UNIVERSITY OF ZAMBIA

SPK
LLB
SAK
2013
C.

SCHOOL OF LAW

SAFE WORK ENVIRONMENT LAWS IN ZAMBIA AND INTERNATIONAL STANDARDS

BY:

TISANGECHI SAKALA

A dissertation submitted to the University of Zambia Law Faculty in partial fulfillment of the requirements for the award of Bachelor of Laws Degree (LL.B) of the University of Zambia.

© July 2013

DECLARATION

I, **TISANGECHI SAKALA**, computer number-**29037573** do hereby declare that I am the author of this Directed Research entitled "Safe Work Environment Laws in Zambia and International Standards," and confirm that it is my own work. I further declare that due acknowledgement has been given where work of other scholars has been used. I verily believe that this research has not been previously presented for a degree at the University of Zambia or any other University. No part of this paper shall be reproduced, copied or reprinted without the author's prior authorisation.

.....Tsakala..... .....12TH AUGUST, 2013....

(Student's Signature) (Date)

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

RECOMMENDATION

I recommend that the obligatory essay under my supervision

By

TISANGECHI SAKALA

(29037573)

Entitled:

SAFE WORK ENVIRONMENT LAWS IN ZAMBIA

AND INTERNATIONAL STANDARDS

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements pertaining to the format as laid down in the regulations governing Obligatory Essays.

....12/08/2013.....

Mr. M. Sakala (Supervisor) (Date)

DEDICATION

To my everlasting God, the Saviour of my soul who sees the depths of my heart and all that is within me but still gives me unconditional love, favour and grace. This work is only a part of what you have placed within me and I know there is so much more from your unlimited supply of blessings. To my parents, Joseph and Alice, who always see the best in me and have never ceased to believe in me and encourage me even when I could not see what they see when they look at me. Thank you for your love and all you have done for me. This work is also dedicated to my brothers and sisters who always remind me that I am able to do anything and who encourage me every step of the way. To my babies- my nieces and nephews- who somehow always manage to put a smile on my face.

ABSTRACT

The high number of occupational accidents in places of work in Zambia has raised the need to examine the role of safe work environment laws in Zambia. To this end, this dissertation focused on analysing the adequacy of safe work and compensation laws for factory and mine workers. The dissertation also sought to analyse safety and compensation laws' compliance with international standards. Finally, the paper sought to make recommendations on how the laws could best be improved on.

The dissertation establishes that the current safety law for factory workers is the Factories Act. With regards to mine workers, the current laws include the Mines and Minerals Development Act and several Regulations. Despite the number of safety laws, factory and mine workers are not adequately safeguarded. The major problems are lack of important provisions and standards contained in specific ILO Conventions discussed in the paper and lack of regular review which greatly disadvantages workers.

The dissertation establishes that the goal of the Workers' Compensation Act is to provide for compensation in cases of death or injuries from occupational accidents. However, this goal is not completely met due to non-compliance with Conventions No. 17 and 18. Furthermore, compensation premiums are not regularly reviewed and this review lacks employer and employee participation when it is done.

The paper recommends that safety and compensation laws be regularly reviewed and amended. This will ensure that they provide for workers' needs as and when they arise. It also recommends that ILO Conventions should be domesticated as opposed to mere ratification so that they can serve their intended purpose. The paper finally recommends that employers and employees be actively involved in contributing to the enactment of legislation as they are the parties that know best what is affecting them.

ACKNOWLEDGEMENTS

I wish to say a big thank you to the Almighty God. God has always had me in the palms of His hands. God You were with me during the preparation of this paper, from inception to conclusion, and You helped me to pick up the pieces when I lost this very paper. This paper would not have come into being without You.

To my parents, thank you for all the support you have given me. You taught me to believe in God and to always believe in myself. Your love, prayers and words of encouragement gave me the hope and strength that I needed to bring this work to completion and I want to thank you for that. Thank you for always being ready and willing to take me back when I take the wrong turns in life. To my brothers and sisters thank you for believing in me.

My heartfelt gratitude goes to my supervisor, Mr. Sakala who patiently and endlessly reviewed my work. You never grew weary or tired and you were always available when I needed your help, 24/7. You always gave me very useful and helpful insight and input on how to improve my work. Your firm instruction made this paper what it is. Mr Sakala you truly are a great supervisor. May the Almighty God richly bless you.

Special thanks go to my good friend Mwelwa who is always supportive. He proof read parts of this work, offered useful insight and encouraged me every step of the way. I would like to thank my good friend Monde for encouraging me and proof reading parts of this work. I also wish to extend my gratitude to my friends Cecilia, Sachikunka, Musenge, Dorothy, Fred and Lubunda for all your emotional and spiritual support. You encouraged me every step of the way. To my friends Mwelwa, Fred, Musenge, Sachikunka, Cecilia and Cholwe and my sister and best friend Caroline thank you for holding my hand when I found it hard to pick myself up after I lost my work and data. Finally, to everyone else I have not mentioned thank you so much for all your help.

TABLE OF STATUTES

The Explosives Act, SI No. 70 of 1974.

The Explosives Regulations, SI No. 71 of 1974.

The Factories Act, Cap 441 of the Laws of Zambia.

The Interpretation and General Provisions Act, Cap 2 of the Laws of Zambia.

The Mines and Minerals Development Act, No. 7 of 2008.

The Mines and Minerals (Environmental) Regulations, SI No. 29 of 1997.

The Mining (Amendment) Regulations, 1973.

The Workers' Compensation Act, No. 10 of 1999.

TABLE OF CASES

Attorney General v Roy Clarke (2008) Z.R. 38.

Bradford v Robinson Rentals Ltd [1967] 1 All ER 267.

Henry Mwamba v Metal Fabricators of Zambia Limited (2005) HN 279.

Hudson v Ridge Manufacturing Company [1957] 2 QB 348.

Latimer v AEC Limited [1953] 2 All ER 449 (HL) 84.

TABLE OF CONVENTIONS

The Occupational Safety and Health Convention, No. 155 of 1981.

The Safety and Health in Mines Convention, No. 176 of 1995.

The Workmen's Compensation (Accidents) Convention No. 17 of 1925.

The Workmen's Compensation (Occupational Diseases) Convention No. 18 of 1925.

OPERATIONAL DEFINITION OF TERMS

Compensation: Compensation in this paper will mean any benefit or aid derived by a worker or his dependants under the Worker's Compensation Act which may be monetary or otherwise.

Comply: This means meeting certain standards or acting in accordance with set standards.

Employer's liability: Employer's liability in this paper will mean an employer's responsibility at law for his or her actions where they result in harm to the employee.

Factory worker: A factory worker will mean an employee employed under a contract of employment in an environment that will entail the use of manual labour and the use of machinery to transform raw materials into a desired finished product.

Implementation: This means to bring certain instruments into effect by ratification or enactment into local legislation.

International Standards: International standards are measures, norms or guidelines that are laid down in an effort to achieve uniformity.

Mine worker: A mine worker will mean an employee working in a mine or premises that deal with the extraction, preparation or treatment of minerals.

Negligence: This is the breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff.

TABLE OF CONTENTS

CONTENT **PAGE**

PRELIMINARY PAGES

Title i

Copyright Declaration ii

Recommendation iii

Dedication iv

Acknowledgement v

Abstract vi

Table of Statutes vii

Table of Cases viii

Table of Conventions ix

Operational Definition of Terms x

Table of Contents ..... xi-xiv

CHAPTER 1: INTRODUCTORY CHAPTER

1.1 Introduction 1

1.2 The Three Aspects of the Duty to Provide Safety 2

1.3 Safety provisions in Zambian Law 3

1.4 International labour standards 5

1.5 Statement of the Problem.....6

1.6 Objectives of the Study.....7

1.7 Significance of the Study.....8

1.8 Methodology.....9

1.9 Conclusion.....9

CHAPTER 2: SAFETY OF FACTORY WORKERS UNDER THE FACTORIES ACT AND CONVENTION NO. 155

2.1 Introduction.....10

2.2 Scope of the Factories Act.....11

2.3 Safety Provisions in the Factories Act.....11

2.3.1 A reasonable safe place of work.....12

2.3.2 Safe plant and equipment.....14

2.2.3 Hiring competent fellow employees.....15

2.4 Safety Provisions in Convention No. 155.....16

2.5 The Insufficiency of the Factories Act.....17

2.6 Comparison between the Factories Act and Convention No. 155.....20

2.7 Conclusion.....21

CHAPTER THREE: ZAMBIAN MINE SAFETY LAWS AND ILO CONVENTIONS

3.1 Introduction.....22

3.2 The Current Mine Safety Laws.....22

3.2.1 The Mines Act.....22

3.2.2 The Mines and Minerals Regulations.....23

3.2.3 The Explosives Act and Explosives Regulations.....24

3.2.4 The Mining Regulations.....27

3.3 Safety Provisions in Convention No. 176.....31

3.4 The Current Regime and Convention No. 176.....33

3.5 Conclusion.....36

CHAPTER FOUR: THE OPERATIONS OF WORKERS' COMPENSATION IN THE WORKERS' COMPENSATION ACT NO. 10 OF 1999

4.1 Introduction.....37

4.2 The Workers' Compensation Act.....37

4.2.1 Application of the Workers' Compensation Act.....37

4.2.2 Compensation Assessments.....38

4.2.3 Compensation for Mine Workers and Factory Workers.....38

4.3 Compensation in ILO Conventions.....40

4.4 The Workers' Compensation Act's Compliance

with Compensation Conventions and its sufficiency....42

4.5 Conclusion....43

CHAPTER 5: RECOMMENDATIONS AND CONCLUSION

5.1 Introduction....44

5.2 General Conclusion....44

5.3 Recommendations....46

5.3.1 Regular review and amendment of laws....47

5.3.2 Domestication of work safety and

compensation conventions....49

5.3.3 Consultation with employers' and workers' representatives....49

CHAPTER ONE

1.0 INTRODUCTORY CHAPTER

1.1 INTRODUCTION

All employers have the duty to provide for the health, safety and welfare of their employees. This is an implied duty in all contracts of employment meant to ensure employees' safety at places of work. It ensures that employees are not erroneously held liable for injuries to themselves or third parties that occur in their places of work as a result of their employers' negligence. This duty may arise either under common law or statutory law.

