 70, 850 in 1991 showing a rising trend over a period of 10 years¹⁶. This clearly shows that children are being abused by being left without proper food and other good living conditions.

Another form of child abuse has manifested itself in the recent street kids phenomenon. Many children are being abandoned by their parents for varying reasons. A researcher with the Common Wealth Youth Programme, Lusaka, put the number of street children at more than 30,000¹⁷ streetisin is not only child abuse in as far as it entails the subjection of the child to inhabitable poor living conditions, but is also a gateway to sexual abuse among female children and drug and substance abuse among the male children on a daily basis.

Child abuse in Zambia can be demonstrated not only by the upswing in the number of street children and malnutrition, but it can also be clearly seen in the very fact that there has been an increase in the number of children's homes in the country. Apart from the old well known children's homes which are Kasisi Mission (Lusaka) St Martins Home (Kitwe), Hillwood Farm and Falconer, other children's homes have been recently set up.

- a) Harold children's Home (Ndola)
- b) Holy Family Home (Ndola)
- c) Christ For All Nations (Luanshya)
- d) Kafubu Block (Luanshya)
- e) Malo Achikulupililo (Kabulonga, Lusaka)
- f) Cuvosa (Chelston, Lusaka)

The total number of children being looked after in children's homes has gone up from 249 in the year 1992 to 289 in 1993, an increament of 16% over a period of only twelve (12) months. (Mc DSS Annual Report 1993)

Since there has been this increase in the children's homes, one cannot resist the temptation to question the safety of these children being kept in these homes. Are they not being abused even in these homes? During an interview with an official in the department of Social Welfare at the Ministry of Community Development and Social Services in Lusaka, it was found out that even these

16. Sunday Times of Zambia April 17th, 1994. P7

17. Bulletin of Health statistics 1987 to 1988; major trends 1978 - 1988 (Ministry of Health Statistical Unit).

Zambia Daily Mail, March 21st 1994. P6

and street walkers as their primary targets. This cluster of children also includes those who stand by street lights and beg directly from motorists while the latter are waiting for their right of way. In both cases, the children are subjected to numerous abusive language from the indignant public. The second category involves children who station themselves at the key supermarkets such as Kabulonga and Northmead in Lusaka. This group normally begs from the well-to-do shoppers and from expatriates in the hope of getting some coins from the shoppers.

We also have begging children hired by the blind and handicapped. These often act as guides and either advise the blind or handicapped person when to beg and where to go. These children roam from bar to bar and from shop to shop. In most instances, the reception, especially in bars, is very hostile and rude and the couple seem to accept this treatment without a murmur.

These children also face the wrath of their masters. The blind are usually very rude and impatient towards the youngsters, some of whom actually end up being slapped. This sign of impatience could be a reflection of the house conditions and frustrations attending most of the handicapped and blind who cannot find decent employment, let alone lead a more meaningful life.

iii) Stone Crushing:

The children engaged in stone sales are at two levels; gathering and chipping of stones and packing them mostly in 25Kg bags or soliciting potential buyers and get a commission thereafter. When crushing these stones, these children often confront the danger of chipped stones hitting their eyes or face in addition to being hit with a hammer in the course of breaking the stone worse still, the children are in perpetual danger of being hit by a passing vehicle either as they try to cross the road or once the vehicle careers off the road. For those children assigned to look for potential buyers, they have to walk some kilometres in most instances without even striking any luck and this could go on for a week.

One conspicuous thing about the whole arrangement of stone crushing is that it has a gender bias. It has also been observed that most of the stone crushers of adult age are females, more specifically mother mostly in their late twenties. This practice has ushered another form of child abuse. Since mothers are normally in charge of baby sitting, most of them cannot afford to hire a nanny to look after the baby. Similarly, they cannot afford the older siblings to remain

children kept in children's homes are in some instances victims of child abuse. It was reported that at Kafinsa Missison in Ndola a white man used to keep children claiming that he was helping them as they were poor. However, it was later discovered that, that man actually used to sexually abuse those children. He even took some to the United States Of America where he got some ponogrphic photographs of these children who were of about 10 years old.

Another form of child abuse that is on the upswing in Zambia, is child labour. From general observation this can be divided along the following lines.

i) Street Vending:

This has attracted the attention of the mass media and the general public. This is indeed the most common type of child labour. It is influenced by diminishing family resources in the face of sharply rising cost of living narrowing job opportunities among the young generation.

Children engage themselves in many street activities as a means of generating income. They are subjected to long hours of toil. (Not less than ten hours on the average.) In addition, they have to weather rains during the wet season, cold days in June, July and August, as well as the blazing heat during the months of September, October and the first part of November.

In addition, the younger ones always live in the danger of being bullied by the older street boys. Worse, sometimes, the little that they have gets grabbed by thieves on the pretext that they are party militants. This at times, forced them to change street activities. They ended up doing more physical and demanding jobs such as heaving bags of mealie meal, carrying buckets of water for marketeers etc. One of the problems faced by most of these boys is that they are literally compelled by parents to hand in a certain amount of money, sometimes even if the actual initial capital came from other sources apart from parents. With limited income in most cases they cannot afford to buy a decent meal during lunch hour.

ii) Street Begging:

This is increasingly becoming a common form of child labour. Boys and girls engaged in street begging fall in two main categories. There are those who beg from passers-by in street, with packing motorists

behind as baby-sitters, since the latter are supposed to assist with gathering and breaking the stones. As a result, babies are seen tucked behind their mother's backs in the face of the blazing tropical sun or in the cold and sometimes windy days.

iv) Food Vending:

Food vending caters for more cases of child labour than most of the activities cited above. Most children are employed to sell cooked food stuff by their parents or relatives in bars or outside bars. The bias is toward engaging young girls in their early teens or around the age of twelve. Those who sell in bars or nearby are prone to abusive language from drunken customers. In some cases, the girls are raped or beaten unless they are in a group.

We can also allude to the prevalent habit of employing young girls in food markets either as baby sitters or as cooks. The girls sometimes work under pressure from about 06.00 hours to about 17.00 hours with normal wages. By and large, the girls tend to be of school-going age but are forced to stay away from school because parents cannot apparently afford school uniforms and other requisites. Yet, marketeers themselves sometimes have their own girls of similar age who are actually attending school. Instead of encouraging these girls to go back to school, they would rather have cheap source of labour

E) CONCLUSION:

From the foregoing discussion, it is apparent that the problem of child abuse in Zambia is seriously at stake and needs to be addressed squarely and wholistically. It is for this reason that I shall dedicate the remaining chapters of this paper to look at the existing legal safeguard for children against child abuse. In my conclusion, I shall endeavour for make recommendations as to whether we need any ammendments to the law in order for the child to be sufficiently protected.

CHAPTER TWO

CHILD ABUSE: THE EXISTING LEGAL SAFEGUARDS

In this chapter, we shall endeavour to examine the existing laws in this country which were enacted for the purpose of protecting the Zambian child against abuse. The chapter shall also highlight the adequacy and effectiveness of these laws.

