

**AN EVALUATION OF THE EFFECTIVENESS OF THE BUSINESS LICENSING  
SYSTEM ESTABLISHED UNDER THE BUSINESS REGULATORY ACT**

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**A DISSERTATION SUBMITTED TO THE UNIVERSITY OF ZAMBIA LAW  
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AWARD OF BACHELOR OF LAWS**

**UNZA**

**2015**

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## **DEDICATION**

To my parents Mr. J. Bwalya and Mrs. S. Bwalya, thank you so much for my life, your sacrifices, belief and all the support you have rendered. You have made it possible for me to pursue my academics up until now I have my LLB from the highest learning institution of Zambia. This research is also dedicated to my siblings Mercy, Tony, Ruth, Priscilla and Matilda.

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## ABSTRACT

The objective of this research is to evaluate the licensing system under the Business Regulatory Act no. 03 of 2014, with the view to ascertaining the extent to its licensing system under the improves the establishment of businesses in Zambia. This research primarily focuses on the new single licensing system and the facilities that qualify its reliability as the proper response to problems faced in Zambia's business licensing environment.

In recent times there have been discussions on business licensing in Zambia. Different sections of the Zambian society have sharply criticized the business licensing system as lacking independence, inept, inefficient, corrupt, ungovernable, elitist and not accountable to persons doing business in Zambia. The major demand has been for the revision of the business regulatory laws. In response, the government has enacted the Business Regulatory Act under which the new business licensing system is established.

The research starts by discussing the concept of business regulation and narrows down to the new licensing system. The research examines the concept of the licensing system, international standards relating to business licensing and the mechanisms through which business regulation can be achieved. This is followed by an examination of the law and practice on business regulation in Zambia. The research employed the socio-legal method and relied on qualitative data. Both primary and secondary data were used. Desk based research was the main method of data collection. The relevant legislations in Zambia are also reviewed.

The main findings of the study are first, that the concept of the new licensing system is an improvement to the business licensing system in Zambia as the e – registry, minimal costs and improved timing are necessary for an improved business environment in relation to investment, reduction of poverty and employment. Secondly, that the transparency is reflected in the provisions of disclosure principles, immunity covering only acts done in good faith, accounts and audits of the committees established by the minister. Thirdly, that the e – registry is itself an improvement on the fight against corruption as it reduces personal contacts with the agents that may seek a bribe from the business persons. Finally the study concluded that to a very large extent, the licensing system is an improvement to the business environment in Zambia as it reflects economic, social and cultural rights.

The main recommendations of this study are; firstly, there is need for the licensing system to adhere to all International Finance Corporation standards, secondly, there is need for the licensing system in Zambia to enhance transparency as buffer against corruption. Thirdly, there is need for the licensing system in Zambia to improve the realization of economic social and cultural rights by providing for a training awareness program.

## **TABLE OF STATUTES**

### **INTERNATIONAL INSTRUMENTS**

Universal Declaration on Human Rights of 1948

The International Covenant on Civil and Political Rights of 1966

The International Covenant on Economic, Social and Cultural Rights of 19

### **LOCAL LEGISLATION**

The Business Regulatory Act no.3 of 2014

The Zambia Wildlife Act No. 12 of 1998

The Trade Licensing Act No. 393 of 1994

The Public Health Act Cap 295 of the Laws of Zambia

The Income Tax Act Cap 323 of the Laws of Zambia

The Tourism and Hospitality Act No. 23 of 2007

The Anti-Corruption Act no. 3 of 2012

The Zambia Development Agency Act no. 11 of 2006

Public- Private Partnership Act no. 14 of 2009

Custom and Excise Act, Cap 322 of the Laws of Zambia

The Income Tax Act, Cap 324 of the Laws of Zambia

The Value Added Tax Act, Cap 331 of the Laws of Zambia

## **TABLE OF CASES**

*Attorney General v Roy Clarke (2008) Z.R. 38 Vol.1*

*Minister of Broadcasting Services and Another v Funwell Chembo and 4 others (2007) Z.R. 82*

*Zambia Sugar Plc v Fellow Nanzaluka, SCZ Appeal No. 82/2001*

## TABLE OF CONTENTS

|   |      |
|---|------|
| Title.....                              | i    |
| Declaration.....                        | ii   |
| Supervisor’s Recommendation.....        | iii  |
| Dedication.....                         | iv   |
| Acknowledgements.....                   | v    |
| Abstract.....                           | vi   |
| Table of International Instruments..... | viii |
| Table of Legislation.....               | ix   |
| Table of Cases.....                     | x    |
| Glossary of Acronyms.....               | xi   |
| Table of Contents.....                  | xii  |

## TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>Chapter One .....</b>   | <b>1</b>  |
| <b>Introduction.....</b>   | <b>1</b>  |
| 1.1 Brief Overview .....   | 1         |
| 1.2 Background .....   | 2         |
| 1.3 Statement of The Problem.....  | 4         |
| 1.4 Research Objective.....  | 4         |
| 1.5 Research Questions .....   | 5         |
| 1.6 Significance of Study .....  | 6         |
| 1.7 Literature Review .....  | 6         |
| 1.8 Methodology .....  | 10        |
| 1.9 Outline of Chapters .....  | 10        |
| 1.10 Conclusion.....   | 11        |
| <b>Chapter Two.....</b>  | <b>12</b> |
| <b>Business Licensing In Zambia And The Fight Against Corruption .....</b> | <b>12</b> |
| 2.1 Introduction .....   | 12        |
| 2.2 Background to Business Licensing System In Zambia .....                | 12        |

|   |  |           |
|---|--|-----------|
| 2.3   | The International Finance Corporation Best Practice Standards to Business Licensing              | 15        |
| 2.3.1   | Reducing The Number And Coverage of Permits in The Licensing of Business ..                      | 16        |
| 2.3.2   | Simplifying The Issuance Of Permits In The Licensing Of Business .....                           | 17        |
| 2.3.3   | Implementing A Training And Awareness Creation Program in The Licensing of Business              | 17        |
| 2.4   | Adherence of Zambia to the Best Practice Standards .....   | 17        |
| 2.5   | The Business Regulatory Act and the Fight Against Corruption.....                                | 18        |
| 2.5.1   | Zambia’s Legal Framework for Fighting Corruption In The Business Environment                     | 19        |
| 2.5.2   | The Contribution And Shortcomings Of The Business Regulatory Act In Fighting Corruption.....     | 21        |
| 2.6   | Conclusion.....  | 22        |
| <b>Chapter Three .....</b>  |  | <b>24</b> |
| <b>The Effect Of Business Licensing System On Investment, Poverty Reduction, And Promotion Of Employment In Zambia.....</b> |  | <b>24</b> |
| 3.1   | Introduction .....   | 24        |
| 3.2   | Business Licensing in Relation To Investment In Zambia .....                                     | 24        |
| 3.3   | Business Regulatory Laws in Relation to Poverty Reduction.....                                   | 27        |
| 3.4   | Business Licensing in Relation To Employment .....   | 28        |
| 3.5   | The Response of The Business Regulatory Act on Investment Poverty Reduction And Employment ..... | 30        |
| 3.5.1   | Conditions For Imposing of Licensing Under The Business Regulatory Act .....                     | 31        |
| 3.5.2   | E – Registry And Control Numbers Under The Business Regulatory Act.....                          | 32        |
| 3.5.3   | The Single Licensing System Under The Business Regulatory Act.....                               | 33        |
| 3.6   | Conclusion.....  | 33        |
| <b>Chapter Four .....</b>   |  | <b>34</b> |
| <b>The Effect Of Business Licensing System On The Development Of Economic, Social And Cultural Rights In Zambia.....</b>    |  | <b>34</b> |
| 4.1   | Introduction .....   | 34        |
| 4.2   | The Background to Economic Social And Cultural Rights .....                                      | 34        |
| 4.3   | The Nature Of Economic Social And Cultural Rights.....   | 35        |
| 4.4   | Duty Of The State In Relation to Economic Social And Cultural Rights.....                        | 37        |

|  |   |           |
|--|---|-----------|
| 4.5  | The Legal Effect Of The International Convention on Economic Social And Cultural Rights in Zambia .....   | 38        |
| 4.6  | The Business Regulatory Act in Relation To Economic, Social and Cultural Rights ...   | 39        |
| 4.6.1  | The General Principles for Licensing .....  | 39        |
| 4.7  | Possible Revisions to the Act to Enhance Realisation Of Social, Economic And Cultural Rights  | 44        |
| 4.8  | Conclusion.....   | 45        |
| <b>Chapter Five .....</b>                    |   | <b>46</b> |
| <b>Recommendations And Conclusions .....</b> |   | <b>46</b> |
| 5.1  | General Conclusion .....  | 46        |
| 5.2  | Findings .....  | 48        |
| 5.3  | Recommendations .....   | 49        |
| 5.3.1  | There Is Need For The Licensing System To Adhere To All International Finance Corporation Standards .....   | 49        |
| 5.3.2  | There Is Need For The Licensing System In Zambia To Enhance Transparency As Buffer Against Corruption .....   | 50        |
| 5.3.3  | There Is The Need For The Licensing System To Improve Realisation Of Economic Social And Cultural Rights Could Be Enhanced By Providing For A Training Awareness Program..... | 51        |
| 5.4  | Final Conclusion .....  | 51        |
| <b>Bibliography .....</b>                    |   | <b>52</b> |