The duty to provide for safety reflects directly on the output of an organisation as employees who work in a safe environment yield better results. The provision of safety minimises the employers' liability for any injury that employees may incur as a result of the lack of provision of safety.

This research is intended to look at safety at the place of work particularly to analyse the adequacy of work safety laws in Zambia in protecting employees' entitlement to safety and the extent to which such laws comply with international standards set by instruments that Zambia is a party to. This chapter focuses on the statement of the problem, objectives of the research as well as the methodology. The next chapter analyses the sufficiency of Zambian factory safety provisions whereas chapter three looks at mine safety laws and their compliance or lack thereof with mine safety ILO Conventions. Workers' compensation, its administration and conformity with international standards set out in ILO Conventions is looked at in chapter four with the final chapter of the research, chapter five, giving the conclusions and recommendations of the research.

1.2 THE THREE ASPECTS OF THE DUTY TO PROVIDE FOR SAFETY

The duty to provide for safety is threefold. It consists firstly of the duty to provide a reasonable safe system of work; secondly the duty to provide a safe plant and equipment; and thirdly the duty to hire competent fellow employees.[1]

Providing a reasonable safe system of work connotes that the employer must take reasonable precautions to ensure the safety of their employee in the place of work. It includes the following: proper provision of procedures used in the place of work, the provision of instructions and the provision of warning signs. It also extends to the provision of safe tools and machinery.[2] Fire and emergency precautions must be taken as well as the provision of instructions and methods on the proper use of plants and appliances used for special tasks. Inexperienced workers must also be given proper instructions on how to go about their tasks. This duty extends to any place where an employee may be tasked with working. In the case of ***Bradford v Robinson Rentals Ltd***[3], a van in which an employee was sent to work was held to be a place of work.

A safe plant and equipment means that there must be protective clothing and equipment placed at the employee's disposal in the course of employment. It also means that there must be regular checks to ensure that all working plants are safe and conducive for use. The employer must not only select the appropriate equipment but they must also ensure that such equipment is kept in good condition and regularly serviced.

Hiring competent fellow employees means that employees hired must possess and exercise reasonable skill and care to prevent harm being occasioned to another employee as a result of

---

[1] Keith Abbott, Norman Pendlebury and Kevin Wardman, *Business Law, 9th Edition* (United Kingdom: Cengage Learning EMEA, 2013), 528.

[2] Itumeleng Clarence Tshoose, "Interpretation of the duty to take reasonable care and safety of employees," *A Journal of International and Commercial Law and Technology 6*, no. 3 (2011): 4.

[3] [1967] 1 All ER 267.

the former's actions.[4] Breach of this duty results in employers' liability for negligent acts of fellow employees under vicarious liability as was the case in ***Hudson v Ridge Manufacturing Company***.[5] In this case, the defendant was held liable for failing to take reasonable steps to ensure the safety of their employees which was compromised when one of its employees always engaged in an exercise of making the plaintiff trip and this resulted into his injury. The plaintiff sued for negligence and his suit was successful as the Court held that it was the defendant's responsibility to ensure that all hired staff were competent.

1.3 SAFETY PROVISIONS IN ZAMBIAN LAW

The High Court in ***Henry Mwamba v Metal Fabricators of Zambia Limited*** [6] stated that the employer must make the place of employment as safe as the exercise of reasonable skill and care would permit. Failure to do so will result in their liability for negligence.[7] In assessing whether or not the employer took reasonable precautions the Court will take three elements into account: firstly, the risk of injury to the employee; secondly the cost of prevention to the employer and thirdly the characteristics of the employee. Where the employer has acted reasonably, they will not be liable as was held in the case of ***Latimer v AEC Limited***.[8] The test on whether or not the employer acted reasonably is that of the reasonable man. The court bases this test on what a reasonable man in the employer's situation would have done; what measures they would have taken and if the employer took those measures.[9]

In Zambian statutory law, liability is based on the provisions of the statutes. The Employment Act, Cap 268 of the Laws of Zambia (**"the Employment Act"**) is the general law that governs all forms of employment in Zambia. It provides for safety in Section 14 (2) (d):

---

[4] Morgan McManus, "Employers' Liability: Who is Responsible for Health and Safety at Work," under "Settings," http://www.morganmcnamus/litigation/employers_liability.html (accessed October 1, 2012).
[5] [1957] 2 QB 348.
[6] (2005) HN 279.
[7] Keith Abbott, Norman Pendlebury and Kevin Wardman, *Business Law, 9th Edition,* 528.
[8] [1953] 2 All ER 449 (HL) 84.
[9] Itumeleng Clarence Tshoose, "Common law duty of employer to provide safety and health": 3.

(2)When an employer provides transport a proper officer shall take all necessary measures to ensure, and may give such directions to the employer as well ensure, that-

(d) in the case of long journeys, all necessary arrangements are made for the health, safety and welfare of employees and their families.[10]

The Employment Act provides for safety in cases of repatriation only. Thus other legislations must be referred to in order to ascertain whether or not this duty is placed on employers in Zambia. This research focuses on two legislations: the Factories Act, Cap 441 of the Laws of Zambia (**"the Factories Act"**) and the Mines and Minerals Development Act, No. 7 of 2008 (**"the Mines Act"**) as well the Mines and Minerals (Environmental) Regulations, SI No. 29, 1997 (**"the Mines and Minerals Regulations"**) issued under the Mines and Minerals Act, Cap 213 of the Laws of Zambia (**"the repealed Act"**) which has since been repealed and replaced by the Mines Act.

The other Acts and Regulations that have been used are the Explosives Act, SI No. 70, 1974 (**the Explosives Act"**); the Explosives Regulations, SI No. 71, 1974 (**"the Explosives Regulations"**) and the Mining (Amendment) Regulations, 1973 (**"the Mining Regulations"**). The Regulations are deemed to have continued being in force pursuant to Section 15 of the Interpretation and General Provisions Act, Cap 2 of the Laws of Zambia (**"the Interpretation Act"**).[11] This research also looks at compensation awarded to employees who are injured in the course of employment. This compensation is awarded pursuant to the Workers' Compensation Act, No 10 of 1999 (**"the Workers' Compensation Act"**).

Safety of factory workers is provided for in Parts V to X of the Factories Act.[12] Safety in the Mines Act is provided for in Sections 25 and 87.[13] According to Section 6 of the Workers'

[10] The Employment Act of Zambia, Cap. 268 of the Laws of Zambia, Section 14 (2) (d).
[11] The Interpretation and General Provisions Act, Cap 2 of the Laws of Zambia, Section 15.
[12] The Factories Act, Cap. 441 of the Laws of Zambia, Parts V- X.
[13] The Mines and Minerals Development Act, No. 7 of 2008, Sections 25 and 87.

Compensation Act, an employer has civil liability for breach of duty to provide for the health, safety and welfare of employees.[14] The Workers' Compensation Act establishes a mechanism of compensating employees who are injured in the course of employment.

1.4 INTERNATIONAL LABOUR STANDARDS

The International Labour Organisation (ILO) has set international safety standards through the use of Conventions. To this end, this research has used international standards laid down in the following Conventions: the Occupational Safety and Health Convention, No. 155 of 1981 (**"Convention No. 155"**); the Safety and Health in Mines Convention, No. 176 of 1995 (**"Convention No. 176"**); the Workmen's Compensation (Occupational Diseases) Convention No. 18 of 1925 (**"Convention No. 18"**) and the Workmen's Compensation (Accidents) Convention No. 17 of 1925 (**"Convention No. 17"**). Zambia is a party to the aforementioned Conventions.[15]

Zambia has signed and ratified Convention Nos. 176, 18 and 17 whereas it has only signed Convention No. 155 with intentions to ratify it soon.[16] The Conventions have not been domesticated and hence lack the force of law. They are not binding but are of persuasive value. They may only be relied upon where local legislation is silent in certain circumstances but the Judges are not bound by them.

Article 3 of Convention No. 155 covers all categories of employment.[17] It further provides that each member state must formulate a national policy which must provide for different

[14] The Worker's Compensation Act, No. 10 of 1999, Section 6.
[15] APPLIS, "List of Ratification of International Labour Conventions," under "Settings" http://www.ilo.org/mht (accessed on October 9, 2012).
[16] APPLIS, "List of Ratification of International Labour Conventions," under "Settings" http://www.ilo.org/mht (accessed on October 9, 2012).
[17] The Occupational Safety and Health Convention, No. 155 of 1981, Article 3.

spheres of occupational safety and health such as training and maintenance of the work environment.[18]

Convention No. 176 mandates States parties to formulate national laws and regulations that will provide for health and safety of mineworkers.[19] It lists employers' duties.[20] According to Article 7, employers have the duty to provide for miners' safety and health. They must ensure that the mine is suitable for work and that reasonable measures have been taken to ensure miners' safety.

Compensation for industrial accidents is provided for by Convention No. 17. This Convention also covers dependents of employees.[21] Dependants of employees who suffer personal injuries due to industrial accidents shall be compensated for such injury. States are mandated to enact national laws which provide for compensation.[22] Convention No. 18 also deals with compensation with respect to occupational diseases. It lists the diseases for which compensation is to be given in Article 2. Compensation must be paid when the diseases affect a worker engaged in that particular trade and this must be done in accordance with national laws.[23]

1.5 STATEMENT OF THE PROBLEM

Liability under statutory law is limited to what the statute provides for. There is no room for claims which are not covered by the statute. This poses a problem for employees as they cannot claim breach of statutory duty for certain injuries and this results in their being inadequately protected. Consequently, the alternative course of action is liability in

[18] The Occupational Safety and Health Convention, Arts. 4-5.
[19] The Safety and Health in Mines Convention, No. 176 of 1995, Article 5.
[20] The Safety and Health in Mines Convention, Arts. 6-12.
[21] The Workmen's Compensation (Accidents) Convention No. 17 of 1925, Article 1.
[22] The Workmen's Compensation (Accidents) Convention, Article 8.
[23] The Workmen's Compensation (Occupational Diseases) Convention No. 18 of 1925, Article 1.

negligence which will not always safeguard the employees' interests because the remedy given may not correspond to the injury sustained by an employee.