An examination of these laws reveals that there are no less than 24 such pieces of legislation in Zambia. These pieces of legislation that deal with various aspects of children's life can be categorised into at least two main classes namely, those that are protective of the rights, interests and welfare of the child and secondly those that are promotive of the same. In presenting the existing legislative position affecting the rights and welfare of the child in Zambia, we shall proceed on the basis of the said categorization of the laws in question.

A. PROTECTIVE LEGISLATION:

This category of legislation has been identified to be protective in nature and formulation. That is, it tends to enjoy state functionaries to carry out measures designed to protect the rights and interests of children and prohibit certain acts and actions which are detrimental to the rights and interest of children. These pieces of legislation which we shall now examine in turn are:

i) The Constitutional Provisions:¹

The proper point at which to start the discussion of the legal protection of children in Zambia is its fundamental law. That is the current Multi-Party Constitution which was adopted in 1991. Like all other constitutions it is the supreme law of the land and its provisions, that have binding force on all the authorities and persons throughout the Republic of Zambia. The following are the provisions of the constitution protecting the child.

1. Chapter 1 of the Laws of Zambia

1) Entrenchment Of Fundamental Rights And Freedom

All rights and freedom in the Zambian Constitution are enacted in chapter III. There are in all twelve rights and freedoms which are guaranteed under this chapter and are to be enjoyed by all persons in Zambia, that is, including children.

2) The Right To Nationality Or Citizenship

The constitution of Zambia has also implemented the right of the child to be granted a nationality as stipulated by the United Nations Convention on the Rights of the child which has been ratified in Zambia.

ii) Births And Deaths Registration Act:²

The United Nations Convention cited above also has provisions requiring the child's immediate registration after birth and his right from birth to a name. These provisions are implemented in Zambia by the Births and Deaths Registration Act. Section 5 of this Act reads in part "...the registration of the birth of a child whether born alive or still-born shall be compulsory.."

In addition, it should also be noted that apart from providing for the registration of all the births of children in Zambia, the Birth and Deaths Registration Act requires the registration of all the deaths of every person, including children, with all the necessary details relating to the cause of the death. This ensures that no death of a child can occur without being accounted for. There can also be no burial of a person without a burial or disposal certificate which will only be issued after the issuing authorities have satisfied themselves as to the cause of the death.

iii) The Penal Code:³

The Penal Code of Zambia contains far reaching provisions which protect the physical and moral well being of the child. These provisions are referred to as "offences

2. Chapter 210 of the Laws of Zambia

3. Chapter 146 of the Laws of Zambia.

against morality" under chapter XV of the Penal Code. Under these provisions it is an offence for any person to be involved in the act of:

- 1) Abduction of a girl under sixteen years⁴ or;
- 2) Defilement of a girl under sixteen years⁵

Further, under the Penal Law of Zambia, a person under the age of eight years is not criminally responsible for any act or omission⁶, and a person under the age of twelve years is not criminally responsible for any act or omission unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or omission⁷. A male under the age of twelve is presumed to be capable of having canal knowledge⁸.

However, there is a provision under the Juveniles Act, CAP 217 of the Laws of Zambia, for a child who is below the age of criminal responsibility to be amenable to the jurisdiction of the juvenile court established under 563 of the Juvenile Act.

iv) The Juvenila Act:

The Juvenile Act is really the main legislation which directly deals with both the protection of the welfare and interests of children and the promotion of the same. For the purpose of the present discussion, we shall confine ourselves to an examination of the protective provisions of the Act. The other category of provisions will be discussed in the other part of this work dealing with promotive provisions.

The offences against juveniles in the Juvenile Act are outlined in detail from sections 46 to 55. Under those provisions, cruelty to the juvenile or child is defined under section 46(1) to include wilful assault, illtreatment, neglect, abandonment or exposure of the juvenile to assault, illtreatment or neglect. Further, a parent

4. S 136
5. S 138
6. S 14(1)
7. S 14(2)
8. S 14(3)

or a legal guardian who is legally recognised to maintain a juvenile is deemed to have neglected the juvenile if he has failed to provide adequate food, clothing, medical aid or lodging for him. Further, it is an offence under the Act for a parent or a legal guardian of the child to cause or encourage the abduction, unlawful canal knowledge or prostitution of girls under sixteen years. It is an offence for any person having the custody of a juvenile to allow that juvenile under the age of sixteen years to reside or frequent a brothel, to cause or allow children to be used for begging, or to give intoxicating or spurious liquor to children or to cause or allow children to be in bars of licenced premises.

v) Maintenance Of The Child:

The provisions in the Juvenile Act referred to above, must also be read together with those in the Penal Code which deal with offences relating to marriage and domestic relations. Section 168, 169 and 171 of the Penal Code makes it an offence, respectively for any parent or legal guardian to desert the child leaving it without means of support, or to refuse or neglect to provide sufficient food, clothes, beddings and other necessaries for a child, or for any person to deprive a parent or guardian the lawful care or charge of a child under the age of sixteen years. Forcible or fraudulent possession or harbouring by anybody constitutes a felony punishable with seven years imprisonment under the Penal Laws of Zambia⁹. Further, S211 of the Penal Code imposes a duty of maintenance on the head of the family in relation to his children. This section reads:

"... it is the duty of every person who as head of a family has charge of a child under the age of fourteen years being a member of his household, to provide the necessaries of life for such a child and he shall be deemed to have caused any consequences which adversely affect the life of the child by reason of any omission to perform that duty whether the child is helpless or not.."

9. S171 of the Penal Code CAP 146 of the Laws of Zambia.

In addition to these provisions in the Penal Code, law pertaining to matters of maintenance of a child can be joined in the subordinate courts Act CAP 45 of the Laws of Zambia and the High Court Act, CAP 50 of the Laws of Zambia. Thus S20 of the Subordinate Courts Act states that the Subordinate Courts of the first class shall have all the powers and jurisdiction conferred on them by the Criminal Procedure Code CAP 160 of the Laws of Zambia to make maintenance order.

vi) Child Marriage:

Under the Marriage Act¹⁰, section 33, a marriage between persons either of whom is under the age of sixteen years is void. But such a marriage will be voidable if a judge of the High Court consented to such marriage upon him being satisfied that in the particular circumstances of the case, it is not contrary to public interest to do so.

Further, the same law requires a written consent of the father or mother or guardian for any party of the intended marriage who is under twenty-one years. Without this written consent, no marriage certificate can be issued.

Under customary law, however, child marriage is permissible and is easily contracted in cases of girls or boys who have attained the age of puberty. In some cases, such parties to the marriage should have gone through some initiation ceremony and sometimes the marriage will only take place upon payment of dowery to the girl's parents.

vii) Child Adoption:

The United Nations Convention on the Rights of the child under Articles 21 obligates state parties which recognise and/or permit adoption that they will carry out the system of adoption only in the best interest of the child, with all necessary safeguards for a given child and authorisation by the competent authorities. The Adoption Act¹¹ is the law that provides for the adoption of children in Zambia.