## CHAPTER ONE

### INTRODUCTION

#### 1.1 BRIEF OVERVIEW

This research aims to evaluate the effectiveness of the licensing system provided for under the Business Regulatory Act no. 3 of 2014<sup>1</sup> (hereinafter referred to as “the Act”). This evaluation will be done in relation to investment, eradication of poverty, fight against corruption, promotion of employment and development of economic, social and cultural rights. The Policy Monitoring and Research Center (hereinafter referred to as the “PMRC”) have noted that the Act<sup>2</sup> was enacted in response to the problems that have been faced in the country’s licensing environment in order to encourage establishment of businesses and investment in Zambia.<sup>3</sup>

The Act<sup>4</sup> was enacted to provide for an efficient business licensing system and also to provide a set of principles and interventions to guide regulatory agencies when regulating and licensing business activities in accordance with the law.<sup>5</sup> It has established a classification criterion with regards licensing and an e-registry which is an electronic registry which is used to assign numbers of regulatory clearance system of businesses in each sector or group of business sectors.<sup>6</sup> The Act<sup>7</sup> has also brought about the establishment of the Business Regulatory Review Committee and the Business Regulatory Agency which assigns their functions and powers with regards the new licensing system.<sup>8</sup> The newly introduced ‘Single licensing system’ under the

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<sup>1</sup> Act no. 3 of 2014

<sup>2</sup> Business Regulatory Act no. 3 of 2014

<sup>3</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, Lusaka, 2014

<sup>4</sup> Business Regulatory Act no. 3 of 2014

<sup>5</sup> The Business Regulatory Act no.3 of 2014

<sup>6</sup> The Business Regulatory Act no.3 of 2014

<sup>7</sup> Business Regulatory Act no. 3 of 2014

<sup>8</sup> The Business Regulatory Act no.3 of 2014

Act<sup>9</sup> is a regulatory service centre as opposed to streamline regulations within a sector and hereby reduces licenses within a sector. Each sector will have a ‘single licensing system’ or service centre where licenses are to be obtained to ease procedure in the establishment of businesses in the jurisdiction.<sup>10</sup>

## 1.2 BACKGROUND

From time immemorial the concept of regulation has been an important aspect of the existence of human society. A regulation is a principle or rule used to control, direct or manage a system or an organization, with or without coercive power of the law<sup>11</sup>. This may be prescribed by a specific law or statute and may be enforced by a regulatory agency mandated to carry out the purpose or provisions of the law<sup>12</sup>. One prominent area of law that has seen regulation many centuries and everywhere around the globe is the business sector. Zambia history since independence has seen both socialist and capitalist models of economy. In both models a level of government regulation over business has been experienced at both extreme and moderate levels. One such control is the requirement of permits for operating a business issued through a licensing system by various regulatory agencies. Over the years the licensing system in Zambia that ensures businesses are run with legal compliance has developed to the present day system established under the Act<sup>13</sup>.

The licensing system in Zambia before the Act<sup>14</sup> was complex, bureaucratic and one hindrance to private sector development. In order to be established, businesses had to comply with multiple

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<sup>9</sup> Business Regulatory Act no. 3 of 2014

<sup>10</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P.11

<sup>11</sup> Business Dictionary, <http://businessdictionary.com>,( accessed on the 29<sup>th</sup> of January, 2015)

<sup>12</sup> Business Dictionary, <http://businessdictionary.com>,( accessed on the 29<sup>th</sup> of January, 2015)

<sup>13</sup> Business Regulatory Act no. 3 of 2014

<sup>14</sup> Business Regulatory Act no. 3 of 2014

licenses, numerous regulatory agencies, and a complicated legislative framework where a multiplicity of laws have been enacted to regulate a single sector prevailed.<sup>15</sup> This led to a lack of guidelines for new licenses and lack of alternative revenue generation methods for regulatory authorities which led to increase in costs of obtaining licenses. To illustrate, in the year 2007 the cost of business licensing reached 4.9% of GDP, that is too high.<sup>16</sup> These difficult procedures were seen to delay investment of most multi-national firms and presented a serious obstacle of up to 20% of urban micro, small and medium enterprises. Overall, the licensing environment was such that licensing procedures made it tedious, time consuming and costly to start up a business, thereby negating investment and development.<sup>17</sup>

In relation to its improvement of the establishment of businesses in Zambia for stakeholders, this research will look into the implication of the Act<sup>18</sup> on these various aspects. This will be accomplished with regards to what such provisions entail when compared to the internationally accepted standards of the International Finance Corporation (hereinafter referred to as the “IFC”)<sup>19</sup>. It also aims at critically evaluating the provisions of the Act and ascertaining effectiveness in meeting the Act’s<sup>20</sup> objective; and in relation to the aforementioned areas of investment, eradication of poverty, the fight against corruption, promotion of employment and development of economic, social and cultural rights.<sup>21</sup>

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<sup>15</sup> Business licenses have been contained in a total of 86 different Acts and Statutory Instruments ( SIs) in Zambia. Depending on the nature of individual business operations, many of these overlap, leading to the requirement for multiple licensing, under a variety of Acts, however this problem has been curtailed with the introduction of the new Act- PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, Lusaka, 2014, P. 9

<sup>16</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P. 11

<sup>17</sup> The Business Regulatory Act no.3 of 2014

<sup>18</sup> Business Regulatory Act no. 3 of 2014

<sup>19</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P.12

<sup>20</sup> Business Regulatory Act no. 3 of 2014

<sup>21</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing* ,P.9

### **1.3 STATEMENT OF THE PROBLEM**

The prevalence of a good business environment thrives on effective legal rules and regulations provided for by the law. Zambia has enacted the Act<sup>22</sup> in an effort to bring about a good business environment. The circumstances that necessitated the enactment of the Act<sup>23</sup> were an ineffective licensing regulation system in relation to costs, time and transparency; which triggered detrimental consequences on the capacity of doing business in Zambia. This detriment resulted in adverse effects on the county's economic, social and legal development. It is not known to what extent the Act<sup>24</sup> has accomplished the improvements it intended to bring to the licensing environment.

### **1.4 RESEARCH OBJECTIVE**

The objectives of this research are:-

1. To examine the improvement that the Act<sup>25</sup> will bring to Zambia's licensing environment as opposed to what previously prevailed.
2. To analyze the extent to which the investigated improvements will conform to the international best standards of a licensing environment, as set by the International Finance Corporation.
3. To examine whether or not the new business licensing system is the answer to the problems of Zambia's business licensing environment.
4. To examine the reparations of the licensing system under the<sup>26</sup> Act on eradication of poverty and the fight against corruption.

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<sup>22</sup> Business Regulatory Act no. 3 of 2014

<sup>23</sup> Business Regulatory Act no. 3 of 2014

<sup>24</sup> Business Regulatory Act no. 3 of 2014

<sup>25</sup> Business Regulatory Act no. 3 of 2014

<sup>26</sup> Business Regulatory Act no. 3 of 2014

5. To analyze the extent to which the licensing system under the Act<sup>27</sup> promotes investment and employment.
6. To examine the bearing of the new licensing system under the Act<sup>28</sup> on the development of economic, social and cultural rights in Zambia.

## 1.5 RESEARCH QUESTIONS

The following are the research questions considered in this study:-

1. What conditions prevailed in Zambia that necessitated the enactment of the Act<sup>29</sup>?
2. Has the licensing system conformed to the internationally best standards set by the International Finance Corporation?
3. Is the Act<sup>30</sup> an effective answer to the difficulties that were experienced on Zambia's business licensing environment?
4. How do the provisions of the Act<sup>31</sup> impact on the eradication of poverty and fight against corruption?
5. What are the important adjustments in the business licensing system that the Act<sup>32</sup> has presented with regards Investment and employment in the Country?
6. Does the Act<sup>33</sup> enhance the development of economic, social and cultural rights in Zambia?

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<sup>27</sup> Business Regulatory Act no. 3 of 2014

<sup>28</sup> Business Regulatory Act no. 3 of 2014

<sup>29</sup> Business Regulatory Act no. 3 of 2014

<sup>30</sup> Business Regulatory Act no. 3 of 2014

<sup>31</sup> Business Regulatory Act no. 3 of 2014

<sup>32</sup> Business Regulatory Act no. 3 of 2014

<sup>33</sup> Business Regulatory Act no. 3 of 2014

## **1.6 SIGNIFICANCE OF STUDY**

This research may be significant to the legislators, policy formulators and stakeholders on the Zambian business base. From this research, there has not been any research that has critically examined the provisions of licensing system under the Act<sup>34</sup> in a fashion that this study will employ. This research argues that the new licensing system should be cost and time efficient and should also encourage transparency. The evaluation of the licensing system under the Act<sup>35</sup> is significant to this research as it seeks to reach an assessment on corruption, poverty, investment, employment and development of economic social and cultural rights in Zambia.