There are different safety laws in Zambia which prescribe different standards and types of liability. These laws are intended to safeguard employees' entitlement to safety at places of work. In order for them to perform their intended function, they must be implemented by employers. In the absence of implementation, they will not be very valuable to employees hence it is necessary to establish whether or not these laws are really safeguarding employees' interests in practice.

Another area of concern is whether or not the existent laws are being formulated in compliance with international obligations that Zambia has undertaken to fulfil. The Supreme Court in ***Attorney General v Roy Clarke***[24] stated that undomesticated international instruments are of persuasive value in Zambia. They are not binding but they may influence the Courts' decisions and therefore, it is imperative to assess whether or not the current safety laws comply with international standards that Zambia has already expressed intention to be bound by.

The problems arising from the inadequacies of the current work safety laws in Zambia and their questionable conformity to international standards raise a need to critically analyse the ability of these laws to satisfactorily cater for employees as well as to ascertain if they comply with international standards.

1.6 OBJECTIVES OF THE STUDY

The main objective of this research paper was to analyse the sufficiency of the current work safety laws in Zambia and to ascertain whether or not they are in conformity with international standards. The specific objectives of this research were the following:

[24](2008) Z.R. 38.

a) to know and ascertain legislations that provide for employee safety in the place of work,

b) to critically analyse employee safety provisions in the current legal regime,

c) to critically analyse the adequacy of these provisions in protecting employees' right to safety,

d) to establish the recourse that employees have against their employers for breach of the duty to provide safety,

e) to establish if these laws and provisions are in compliance with international standards that are laid down by instruments that Zambia is a party to and

f) to give recommendations, based on the research, on how safety and compensation laws can be improved on, where they have inadequate provisions.

1.7 SIGNIFICANCE OF THE STUDY

In Zambia the existence of legislation that provides for safety in employment is not in question. However, the real issue is whether or not the current legal regime accords adequate protection with regards to safety to address the plight of employees in different sectors. This study is therefore significant as it will not only look at the theoretical standpoint of these laws but also at their implementation and establish their use in practice.

Zambia's signing of international instruments is indicative of its willingness or intention to be bound by such instruments so that even if it does not ratify or domesticate them, they may be invoked against it internationally.[25] In our local laws these instruments are of persuasive value hence it is important to look at safety laws in line with international standards.

[25] Michael N. Shaw, *International Law*, 6th Ed., (New York: Cambridge University Press, 2008), 941.

Consequently, this research is significant as it will also take into account international obligations that Zambia has and establish if these have been given effect in our local legislations.

1.8 METHODOLOGY

The objectives of this research were met by analysing available collected data and judicial precedence. The author also made use of available literature produced by scholars. This literature was in the form of textbooks, scholarly articles, newspaper and magazine articles, theses and internet sources, where the foregoing were inadequate. Field research was also used where judicial precedence, collected data and literature fell short.

1.9 CONCLUSION

The foregoing chapter has given a brief outline of this research paper. It has also given a brief insight into the employers' duty to provide for the safety of their employees. It has endeavoured to show the relevance and importance of the study. The chapter has shown the importance of the duty to care in the Zambian work context and has also endeavoured to highlight work safety laws in Zambia as well as the recourse that employees have in the event that employers breach the said laws.

The next chapter discusses work safety of factory workers. It looks at specific parts of the Factories Act that address safety issues in factories. The chapter further addresses the question as to whether or not the Factories Act adequately safeguards workers' needs. It also looks at whether the provisions of the Factories Act are in compliance with Convention No. 155.

CHAPTER TWO

2.0 SAFETY OF FACTORY WORKERS UNDER THE FACTORIES ACT AND CONVENTION NO. 155

2.1 INTRODUCTION

Factories make a vital contribution to Zambia's economic or industrial activity. The higher the output of the industries, the more the economy thrives. It is therefore essential to ensure that factory workers work under the most favourable conditions so as to give optimum output. One such necessary condition of service is safety. The provision of safety comes at a cost to the employer. To minimise on costs most employers neglect to provide safety which action results into occupational accidents. In order to safeguard workers' entitlement to safety, the Factories Act was promulgated.

For the purposes of ascertaining whether or not workers are adequately safeguarded, it is important to identify the provisions of the Factories Act which provide for safety. This Chapter therefore, discusses safety provisions of factory workers under the Factories Act. It further explores whether or not factory workers are currently adequately protected. The Chapter also looks at safety provisions in Convention No. 155. It then goes on to compare the provisions of the Factories Act to those of Convention No. 155 so as to know the former's compliance with the latter. This chapter was authored using information obtained from interviews conducted at some factories in Lusaka.

2.2 THE SCOPE OF THE FACTORIES ACT

The Factories Act regulates factory workers' safety. Its scope covers factories and other places as defined in the Factories Act.[26] It gives a wide definition of a factory and the kind of work that goes on in a factory. From the definition and descriptions given, it is evident that the Factories Act envisages that a factory comprises any premises in which there is an investment of manual labour either for economic gain or as a trade.[27] There must also be control over or access to the premises by the owner or employer. The term factory also includes premises in which activities are carried out ancillary to or incidentally to a factory and covers most forms of activity from cleaning bottles to the generation of electrical energy. Premises owned by or in occupation of the Republic, local or public authorities are not exempted from being classified as factories if the activities that take place in such premises are tantamount to those that take place in a factory.[28]

2.3 SAFETY PROVISIONS IN THE FACTORIES ACT

Safety is covered in parts VI, VII, VIII and X of the Act. Part VI contains provisions pertaining to general safety in the factory. Safety precautions or measures with regards to lifting machinery and steam boilers are found in Parts VII and VIII, respectively. Part X contains special provisions and regulations for health, safety and welfare. The provisions of the aforementioned Parts of the Factories Act will be discussed in three parts, these being: the provision of a reasonable safe place of work; provision of a safe plant and equipment and hiring competent fellow workers.

[26] The Factories Act, Preamble.
[27] The Factories Act, S 2.
[28] The Factories Act, S 2.

2.3.1 A reasonable safe place of work

One of the most important provisions of the Factories Act is that workers must be guaranteed safe access and egress from places of employment. A worker must only be allowed to work in a confined space from which dangerous fumes will most likely be emitted if his safety has been guaranteed. [29] No worker must be allowed to enter a furnace if it is still hot.

All vessels containing any dangerous materials must be clearly marked "DANGER" and must be properly fenced off or kept in isolation.[30] To ensure that there is no unauthorised contact between workers and such vessels, all means of access such as ladders and gangways must not be placed near such vessels. The Minister of Labour and Social Security may, through SI's, make any further regulations pertaining to such vessels.

The Factories Act also provides for the proper construction of factory equipment and maintenance of safeguards. All fencing and other safeguards present in the factory are only to be left open when there is an examination to be done.[31] Additionally, in accordance with section 32, all machines that are driven by mechanical power must also be kept in good condition. Section 36 (1) provides that all passageways such as stairs and steps must also be of proper construction and maintenance. Pursuant to section 47, all hoists and lifts must also be so constructed as to manage the weights that they carry. Hoists must be examined before they are put to use in the factory. Other lifting machinery such as cranes, chains, ropes or lifting tackles must be properly constructed and maintained.[32] Sections 54 (5) and 57 (4) provide that steam boilers and steam receivers must equally be of proper construction and

[29] The Factories Act, S 33-38.
[30] The Factories Act, S 33.
[31] The Factories Act, S 31.
[32] The Factories Act, Ss 51 (1) and 52 (1).

maintenance and they must be examined by an inspector at intervals not exceeding eighteen months and three years, respectively.[33]

Section 40 provides that there must be appropriate means of fighting fire. Employers must provide suitable apparatus for dealing with fire as well as specialised training for employees tasked with operating such apparatus.[34] Employers must ensure that their factories are well equipped with means of escape in case of fire and all emergency exits must be kept free from obstructions at all times. Pursuant to section 43, employers must make sure that all workers are familiar with all emergency exits provided by the employer. Employers must also post clear and legible signs prohibiting smoking in the factory in an effort to prevent outbreaks of fire. The Minister of Labour and Social Security may, through the use of SI's, make regulations dealing with the prevention of fire.[35]

In order to prevent overloading of machines and equipment, the Factories Act provides that machinery such as hoists and lifts that carry persons must clearly be marked in a conspicuous manner the maximum weight of people that they are designed to carry.[36] Similarly, the maximum weight that all ropes, chains or lifting tackles are designed to carry must be displayed clearly on the premises.[37] No weight above the stated limit must be placed on such lifting machinery unless the machinery has different maximum weights at different angles. The safe working loads that all cranes are designed to carry must be displayed and these must not be exceeded at anytime.[38] Section 72 further states that no worker must be employed to lift weights that are so heavy as to cause physical injury to them.

---

[33] The Factories Act, S 55 (3) and S 57 (5).
[34] The Factories Act, S 40.
[35] The Factories Act, S 44-46.
[36] The Factories Act, S 48 (1) (c).
[37] The Factories Act, S 51 (1) (b).
[38] The Factories Act, S 52 (4)-(5).

2.3.2 Safe plant and equipment

The Factories Act does not provide a lot of safeguards with regards to the provision of protective clothing to workers. It does not make it mandatory for employers to provide their workers with protective clothing at all times since the bulk of the Act deals with plant machinery and the work environment. Workers are guaranteed protective clothing if they are subjected to excessive exposure to poisonous and dangerous substances or extreme temperatures.[39] This clothing must be free from defects. Additionally, all workers who work in any process that is likely to cause injury to their eyes must be given goggles or effective screens.

Employers are mandated to ensure that their factories are safe.[40] A worker must only be allowed to work in a confined space on condition that they have suitable breathing apparatus and that they have a rope tied around their body with the other end being held by someone on the outside capable of pulling them out. Workers may only be allowed to enter such spaces without the rope or apparatus when they are safe for use without them. The breathing apparatus and safety equipment must be kept readily available for the workers and must be examined at least once a month.[41]

Workers must not be exposed to inflammable dust, gas, vapour or substance that is produced within the factory.[42] The employer must put in place measures to trap any harmful substances that may be produced within the factory. These must be kept in isolation and must not be opened unless if the plant is installed in open air.