10. Chapter 211 of the Laws of Zambia.

11. Chapter 218 of the Laws of Zambia.

viii) Child Labour:

The United Nations Convention on the Rights of the Child under Article 32 obligates state parties to protect children from engaging in work that constitutes a threat to their health, education or development, to set minimum ages for employment and to regulate conditions of employment. The Employment of Women, Young Persons and Childrens Act¹² is the law that directly regulates the situation stipulated under the United Nations Convention as stated above. The Employment of Women and Young Persons Act provides under S12 that, no person can employ or cause to be employed any person below fifteen years of age except:

1. in cases of a person who is receiving full time education at a school recognised as such under the the Education Act; if he is employed during school vacations.
2. A person who has failed to secure admission to a suitable school on whose enrolment has been cancelled or terminated by the school authorities or for good cause by a parent.

When child labour is permitted as in cases cited above, a child can only be employed if the terms, conditions and nature of employment have been approved by the Minister of Community Development and Social Services.

Under 59 of the same Act, employment of a young person at night in any undertaking is also prohibited unless the undertaking is a family concern.

In addition, the Apprenticeship Act, CAP 511 of the Laws of Zambia provides for the regulation of employment of apprentices in order to ensure the well-being of minors. The Act defines a minor as any person below the age of twenty-one.

However, the Employment of Women and Young Persons Act allows the employment of children in agriculture and commercial undertakings, without prior approval of the

12. Chapter 505 of the Laws of Zambia.

Government office provided the children have reached contractual age under 59. Also under, the employment of a child in an industrial undertaking, is allowed where other employees employed are members of the same family.

ix) The In Adult Entertainment:

Under the Juvenile Act discussed above children under the age of sixteen are restricted in adult entertainment.

x) The Child And Intoxicating Liquor:

The Juvenile Act provision which prohibits the giving of intoxicating or spiritous liquor to children and the causing or allowing of children in bars of licenced premises are further stipulated by the provisions of the Liquor Licencing Act, Chapter 429 of the Laws of Zambia. In addition to the Juvenile Act provisions of this Act makes it unlawful for any licence to knowingly sell or deliver intoxicating liquor to a person under the age of fourteen years are also prohibited from being sent to buy liquor except under very restrictive circumstances. All these legal provisions have, as their objectives, the protection of children from the abusive tendencies of taking liquor at a tender age.

xi) The Child And Dangerous Drug:

In Zambia, all persons, including children are protected from dangerous drugs by the Dangerous Drugs Act¹³. This Act, controls the production, sale, distribution and exportation of substances classified as dangerous drugs under the Act such as dagga and other neurotic substances.

B. PROMOTIVE LEGISLATION:

i) Education And The Child:

The right of a child to education is recognised in the legislatures of many countries and proclaimed in several constitutions. In this respect, the United Nations

13. Chapter 549 of the Laws of Zambia.

Organisation in its Declaration on the Rights of the child proclaims in principle that:

"...the child is entitled to receive education which shall be free and compulsory at least in the elementary stages. He shall be given an education which shall promote his general culture; enable him on a basis of equal opportunity to develop his abilities; his individual judgement and his sense of moral and social responsibility and to become a useful member of the society. The best interest of the child shall be the guiding principle for his education..."

In Zambia, the child's rights to education are provided for in the education (primary and Secondary) Act¹⁴. This Act provides for the establishment and operation of the National Council of Education for the Republic. It also provides for the establishment of local Councils of Education for the promotion and control of schools at local level.

Further, in pursuance of the right of a child to education S25 of the Education Act entitles a child to practice freely his or her religious beliefs without undue hindrance from anyone including the school authorities. This was once in issue in the case of Felavia Kachasu Vs Attorney General,¹⁵ were a young girl aged between 11 and 12 years suing through her father Paul Kachasu as next friend challenged the constitutionality of ministerial regulations which required her to sing the national anthem and to salute the national flag as being contrary to her religious beliefs as a member of the watchtower sect. She was seeking redress under S28 of the constitution, which section relates to the enforcement of sections 13 to 26 of the constitution which guarantees the protection of the fundamental rights and freedoms of the individual, including children. Like all members of the Watch Tower, she regarded the singing of the national anthem as the singing of a hymn or prayer to someone other than Jehovah God himself. To them the singing of the national anthem and saluting of the flag are religious ceremonies or observances in which they cannot actively take part because these are ceremonies in conflict with their own religious beliefs.

14. Chapter 234 of the Laws of Zambia.

15. (1967) Z.R. 145.

The applicant had refused to sing the national anthem and was suspended from school in pursuance of Regulation 31(i) (d) of the Education Act which empowered the head of the school to suspend from attendance at the school of any pupil who willfully refused to sing the national anthem or salute the flag when lawfully required to do so.

The court held inter alia that the applicant had suffered hinderance in the enjoyment of her freedom of conscience in that she had been suspended from school and denied readmission there to in-consequence but that such hindrance, however, did not constitute a contravention of her right to the enjoyment of freedom of conscience secured to her by the constitution in as much as that hindrance was reasonably justifiable in a democratic society.

ii) Handicapped Children:

Under the Handicapped Persons Act¹⁶, all handicapped children, like any other children are entitled to education. They are to receive basic and advanced education by full-time study as any other child.

iii) Health And Children:

The Public Health Act¹⁷ provides for the prevention and suppression of diseases and generally all matters connected with public health in the country. In specific the Act provides for the child under 539 which requires that all children should be vaccinated against some infectious diseases such as small pox. The section provides that:

1. "Every unvaccinated... parent or guardian of every unvaccinated child in Zambia who has not been vaccinated at the commencement of Act No. 61 of 1961 shall cause himself or such child to be vaccinated within three years from that date."
2. "Every...parent or guardian of every child in Zambia shall cause himself or such child to be revaccinated at intervals of three years from the date his last successful vaccination. S46(i) of the same Act provides that:

16. Chapter 551 of the Laws of Zambia.

17. Chapter 234 of the Laws of Zambia.

"No child shall be admitted to or attend any school until there has been produced to the person in charge there of a certificate or other satisfactory evidence that the provisions of this Act in respect of such child have been complied with."

Sub-section (2) of the same section goes on to say: "For the purpose of ascertaining whether the provisions of subsection (1) are being observed, every medical officer of Health is hereby authorised and, whenever instructed by the Director of Medical Services to visit any school and make therein such inspection of children as will enable him to furnish prescribed particulars to the Director of Medical Services as to the children who are unvaccinated".

Under the Public Health (infectious Diseases) Regulations 559 allows the exclusion from school of any child on account of infectious diseases. 59 of the Regulations also requires every Registrar of Births and Deaths to furnish a medical officer of health or where no such officer has been appointed, to the local authority particulars of every birth.