This research may prove to be useful to both public and private sectors. In the public sector, the executive wing and its ministries have the mandate to formulate effective policies for development. The legislature is also a primary target of this research as it is responsible for the formulation, drafting, and making amendments to statutes. In view of this, the research is hoped to make a modest contribution on the considerations to be taken into account for an efficient licensing system for the business environment.

## **1.7 LITERATURE REVIEW**

Mukonde<sup>36</sup> did an evaluation of the licensing regime under the Information Technologies Act of 2009. His main objective was to evaluate licensing of electronic communications of the Information Technologies Act. He showed that the concept of regulation is that it is sustained and focused on control exercised by a public agency over activities that are valued by a community. His research found that the legislation did not change the environment of licensing from those that were repealed before it leaves and the discretion of the ministers remains wide.

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<sup>34</sup> Business Regulatory Act no. 3 of 2014

<sup>35</sup> Business Regulatory Act no. 3 of 2014

<sup>36</sup> Mukonde. MM, *An Evaluation of the Licensing regime Under the Information and Communication Technologies Act of 2009*, (An Obligatory essay, University of Zambia, School of Law; 2011.), p. 47

His research observed that the licensing format should be changed to a converged format. This is in order to achieve technological neutrality which allows for licensees to choose the technology and equipment to be used to allow for licensed services. It also allows for a fair predictable regime that embraces technological and market development. It also responds to flexibility and cost effectiveness on the market. While this research relates this principle finding of converged format to the licensing of business and how well it responds to the fight against corruption, poverty reduction, investment, employment and development of economic, social and cultural rights.

Mwamba<sup>37</sup> in his research on the Regulation of Tariff in the Communication Industry stated that price control in Zambia is reasonable. Despite the intervention from the regulator, in Zambia the industry is, nonetheless, attractive and it does not appear that investors do not have enough confidence to invest in the industry due to poor regulatory system. In light of this finding this research seeks to make a generalized evaluation of whether or not investors have the confidence to invest in Zambian industries regardless of due to poor regulatory systems. Further, the research will point out provisions and facilities in the new licensing system that encourage investment.

The World Bank<sup>38</sup> in their research doing business in Zambia, observed that the indicators of a good practice economy or those of comparator economies in the region. Revealing bottlenecks reflected in large numbers of procedures, long delays or high costs. Or they may reveal unexpected strengths in an area of business regulation such as a regulatory process that can be

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<sup>37</sup> Mwamba. B.M, *Regulation of Tariffs In The Telecommunications Industry in Zambia: will Price control undermine investor confidence?*( An Obligatory essay, University of Zambia, School of Law, 2012), p 46

<sup>38</sup> The World Bank, *Doing Business in Zambia; Smarter regulations for Small and Medium enterprises*, Lusaka 2013

completed with a small number of procedures in a few days and at a low cost. This research brings out some provisions of the Act<sup>39</sup> that are possible solutions to the observed “bottlenecks”.

The Organization for Economic Co-operation and Development<sup>40</sup> (hereinafter referred to as the “OECD”) have revealed that major challenge to which the government has accorded priority is that of simplifying the investment regime by aligning regulations and procedures that result in administrative bureaucracy and unnecessary compliance costs. A key step taken has been to spearhead regulatory reforms across all government ministries and agencies that provide services to facilitate investment. Legislative reforms have aimed at removing restrictive or discriminatory provisions that are inconsistent with a liberalized market environment, and at simplifying regulations and procedures that govern the establishment of business ventures. In light of these revealed challenges, this research examines how the Act addresses the need for a liberalized and simple regulatory framework.

The Policy Monitoring and Research Center<sup>41</sup> has observed that the current business-licensing environment in Zambia is complex, bureaucratic and inhibiting private sector development. Businesses face compliance with multiple licenses, numerous regulatory agencies, and a complicated legislative framework. The lack of guidelines for new licenses and alternative revenue generation methods for regulatory authorities has led to increasing costs. The cost of business licensing reached 4.9% of GDP in 2007. Difficult procedures delay investment of multinational firms and present a serious obstacle to 20% of urban micro, small and medium enterprises.

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<sup>39</sup> Business Regulatory Act no. 3 of 2014

<sup>40</sup> OECD, Investment Policy Review of Zambia Advancing investment policy reform 2011 review. Lusaka, 2012

<sup>41</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, Lusaka, 2014

The Ministry of Commerce Trade and Industry<sup>42</sup> has also undertaken to launch the One Stop Shop (hereinafter referred to as the “OSS”) for Business Registration. This is a strategy aimed at providing both local and foreign investors with fast, efficient and business-friendly registration services and thus, reducing the cost of doing business. The OSS also aims to make business registration services more easily accessible through establishment of OSS facilities in all the provinces of Zambia by the year 2015. This in effect shows that government ministries are working and embarking on making the business licensing environment more flexible to attract investment.

The International Finance Corporation<sup>43</sup> have examined on the importance of effective business licensing regimes through their Business Enabling Environment (hereinafter referred to as the “BEE”) program provided by the World Bank Group (hereinafter referred to as the “WBG”). The BEE promotes business licensing reform and simplification. The IFC have also observed that poor licensing policy has been found to impede healthy competition and the operation of effective markets, unnecessarily raise business costs and consumer prices, generate scope for corruption, and be misused to collect revenues.<sup>44</sup> In view of this, this research seeks to make an assessment on the effectiveness of the licensing system under the Act specifically in relation to the fight against corruption, poverty reduction, employment, investment and the development of economic, social and cultural rights.

The literatures referred to in this section of the research point to a simplified regulatory system as the response to the desired economic development that is needed in Zambia. The literatures have

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<sup>42</sup> The Ministry of Commerce Trade and Industry, *One Stop Shop Business Registrations, Licenses and Permits*, Lusaka , 2013

<sup>43</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*

<sup>44</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*

concluded that licensing needs to be of converged format and reveal that bottlenecks are reflected in large numbers of procedures and long delays or high costs. That the major challenge to which the government has accorded priority is that of simplifying the investment regime by aligning regulations and procedures that result in administrative bureaucracy and unnecessary compliance costs. Further, difficult procedures delay investment of multi-national firms and present a serious obstacle to urban micro, small and medium enterprises. This research undertakes a different approach by evaluating the effectiveness of the Business Regulatory Act, which was enacted in response to the problems concluded in the literatures above. This is for the purposes of ascertaining its efficacy in addressing the problems that transpire on Zambia's business licensing environment.

## **1.8 METHODOLOGY**

The research will be qualitative in nature. The research will primarily be desk research and field research. Secondary research data will essentially consist of an examination of published and unpublished materials. This information will include articles, paper presentations, student obligatory essays, reports and statutes relevant to the subject matter and interviews with key personnel at the Authority.

## **1.9 OUTLINE OF CHAPTERS**

This research follows the structure below:

Chapter two critically analyses business licensing in Zambia and the fight against corruption. The chapter outlines the history, international standards of licensing and principles that guide the fight against corruption in relation to the Act.<sup>45</sup> Chapter three analyses the effect of business

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<sup>45</sup> Business Regulatory Act no. 3 of 2014

licensing system under the Act<sup>46</sup> on investment, poverty reduction, and promotion of employment in Zambia. Chapter four proceeds to evaluate the effect of business licensing system under the Act on the development of economic, social and cultural rights in Zambia. In conclusion chapter five draws findings, recommendations and conclusions of this research.

## **1.10 CONCLUSION**

This chapter has introduced the contents of this research paper by giving a brief introduction of the licensing system under the business licensing system under the Act<sup>47</sup>. The Chapter has also given the statement of the problem, research objective, research questions, the significance of study, literature review and the methodology.

The next chapter examines the background and to the business licensing system and its effect on the fight against corruption.

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<sup>46</sup> Business Regulatory Act no. 3 of 2014

<sup>47</sup> Business Regulatory Act no. 3 of 2014

## CHAPTER TWO

### BUSINESS LICENSING IN ZAMBIA AND THE FIGHT AGAINST CORRUPTION

#### 2.1 INTRODUCTION

This chapter examines the business licensing in Zambia and its effect on the fight against corruption. In so doing, the chapter discusses the background of Zambia's business environment, showing how the political ideologies have influenced the business environment overtime. The chapter also examines the extent to which the business licensing system has conformed to the best practice standards, established by the International Finance Corporation (hereinafter referred to as "IFC"). Finally, the chapter considers how the Business Regulatory Act (hereinafter referred to as the Act)<sup>1</sup> influences the ongoing fight against corruption by considering some principles applied world over in the fight against corruption and how some provisions of the Act<sup>2</sup> adhere to them.