The Factories Act also provides for inspection and examination of different factory machinery. According to section 42 (1), fire warnings must be tested and examined at least

[39] The Factories Act, S 71 (1).
[40] The Factories Act, S 37 (1).
[41] The Factories Act, S 38.
[42] The Factories Act, S 39.

once in every three months. Workers must be provided with information on how a fire drill is done as well as how to leave the premises in the event that there is a fire. All machinery must be examined and inspected before use and thereafter very frequently. All air receivers must be thoroughly examined at intervals of three years or less.[43]

2.3.3. Hiring competent fellow employees

The Factories Act provides that only individuals who have been properly trained or supervised must be employed to operate and work with certain machinery if such machinery is liable to result in physical injuries if not used properly.[44] This is the provision that provides the basis for employing competent and trained staff in a factory because most of the equipment and machinery used in a factory is likely to cause injuries if not used properly.

Employers must ensure that all workers tasked with examining lifting machines such as hoists and lifts, ropes, chains and lifting tackle are competent in that task.[45] Further, cranes and similar lifting machines must also be examined by competent workers. If it is reasonably believed that dangerous fumes are likely to be produced or present in a confined space in which a worker is tasked with working, there must be other workers nearby who are well-trained in restoring respiration and in the operation of breathing apparatus and other apparatus to be used in assisting that worker.[46]

All workers must be well familiar with the means of escape and the routine to be followed. In order to enhance this, the Act further provides that fire drills must be conducted regularly.[47] The Minister may also make additional regulations with regards to fire drills, means of escape if there is a fire and fire prevention.

---

[43] The Factories Act, S 58 (4).
[44] The Factories Act, S 35.
[45] The Factories Act, S 47 (2) and S 51 (1) (d).
[46] The Factories Act, S 38 (7).
[47] The Factories Act, S 43.

2.4 SAFETY PROVISIONS IN THE OCCUPATIONAL SAFETY AND HEALTH CONVENTION NO. 155

The Convention does not give an exhaustive definition of a factory but an umbrella one so that it applies to most places of work. According to article 1 (1), the Convention applies to all branches of economic activity. From the foregoing, a factory must be a place of economic activity. States have the authority to exclude certain branches of economic activity from the application of the Convention but they must state their reasons for doing so.[48] According to article 3, place of work does not only apply to the factory but also premises in which a worker is sent to work from out of station but under the control of their employer. All measures to ensure safety must be provided for by the employer hence they must bear the cost of all the safety measures taken and this must not involve expenditure for the worker.[49]

Article 4 of the Convention mandates state parties to come up with a national policy which will aim at reducing hazards in places of work. This policy must be periodically reviewed and must be made in consultation with the employers' organisations, workers' organisations as well as state representatives.[50] Article 5 provides the scope of the policy. The policy must make provision for the training of all individuals involved in safety. It must further make provision for the design, testing, maintenance and construction of material elements of work such as machinery and equipment. It must make adequate provision for the protection of workers from disciplinary action when they report safety defaults in their factories. Workers must also be protected from disciplinary action if they remove themselves from dangerous situations. Workers must be given training in dealing with safety.

[48] The Occupational Safety and Health Convention, Art. 1(2)- (3).
[49] The Occupational Safety and Health Convention, Art. 21.
[50] The Occupational Safety and Health Convention, Art. 8.

The Convention further provides that the state must, at appropriate intervals, review laws relating to occupational safety and health to reduce occupational hazards and accidents.[51] Article 8 provides that enforcement of all laws and regulations shall be by an adequate and appropriate system of inspection. There must be a competent authority for the enforcement and management of the created policy.[52] There must also be adequate penalties provided for violations of the policy created by the state.

Article 16 requires employers to ensure that all processes, machinery, equipment and materials under their control are reasonably safe. They must provide protective clothing and equipment and ensure that all substances are free from danger. They must also provide for measures to deal with accidents and emergencies as well as first aid arrangements. Workers must receive specialised safety training and must be availed with information on the measures taken by the employer to ensure their safety.[53]

2.5 THE INSUFFICIENCY OF THE FACTORIES ACT

Despite the many safety provisions contained in the Factories Act, factory workers in Zambia are not given optimum protection. Some of the shortcomings of the Factories Act are the following.

The most prominent insufficiency of the Factories Act is that it has weak means of enforcement. The Factories Act is usually enforced through inspections carried out by the inspectorate of factories of the Ministry of labour and Social Security. While this means of enforcement is arguably ensuring compliance with the provisions of the said law, it is not doing enough. The Factories Act lacks alternative means of enforcing the law such as tasking employers with writing reports on all safety measures put in place during the year. Most

[51] The Occupational Safety and Health Convention, Art. 7.
[52] The Occupational Safety and Health Convention, Art. 11.
[53] The Occupational Safety and Health Convention, Art. 19.

employers do not ensure compliance with the law because they are not obligated to report to the authorities but instead wait for the authority to inspect their premises which may not be done on a regular basis.

It is important to note that the Factories Act attempts to provide for different types of factories. In order to provide for all of these factories, the Act has general provisions and hence gives general guidelines with regards to safety. As a result, certain important aspects of safety have not been provided for by the Act. For instance, the provision of personal protective equipment (PPE) has not been made mandatory by the Act. Employers seek to have high profits with little expenditure and therefore, by not making the provision of PPE mandatory, the Factories Act does not give optimum protection to workers. PPE is only guaranteed in the Act where a worker may be exposed to dangerous substances or extreme temperatures. This must not be the case because by nature factories are potentially dangerous.

The Factories Act also lacks sufficient penalties for failure to provide safety for workers. It does not provide for stiffer penalties. The current fine for violation of the Factories Act is a minimum of 300 penalty units and a maximum of 1,500 penalty units.[54] This amounts to a minimum of 54 and a maximum of 270 Kwacha Rebased which is not enough money as a penalty to deter employers from not complying with the law. Further, the lack of provisions on workers' healthcare in the event that they are injured at the place of work also disadvantages them. Employers are not made to pay for their workers' injuries and healthcare when they are injured in the work premises. The provision of healthcare is catered for in the Workers' Compensation Act. However, the money paid out under the Workers' Compensation Act is not adequate.

[54] The Factories Act, S 92.

Interviews conducted by the author revealed that some factory owners have developed the practice of issuing general work rules to their workers and among these rules is a rule that workers may not engage in any work in the factory if the employer has not taken reasonable steps to ensure that their place of work is safe or if the employer has not provided PPE. The Factories Act does not provide for this option for workers. Furthermore, it does not provide for any form of protection for workers who abstain from work when their employers have not taken reasonable steps to provide them with safety.

Conditions of service are usually found in the contract of employment. In Zambia contracts of employment are generally governed by the Employment Act with other laws governing different types of employment. Both the Employment Act and Factories Act do not place a positive obligation on employers to include safety measures in their contracts of employment. However, these are implied into the employment contracts automatically but this does not guarantee workers' safety adequately. If safety provisions or measures were included in employment contracts it would give workers an opportunity to negotiate for better conditions of service and safety measures but since they are not included in the contract, workers do not have this opportunity.

The final problem with the Factories Act is that it has not evolved with technology and modern times and this has had the effect of only providing for specific equipment such as hoists or lifting machines which may not always be in use in factories. Interviews revealed that modern factories use modern equipment such as drivers which is not provided for by the Act.

2.6 COMPARISON BETWEEN THE FACTORIES ACT AND CONVENTION NO. 155

It is important to note that undomesticated international instruments are only of persuasive value in Zambia. They can only attain the force of law once they have been ratified and domesticated.

The definition of a factory in the Factories Act is very broad but the general feature in the different aspects of what a factory is that there must be an investment of manual labour for trade or economic gain. This ultimately means that there must be economic activity in a factory.

Article 4 of Convention No. 155 provides for the formulation of a national policy on occupational safety which must aim at reducing occupational accidents. This policy must be periodically reviewed with the view of ensuring that it is being adhered to as well as improving on it. Additionally, all laws relating to occupational safety must be implemented through a system of regular inspections.[55] The Factories Act gives general guidelines on safety measures that must be set up in factories. The Factories Act does not contain all the provisions listed in Article 4 as these have been provided for in the Occupational Health and Safety Act of 2012.

According to convention no. 155, all workers must be trained in aspects of occupational safety. This must all be provided for by the employer. The Factories Act does not make provision for the training of all workers in aspects of safety. Consequently, most employers do not usually provide this training to their workers. It is left to the employer to incur the extra cost of training their workers. The employers who provide training do not include aspects of safety.

[55] The Occupational Safety and Health Convention, Art. 9.

The Factories Act unlike convention no. 155 does not make provision for the protection of workers who abscond from work due to the lack of provision of safety and this has made workers vulnerable as they are forced to work in unsafe environments or risk losing employment. Additionally, unlike Convention No. 155, the Factories Act does not have contain provisions that provide for consultations with workers' organisations and this hinders the workers' concerns being addressed in safety laws.

2.7 CONCLUSION

The foregoing chapter has discussed the safety of factory workers under the Factories Act. It has endeavoured to show how the Factories Act has attempted to provide for the safety of factory workers in relation to the three major aspects of work safety. It has further shown the scope of the Factories Act and has summarised the definition of a factory. The chapter has highlighted the fact that the major part of the Factories Act provides for the first aspect of safety while not adequately doing so for the other two. It has also shown the inadequacies of the current safety law of factory workers and has further shown that the current law does not comply with Convention No. 155. The next chapter looks at mineworkers' safety and the law's compliance with Convention No. 155 and Convention No. 176.

CHAPTER THREE

3.0 ZAMBIAN MINE SAFETY LAWS AND ILO CONVENTIONS

3.1 INTRODUCTION

Mine workers, like factory workers, make an immense contribution to the country's economy because they are the individuals who personally excavate the minerals. The excavation and preparation of minerals is a dangerous process and it is for this reason that workers' safety must be ensured. Due to the nature of the activities that take place in mines, the safety of mines is provided for by a number of laws and as such this chapter will focus on four primary laws in this area. The chapter will look at the principal legislation in mining, the Mines Act. It will also look at the Explosives Act and the Regulations issued thereunder, the Mining Regulations as well as the Mines and Minerals Regulations. This chapter aims at assessing and determining whether or not the current legal regime for mine workers' safety is sufficient and whether or not it complies with Convention No. 176.

3.2 THE CURRENT MINE SAFETY LAWS

The current mine safety regime comprises regulations and laws that mainly provide for explosives and the mining environment itself. The following are some of the main provisions of these laws.