These provisions of the Public Health Act have been achieved by the presence of anti-natal and under-five clinics which ensure the good health of a child before and after birth respectively.

iv) Leisure, Recreation And Sports Activities And Children:

Under the Education (primary and secondary schools) Regulations made under the Education Act which has been referred to above, physical education is one of the compulsory subjects at both primary and secondary schools.

v) Institutional And Rehabilitation Care Of Juvenile Delinquents:

The Juvenile Act which has already been discussed in context of "protective provisions" above, is the law directly making provision for the custody and protection of juveniles in need of care, and provide for the correction of juvenile delinquents.

vi) Property_Rights:

Generally children are entitled to own property. Their capacity to do so, however, is regulated by law of contract which like most laws in Zambia is a reproduction of the law of contract in force in England. To protect minors the law states that a minor has no capacity to enter into contracts except for necessities. Thus the general rule is that a contract made by a child is voidable at his option. This means that all contracts which confer some permanent or durable interest in property or which impose continuing obligations on the child are valid binding unless they are repudiated by or on behalf of the minor before or soon after the attainment of majority. In both these cases, the other (adult) party remains bound by the contract. The rationale for this is obviously to afford relief to children as to transactions which may Prima Facie appear beneficial, but which may later turn out to be detrimental to the child. Accordingly as has been mentioned above, as regards contracts of necessities and beneficial contracts of services, it is generally the case that these are binding on the child unless they are decidedly to his or her detriment. It follows, then that where a child takes delivery of such necessities he or she must pay a reasonable price for them. Moreover, necessities are not confined to items and services which are essential for the maintenance of biological existence, they include, those things needed in order to maintain the child in his or her station in life.

Be that as it may, the law that has the most direct bearing on the social welfare of children in the realm of property rights relates to the law of inheritance. Thus a child will be assured a survival in event of the bread-winner dying in instances where his or her property rights have been catered for under a statute on any other scheme¹⁸.

In Zambia, the law that provides for the child's property rights in such a case is the Interstate Succession (inheritance) Act 1989.

18. Cheshire & Fifoot: Law of Contract 10th ed. (London, Butterworths 1981) P380.

Thus 55(i) (b) of the Act provides that:

"50% of the estate shall devolve upon the children in such proportion as shall be commensurate with a child's age or educational needs or both."

However, it should be noted that this provision will only apply where the deceased died intestate.

C. CHILD ABUSE: ADEQUACY/EFFECTIVENESS FO THE LAW:

Adequacy:

According to the definition of child abuse in the previous chapter, and after looking at the law that relates to the child in Zambia, it can be deduced that the law does to a greater extent adequately provide you the protection of the child against abuse. However, there are still a few weaknesses in this law and these include the following:

Firstly, the law protecting the child against abuse in Zambia can be said to be inadequate because most of these pieces of legislation were enacted during the colonial administration. Most of these enactments have remained the same in context.

"There has never been an exercise to comprehensively review these laws so that they reflect contemporally thinking and atituteds regarding children's welfare in the country today."¹⁹

For example, while the problem of child abuse has increased especially as far as begging in the streets is concerned, the law relating to this has remained the same for a long time. Under chapter 50(i) of the Juvenile Act, if any person caused or procured any child or having custody, change or care of such child allows him to be in any street for the purpose of begging or receiving alms shall be liable to a fine not exceeding K50 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment. The thing is, these pieces of legislation should be reviewed from time to time and penalties ammended to suit the prevailing living conditions of the people. So as regards the above Juvenile Act provision, while K50.00 might have been a reasonable amount at the time when this law was enacted, it is at present, considering the prevailing economic conditions, very unreasonable

19. LAWRENCE SHIMBA. A paper presented to the "Workshop on the Formulation of Child Policy" organised by the Ministry of Sport, Yourth & Child Development 5th-6th Feb. 1993 Lusaka P24.

to be charged to people who commit this increasing and serious kind of child abuse. Penalties are given to those people who break the law so that they can be deterred from committing the same offence again. However, a payment of K50.00 today cannot have that effect on a person who sends his child begging in the street because it is just too little.

Effectiveness:

Having examined the existing laws and their adequacy, we shall now proceed to look at their effectiveness as far as protecting the child against abuse in Zambia is concerned.

From the examination of these laws, effectiveness can be said to be the main problem with these laws. The legal system of the country provides for the protection of children from abuse. This, however, is novel in Zambia. These provisions protecting the child are not enforced and are being infringed everyday. There are various reasons which affect the enforcement and therefore effectiveness of these laws and these include the following:

- i) In Zambia, just like in many other African countries, these laws are not to be found in one single comprehensive legislation. These laws are scattered, as can be seen above, in many different pieces of legislation. This makes it very difficult to implement considering the fact that the state machinery for such implementation is completely lacking.
- ii) The other problem affecting the effectiveness of these laws is that people are ignorant of their existence. There are virtually no national efforts or strategies which are being made or devised to put in place an effective, practical oriented campaign of creating public awareness of the rights of the child. The rights of the child which are enunciated in the national constitution and in other statutory laws of the land, need to be disseminated to the public and should be taught in schools, colleges and in appropriate departments of the universities. Unless information regarding the rights of the child reach people in whatever situations they are placed as parents, policemen, lawyers, journalists, employers etc. these ground principles of humanity and morality will not influence the attitudes, behaviours and action of

the people. In Ndola, the prisons fellowship director said, with regards to the blind who abuse their children by using them in begging "the problem was that the blind people were not adequately counselled to stop abusing their children."

The director challenged civic educators to "start counselling the blind on the matter instead of concentrating on having seminars in posh places like hotels and other renowned resorts where ordinary people like the blind have no access to."²⁰ To make matters worse, surprisingly even the law enforcement officers seem not to be familiar with the law protecting the child or if they are aware of such provisions, then they are not carrying out their duties. Such ignorance is accelerated by the fact that, there is no single educational institution, that is an institution or college, or a centre established in the country specifically to train personnel in a variety of skills which apply to the affairs of children. There is need for example to train inspectorate staff to police members of the community in ensuring that these laws which are in place to protect children from abuse are enforced. So even if the law is there on paper, it will not be effective and therefore of no use until the Zambian people know of its existence and implement it.

- iii) The other factor that is affecting the effectiveness of the law in Zambia is the prevailing economic conditions.

Many streets in Lusaka, as well as other towns in Zambia, today are littered with children boys and girls in the 10-17 age group who earn money for their family up-keep by engaging themselves in all sorts of odd jobs. The little girls are found selling fruits, vegetables, groundnuts, fritters and other food stuffs while the boys keep watch over cars belonging to private individuals as well as engage in car-washing, street vending and illegal gambling²¹.