#### 2.2 BACKGROUND TO BUSINESS LICENSING SYSTEM IN ZAMBIA

Zambia became an independent sovereign state in the year 1964. As a newly independent state, Zambia had few business regulatory laws as few persons had capacity to do private businesses in in the region. <sup>3</sup>Since its independence in 1964, Zambia has had two political ideologies, the socialist ideology (1973 - 1990)<sup>4</sup> and the capitalist ideology (1991 - present)<sup>5</sup>. These ideologies have influenced the regulation and reforms the government has employed on the business environment. Initially, Zambia experienced a fairly liberal political and economic policy which

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<sup>1</sup> Business Regulatory Act no. 3 of 2014

<sup>2</sup> Business Regulatory Act no. 3 of 2014

<sup>3</sup> *The Encyclopedia Britannica. Encyclopedia Britannica, Lnc. 2015*, <http://www.Britannica.com>, (Accessed on 28<sup>th</sup> February, 2015)

<sup>4</sup> International encyclopedia of the social sciences, *Kenneth Kaunda*, <http://www.encyclopedia.com> (Accessed on 28<sup>th</sup> February, 2015)

<sup>5</sup> 'Since the return of Multy-party democracy in 1991, Zambia has experienced one of Africa's most thorough programmes of economic liberalization.' Rakner. L, *Political and Economic Liberalisation in Zambia, 1991 – 2001*; *Nordiska Africa institutet*; 2003, P. 235

focused on providing services and infrastructure to its entire people.<sup>6</sup> However, in 1973, pursuant to the implementation of the Mulungushi declaration of 1968, restrictive economic policies were imposed by the then president.<sup>7</sup> This was to the effect that the state owned and controlled the industry with high tariffs imposed for protection. The consumption was heavily subsidized, prices were controlled and the agricultural marketing and credit were provided for by state agencies.<sup>8</sup> The business regulation reforms in terms of licensing which occurred under the first republic and the second republic (era of socialism in Zambia); and those of the third republic which introduced a liberalized economy which prevails in Zambia until date is the concentration of the chapter.<sup>9</sup>

The nationalization process was introduced due to the adopted philosophy of socialism by the then government where businesses became state-owned; this occurred on 10<sup>th</sup> August, 1969. Pursuant to the announcement by the then president to introduce nationalization policies, the Zambia Industrial and Mining Corporation (hereinafter referred to as “ZIMCO”) was created in 1971 as a major shareholder of state interests.<sup>10</sup> ZIMCO had a lot of subsidiary companies which fell under it. It was one of the biggest corporate bodies in the world, with a board which was headed by the President of the country. Government directly controlled all businesses and as such, there was practically less regulatory laws for private and foreign investors in the region.<sup>11</sup>

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<sup>6</sup> *Chapter One; An Overview of Zambia’s Poverty and Economic Situation SARPIN*, <http://www.sarpn.org>, (Accessed on 28<sup>th</sup> February, 2015)

<sup>7</sup> *Chapter One; An Overview of Zambia’s Poverty and Economic Situation SARPIN*, <http://www.sarpn.org>, (Accessed on 28<sup>th</sup> February, 2015)

<sup>8</sup> *Chapter One; An Overview of Zambia’s Poverty and Economic Situation SARPIN*, <http://www.sarpn.org>, (Accessed on 28<sup>th</sup> February, 2015)

<sup>9</sup> *Chapter One; An Overview of Zambia’s Poverty and Economic Situation SARPIN*, <http://www.sarpn.org>, (Accessed on 28<sup>th</sup> February, 2015)

<sup>10</sup> The Encyclopedia Britannica, *Encyclopedia Britannica, Lnc*, <http://www.Britannica.com>, (Accessed on 28<sup>th</sup> February, 2015)

<sup>11</sup> The Encyclopedia Britannica, *Encyclopedia Britannica, Lnc*, <http://www.Britannica.com>, (Accessed on 28<sup>th</sup> February, 2015)

People suffered due to the fall of the economy as a result of the failure of state owned businesses and one party system. The Zambian people gave a legitimate uproar against one party system and thus advocated for democracy.<sup>12</sup> In 1991 the constitutional provision which prohibited other political parties to contest for presidency in Zambia was amended to that which included the participation of other parties. The Movement for Multiparty Democracy (hereinafter referred to as 'MMD') came into power and embarked on liberalization and expansion of the private sector with the aid of the World Bank and International Monetary Fund (hereinafter referred to as "IMF") saw the creation of a capitalist economy.<sup>13</sup> The liberalized economy enabled private investment as Zambia received more capital from Foreign Direct Investment (hereinafter referred to as "FDI").<sup>14</sup> Consequently, Zambia has been operating on a Capitalist ideology which lets the forces of supply and demand control the economy. From then on until 2014, there have been a lot of regulatory laws that have facilitated a vast number of businesses in the private sector.<sup>15</sup>

However, the complexities of laws that are involved in the running of business have been argued to be costly, time consuming and fertile grounds for corruption. The Policy Monitoring Research Center, a nonprofit institution that helps improve policy and decision-making through research and analysis in Zambia observed that:

Business licenses are covered by a total of 86 different Acts or Statutory Instruments (SIs) in Zambia. Depending on the nature of individual business operations, many of these overlap, leading to the requirement for multiple licensing, under a variety of Acts, local governments, and regulatory agencies: The Tourism and Hospitality Act<sup>16</sup> provides for licenses for tourism enterprises, hotels and casinos, each with a different set of requirements; The Zambia

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<sup>12</sup> A.W Chanda, *Constitutional Law in Zambia: Cases and Material*, Unza Press, Lusaka, 2011, p.117

<sup>13</sup> The Encyclopedia Britannica, *Encyclopedia Britannica, Lnc*, <http://www.Britannica.com>, (Accessed on 28<sup>th</sup> February, 2015)

<sup>14</sup> The Encyclopedia Britannica, *Encyclopedia Britannica, Lnc*, <http://www.Britannica.com>, (Accessed on 28<sup>th</sup> February, 2015)

<sup>15</sup> The Encyclopedia Britannica, *Encyclopedia Britannica, Lnc*, <http://www.Britannica.com>, (Accessed on 28<sup>th</sup> February, 2015)

<sup>16</sup> Act No. 23 of 2007

Wildlife Act<sup>17</sup> outlines twelve different licenses relating to hunting and the processing, sale, import and export of wild animals and trophies; The Trade Licensing Act<sup>18</sup> provides for eight different licenses, including trading, stalls, agents and manufacturing; The Public Health Act<sup>19</sup> provides for thirteen licenses relating to restaurants and food safety; The Income Tax Act<sup>20</sup> provides for seven licenses relating to payment of tax; and The Zambian Development Agency (hereinafter referred to as “ZDA”) requires different licensing for the development or operation of premises as a multi-facility economic zone, the export of prescribed goods and services, the investment in any business enterprise, or the registration of a micro, education, skills training or rural enterprise. Businesses operating within the tourism, or any other economic sector, will need to understand and engage with such an extensive list of legislation in order to comply with procedures and operate effectively, requiring significant time and effort.<sup>21</sup>

The quotation above illustrates the complexity and inconsistency that existed on Zambia’s Business licensing environment that necessitated the enactment of a law establishing a single licensing system in which consistency, uniformity and simplicity would prevail. The state of affairs caused the need on the business scene to create a law that enabled the codification of such licenses in one single system for each sector. Thus the Zambian government enacted the Act<sup>22</sup> whose effectiveness is examined using the best practice standard established by the World Bank Group; the International Finance Corporation.

### **2.3 THE INTERNATIONAL FINANCE CORPORATION BEST PRACTICE STANDARDS TO BUSINESS LICENSING**

Throughout the world it has been established that inadequate business licensing policies encumber healthy capacity of competition and the operation of effective markets, raise business

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<sup>17</sup> Act No. 12 of 1998

<sup>18</sup> Act No. 393 of 1994

<sup>19</sup> Cap 295 of the Laws of Zambia

<sup>20</sup> Cap 323 of the Laws of Zambia

<sup>21</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, Lusaka, 2014, P. 9

<sup>22</sup> Business Regulatory Act no. 3 of 2014

costs and consumer prices, generate scope for corruption, and is misused to collect revenues.<sup>23</sup> For the aforementioned reasons International Finance Corporation (hereinafter referred to as “IFC”) through the Business Enabling Environment program (hereinafter referred to as “BEE”) provided by the World Bank Group (hereinafter referred to as “WBG”) are spearheaded to promote business licensing reform and simplification by setting standards that nations should seek to adhere to in order to enjoy a healthy business licensing system around the world.<sup>24</sup> The IFC aims to support regulatory reforms and encourage modernization of developing countries; in so doing annual reports are produced showing rankings of countries and their economic ranking in relation to business regulation.<sup>25</sup>

Three of the standards set by the IFC are those discussed below which are reducing the number and coverage of permits, simplifying the issuance of permits and the implementation of a training and awareness creation program<sup>26</sup>

### **2.3.1 REDUCING THE NUMBER AND COVERAGE OF PERMITS IN THE LICENSING OF BUSINESS**

The first principle of the IFC is that of reducing of the number and coverage of permits to only those necessary for a specific business undertaking. Although the question of what is deemed ‘necessary’ may be subject to interpretation, the important point is to undertake a comprehensive

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<sup>23</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P. 9

<sup>24</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P. 9

<sup>25</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P. 9

<sup>26</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment*, P. 12

review of existing permits and approvals, implementing the ‘guillotine’(getting rid of redundant permits) approach should state agencies find any license redundant.<sup>27</sup>

### **2.3.2 SIMPLIFYING THE ISSUANCE OF PERMITS IN THE LICENSING OF BUSINESS**

The second principle of the IFC is for the simplification of issuance of permits. As such, reforms should implement a ‘one-stop-shop’ approach, providing a single centre for all license applications. This is accompanied by a ‘silence-is consent’ principle, whereby licenses are automatically approved after a certain period of time if no response is received.<sup>28</sup>