3.2.1 The Mines Act

The Mines Act does not have substantive provisions on safety. It mainly deals with mining procedures and licences. It provides for the acquisition of mining licences as well as the rights that license holders have. The most important provision as far as safety is concerned is in section 161. This section gives the Minister of Mines and Minerals Development power to formulate regulations that deal with a lot of aspects in the mining industry. The Minister of

Mines and Minerals Development has power to formulate regulations which may provide for mineral processes, prospecting and mining with the view of ensuring safety and preserving and protecting life.[56] There are no safety regulations that have been made under the current Mines Act. The regulations and statutory instruments (SI's) that are currently in force were made under the repealed Mines Act and they will remain in force until they are repealed and replaced by new regulations and SI's. These SI's and regulations have remained in force pursuant to section 15 of the Interpretation Act which allows SI's from repealed Acts to remain in force until new SI's have been enacted to replace them.

The regulations and SI's that currently provide for safety are the Mining Regulations, the Explosives Act and Explosives regulations as well as the Mines and Minerals Regulations.

3.2.2 The Mines and Minerals Regulations

The Mines and Minerals Regulations provide for the provision of protective clothing to all employees who may be exposed to danger and pollution in the course of employment. This clothing must be given if the danger that they may be exposed to may impair any functioning of their body.[57] Any employee given such clothing must keep it in sanitary and proper conditions at all times. The Regulations, in regulation 70, further mandate an employer to provide proper and adequate washing and eating facilities for all employees if the mine produces toxic substances. An employer must also issue an appropriate code on safety to all employees. This code must specify what measures are being taken to ensure employees' safety and must be given to all employees.[58]

Employers must ensure that all excavations are fenced off to prevent employees and other people from falling into such excavations. The edges of such excavations must be guarded by

[56] The Mines Act , S 161 (2) (e)
[57] The Mines and Minerals Regulations, Reg. 69
[58] The Mines and Minerals Regulations, Reg. 71

a regular ridge all around the edges. Additionally, where cracks or any other likely danger may result from mining surfaces, an employer must ensure that such surfaces are bound off and that there is no unauthorised entry into such areas. No buildings must be made within one hundred meters of such areas. Notices prohibiting unauthorised entry must also be placed near such areas and entry must be restricted to individuals performing statutory duties.[59]

3.2.3 The Explosives Act and the Explosives Regulations

Explosives are produced and used in most mines in the blasting process. Thus the Explosives Act and the Explosives Regulations were formulated to provide for the storage, maintenance and use of such explosives. The Explosives Act and the Explosives Regulations generally provide for the use of explosives and how they are to be stored as well their safe use and handling. Below are the main safety provisions of the said laws.

Section 18 of the Explosives Act provides the basis for the Explosives Regulations. Section 18 provides for the creation of regulations dealing with *inter alia* the storage, usage and disposal of explosives. The Minister of Mines and Minerals may also pursuant to section 18, make regulations dealing with the construction, transportation and manufacture of explosives.

According to the Explosives Regulations, employers must ensure that all reasonable precautions are taken in the storage of electronic detonators where they are used to detonate explosives underground.[60] This is to ensure that there is no accidental detonation of any explosives. The Regulations also specify the distance within which magazines for storing explosives may be stored away from the mines.[61] The distances vary with the types of explosives and the amount of power used in the mine. Employers must ensure that all employees involved with the working of explosives are medically examined so that only

[59] The Mines and Minerals Regulations, Reg. 72-73
[60] The Explosives Regulations, Reg. 121
[61] The Explosives Regulations, Reg. 125

medically fit persons are allowed to handle and work with explosives. No employee who would be a danger to the safety of himself and others must be allowed any involvement in the work of explosives.[62] Additionally, regulation 210 provides that all areas that deal with explosives in the mining premises must be fenced off and marked as dangerous.

Buildings dealing with explosives must meet a certain standard and must be of particular specification. They must be of proper construction and they must have reasonable safeguards to protect employees. All doors must open outwards and they must specify the maximum number of employees allowed in the building at any time.[63] The tools used in these buildings must be made from inflammable material and such buildings must be kept clean at all times. Furthermore, all the exits and passageways of these buildings must be of proper construction and adequate size. They must be kept free from obstruction at all times.[64] To prevent accidents, buildings in which explosives are used must be repaired at all times when any damage occurs. The Explosives Regulations also provide for specifications of mixing plants as well as storage buildings. Competent persons must be employed to manage these buildings.

Employers and managers must ensure that fire drills are conducted regularly at intervals of not more than one month and that there is proper organisation of means of extinguishing fire in case of an outbreak.[65] Management must also make a procedure to be adopted in case of fire. It shall also ensure that such procedure is circulated among all employees. Employers must also provide a first aid station to treat employees who need immediate medical assistance. Employees who are instructed to carry out certain works must be provided with protective clothing that fits the task that they have been given, where such clothing is a

[62] The Explosives Regulations, Reg. 129
[63] The Explosives Regulations, Reg. 216
[64] The Explosives Regulations, Reg 217-220
[65] The Explosives Regulations, Reg. 275

necessity.[66] They must ensure that there is adequate ventilation in all parts of the explosives factory if an employee's safety is likely to be endangered from exposure to dangerous substances in the factory. Magazines that contain explosives and electrical magazines must have proper electrical wiring and must be fenced off. Warning notices must be posted at all fenced off areas to ensure that no unauthorised persons go into such areas.

The Explosives Regulations also provide for the safe handling of machinery as well as its maintenance. All machine parts that are potentially dangerous must be fitted with sufficient safeguards. Mine owners must hire competent staff to work with all machinery to ensure that no employee suffers from harm due to machinery that is not properly used.[67] Machinery must only be used after it has been examined and it is established that all reasonable precautions have been taken to ensure that its use will not cause workers to suffer from harm. Workers must also be provided with safety goggles and screens when they are working with metal surfaces, electricity or stones which may pose a danger to their eyes.[68]

The maximum weights of all lifting machinery must be clearly stated and marked on all machinery. All lifting machinery must have suitable controls and efficient brakes and no excessive weights must be placed on lifting machinery. Apparatus that functions using electricity must only be operated by competent persons. The apparatus must be installed, arranged and protected in such a manner as to take all reasonable precautions to prevent harm. It must also be systematically and regularly inspected. Furthermore, all cables, flexing cables and blasting cables must be earthed so as to prevent electrocution of employees using such apparatus and cables.

[66] The Explosives Regulations, Reg. 287
[67] The Explosives Regulations, Reg. 904-905
[68] The Explosives Regulations, Reg. 908

Any machinery that uses steam boilers and steam receivers must only be used if the boilers and receivers are of proper construction. Such boilers and receivers must contain safety valves which will prevent the build up of any steam which may be dangerous in case of an accident.[69]

3.2.4 The Mining Regulations

The Mining Regulations provide a wide variety of mining processes and activity which range from the mine surface, apparatus used in the mine, buildings situated in the mine and their maintenance. Below are the salient provisions of the Mining Regulations.

The regulations provide for the fencing off and barricading of all dangerous places underground. All entrances to dangerous places underground must be fenced off or barricaded to prevent unintentional access thereto. As such, all excavations that pose a danger to employees must be fenced off. Similarly, any mined main ore passes and waste ores must be adequately covered with appropriate material to prevent their coming into contact with employees and thereby causing any injuries.[70]

All platforms used to lift loads in the mine must be made from sufficiently strong material and they must be adequately secured with appropriate material. Employees that engage in work in places where falling would be likely to entail injury must be secured with rope of sufficiently strong material. Such rope must be properly maintained and fixed to appropriate anchorage. Similarly, adequate rescue equipment must be provided for employees who work in places near water and where they may most likely fall into such water. Employers must

[69] The Explosives Regulations, Reg. 1003-1005
[70] The Mining Regulations, Regs. 702- 706

also take all reasonable precautions to protect employees working near vessels that contain corrosive materials, molten metal and other dangerous substances.[71]

The Mining regulations in Part VIII also make provision for outlets and travelling ways underground. All mines must have two separate means of egress and ingress underground. There must also be ladder ways and other outlets fixed in the mine which must be permanently fixed and free from obstructions at all times to allow workers to leave the mine at anytime. All ladders used in the mine must be properly maintained and must be of proper construction. Additionally, they must be made from material that is appropriate depending on how they are fixed in the mine. The particular specifications of the ladders are provided for in the Regulations and vary with the types of ladders that have been installed.

All mines must be adequately ventilated by either natural or mechanical means. No worker must be allowed to work in any place that is not adequately ventilated. To ensure that there are no toxic substances in the air underground, employees must cause inspections of the air to be done at least once every three months. All fire extinguishers provided underground must not contain any toxic substances. All doors that allow for ventilation must not be self locking. Additionally, all surface plants must be adequately ventilated. Employers must provide adequate washing and eating facilities for all workers who work in places where toxic substances may be handled.[72] Every worker who goes underground must be provided with a lamp.

Part XII of the Mining Regulations contains first aid and fire fighting provisions. This part provides for the provision of a first aid room and first aid equipment. Employers must hire competent staff to operate from these first aid rooms and they must ensure that employees are attended to promptly. The regulations further provide that employers must provide adequate

[71] The Mining Regulations, Reg. 709- 713
[72] The Mining Regulations, Part IX

equipment for fighting fire both on the surface and underground. Such equipment must be inspected at intervals not exceeding 90 days. A proper fire fighting plan must be made by employers and this plan must be given to all employees. The fire fighting plan must include the provision for conducting fire drills every 90 days.[73]

All machinery used in mines must be operated by competent individuals.[74] All electrical and other parts of machines that may pose a danger to employees must be fitted with efficient safeguards and all machinery must have audible warning devices. Workers must be given safety screens and goggles to prevent their eyes from being harmed by molten metal, corrosive metals, welding and crushing processes and other dangerous processes. The maximum and minimum safe working loads for all machinery must be clearly marked to ensure that it is not overloaded. All machinery, along with all the hooks, chains and ropes it uses must be inspected by competent staff before it is put to use.[75] The specifications and construction of machinery vary with the types of machinery.