In some cases, children have been forced into prostitution by the parents to supplement incomes. Such kinds of child

20. Sunday Times of Zambia, April 17 1994- Page 7

21. Zambia Daily Mail, Monday March 21st 1994.

abuse just go to paint the picture of the untold miseries of poverty and, even though they may be aware of the fact that they are abusing their children, many parents assure themselves of some hope in their children's labour. Parents are left in a hopeless situation, they are forced to abuse their children in such ways because that is their only way of survival.

Public places like bars no longer bar children from entry or let alone the consumption of alcohol. This is all because businessmen no longer care whether they are abusing a child or not, all they are concerned about is the money they get from such children who buy alcohol.

In most villages, the Government can not afford to build enough schools and hospitals. This leads to the situation whereby many children in such places do not go to school and thereby denied their right to education. In the rural areas most children are not born in hospitals and therefore making it impossible for the provisions of the Births and Deaths Registration Act discussed above to be implemented.

- iv) Some policies pursued by the Government today also hamper the promotion of the rights of the child. For example the policy of fee paying in schools. This will limit the number of children going to school because they cannot meet the uniform and other school requirements. This has been worsened by the fact that although Government has set up a social financial department meant to address problems faced by the under privileged, most of the beneficiaries are unaware of these rights. A spokesman in the minority of education once lamented that the bursaries scheme that Government had put in place to cater for vulnerable school going groups has not been utilised because of ignorance on part of beneficiaries.²²

Government should therefore try as much as possible to formulate policies that will promote and not hamper the development of the rights of a child.

22. Zambia Daily Mail, Monday March 21st 1994.

CHAPTER THREE

THE JUDICIAL ATTITUDE TOWARDS CHILD ABUSE IN ZAMBIA

In this chapter we are going to look at the judicial attitude towards child abuse. That is to examine the seriousness that the courts give to cases involving child abuse as manifested through cases. We are also going to look at the judicial set up in cases involving children, are the courts favourable for the discharge of judgements which would be to the advancement of the child's interests?

After going through some cases involving child abuse it has been discovered that the courts do not give these cases the seriousness that they deserve. This can be manifested mostly in cases of defilement. Defilement, according to S138 of the Penal Code is unlawfully and carnally knowing a girl who is under the age of sixteen years. However, there is a provision under S138 of the Penal Code that shall be sufficient defence to any charge under this section if it shall be made to appear to the court before whom the charge shall be brought that the person so charged had reasonable cause to believe and did infact believe that the girl was of or above the age of sixteen years. The point that makes this proviso tricky is that it is the duty of the magistrate to explain to the accused the defence laid down in the proviso. Hence no conviction based on a plea of guilty to a charge of defilement under S138 of the Penal Code can stand if the proviso to that section is not explained to the accused and if the accused could have up a defence given to him by that proviso.

This point was emphasised in the case of Nsofu V The People¹ where the appellant was convicted on three counts of defilement. The brief facts of this case were that appellant was convicted of defiling three girls. Two of the girls were nine years old and the other seven years old. The girls said they were playing in the house of one of them Kanini, when the appellant arrived. After a short while he took each of the girls in turn into the kitchen of the house and had sexual intercourse with them. Afterwards gave them 10 ngwee to share between them.

Later in the evening the girls reported the incident to their parents and the accused was approached in his own house and accused of

1. (1973) ZR 287

having defiled the girls. The accused admitted having been with the girls but denied having had sexual intercourse with each of them claiming that he had just been playing with them. Medical evidence showed that the hymen of each of the girls had been ruptured by the insertion in the vagina of a rough object. One of the grounds of appeal advanced by the counsel for the appellant was that the proviso of section 138 of the Penal Code had not been explained to the appellant and as a result he had been denied the opportunity to make out the defence that the proviso creates.

Baron D.C.T. in delivering the judgement of the case stated inter alia that the appellant in this case had pleaded not guilty. It is a rule of practice to which reference has been made in a number of cases that, where it appears that an unrepresented accused person may be intending to plead guilty to a charge of defilement, the proviso to S138 of the Penal Code should be explained to him; even where an accused pleads not guilty it is desirable that the proviso be explained before plea, but certainly at some early stage in the proceedings so that the accused may have the opportunity to direct his cross-examination of the prosecution witness to the question of the girl's age.

The proviso was also explained in the case of Ndalama V The People² where the appellant was convicted of the defilement of three girls, two of them aged 15 and one 14. He denied the charges, admitted having had sexual intercourse with the girls but said that they looked mature and that he had paid them money. The court did not explain to the appellant the proviso to section 138 of the Penal Code namely that if he had reasonable grounds to believe and in fact believed that the girls were over the age of 16 it would have been sufficient defence to the charges.

It was held inter alia that the purpose of explaining the proviso is in order to make clear the defence that is available and the explanation must be given to the accused at a time when the knowledge of the defence will be of some use to him. The court went on to say; this point has been dealt with by this court in a number of cases for instance Nsofu V The People³ and that case was followed in Mwaba V The People⁴ where Huges J S said: "The learned trial magistrate's failure in the case to explain the statutory defence

2. (1976) ZR 220

3. 1 Bid

4. (1979) ZR

to the appellant before his plea was recorded and certainly before he was put on his defence, was in our view an irregularity, particularly as this was a borderline case in terms of age and in view of the complainant's sexual maturity...". This appeal must therefore be allowed and the conviction and sentence set aside.

The importance of the disclosure of the proviso under S138 of the Penal Code was also emphasized in the case of Mwaba V The People which has already been cited in the previous case. In this case, it was held that the appellant was not represented in the trial court and at no time did the magistrate explain to him his statutory defence, "I do not consider that it is safe to allow this conviction to stand. The conviction is quashed and the sentence imposed in respect of it is set aside." (Per Hughes J S).

It is therefore incumbent upon the magistrate to explain the proviso to S130 of the Penal Code as has already been stated above to the accused and if the magistrate does not do so then the accused would have a right to appeal. It is said that justice delayed is justice denied and if the case be so then the magistrate should have been ensuring that they explain the proviso and so avoid an appeal. Anyway magistrates could only do so if they realised the seriousness of these child abuse cases. Magistrates seem to forget to explain the proviso to the accused and that gives us a picture that they do not really see the seriousness of these child abuse cases. If they did they would have been making sure that all regularities of the case were followed so as to avoid any appeal by the accused. It is time the magistrates took a serious attitude towards these child abuse cases and ensured that all the requirements of the proceedings of the case were met.