### **2.3.3 IMPLEMENTING A TRAINING AND AWARENESS CREATION PROGRAM IN THE LICENSING OF BUSINESS**

Thirdly, The IFC document highlights the need for a training and awareness creation program to ensure that government officials are trained to use new procedures, and that entrepreneurs are informed about key changes, understand the improvements made, and the use.<sup>29</sup>

## **2.4 ADHERENCE OF ZAMBIA TO THE BEST PRACTICE STANDARDS**

From the above, the international best practice standards provide that the coverage of licensing permits for business licensing required need to for decentralization. The next requirement is that of simplifying the issuance of permits through a one-stop shop. Third is that of implementing a training and awareness creation program to assist with implementation.<sup>30</sup>

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<sup>27</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P. 12

<sup>28</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P.12

<sup>29</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*P.12

<sup>30</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P.12

The Act<sup>31</sup> has adhered to some of the principles of the best practice standard in that it has introduced an e-registry and centralized database which will enable simplified issuance of permits.<sup>32</sup> The Act has also implemented regulatory impact assessments, and stipulations that licenses are automatically approved after a certain period of time.<sup>33</sup> On the down side, the realization of the idea of simplification remains lacking in that there is no reference to reducing the number and coverage of permits. Similarly, there is a need to focus on training and awareness creation, and improve definitions of how monitoring and evaluation will operate. The training awareness program is clearly not provided for by the Act.<sup>34</sup>

## **2.5 THE BUSINESS REGULATORY ACT AND THE FIGHT AGAINST CORRUPTION**

There is no comprehensive and universally accepted definition for the word corruption.<sup>35</sup> The Anti-Corruption Act no. 3 of 2012<sup>36</sup> defines corruption as;

The soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of public office for advantage or benefit for oneself or another person, and the “corruption” shall be construed accordingly.

The Anti-Corruption Act focuses on the abuse of public offices for personal private advantage. International sources have broadly described government corruption as abuse of public power for private gain.<sup>37</sup> This is where government officials constituting the legislature, executive and

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<sup>31</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P. 15

<sup>32</sup> Section 8 of the Business Regulatory Act no. 3 of 2014

<sup>33</sup> Section 8 of the Business Regulatory Act no. 3 of 2014

<sup>34</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P.15

<sup>35</sup> United Nations, *Handbook on Practical Anti-Corruption Measures For Prosecutors and Investigators*, Vienna, 2004, P. 23

<sup>36</sup> Section 3 of Act no. 3 of 2012

<sup>37</sup> Watchtower Bible & Tract Society, *Awake: A Government Free from Corruption. January 2015*, New York, 2015, P. 1

judiciary take advantage of the entrusted authority given for interest of the public; is used for the personal benefits of the person holding the office. The 2013 Global Corruption Barometer, published by Transparency International reported that there is a global consensus that the five most corrupt institutions are political parties, the police, public officials, the legislature, and the judiciary.<sup>38</sup> This chapter will relate the above reported consensus to the business environment of Zambia and particularly to the Act<sup>39</sup>.

### **2.5.1 ZAMBIA'S LEGAL FRAMEWORK FOR FIGHTING CORRUPTION IN THE BUSINESS ENVIRONMENT**

The Zambian people are well aware of the existence of corruption and have embarked on establishing measures to reduce the occurrence of corruption in public offices.<sup>40</sup> The Anti-Corruption Commission (hereinafter referred to as the “ACC”) provided for under the Anti-Corruption Act of 2012<sup>41</sup> is the agency authorized to spearhead the fight against corruption in Zambia.<sup>42</sup> There are also other agencies that are mandated to fight corruption in Zambia.<sup>43</sup>

Zambia's anti-corruption agencies generally do not discriminate between local and foreign investors. This has proved to be beneficial as it creates a free and fair market base fertile for competition in terms of legal requirements.<sup>44</sup> Transparency International has an active Zambian chapter and has played a key role in educating Zambians and influencing legislation to combat

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<sup>38</sup> Watchtower Bible & Tract Society, *Awake: A Government Free from Corruption. January 2015*, New York, 2015, P. 1

<sup>39</sup> Business Regulatory Act no. 3 of 2014

<sup>40</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, Washington DC, 2010, P. 15

<sup>41</sup> Act no. 3 of 2012 section 4(1)

<sup>42</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, Washington DC, 2010, P.18

<sup>43</sup> The Anti-Money Laundering Unit of the Drug Enforcement Commission (DEC) also assists with investigation of allegations of misconduct. An independent Financial Intelligence Unit (FIU) was formed in 2010, but has not yet developed the capacity to take the lead in investigating financial crimes. In November 2012, the FIU Board of Directors was appointed and sworn in with a challenge to implement its mandate - The World Bank Group, *Regulatory Capacity Review of Zambia*, P. 18

<sup>44</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, P.18

corruption.<sup>45</sup> Further, the Zambian government encourages the establishment of internal codes of conduct that, among other things, prohibit bribery of public Officials.<sup>46</sup>

Concerning Transparency as the key principle to the fight against corruption, the Transparency International has noted that:

Transparency establishes a stable and accessible regulatory environment that promotes competition, trade, and investment. It helps ensure against undue influences of special interests and reinforces the legitimacy and fairness on regulatory processes. Provisions for transparency in making laws transparent and consistent processes for making and implementing laws and regulations are fundamental to ensuring public confidence in the rulemaking process.<sup>47</sup>

The above quotation is relevant to the research as the good aspects it brings out in relation to transparency that need to be mirrored in the Act<sup>48</sup> a tool that is intended to improve business and development in Zambia.

Zambia has been pursuing numerous policy reforms that have legal, administrative, and regulatory implications.<sup>49</sup> There is a multiplicity of projects with various ministries supported by various donors that involve review and reform of laws, regulations, policies and institutions affecting the business environment. However, to date, Zambia has not adopted an explicit policy on regulatory reform and the principles and objectives of regulatory reform, in order to ensure that they are mutually consistent and supportive of each other.<sup>50</sup>

While legislation and stated policies on anti-corruption are adequate, implementation sometimes falls short. Zambia lacks adequate laws on informer protection, asset disclosure, evidence, and freedom of information.<sup>51</sup> For instance, under section 7 of the Act<sup>52</sup>, disclosure or publication of

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<sup>45</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, P. 18

<sup>46</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, P. 18

<sup>47</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, P. 15

<sup>48</sup> Business Regulatory Act no. 3 of 2014

<sup>49</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, Washington DC, P.18

<sup>50</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, Washington DC, P. 15

<sup>51</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, Washington DC, P. 15

<sup>52</sup> Business Regulatory Act no. 3 of 2014

information without the consent of the committee is criminalized! This is evidence of prevalence of a law that can be argued in given circumstances to hinge on the right to freedom expression and to information.

## **2.5.2 THE CONTRIBUTION AND SHORTCOMINGS OF THE BUSINESS REGULATORY ACT IN FIGHTING CORRUPTION**

The Act<sup>53</sup> has laid down provisions that are worth considering as provisions that encourage transparency and the fight against corruption. The chapter takes into consideration two useful features of the Act<sup>54</sup> in this regard. Firstly, the provision of an agency under the Act<sup>55</sup> mandated to monitor systems of Public Bodies is essential as it provides a check on such bodies in the issuance of licenses ensuring everything is done according to the law. Secondly, the Electronic registry<sup>56</sup> is a powerful tool in combating corruption. This means that one on one encounters are lessened thus officials who potentially can wish to seek a bribe through business registration for their private gains are limited.<sup>57</sup>

Section 6 (1) of the Act<sup>58</sup> provides for disclosure of interest in the meeting where relatives are involved. This provision protects rules of natural justice in the system thus encouraging transparency. It also promotes free and fair decision making processes. The Business Regulatory Committee created by the Act<sup>59</sup> is also subject to account audits and according to Section 12 (2)<sup>60</sup> annual reports are to be submitted to the minister. This too is a check on the functions

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<sup>53</sup> Business Regulatory Act no. 3 of 2014

<sup>54</sup> Business Regulatory Act no. 3 of 2014

<sup>55</sup> Business Regulatory Act no. 3 of 2014

<sup>56</sup> Business Regulatory Act no. 3 of 2014

<sup>57</sup> *E-governance - impact on corruption – international journal*, <http://www.researchmanuscripts.com>, ( Accessed on 28<sup>th</sup> February, 2015)

<sup>58</sup> Business Regulatory Act no. 3 of 2014

<sup>59</sup> Business Regulatory Act no. 3 of 2014

<sup>60</sup> Business Regulatory Act no. 3 of 2014

exercised by the committee overseeing affairs of the committee. Thus, to this extent the Act echoes transparency

Another notable provision is section 8 of the Act<sup>61</sup>, providing for immunity that only covers acts or omissions done in good faith. Therefore, this allows a person who is aggrieved with actions that are done in bad faith to seek recourse with the court through judicial review. The purpose of Judicial Review is not to provide an appeal procedure against decisions of public bodies, such as the Minister, on their merits, but rather to control the jurisdiction of public bodies by ensuring that they comply with their duties or by keeping them within the limits of their powers.<sup>62</sup> Zambia has tried to uniformly adhere to international standards required for licensing and transparency by providing immunity only to the extent of acts done in good faith. However, no much awareness programs have been run by the government educating is people on the new licensing system so far.<sup>63</sup>

## 2.6 CONCLUSION

This chapter has examined the business licensing system in Zambia and the fight against corruption. In so doing, the chapter has considered the background of Zambia's business environment, showing how the political and economic ideologies have influenced the business environment overtime. The chapter assessed the extent to which the business licensing system has conformed to the best practice standards established by the IFC; and has shown that there has been consistency except from the recommended training awareness program. In its latter part, the chapter considered how the Act<sup>64</sup> influences the ongoing fight against corruption by considering

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<sup>61</sup> Business Regulatory Act no. 3 of 2014

<sup>62</sup> Minister of Broadcasting Services and Another v Funwell Chembo and 4 others (2007) Z.R. 82

<sup>63</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P. 12

<sup>64</sup> Business Regulatory Act no. 3 of 2014

some principle of transparency applied world over in the fight against corruption and how some provisions of the Act<sup>65</sup> resound transparency.