When it is necessary to carry out works that will involve winding employees, all ropes must be inspected before use. Employers must ensure that these ropes are made from sufficiently strong material and they must comply with designated breaking and working loads. All winding equipment must be inspected at different intervals of at least once a day, a month, a week and a year. Notices prohibiting smoking must be displayed in the winding plant at inconspicuous places.[76]

Part XV of the Mining regulations provides for equipment such as steam boilers and air receivers. This type of equipment must be properly constructed. This type of equipment must be fitted with safety valves, stop valves and pressure gauges. Steam boilers must be examined

[73] The Mining Regulations, Reg. 1211-1214
[74] The Mining Regulations, Reg. 1304
[75] The Mining Regulations, Regs. 1325 and 1326
[76] The Mining Regulations, Part XIV

every 24 months. Air receivers must be examined every 12 months using normal means and every 24 months using hydraulic pressure. The safe working pressure of air receivers must be marked legibly on all air receivers.

Lifts used in the mines must be certified. This certification will only be done after it is determined that they are of proper construction. These lifts must be examined at intervals not exceeding 7 and 30 days. Employers must display legible notices of the maximum loads of all machines. All lifts must be fitted with gates and all ropes should be of good strength quality and manufacture.[77]

Equipment used in construction such as scaffolds should be properly constructed. It should also be inspected at least once a week and every time before use. It should not be overloaded and where a worker may fall for a distance exceeding one meter, employers must provide efficient and sufficient safeguards to prevent harm. Where construction equipment becomes part of the permanent structure or mine, adequate safeguards and precautions must be permanently implemented.[78]

Electrical machines used in mines should be of good construction. They must be made from suitable material and must be checked regularly. Employers must ensure that such machinery is earthed and adequately insulated. Additionally, all flexible and blasting cables must be protected. Metallic parts of all machinery using electricity must be earthed. The mine should have a system of immediately cutting off electricity supply off all machines if it is necessary to prevent danger. Employers must also ensure that all reasonable and necessary precautions are taken when workers have to use electrical machinery. Employers are also mandated to display notices prohibiting unauthorised entry into places containing electrical apparatus as

[77] The Mining Regulations, Part XVII
[78] The Mining Regulations, Part XVIII

well as the procedure on the treatment of persons suffering from electrical shock and the procedure on how to deal with fire.[79]

3.3 SAFETY IN THE SAFETY AND HEALTH IN MINES CONVENTION, 1995 NO. 176

Convention No. 176 mandates state parties to formulate a national policy on health and safety which must be regularly reviewed. This policy must be implemented through national laws and regulations. Thus every state must enact legislation that aims at ensuring mine workers' safety in line with the provisions of the Convention. The laws and regulations may be supplemented, if necessary, by guidelines and codes of practice and other means deemed necessary by the states.[80]

The national policy that is to be implemented through laws and regulations must designate the competent authority for ensuring safety in mines. The policy must provide for the regular inspection of mines as well as a system of recording and compiling information and statistics on accidents in mines as defined by national laws. The policy must make provision for the supervision of safety in mines. The laws and regulations must also provide for a system of reporting and investigating disasters, accidents, occupational diseases and other dangerous incidents that may occur in mines. All these occurrences and dangers must be defined in the laws and regulations.

The laws must provide for the competent authority's power to enforce certain measures on employers who do not comply. The measures taken may be closures and seizures of operations until the employers comply. The laws must provide for the storage, transportation, manufacture and use of explosives at the mine under the direct supervision of competent

[79] The Mining Regulations, Part XIX
[80] The Safety and Health in Mines Convention, Arts. 3-4

employees. They must specify how abandoned mine sites are to be secured and give requirements on mine rescue, first aid and medical facilities. Self rescue, respiratory and other similar devices for workers working underground must also be provided. The laws must make provision for the creation of cleaning, washing, and eating facilities of all workers at work premises as well as the means of disposing of waste products and hazardous substances used in the mining process.[81] All safety measures must be in place before the mining commences or within reasonable time thereafter and must be periodically reviewed and updated.

Convention No. 176 in Part III (A) prescribes a number of responsibilities for employers. Among these responsibilities is the proper construction of the mine and all buildings connected thereto. Employers must maintain the stability of the ground. The mine must be safe so that workers' safety is not compromised when they engage in their work. Employers must provide separate means of egress and ingress to and from underground. They must also provide a safe system of work as well as adequate ventilation for all areas underground. They must also organise a system of preventing, detecting and combating the spread of fires and explosives in the mine. Employers must ensure that there is a laid down procedure of ensuring that all employees are evacuated from the mine in case of any emergency or disaster.

Convention No. 176 also requires employers to provide safety training programs for workers and to promptly report all accidents and disasters to the competent authority. Furthermore, where there is a risk of injury from materials that workers have to work with, employers must provide protective equipment and clothing and all other necessary facilities. There must be a system of investigating and attending to accidents and other mining disasters. Workers who are underground must be known at all times and all underground working shifts must be

[81] The Safety and Health in Mines Convention, Art. 5

supervised by competent persons to ensure that the shifts run smoothly. Finally, all workers exposed to mining occupational health hazards must be given regular health checkups.[82]

3.4 THE CURRENT REGIME AND CONVENTION NO. 176

Zambia ratified Convention No. 176 in January, 1999 and as such it has the force of law in Zambia.[83] The Mines Act and Convention No. 176 define a mine by the activities that take place in an environment. From the two definitions, any premises involving the extraction, excavation, preparation, treatment and dressing of any minerals amounts to a mine. It is immaterial whether or not the owner of such premises refers to their premises as a mine.

Convention No. 176 calls on states to formulate a national policy dealing with safety and health of workers. This policy may be implemented and expressed in the form of national laws and regulations. Zambia does have a policy on health and safety in accordance with Article 3 of Convention No. 176. This policy is found in a number of laws and regulations. These laws are the Mines Act, the Mining Regulations, the Explosives Act and the Explosives Regulation.

The aforementioned laws do contain most of the provisions laid down in Convention No. 176. The laws designate the competent authority with the task of monitoring and regulating the various aspects of safety. The laws and regulations do provide for the supervision and regular inspection of safety measures in mines as well as a system of reporting accidents in mines. The current regime also establishes procedures for investigating accidents and fatal and dangerous occurrences in mines. The Explosives Act and Explosives Regulations provide for dealings with explosives and other similar substances.

---

[82] The Safety and Health in Mines Convention, Arts. 9-11

[83] Human Rights Watch, Labor abuses in Zambia- Chinese state-owned copper mines, November 2011, USA, http://www.hrw.org/Zambia/safety-gaps (accessed April 1, 2013), 33

The Mining Regulations also specify that all abandoned areas must be properly fenced off and that employers must ensure that they provide for proper facilities for washing, eating and cleaning. All first aid facilities must be adequately prepared with appropriate equipment. The Convention requirement of creating laws that will specify procedures for dealing with and disposing off all hazardous materials is complied with through the Explosives Act and the Explosives Regulations. The current regime also provides for most of the employers' responsibilities in Part III (A) of Convention No. 176.

The current regime does not provide for certain measures laid down in Convention No. 176. The current mine safety laws and regulations do not provide for the employers' responsibility stated in article 9 (a). The laws do not make provision for employers to inform their employees of all the risks and hazards related with their work as well as the measures being taken to prevent such hazards and protect the employees. This places employees at a disadvantage because they are made to work under conditions that they initially did not know of and hence cannot claim certain safety entitlements.

The current regime, in line with Convention No. 176 imposes on employers the obligation of providing protective equipment where their safety may not be ensured even after taking all reasonable precautions. However, it does not, like the Convention, make employers responsible for sub-contracted and fixed contract employees who work from the mine. This greatly undermines such employees' safety as they are not accorded the same rights that permanent employees have. They do not accrue the same benefits that permanent employees accrue and this places them at risk. For instance, sub-contracted employees at Konkola Copper Mine are not always provided with protective clothing such as protective gloves

when working underground but these are provided for permanent employees.[84] Therefore, there is need for the law to incorporate this provision of the Convention.

Convention No. 176 states that states' policy on safety must undergo periodical reviews. This is to ensure that this policy is updated with new demands in mine safety in mines. The current mine safety laws have undergone some amendments but most of the amendments do not particularly deal with safety but with the vast subject of mining itself and as a result, they have at times failed to cater for new methods of mining and new approaches in catering for employees' safety. The most prominent laws that provide for safety, the Mining Regulations, the Explosives Act as well as the Explosives Regulations, have not been amended and reviewed since 1973 and 1974 respectively and this greatly undermines employees' safety. In different jurisdictions such as South Africa, changing the approach of safety has shown to result in less occupational accidents and injuries. South African legislation has an integrated approach in which employees are consulted throughout the process of making safeguards in mines as opposed to imposing obligations on employers.[85]

The safety laws and regulations discussed above do not provide for adequate penalties which may be imposed on employers who fail to adhere to the safety provisions in the said laws and regulations. Article 5 (2) (e) of Convention No. 176 states that national laws and regulations must give the competent authority power to restrict and suspend operations at mines if they fail to provide safety measures. The laws in Zambia do not give this authority to the competent authorities in Zambia. The penalties imposed are usually restricted to fines and imprisonment of four hundred kwacha and twelve months respectively.[86] The failure to provide stiffer penalties greatly undermines the possibility of employers taking safety

[84] Abi Dymond, Undermining development? Copper mining in Zambia, Report by ACTSA, Christian Aid, SCIAF, October 2007, http://www.actsa.org/ (accessed April 1, 2012)

[85] J. C. Jansen and A. C. Brent, "Reducing accidents in the mining industry-an integrated approach," A Journal of the South African Institute of Mining and Metallurgy, No. 105 (2005): 7

[86] The Mining Regulations, Reg. 305

concerns in their mines seriously. Employers force employees to continue working under unsafe conditions because they know that they will not face serious consequences and as a result safety laws are greatly undermined.[87]

3.5 CONCLUSION

This chapter has discussed the current safety regime of mine workers. The current safety provisions are not contained in one statute but in different regulations and laws. The current safety laws are the Mines Act, the Mines and Minerals Regulations, Mining Regulations, Explosives Act, and Explosives Regulations. These laws and regulations provide for different aspects and areas involved in the mining process such as extraction and preparation of minerals. The chapter has also briefly discussed the provisions of Convention No. 176 and has shown which provisions of mine safety laws are in compliance with the Convention. Finally the chapter has shown the problems resulting from not completely complying with Convention No. 176. The next chapter addresses issues of compensation with regards to mine workers and factory workers with reference to the Workers' Compensation Act and Convention No. 17 and Convention No. 18.