The bad judicial attitude towards child abuse cases is also portrayed by the sentences that the courts give to those people who are actually convicted of child abuse. The most surprising thing is that even though the law provides quite alright reasonable sentences, courts are in a tendency of giving less sentences. For example, in the case of Mwaba V The People⁵, the accused was convicted of having defiled a girl of 15 years old and sentenced to three years imprisonment with hard labour despite the fact that the Penal Code provision for such an offence is life

5. Ibid

imprisonment. Really the contrast between 3 years and life imprisonment is just too big. Do the courts really realise the seriousness of child abuse. Some children who are abused cannot go to school because either they have no money for school fees or they have to stay home and do other jobs like selling or begging in the streets. Some parents do not provide for their children making such children suffer from diseases like malnutrition due to lack of proper food. The problem of child abuse has become more serious with the coming of Acquired Immune Deficiency Syndrome (AIDS). Men who defile girls of HIV positive can transmit the virus to the girl. However with such sentences given to offenders, one would easily deduce that the courts do not realise the seriousness of child abuse. This can also be deduced from the magistrate's statement in this same case of Mwaba V The People. The magistrate, despite the fact that a 3 year sentence was not reasonable compared to the seriousness of the offence committed, still had this to say:

"Having regard to the circumstances under which this offence was committed and the sexual antecedents of the complainant a sentence of 3 years imprisonment with hard labour is excessive. Had the conviction been sustained we would have reduced that sentence to one of six months imprisonment with hard labour. The circumstances which the magistrate is talking about were that the complainant had given consent to the sexual intercourse and that the evidence was adduced by the prosecution which tendered to show that the complainant had sexual intercourse with other men at least seven times before that offence was committed."

The fact that the complainant had given consent should not be taken as a circumstance upon which a sentence of defilement should be reduced and that is because in a case of defilement, the girl's consent is not necessary. This is because as was discussed in our first chapter, girls of less than 16 years old are presumed not to have the capacity to give valid consent to sexual intercourse.

The fact that a girl has had sex with other men previously should not lessen the present case. If anything the court should instead strive to bring even those other men who had sex with her before and them too because they also defiled the girl.

It is not only in defilment cases where the courts do not pass reasonable judgements. In one unreported case between Joyce Musole and Paul Simunyola the plaintiff Joyce Musole alleged that the defendant Paul Simunyola did not support the twins who were their children. The local court ordered the defendant to pay K5,000.00 per month for the maintenance of the children. Looking at the prevailing economic situation K5,000.00 per month is not enough to keep 2 children. The courts should realise the cruciality of these cases involving children. Parents have a duty as was shown in the previous chapter to provide for their children and in cases where a parent is not doing so, the courts should ensure that they do so and does so reasonably.

The other judicial problem as far as children and the protection of their rights is concerned can be deduced from the courts attitude to juvenile delinquents..

The United Nations Convention on the Rights of the Child clearly stipulates under Article 40(3) that:

"State parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of having infringed Penal Law."

The principle of special judicial institutions for children has not been adequately implemented under the Zambian Laws. Unlike in many other countries, Zambia has no clearly defined system of juvenile courts which have been established to carry out the administration of criminal justice as it affects children. The system of juvenile courts established under section 63 of the Juvenile Act which has been referred to in the previous chapter is found to be too wanting and is inadequate and out of tune of contemporary thinking on the subject of the administration of Juvenile justice. This is all because the juvenile courts established under the juvenile Act in Zambia are infact the ordinary magistrates courts which convent themsevles into juvenile courts when they are hearing any charge against a juvenile and no appeals are allowed to the high court.

If there were courts specifically for children it would have been better because the judge of those courts would have been more acquainted to the rights of the child and therefore be in a better position to pass judgement promoting the child's best interests especially that no appeals to the High Court are allowed.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

Having endeavoured to examine the issue of child abuse and the law in Zambia, we shall now in this last chapter give our conclusion on the matter. We shall also try to give recommendations as to what can be done to remedy these problems that were discovered in our research.

From the foregoing discussion and summaries it is apparent that the problem of child welfare particularly child abuse in Zambia is seriously at stake and need to be addressed squarely and wholistically. As has been shown in our first chapter, many children in Zambia are abused in one way or another. Many of them are left hungry, they are exposed to dangers like diseases, they do not go to school and are used as a source of cheap labour. It is a duty of every elderly person, that is, starting from the child's immediate family to the Government to try and bring this problem of child abuse to an end. However, in this research it was discovered that the law on the child is not adequate and efficient enough to achieve this goal. What then should be done to the law in order to make it adequate and more efficient as regards child abuse? A summary of the recommendations as to what should be the future legal arrangements governing the welfare of the child in the country can be discussed under the following headings:

a) Need to Consolidate Laws Affecting the Child Into One Single Code

The need to consolidate Laws affecting the child into one single code is one of the main outcome and recommendation of the research on child abuse and the Law in Zambia. There is no doubt that the present state of affairs whereby the applicable Laws relating to the welfare of the child are scattered in so many status is unsatisfactory. There is therefore an urgent need to rationalise the current legal position as it affects the rights of the child by putting together the pieces of the applicable enactments into a systematised manner for easy reference. In this respect, reference can be made to the fact that this is exactly what the U.N. convention on the Rights of the Child (1989) has successfully achieved. This convention has managed to incorporate all the principles affecting the rights of the child into one single document.

Similarly, in the Soviet Union, all available legislations on children's rights are collected in one publication.¹ Zambia should also strive to do the same.

As a result of the unsatisfactory arrangements of the laws relating to the child in Zambia, their implementation and enforcement as has already been said, has proved difficult. In particular the 'protective provisions' relating to child abuse in the Juvenile Act and Penal Code have not been adequately enforced. No proper enforcement co-ordination has worked out among the Police, the social workers like probation officers and the juvenile courts.

A single statutory code in the area of children's welfare, therefore, will constitute an easy reference text on the law of the child in the country for the benefit of lawyers, social workers, non governmental organisations and international organizations like UNICEF who are concerned with the promotion of the welfare of children.

Further, the process of codification of the laws relating to the child into a single document will facilitate the incorporation into that document most of the progressive principles which have been proclaimed by the United Nations Convention on the Rights of the Child (1989). Zambia has since ratified this Convention thereby becoming a signatory party. Zambia is therefore under obligation to comply with the provision of the Convention.

Outdated Zambian legislations on children which no longer conform with the societal norms and which are out of tune with contemporary trends should be abrogated.

Need to Establish a Statutory Commission on Children²

The second recommendation is that there is an urgent need and good reason to constitute, in Zambia a National Commission or some form

1. Soviet legislation on Children's Rights, Progress Publishers, Moscow 1978

2. Lawrence Shimba (Prof) A paper to the "Workshop on the Formulation of the Child Policy" organized by the Ministry of Sport, Youth and Child Development 5th - 6th Feb. 1993, Lusaka

of statutory body outside the state framework, to be in full charge of the activities pertaining to the protection, promotion and championing of the rights and welfare of children throughout the country.

the other main functions of the Commission would be:

- (i) to monitor or even supervise, implementation and enforcement of legislation on matters affecting the child.
- ii) to promote public awareness, on issues affecting the rights and interests of the child.
- iii) to recommend appropriate policy measures which the government should be taking in the area of child welfare in the country, and in order to give effect to the principles enshrined in the United Nations Convention on the Rights of the Child.
- iv) to mobilise from private, national, and international sources financial and other resources to assist in the execution of the programmes of actions for the children.
- v) to encourage and support research more relevant to children's needs and survival.
- vi) to co-ordinate efforts being undertaken by the NGOs and international organisations like UNICEF to the advancement of the welfare of children.
- vii) to devise strategies for the dissemination of information about the rights of the child as provided for by the Constitution and other Laws of Zambia and of the United Nations Convention on the Rights of the Child.