The next Chapter examines the effect of business licensing system on investment, poverty reduction and promotion of employment in Zambia.

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<sup>65</sup> Business Regulatory Act no. 3 of 2014

## CHAPTER THREE

### THE EFFECT OF BUSINESS LICENSING SYSTEM ON INVESTMENT, POVERTY REDUCTION, AND PROMOTION OF EMPLOYMENT IN ZAMBIA

#### 3.1 INTRODUCTION

It is internationally accepted that good laws and policies are those that seek to improve the economic status of entrepreneurs and that of the local people at large<sup>1</sup>. When a law is formulated it should be able to touch fundamental aspects of economic growth which include investment, poverty reduction and promotion of employment.<sup>2</sup> It is the position of this research that in order for the Business Regulatory Act<sup>3</sup>( hereinafter referred to as “the Act” ) to be regarded efficient it has to impact positively on the three aspects of investment, poverty reduction and promotion of employment.

Chapter three analyses licensing system under the Act<sup>4</sup> in relation to its effectiveness in sustaining Investment, poverty reduction and Employment in Zambia. The chapter gives an assessment of the extent to which the licensing system under the Act will positively influence Investment poverty reduction and employment.

#### 3.2 BUSINESS LICENSING IN RELATION TO INVESTMENT IN ZAMBIA

The Zambia Development Agency Act of 2006 (hereinafter referred to as “ZDA Act”)<sup>5</sup> under section 3, defines investment as contribution of capital, in cash or in kind, by an investor, to a new business enterprise, to the expansion or rehabilitation of an existing business enterprise or to the purchase of an existing business enterprise from the State”<sup>6</sup>. An investor" is defined as any

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<sup>1</sup> *Economic Growth in Developing countries – Policy – GOV UK*, <http://www.gov.uk>, (Accessed on 23<sup>rd</sup> March, 2015)

<sup>2</sup> *Economic Growth in Developing countries – Policy – GOV UK*, <http://www.gov.uk>

<sup>3</sup> Business Regulatory Act no. 3 of 2014

<sup>4</sup> Business Regulatory Act no. 3 of 2014

<sup>5</sup> Act no. 11 of 2006

<sup>6</sup> Zambia Development Agency Act no. 11 of 2006.

person, natural or juridical, whether a Zambian citizen or not, investing in Zambia in accordance with the provisions of this Act.<sup>7</sup>

Zambia seeks foreign investment through the Zambia Development Agency (hereinafter referred to as “ZDA”) which was established pursuant to the ZDA Act.<sup>8</sup> The ZDA Act provides for the consolidation of a number of trade and investment promotion entities as a one – stop resource for international investors interested in Zambia. Investment in Zambia for both foreign and local investors is governed by a number of laws,<sup>9</sup> including the ZDA Act<sup>10</sup> . The ZDA Act has a provision that enables a person seeking to invest to be granted a license, permit or certificate of registration certificate under section 68.<sup>11</sup>The are other laws regulating investment include the Public- Private Partnership Act<sup>12</sup> (hereinafter referred to as the “PPP Act”) which facilitates and promotes privately financed infrastructure projects and effective delivery of social services.<sup>13</sup> The ZDA and PPP have been established by the Industrial Development Commission under the Ministry of commerce.<sup>14</sup> Another regulatory law governing investment includes the Companies Act<sup>15</sup> which governs the registration of companies in Zambia. The general incentives to the investors are provided in various legislation that govern the Zambia Revenue Authority (hereinafter referred to as “ZRA”) which are the Custom and Excise Act<sup>16</sup>, the Income Tax

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<sup>7</sup> Section 2 of the Investment Act. Cap 385 Of the Laws of Zambia.

<sup>8</sup> Zambia Development Agency Act no. 11 of 2006

<sup>9</sup> US Department of State, *Zambia Buereau of Economic and Business Affairs, February 2013 report*, <http://m.state.gov/mb2047> (Accessed on 30 th April 2015)

<sup>10</sup> Act no. 11 of 2006

<sup>11</sup> Act no. 11 of 2006

<sup>12</sup> Act no. of 2009

<sup>13</sup> US Department of State, *Zambia Buereau of Economic and Business Affairs, February 2013 report*, <http://m.state.gov/mb2047>

<sup>14</sup> US Department of State, *Zambia Buereau of Economic and Business Affairs, February 2013 report*, <http://m.state.gov/mb2047>

<sup>15</sup> Cap 388 of the Laws of Zambia

<sup>16</sup> US Department of State, *Zambia Buereau of Economic and Business Affairs, February 2013 report*, <http://m.state.gov/mb2047> , (Accessed on 30<sup>th</sup> April 2015)

Act<sup>17</sup>, the Value Added Tax Act<sup>18</sup> Therefore, for investment of any form to take place, it is dependent on the business licensing system, which provides for licensing of businesses in Zambia.

The private sector is the engine of growth.<sup>19</sup> Successful businesses drive growth, create jobs and pay the taxes that finance services and investment.<sup>20</sup> Foreign investment, and particularly exports, can accelerate domestic development.<sup>21</sup> Governments have a role in encouraging responsible investment, and helping markets work better for poor people.<sup>22</sup> This requires a focus on the long term, to ensure the measures we support now are aligned with the actions of the more forward-looking governments and responsible investors we want to partner with.<sup>23</sup>

Economic development strategic framework highlights the importance of the institutions that encourage private investment and export growth: free and fair markets; sound macroeconomic management; clear and consistently applied policies, regulations and laws; secure property rights; and functioning commercial courts.<sup>24</sup> In effect a framework that is distinctively dealing with investment in particular is the most suitable regulatory tool in order to improve the investment capacity in the country<sup>25</sup>.

Zambia's economy is largely dependent on investment by both locals and foreigners. The major part of the economic growth is achieved through Foreign Direct Investment (hereinafter referred to as "FDI"). Since investors need to be licensed in order for them to invest in Zambia; a

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<sup>17</sup> US Department of State, *Zambia Buereau of Economic and Business Affairs, February 2013 report*, <http://m.state.gov/mb2047>

<sup>18</sup> US Department of State, *Zambia Buereau of Economic and Business Affairs, February 2013 report*, <http://m.state.gov/mb2047>

<sup>19</sup> DFID, *Economic development for shared prosperity and poverty reduction: a strategic framework*, London, 2015, P. 2

<sup>20</sup> DFID, *Economic development for shared prosperity and poverty reduction: a strategic framework*, P. 2

<sup>21</sup> DFID, *Economic development for shared prosperity and poverty reduction: a strategic framework*, P. 2

<sup>22</sup> DFID, *Economic development for shared prosperity and poverty reduction: a strategic framework*, P. 2

<sup>23</sup> DFID, *Economic development for shared prosperity and poverty reduction: a strategic framework*, P. 2

<sup>24</sup> DFID, *Economic development for shared prosperity and poverty reduction: a strategic framework*, P. 2

<sup>25</sup> DFID, *Economic development for shared prosperity and poverty reduction: a strategic framework*, P. 2

licensing system of businesses needed is that which attracts more investors with good aspects of being cost efficient, time efficient and simplicity.