[87] Human Rights Watch, Labor abuses in Zambia- Chinese state-owned copper mines, November 2011, http://www.hrw.org/Zambia/safety-gaps (accessed April 1, 2013), 33

CHAPTER FOUR

4.0 THE OPERATIONS OF WORKERS' COMPENSATION IN THE WORKERS' COMPENSATION ACT NO. 10 OF 1999

4.1 INTRODUCTION

Compensation legislation plays an important role in providing aid to workers who get injured in the course of employment. It must make provision for adequate compensation for workers and their dependants in case of occupational accidents or death. This chapter analyses compensation legislation in Zambia. It looks at how compensation is paid out as well as what claims workers can make. The chapter also analyses the contribution that employers make towards workers' compensation. It further compares the current compensation law with Convention Nos. 17 and 18. The chapter looks at whether or not the current law fully addresses workers' needs as well as the shortcomings of the current law. Like chapter two, this chapter was also written with the aid of information obtained from field research.

4.2 THE WORKERS' COMPENSATION ACT

4.2.1 Application of the Workers' Compensation Act

The Workers' Compensation Act is the only compensation law in Zambia that provides for compensation to workers and their dependants for death and any occupational injuries and diseases that may be incurred or contracted, respectively, in the course of employment. The Workers' Compensation Act applies to all persons who have entered into contracts of service, apprenticeship or learnership with any body of persons or corporate or incorporate entities. It

does not apply to domestic workers or the Government as an employer.[88] Further, the Workers' Compensation Act also applies to mine workers and factory workers.

The Workers' Compensation Act creates the Workers' Compensation Fund (**"the Fund"**) from which all claims to compensation in Zambia are paid out by the Workers' Compensation Commissioner.[89] All employers must register with the Workers' Compensation Fund Control Board (**"the Board"**) within 14 days of commencement of business.[90] The Fund is administered by the Board which is the body responsible for the payment of compensation to injured workers and to their descendants if their occupational accidents result in death.

4.2.2 Compensation Assessments

Assessments refer to the premiums or compensation payments which are contributed to the Fund by employers and are determined by the Board. These assessments are then negotiated on by the Board, employers' representatives and workers' representatives. The assessments must be paid by all employers and are fixed in accordance with the nature of the risk of accidents and occurrences of occupational hazards in a particular industry. As a result, some employers pay higher assessments than others. Employers may only pay assessments to a maximum of K 9,600 per annum or K 800 per worker. Employers involved in the mining and industrial industries pay higher assessments due to the high degree of risk of exposure to occupational injury and disease associated with the nature of the work that workers do.

4.2.3 Compensation for Mine Workers and Factory Workers

According to Part V of the Workers' Compensation Act, a worker is entitled to claim compensation if he or she is involved in an accident or contracts a disease arising in the

[88] The Workers' Compensation Act, S 3 & 5.
[89] The Workers' Compensation Act, S 104- 105.
[90] The Workers' Compensation Act, S 134.

course of employment. Compensation may also be paid to a worker's dependants if that worker dies. Such compensation shall not be deducted from a worker's earnings but must be wholly or partially paid by the employer. Compensation is also paid for temporary incapacity.

Claims to compensation for earnings are dependent on a worker's rank and position at the place of work but all medical costs are borne by the Fund. The Fund covers all the medical and surgical costs incurred by a worker. This is done through periodical payments or a lump sum. Where a worker's accident does not result into death but injuries, the amount of compensation paid depends on the degree of disablement suffered by that worker so that if a worker suffers from total or permanent disablement, he will receive periodical payments at the rate of fifty percent of his earnings.[91] The compensation paid out for permanent disablement equally depends on the degree of disablement sustained. The amount of compensation paid out for partial disablement is determined by the proportion that the disablement bears to total disablement. All payments for total and partial disablement must not be made for a period exceeding 18 months. A disablement is deemed to be permanent once it persists for more than 18 months.[92]

In addition to the periodical payments made by the Board, all employers are required to pay injured workers their full earnings despite their inability to work. The Board refunds the employers part of the earnings paid out. The Board pays out compensation even when employers have not paid their assessments into the Fund.

In the event that a worker dies, the Board makes periodical payments to the dependants of the deceased worker or a lump sum, whichever is deemed to be suitable by the Commissioner. All payments made by the Board are independent from workers' pensions so that the

[91] The Workers' Compensation Act, Ss 66 & 69.
[92] The Workers' Compensation Act, S 67.

employers must continue to pay workers their benefits and earnings acquired through their contracts of employment.[93]

In addition to the foregoing provisions, the Workers' Compensation Act also provides for one occupational disease. According to Part IV of the Workers' Compensation Act, all mine workers must be examined and checked for pneumoconiosis. They must be certified fit before they can commence work in the mines. Similarly, all persons who wish to be employed in any mine must be examined and checked for pneumoconiosis. Such examinations must also be done regularly. Any mine worker found to be suffering from pneumoconiosis in stages one, two or three accompanied by incapacity shall be deemed to be suffering from pneumoconiosis for which they can claim from the Board.[94] From the foregoing, the Board bears most of the costs incurred when occupational accidents take place or when diseases are contracted.

4.3 COMPENSATION IN THE ILO CONVENTIONS

There are three ILO conventions on compensation which have been signed and ratified by the Zambian Government which help to set compensation standards. These Conventions are the Workmen's Compensation (Agriculture) Convention (No. 12), Workmen's Compensation (Accidents) Convention (No. 17) and the Workmen's Compensation (Occupational Diseases) Convention (No. 18). This chapter looks at Convention Nos. 17 and 18 only. Conventions Nos. 17 and 18 were ratified by the Zambian government in 1964 and 1965.[95] The aforementioned Conventions provide for two aspects of compensation: accidents and occupational diseases. Below are prominent provisions of Convention Nos. 17 and 18.

---

[93] The Workers' Compensation Act, S 53.
[94] The Workers' Compensation Act, Part IV.
[95] APPLIS, "List of Ratification of International Labour Conventions," under "Settings" http://www.ilo.org/mht (accessed on October 9, 2012).

Convention No. 17 provides for industrial accidents. Convention No. 17 in article 1 states that all parties must provide compensation on terms that are equal to or better than those provided in the Convention. It classifies a worker as any apprentice, employee or workman employed by any artificial or natural person.[96] Compensation shall be paid to workers or their dependants when occupational accidents result into permanent incapacity or death hence temporary incapacity is not covered in this Convention. This payment may be made in the form of periodical payments or wholly or partially as a lump sum.[97] Workers who have permanent incapacity must be paid their compensation within five days after the accident and if they require the aid of another person, they must receive additional compensation to cover the cost of their help.[98]

Convention No. 17 further provides that national laws and regulations must provide for a mechanism of reviewing and supervising the operation of compensation laws. The law must also allow workers to receive their compensation in the event that an employer or accident insurance institution becomes insolvent. The employer or accident insurance institutions shall bear the cost of giving medical and surgical aid to injured workers. They must also provide artificial limbs and surgical appliances to workers when necessary.[99]

Convention No. 18 lists three main occupational diseases for which national compensation laws must provide. All parties to Convention No. 18 undertake to consider lead poisoning, mercury poisoning and anthrax as occupational diseases if a worker contracts them in the course of employment. The rates of compensation provided for these occupational diseases shall not be less than the rates provided for injuries resulting from industrial accidents.[100]

---

[96] The Workmen's Compensation (Accidents) Convention, Art. 2.
[97] The Workmen's Compensation (Accidents) Convention, Art. 5.
[98] The Workmen's Compensation (Accidents) Convention, Arts. 6-7.
[99] The Workmen's Compensation (Accidents) Convention, Art. 8- 11.
[100] The Workmen's Compensation (Occupational Diseases) Convention, Arts. 1-2.

4.4 THE WORKERS' COMPENSATION ACT'S COMPLIANCE WITH COMPENSATION CONVENTIONS AND ITS SUFFICIENCY

Following their ratification in 1965, Conventions No. 17 and 18 are of persuasive value in Zambia. They are not binding but may influence the Courts' judgments. The Workers' Compensation Act complies with most of the provisions in Convention Nos. 17 and 18. The Workers' Compensation Act does not expressly provide for compensation for lead poisoning, mercury poisoning and anthrax as occupational diseases listed in Convention No. 18 but they are deemed to be covered by the aforementioned Act in Section 3.

The Workers' Compensation Act has generally adopted the definition of a worker and an employer in Convention No. 17. It further provides for the periodical payment of compensation to injured workers as well as the provision of surgical appliances and artificial limbs to injured workers. The Workers' Compensation Act additionally ensures that workers are compensated even for temporary incapacity as opposed to Convention No. 17 which only provides for compensation for permanent incapacity. From the above, the Workers' Compensation Act is fully compliant with Convention No. 18 and only partly compliant with Convention No. 17.

The Workers' Compensation Act does not comply with article 11 of Convention No. 17. It does not provide for a mechanism that ensures that workers continue to receive their payments in the event that an employer becomes insolvent. This has impacted workers' compensation negatively. When employers become insolvent injured workers usually cease to obtain their compensation, in the form of earnings, from their employers. The Workers' Compensation Act does not make provision as to whether or not workers are to continue receiving their monthly earnings from the Board.

The Workers' Compensation Act also fails to adequately serve its purpose of providing compensation for workers because compensation payments made to workers are not regularly reviewed and changed to suit the current cost of living. The money paid out to workers is usually not sufficient to sustain their families. The Board reserves the power to review pensions and allowances given to workers and their families, however, this is not regularly done and the manner in which this review is to be done is not detailed.[101] The Workers' Compensation Act does not provide for proper procedure that engages employers and employees in reviewing pensions and allowances paid out to workers and their dependants and as such, any reviews done by the Board are not agreed upon by employers. As a result, workers and their dependants receive payments that do not meet the current cost of living. The current compensation rates were last reviewed in 2004.

4.5 CONCLUSION

From the foregoing chapter it can be stated that the Workers' Compensation Act provides for compensation for both factory workers and mine workers. The Board gives compensation for all occupational diseases and injuries. Due to the high risk of accidents in their respective industries, mine workers and factory workers receive higher rates of compensation than workers in other industries. However, this compensation is not adequate because it is not regularly reviewed. The next chapter focuses on the conclusions and recommendations.