In other words, the proposed National Commission on the children will serve the main medium through which all matters on affairs affecting the child will be processed. It will co-ordinate all activities relating to the child with private organizations, NGOs, governmental and international agencies throughout the whole of the country.

t would also be more advantageous if the body was to have a truly full autonomous status so that its operations will not be interfered with particularly by the government. It should be established as a statutory body with a governing council whose composition will be drawn from members of the public, NGOs with primary interest in the welfare of children, government, members representing international organizations with specialization in the work of children, like UNICEF. The actual day to day administrative affairs of the commission should be handled by personnel employed by the commission solely on account of their training, expertise and experience in matters pertaining to children's welfare.

) Need to Re-Formulate a New Philosophy and Legislative Policy Governing the Rehabilitation, Correction and Reformation of Juvenile Offenders:

There is an absolute necessity to re-examine and re-formulate a more progressive pencil policy for the treatment of children offenders in the country. The present one is based on the old colonial philosophy which ultimately influenced the law and legal procedures pertaining to the treatment of juvenile offenders. The official Zambian pencil policy affecting juvenile offenders is embodied in the following policy pronouncement:

"We (in Zambia) do not believe in punishing people for the sake of punishing them, we believe in reforming them".³

Even though this is a post-independence approach to the treatment of juvenile offenders the legislative position does not reflect this new policy. The law relating to the institutional frame work for the rehabilitation correction and reformation of juvenile offenders in Zambia has remained as it was during the colonial period. It emphasises punitive sanctions administered in a prison - like environment.

Under the reformatory order by the juvenile court for example, the juvenile offender is detained at Katombora Reformatory School seems to place unnecessary emphasis on discipline and punishment than on formal education and instructions in trade skills of the boys. This emphasis on punitive measures and prison type of discipline militates against a proper development of the minds of children and therefore

weaken efforts to reform them. The emphasis should be more on the reformatory role of the school rather than punishment.

We further recommend that the law relating to the establishment and procedures of rehabilitation schools, particularly reformatory schools be reviewed to make them reflect the newly adopted Penal Policy of Custody and protection of juvenile delinquents. The practice of treating reformatories as prisons for children offenders should be forthwith abolished.

Need to Create a System of Juvenile Courts and a Separate High Court Division for Juveniles:

Zambia should emulate the steps taken by other civilized Nations of the world in legally recognising the principle administration of juvenile justice. Zambia should realise that juvenile justice is best discharged by specially established systems of juvenile courts which are separate from the regular courts for the adults. Juvenile courts are structurally constituted to suit the special circumstances applicable to the child and adopt procedures and sentencing attitudes, which promote the best interest of the child. To this effect it is therefore recommended that:

- i) the government should immediately commission work to establish a comprehensive system of juvenile courts in the country.
- ii) there should be established a division of the High Court to deal with appeals from lower juvenile courts. The High Court Division for juveniles will serve as an important source of authoritative decisions on the interpretation of the laws relating to the child in Zambia.

Need to Establish a Formal Education Institution To Train Personnel In Child Welfare:

This is one area which has and continues to be neglected. However, the point need not be over emphasized that there is need to train personnel in the field of child welfare. "Unless administrators of children's matters are properly equipped with scientific techniques and knowledge of the habits, behaviour and psychology of the children,

programmes of actions for children will not bear fruits."⁴ It is therefore imperative that probation personnel, social workers, counselling staff, administrators of rehabilitation, reformation and correction schools, inspectorate staff and prosecution personnel in cases involving children should have effective educational and training backgrounds in all the relevant aspects that pertain to children's lives⁵.

These educational institutions for the study of children's welfare would serve as to be the most convenient training grounds on the rights of the child as provided for under the country's legal system and under the United Nations Convention on the Rights of the child.

f) Need To Devise National Strategies for the Dissemination of Information On The Rights Of The Child

It is recommended that once the proposed organisational structure for the administration of the affairs of children is implemented, initiations for drawing up programmes aimed at the dissemination of information about the rights of the child should be undertaken without any delay. It is absolutely necessary that if people's attitudes, behaviour and actions towards children should change, the people must be made aware of the existence and of the nature of the rights of the child as provided for in the national constitution and in other instruments in the country, and also as they are promulgated under the international treaty law.

Unless there exist a well co-ordinated net work for publicity of human rights as they relate to the child by the Government, NGO's, Women and Church organisations, the general public will remain unaware of the Human Rights principles articulated in the relevant national and international legal instruments.

Seminars, conferences and workshops in various aspects of the rights of the child could prove as effective mechanisms through which dissemination of those rights could be done.

Again, unless information regarding the rights of the child reach people in what ever situations they are placed, these ideals will not influence the political thinking and attitudes of people and of the leaders. In this respect, broadcasting, interviews and discussions

. Neil Frude psychological approaches to child abuse, P198, 1980
. Shimba L. (Prof) Codification of the laws relating to the child in Zambia. 5th-6th February 1993 Lusaka.

would be useful. These broadcasts, discussions and interviews should also be conducted in local languages so that they are read by a much more broader category of people.

In conclusion, we can say that, we urge the Zambian Government to re-examine itself in the context of its current national budget to ensure that programmes aimed at the achievement of goals for the survival, protection and development of children will have a priority when resources are allocated. Every effort should be made to ensure that such programmes are protected especially in these times of structural adjustments. Families, communities, local governments, NGOs, social, cultural, religious, business and other institutions, including the mass media, are encouraged to play an active role in support of programmes aimed at protecting the child from abuse. These recommendations on the good welfare of the child given in this paper are ambitious and the commitments required to implement them will demand consistent and extraordinary effort on the part of all concerned. There is no cause which merits a higher priority than the protection and development of children, on whom the survival, stability and advancement of the nation and, indeed of human civilization depends⁵. It is only if these rights of the child provided for in our legal system are implemented that the Zambian child shall be free from abuse.

BIBLIOGRAPHY

BOOKS

1. Alfred Kadushi, "Child Welfare Services", (2nd Ed. New York Macmillan Co) 1974.
2. The Concise Oxford Dictionary, (8th Ed. R.E. Allen, Clarendon Press, Oxford) 1990, USA.
3. David Thorstand M.A. "Man/Boy Love and The American Gay Movement" (New York City Haworth Press Inc) 1991.
4. Henry Kempe "The Battered Child" (2nd Ed. Chicago, University of Chicago Press) 1974.
5. Samuel X Radbill, "A History Of Child And Infanticide" (Butterworths, London) 1975.
6. Achaffer H R Studies In Mother-Infant Interaction. (Academic Press London) 1977.