According to the report made by the IFC, investment is at an increase in countries where the licensing system has been simplified with a 'single licensing system' and provides for cost and time efficiency.<sup>26</sup> According to the Organization for Economic Co-operation and Development (hereinafter referred to as the "OECD") report of 2011,<sup>27</sup> Zambia's investment climate was faced with various challenges, among the many challenges was that there was need to improve its regulatory framework affecting investors. One remarkable option to this and many other challenges included Continuing streamlining the business licensing regime.<sup>28</sup> This measure has been considered to have greatly improved the operating environment for both local and foreign investors. It has also translated into improved perceptions of Zambia as an investment destination for most foreign investors.<sup>29</sup>

### **3.3 BUSINESS REGULATORY LAWS IN RELATION TO POVERTY REDUCTION**

Zambia is classified among the least developed countries and as such the majority of its population is impoverished.<sup>30</sup> Economic development is key to eradicating poverty.<sup>31</sup> Economic development involves putting in place the building blocks that are crucial for countries to eradicate poverty.<sup>32</sup> The measures may include peace, the rule of law, property rights, stable business conditions, and honest and responsive governments, accountable to their citizens.<sup>33</sup>

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<sup>26</sup> PMRC, *The Business Regulatory Act 2014: Does It Deliver in Improving The Zambian Business Licensing Environment?*, P.11

<sup>27</sup> OECD, *Investment Policy Review of Zambia Advancing investment policy reform*. Lusaka, 2011, P. 19

<sup>28</sup> OECD, *Investment Policy Review of Zambia Advancing investment policy reform*, P. 22

<sup>29</sup> OECD, *Investment Policy Review of Zambia Advancing investment policy reform*, P. 22

<sup>30</sup> *Understanding the WTO – Least developed countries*, <https://www.wto.org>, (Accessed on 7<sup>th</sup> April, 2015)

<sup>31</sup> OECD, *Investment Policy Review of Zambia Advancing investment policy reform*, Lusaka, P. 22

<sup>32</sup> OECD, *Investment Policy Review of Zambia Advancing investment policy reform*, P. 22

<sup>33</sup> DFID, *Economic development for shared prosperity and poverty reduction: a strategic framework*, P. 2

Stable business conditions should be facilitated by regulatory laws that will give security and stability to the local people and the foreign investors who entrust their resources into Zambia.<sup>34</sup>

The more people interact in various businesses ventures the more poor people interact with the economy in a number of ways.<sup>35</sup> Governments must take responsibility for helping markets to function effectively for the poor, so that they enable choice, encourage innovation and provide goods and services to consumers at the lowest possible prices.<sup>36</sup> Many of the poor are small entrepreneurs, including farmers.<sup>37</sup> They will benefit if entry and exit barriers are low, if they can purchase inputs at fair prices, and if they are able to sell their output on fair terms. They need a level playing field.<sup>38</sup>

Empowerment is a difficult concept to measure but an important dimension of development.<sup>39</sup> Empowered people participate in the processes that affect their lives by voicing their views and influencing decision making. Empowering people living in poverty is an essential way to ensure that people benefit from business-led economic growth. Individuals working in the informal sector rarely have an opportunity to organize themselves in order to advocate for their interests.<sup>40</sup>

### **3.4 BUSINESS LICENSING IN RELATION TO EMPLOYMENT**

Employment is defined as an occupation by which a person earns a living; work or business.<sup>41</sup> In Zambia for one to be legally considered employed, they must conclude an employment contract with their employer. An employment contract could be oral or written and is binding on both

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<sup>34</sup> Godfrey, *why is competition important for growth and poverty reduction?* , [www.oecd.org/investment/gfi-7](http://www.oecd.org/investment/gfi-7)

<sup>35</sup> Godfrey, *why is competition important for growth and poverty reduction?* , [www.oecd.org/investment/gfi-7](http://www.oecd.org/investment/gfi-7)

<sup>36</sup> Godfrey, *why is competition important for growth and poverty reduction?* , [www.oecd.org/investment/gfi-7](http://www.oecd.org/investment/gfi-7)

<sup>37</sup> Godfrey, *why is competition important for growth and poverty reduction?* , [www.oecd.org/investment/gfi-7](http://www.oecd.org/investment/gfi-7)

<sup>38</sup> Godfrey, *why is competition important for growth and poverty reduction?* , [www.oecd.org/investment/gfi-7](http://www.oecd.org/investment/gfi-7)

<sup>39</sup> Godfrey, *why is competition important for growth and poverty reduction?* , [www.oecd.org/investment/gfi-7](http://www.oecd.org/investment/gfi-7)

<sup>40</sup> Oxfam America, *Exploring the links between international business and poverty reduction, The Coca-Cola/SABMiller value chain impacts in Zambia and El Salvador* By Oxfam America, The Coca-Cola Company, and SAB Miller, Oxfam America P. 15

<sup>41</sup> *Employment*, <http://dictionary.reference.com>, (Accessed on 23<sup>rd</sup> March, 2015)

parties thus requires that each enjoy rights and fulfills obligations pursuant to the Contract and the laws regulating employment in Zambia.<sup>42</sup> Employment may also be in the formal or informal sector and may be between employer and employee as is in the strict legal sense or it may be self-employment.<sup>43</sup>

Improvement and expansion of the informal sector will enable self-employment which will in turn enhance economic growth. Such direction is made easier with sound regulatory laws.<sup>44</sup> Employment laws, regulations, and policies, which can range from minimum wage laws and anti-discrimination laws to non-compete agreements and regulations on workers' compensation and unemployment insurance, can protect or benefit one party (usually employees), but typically impose some cost on the other party.<sup>45</sup> In designing employment laws and regulations, policymakers strive to strike a balance between costs and benefits, which often means adjusting the application or enforcement of employment-related regulations according to firm size. One fundamental obligation on the part of the employer and a right on the part of the employee is that of wages. Wages are necessary for a decent living. It is crucial that the business environment be friendly to enable a lot of people to earn wages.<sup>46</sup> Wages can also be higher where businesses are positively thriving.<sup>47</sup> Thus, the single licensing system is intended to have a positive influence on employment in Zambia.

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<sup>42</sup> Mwenda. WS, *Employment law in Zambia; cases and material*, Unza Press, Lusaka

<sup>43</sup> *Employment*. <http://dictionary.reference.com>

<sup>44</sup> Godfrey, *why is competition important for growth and poverty reduction?*, [www.oecd.org/investment/gfi-7](http://www.oecd.org/investment/gfi-7)

<sup>45</sup> Godfrey, *why is competition important for growth and poverty reduction?*, [www.oecd.org/investment/gfi-7](http://www.oecd.org/investment/gfi-7)

<sup>46</sup> *Employment*, <http://dictionary.reference.com>

<sup>47</sup> Godfrey, *why is competition important for growth and poverty reduction?* , [www.oecd.org/investment/gfi-7](http://www.oecd.org/investment/gfi-7)

### **3.5 THE RESPONSE OF THE BUSINESS REGULATORY ACT ON INVESTMENT POVERTY REDUCTION AND EMPLOYMENT**

The Act<sup>48</sup> is divided into five parts which cover different aspects necessary for regulation. Part I of the Act<sup>49</sup> is the Introduction which provides the interpretation of key concepts used within the Act<sup>50</sup> and the application of the Act<sup>51</sup>. Part II of the Act<sup>52</sup> provides for the regulating of business Activities. It outlines the principles for licensing, including administrative requirements, fees and timing, the conditions for imposing a license system including consultation and regulatory impact assessment, the need for the establishment of an electronic registry and regulatory service centres, and the requirement for a single licensing system. Part III of the Act<sup>53</sup> establishes the Business Regulatory Review Committee, including requirements for committee members and responsibilities, and the need for an annual action plan, quarterly progress reports and monitoring activities. Part IV of the Act<sup>54</sup> establishes the Business Regulatory Review Agency, including the members and their functions.<sup>55</sup>Part V of the Act<sup>56</sup> provides the general provisions relating to enforcement of the Act<sup>57</sup>, including administration of the Committee, disclosure of information, and details for financial accounts and auditing.<sup>58</sup>

The major consideration for this chapter is part (II) of the Act<sup>59</sup>. Part two of the Act<sup>60</sup> outlines the principles for licensing, including administrative requirements, fees and timing, the conditions for imposing a license system including consultation and regulatory impact

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<sup>48</sup> Business Regulatory Act no. 3 of 2014

<sup>49</sup> Business Regulatory Act no. 3 of 2014

<sup>50</sup> Business Regulatory Act no. 3 of 2014

<sup>51</sup> Business Regulatory Act no. 3 of 2014

<sup>52</sup> Business Regulatory Act no. 3 of 2014

<sup>53</sup> Business Regulatory Act no. 3 of 2014

<sup>54</sup> Business Regulatory Act no. 3 of 2014

<sup>55</sup> Business Regulatory Act no. 3 of 2014

<sup>56</sup> Business Regulatory Act no. 3 of 2014

<sup>57</sup> Business Regulatory Act no. 3 of 2014

<sup>58</sup> Business Regulatory Act no. 3 of 2014

<sup>59</sup> Business Regulatory Act no. 3 of 2014

<sup>60</sup> Business Regulatory Act no. 3 of 2014

assessment. The need for the establishment of an electronic registry and regulatory service centres, and the requirement for a single licensing system is also provided for. These are covered from sections 4 to 11 of the Act<sup>61</sup> from which the chapter is analyzing the level and contribution to the investment, poverty reduction and employment. The chapter will take to consider three provisions that may be construed to be a positive contribution to investment, poverty reduction and employment.