[101] The Workers' Compensation Act, S 86.

CHAPTER FIVE

5.0 RECOMMENDATIONS AND CONCLUSION

5.1 INTRODUCTION

The previous chapters have looked at factory and mine work safety and compensation laws and their compliance with international standards set in different ILO Conventions. The chapters have analysed the provisions of the said laws and their sufficiency in providing for the safety of factory and mine workers. This chapter serves to provide the conclusions and recommendations of the research paper. The chapter will first give the general conclusion of the research paper. It will thereafter give recommendations on how conditions of safety in factories and mines can be improved.

5.2 GENERAL CONCLUSION

This research paper set out to analyse work safety legislation in Zambia with particular focus on mine workers and factory workers. The paper set out to establish the laws' compliance with international standards set out in ILO Conventions as well as analyse the sufficiency of the provisions of the said laws in providing adequate conditions of safety for factory and mine workers. The paper also sought to establish whether or not the current workers' compensation laws are adequately serving workers' needs in light of ILO Conventions No. 17 and 18.

The research has established that the current safety regime for factory and mine workers consists of a number of laws and international Conventions to which Zambia is a party by signature and ratification. It must be noted, however, that most of these Conventions have not yet been domesticated and hence are not binding but are only of persuasive value. The research has shown the shortcomings or insufficiencies of the said laws and has further

shown how lack of domestication of the said international Conventions has contributed to lack of adequate provision of safety for factory and mine workers.

The research has shown that factory and mine workers are not given optimum protection by work safety legislation due to non-compliance of this legislation with important provisions of the ILO Conventions looked at in the previous chapters such as the need to have constant and proper review of all safety policies and legislations. These laws are not dynamic and as a result do not accommodate prevailing conditions in work places. Safety laws are not regularly amended and revised to accommodate new machinery that is used in the industry. The major shortcoming of safety legislation is its lack of provisions that provide for constant review of such legislation. Review is necessary as it ensures that factory and mine workers are adequately provided for.

The research has established that one other shortcoming of safety legislation is that it lacks provisions that impose more duties on employers. The laws do not impose certain obligations on employers such as the need for employers to provide safety awareness training for workers. Additionally, the laws do not involve employers in the compensation of workers beyond the payment of compensation premiums to the Workers' Compensation Fund Control Board. Furthermore, the laws do not provide that employers should bear the responsibility of ensuring that anyone who works in their premises is provided with safety equipment hence they are not responsible for the safety of sub-contracted employees and employees hired on fixed term contracts.

The lack of penalties that will encourage employers to adopt safer modes of work for their workers is another shortcoming of safety legislations. Employers do not ensure that working conditions and premises are safe for their workers because the penalties that they face as a result of non-compliance to safety laws are not stiff. For instance in chapter three, it was

noted that the amount payable by employers for failure to provide safety measures is a fine of four hundred kwacha only or imprisonment of twelve months. These penalties are not deferent enough. A fine of four hundred kwacha is not sufficient to ensure that factory and mine owners adhere to safety laws.

The research in chapter four has established the relevance of the Workers' Compensation Act. It has also been noted that Conventions No. 17 and 18 have not yet been domesticated and hence only have persuasive value. The paper has shown how compensation is paid out to injured workers or their dependants if workers die as a result of occupational accidents. The research has shown how employers contribute towards workers' compensation. It has also been established that workers' compensation legislation provisions are also not satisfactory due to lack of full compliance with Conventions No. 17 and 18. The aforementioned Conventions provide for periodical reviews of compensation laws which the current law does not provide for and this has resulted in a fixed amount of compensation payable to victims of occupational accidents. This amount is not sufficient to sustain the victims and their dependants. The current workers' compensation law has also failed to ensure that workers are adequately safeguarded in the event that an employer becomes insolvent.

From the foregoing, it may therefore, be stated that the current work safety and compensation laws do not adequately safeguard workers' entitlement to safety and compensation in the work place and hence need some reform in order to wholly serve their intended purpose. It is for this reason that the research makes the following recommendations.

5.3 RECOMMENDATIONS

One of the objectives of this research was to give recommendations on ways in which the current work safety laws may be reformed to give adequate protection to workers. In view of the foregoing, the following recommendations are now made for purposes of reform.

5.3.1 Regular review and amendment of safety laws

This is one of the most important reforms that would bring about improvements in safety conditions in places of work. The relevant authorities must ensure that all safety legislation is regularly reviewed so as to ensure that it is consistent with changing and emerging trends in manufacture and industrial processes. The procedure for reviewing these laws is not provided for in the said laws. There is a need to provide for the review of safety laws so that all the concerned stakeholders, these being the employers and employees, are involved in its review as they are directly involved in the use of the said laws.

Amending the laws is both a short term and long term way of bringing reform to work safety. Regular amendments of the law, when they are necessary, will ensure that safety laws provide for the handling and use of new machinery used in the manufacturing processes. For instance, it was established in chapter three that with regards to mine safety, only the principle Act, the Mines Act has been amended recently to include new developments such as the acquisition of necessary licenses for gemstone mining and other minerals. This was a positive step taken towards reforming mining legislation but it did not include any amendments on safety provisions. The main safety laws that are currently in use are safety regulations that are as old as 40 years. From the time they were promulgated in 1973, a lot of significant mining and manufacturing processes have been developed which need to be included in safety laws where necessary. Therefore, there is a need for these laws to be constantly reviewed and amended so that they are kept up to date with new industrial processes and technology.

Amending of the law will also ensure that all monetary provisions and pecuniary penalties provided for under such laws correspond with the changing needs of workers. Penalty fees payable for non-compliance with safety laws must be reviewed and increased as this will

deter employers from not complying with the law. There is need for these laws to have higher fines payable as penalties for failure to provide safety measures as the current ones do not deter employers from violating the law because they are not deferent. The laws need to be amended to give the relevant authorities such as the Ministry of Labour and Social Security and its inspectors power to suspend the operations of all factories and mines that do not comply with safety standards. This has proven to be a successful way of ensuring compliance with legislation from the experience of the Zambia Environmental Management Agency which pursuant to the Environment Management Agency Act, No. 12 of 2011 has power to suspend operations at all work premises that do not comply with the law.

In line with review of pecuniary provisions in safety and compensation laws, compensation premiums paid by employers into the Workers' Compensation Fund must also be under constant review and amendment because they will fail to fully cater for workers' needs if the amounts are kept constant as the cost of living is constantly increasing.

Factory and mine safety laws may also be amended to include provisions that will make it mandatory for employers to provide personal protective equipment for all workers, whether sub-contracted or fixed term employees, working within their premises. This will prevent the occurrence of occupational accidents such as the one at Konkola Copper Mine.

In addition to the foregoing, the relevant authorities given authority in the current laws to prescribe standards of safety through Regulations and Statutory Instruments must also play a role in improving safety legislation. These authorities such as the Minister of Labour and Social Security must exercise their statutory power to create and set safety standards through the use of regulations and SI's.

5.3.2 Domestication of work safety and compensation Conventions

Some of the shortcomings of safety laws are due to lack of full compliance with Conventions No. 17, 18, 155 and 176. Therefore, there is need to fully comply with these Conventions as they have important safety and compensation provisions that are not contained in the current safety and compensation laws such as the need to ensure that workers continue to receive their compensation in the event that an employer becomes insolvent. The aforementioned Conventions have been ratified but not yet domesticated and thus they do not have the force of law. Consequently, there is need to domesticate all the ratified Conventions in order to fully incorporate their provisions into local safety and compensation laws.

Domestication of Conventions No. 17, 18, 155 and 176 into local legislation will ensure that workers are given important protection such as the guarantee of obtaining compensation even after an employer becomes insolvent as well as providing that workers are well informed of the risks associated with the work that they are engaged to do. Additionally, domestication of Conventions will make it possible to have provisions that will provide for adequate review of the law if the law does not have such provisions. It is not enough that the Conventions are used as guidelines in formulating legislation but they must be fully incorporated into safety laws because they contain valuable safety and compensation provisions.

5.3.3 Consultation with employers' and workers' representatives

It was established in chapters three and four that one of the shortcomings of mine safety laws and the Workers' Compensation Act is lack of stakeholders' consensus with regards to the provisions of the said laws and reforms that have been suggested over the years. Therefore, it is recommended that both employers' and workers' representatives must be consulted and informed when there are proposals for amending the law if such amendments may affect employers and workers. Furthermore, workers must be consulted so as to get their input on

what they would want to have included in safety laws because they are directly affected by them. This will result in employers' compliance with safety laws and prevent outcomes such as those discussed in chapter four in which employers fail to pay the revised fees into the Workers' Compensation Fund Control Board as they feel that they have been imposed on them.

BIBLIOGRAPHY

Abbott, Keith, Pendlebury, Norman and Wardman, Kevin.*Business Law, 9th Ed.* United Kingdom: Cengage Learning EMEA, 2013.

Shaw, Michael N.; *International Law*, 6th Ed. New York: Cambridge University Press, 2008.

Journals Referred to

Jansen, J.C. and Brent, A.C, "Reducing accidents in the mining industry-an integrated approach," *A Journal of the South African Institute of Mining and Metallurgy*, No. 105 (2005): 7.

Tshoose, Itumeleng Clarence, "Common Law Duty of Employer to Provide Safety and Health," *A Journal of International and Commercial Law and Technology 6*, no. 3 (2011): 3.

Online Sources Referred to

APPLIS, "List of Ratification of International Labour Conventions," http://www.ilo.org/mht (accessed on October 9, 2012).

Dymond, Abi "Undermining development? Copper mining in Zambia," Report by ACTSA, Christian Aid, SCIAF, October 2007 http://www.actsa.org/ (accessed April 1, 2012).

Human Rights Watch, Labor abuses in Zambia- Chinese state-owned copper mines, November 2011, USA http://www.hrw.org/Zambia/safety-gaps (accessed April 1, 2013).

Morgan McManus Solicitors, "Employers' Liability: Who is Responsible for Health and Safety at Work," http://www.morganmcnamus/litigation/employers_liability.html (accessed October 1, 2012).