JOURNALS AND ARTICLES

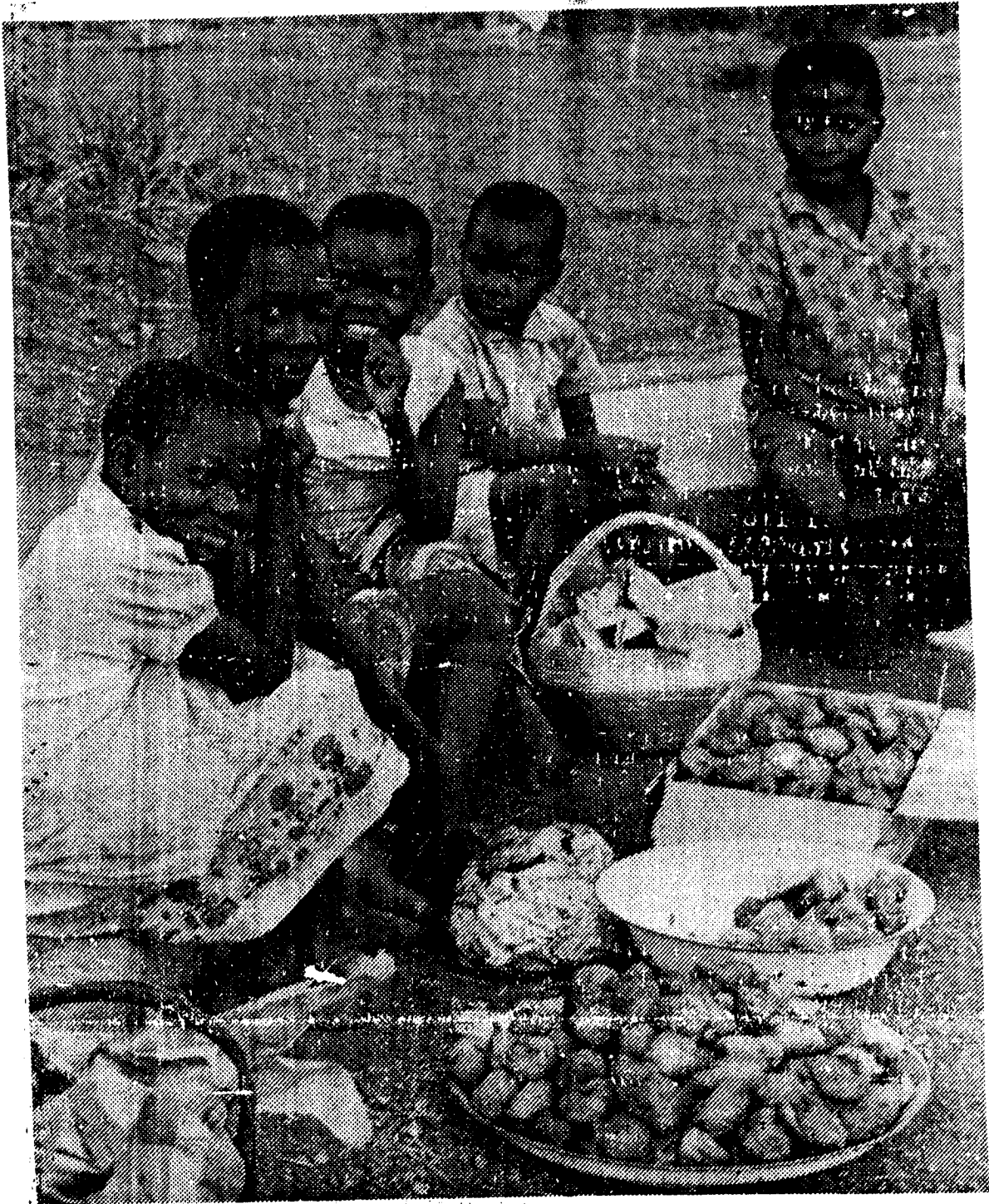
1. Bulletin Of Health Statistics 1987 - 1988, Major health trends 1978 - 1988 (Ministry of Health Statistical Unit).
2. Mushota R.T. "The Scope and Extent Of Child Abuse and Neglect in Rural and Urban Zambia" September 1987.
3. The National Mirror, June 19-25 1994.
4. Shimba L. "A paper presented to the workshop on the Formulation Of Child Policy" Organised by the Ministry of Sport Youth and Child Development. 5th - 6th February 1993 Lusaka.
5. Sport Mirror, June 19 - 25 1994.
6. Sunday Time Of Zambia, April 17th 1994.
7. Sunday Times Of Zambia, September 18, 1994.
8. UNICEF, First Call For Children 30th September 1990, United Nations, New York
9. The Weekly Post, February 8th, 1994.
10. Zambia Daily Mail, March 21st 1994

LEGISLATIONS

1. The Adoption Act, Chapter 218 of the Laws Of Zambia.
2. The Apprenticeship Act, Chapter 511 of the Laws Of Zambia.
3. The Births and Deaths Registration Act, Chapter 210 of the Laws Of Zambia.
4. The Constitution Procedure Code, Chapter 1 of the Laws Of Zambia.
5. The Criminal Procedure Code, Chapter 160 of the Laws Of Zambia.
6. The Dangerous Drugs Act, Chapter 549 of the Laws Of Zambia.
7. The Education (Primary and Secondary Schools) Act, Chapter 234, of the Laws Of Zambia.
8. Employment Of Women, Young Persons and Children Act, Chapter 505 of the Laws Of Zambia.
9. The High Court Act, Chapter 50 of the Laws Of Zambia.
10. The Handicapped Persons Act, Chapter 551 of the Laws Of Zambia.
11. The Intestate Succession (inheritance) Act, 1989.
12. The Juvenile Act, Chapter 217 of the Laws Of Zambia.
13. The Liquor Licensing Act, Chapter 429 of the Laws Of Zambia.
14. The Marriage Act, Chapter 211 of the Laws Of Zambia.
15. The Penal Code, Chapter 146 of the Laws Of Zambia.
16. The Probation Of Offenders Act, Chapter 147 of the Laws Of Zambia.
17. The Public Health Act, Chapter 535 of the Laws of Zambia.
18. The Subordinate Courts Act, Chapter 45 of the Laws of Zambia.

CASES

1. Feliya Kachasu V A.G. (1967) Z.R. 145
2. Joyce Mwale V Paul Simunyola (unreported)
3. Mwaba V The People (1979) Z.R.
4. Ndalama V The People (1976) Z.R. 220
5. Nsofu V The People (1973) Z.R. 287



**INSTEAD of being in school these children spend the whole day along a road selling food stuffs.*



**THE law protects children from this kind of abuse.*