### **3.5.1 CONDITIONS FOR IMPOSING OF LICENSING UNDER THE BUSINESS REGULATORY ACT**

Public bodies are obliged to establish a licensing system for legitimate regulatory purposes or where it is the most effective and efficient means of protecting a clearly defined risk to public health, public safety and national security, environmental protection, conservation and preservation; consumer protection; and upholding of standards for goods, food, drugs and services.<sup>62</sup> To these there must be no unnecessary burden on the business enterprise to which it is applied or proposed to apply: it must not overly bureaucratic or cumbersome; and has the input of the relevant stakeholders.<sup>63</sup>

The provision at section 6 of the Act<sup>64</sup> is a mandatory provision on the part of Public bodies creating regulatory laws to do so only where there is legitimate cause or where there is a defined risk in the business environment. This enables flexibility and relaxation and security of the environment and is attractive to investors.<sup>65</sup> This will in turn enhance economic development strategic due to free and fair markets, clear and consistently applied policies and regulations and

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<sup>61</sup> Business Regulatory Act no. 3 of 2014

<sup>62</sup> Business Regulatory Act no. 3 of 2014

<sup>63</sup> Section 6 of the Business Regulatory Act no. 3 of 2014

<sup>64</sup> Business Regulatory Act no. 3 of 2014

<sup>65</sup> DFID, *Economic development for shared prosperity and poverty reduction: a strategic framework*, P. 2

laws. Poverty is also likely to reduce as investment brings in economic growth which is key to its eradication and stable business conditions.<sup>66</sup>

### **3.5.2 E – REGISTRY AND CONTROL NUMBERS UNDER THE BUSINESS REGULATORY ACT**

There is an obligatory requirement of an electronic registry which shall be a centralized database is an online transaction platform holding information on licenses, permits, certificates, authorizations and regulation. It also includes formalities businesses have to comply with in order to obtain a license, permit, certificate or authorization and capable of facilitating the processing of applications online. The Electronic registry is to contain texts of relevant laws and subsidiary legislation on business regulation and licensing; name or title of business license; license period of validity; downloadable application and contacts of issuing agencies. The section also places the obligation on the committee to ensure the e – registry is free and accessible on the internet and is free of charge; and available for inspection and search by proprietors of business enterprises.<sup>67</sup>

From the provision of section 8 it is seen that Zambia has simplified its licensing system by making it available on the internet free of charge. This will be of benefit as it will be time and cost efficient for both local and international investors. However, the use of the internet is not common among the Zambian people. Therefore the training program recommended by the IFC should be introduced in order to allow the poor to easily use the mandatory facility for all requiring licenses for businesses.<sup>68</sup>

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<sup>66</sup> DFID, *Economic development for shared prosperity and poverty reduction: a strategic framework*, P. 2

<sup>67</sup> Section 8 of the Business Regulatory Act no. 3 of 2014

<sup>68</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing Environment?*, P.12

### **3.5.3 THE SINGLE LICENSING SYSTEM UNDER THE BUSINESS REGULATORY ACT**

Under section 10 of the Business Regulatory Act<sup>69</sup> there has been established a single licensing system for businesses in each sector or group of businesses or group of businesses in each sector<sup>70</sup>. Overall this has been recommended for time and cost efficiency. Single Licensing System is the major recommendation for economic development as it is attractive to investors and will in turn positively affect poverty reduction and encourage employment in Zambia.

### **3.6 CONCLUSION**

This chapter has analyzed of the licensing system under the Business Regulatory Act<sup>71</sup> in relation to its effectiveness in sustaining Investment, poverty reduction and Employment in the Country. The chapter has given an assessment of the extent to which the licensing system under the Act<sup>72</sup> will positively influence Investment poverty reduction and employment.

The next chapter examines the Business Licensing System's Influence on the development of economic, social and cultural rights in Zambia, as the major topic of the research.

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<sup>69</sup> The Business Regulatory Act no. 3 of 2014

<sup>70</sup> The Business Regulatory Act no. 3 of 2014

<sup>71</sup> The Business Regulatory Act no. 3 of 2014

<sup>72</sup> The Business Regulatory Act no. 3 of 2014

## CHAPTER FOUR

### THE EFFECT OF BUSINESS LICENSING SYSTEM ON THE DEVELOPMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ZAMBIA

#### 4.1 INTRODUCTION

The aim of this chapter is to assess the effectiveness of the provisions of the Business Regulatory Act (hereinafter referred to as “the Act”)<sup>1</sup> in relation to its influence on the development of Economic, Social and Cultural Rights (hereinafter referred to as the “ESCR”) in the business sector in Zambia. The chapter examines the provisions of the Act and the extent to which it has complied with the ESCR. Finally, the chapter considers suggestions on how the Act<sup>2</sup> can be revised so that it can as much as possible cover the rights and other state obligations in relation to the stakeholders in the business environment.

#### 4.2 THE BACKGROUND TO ECONOMIC SOCIAL AND CULTURAL RIGHTS

Naturalists’ argument concerning human rights in general is that human rights are inherent entitlement that all acquire by virtue of being human and have been with humanity from time immemorial.<sup>3</sup> However, the positivist history is that prior to the adoption of the Universal Declaration on Human Rights (a non-legally binding document) in 1948, there was general consensus on rights which were to be enshrined in the Declaration to be transformed into legally binding obligations through the negotiation of one or more treaties.<sup>4</sup> In 1966, two distinct treaties, covering almost entirely all the rights enshrined in the Universal Declaration of Human Rights were adopted after almost 20 years of negotiations.<sup>5</sup> The convention providing for civil

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<sup>1</sup> The Business Regulatory Act no. 3 of 2014

<sup>2</sup> Business Regulatory Act no. 3 of 2014

<sup>3</sup> *On Naturalism and Positivism in International Law*, <http://www.jaanikernes.ideasoneurope.eu>, (Accessed on 20<sup>th</sup> April, 2015)

<sup>4</sup> *Office of the United Nations High Commissioner for Human Rights*, <http://www.ohchr.org>, (Accessed on 20<sup>th</sup> March, 2015)

<sup>5</sup> *Office of the United Nations High Commissioner for Human Rights*, <http://www.ohchr.org>, (Accessed on 20<sup>th</sup>

and political rights, is the International Covenant on Civil and Political Rights <sup>6</sup>(hereinafter referred to as the “ICCPR”). The second convention the International Covenant on Economic, Social and Cultural Rights<sup>7</sup> (hereinafter referred to as “ICESCR”). The ICESCR was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 3 January 1976.<sup>8</sup>

In Zambia the Bill of Rights in the constitution provides for civil and political rights which the state or persons are not allowed violating, except in circumstances where there is a legislated derogation to the right.<sup>9</sup> However, the ESCR have not been provided for in the constitution.

### **4.3 THE NATURE OF ECONOMIC SOCIAL AND CULTURAL RIGHTS**

The realization of ESCR by a state will not automatically flow due to democracy; rather, the State must take necessary steps for them to be realized.<sup>10</sup> Any imbalance in the full realization of ESCR will rarely be in the long term corrected solely by the market forces in open economies.<sup>11</sup> However, specific action has to be taken towards the full realization of ESCR.<sup>12</sup> The Committee on Economic, Social and Cultural Rights(hereinafter referred to as the “CESCR”) has pointed out that the full realization of ESCR is rarely achieved as a mere by-product, or fortuitous consequence, of some other programs or developments even in democratic states experiencing massive economic growth.<sup>13</sup> Economic growth does not automatically translate into an

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March, 2015)

<sup>6</sup> UN International Covenant on Civil and Political Rights of 1966

<sup>7</sup> UN International Covenant on Economic, Social and Cultural Rights of 1966

<sup>8</sup> *Office of the United Nations High Commissioner for Human Rights*, <http://www.ohchr.org>, (Accessed on 20<sup>th</sup> March, 2015)

<sup>9</sup> Part III, the Bill of Rights. The Constitution. Chapter 1 of the Laws of Zambia

<sup>10</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 13

<sup>11</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 13

<sup>12</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 28

<sup>13</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 28

improvement of the standard of living of the most excluded and marginalized groups, unless special measures or policies are directed to those ends.<sup>14</sup> The rights under the ICESCR<sup>15</sup> are tolerable to be progressively realized by state parties as they are dependent on each nation's state of economy as envisaged by the use of the wording "take steps" by the convention.<sup>16</sup> The ICESCR<sup>17</sup> requires states "to take steps" to the maximum of their available resources to achieve progressively the full realization of economic, social and cultural rights.<sup>18</sup> Article 2 (1) of the ICESCR<sup>19</sup> provides that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.<sup>20</sup>

The above section allows for ESC rights to be subject to progressive realization, but mandates states to recognize the rights even in legislation.<sup>21</sup> The Zambia State, as a signatory to the ICESCR<sup>22</sup> must take the ESCR into account in the construing of the Act<sup>23</sup>; thereby adhering to the international requirement of their recognition and practice which results in development of the state.<sup>24</sup>

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<sup>14</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 12

<sup>15</sup> UN International Covenant on Economic, Social and Cultural Rights of 1966

<sup>16</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P. 13

<sup>17</sup> UN International Covenant on Economic, Social and Cultural Rights of 1966

<sup>18</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions On Economic, Social and Cultural Rights*, P. 13

<sup>19</sup> UN International Covenant on Economic, Social and Cultural Rights of 1966

<sup>20</sup> UN International Covenant on Economic, Social and Cultural Rights of 1966

<sup>21</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions On Economic, Social and Cultural Rights*, P. 13

<sup>22</sup> UN International Covenant on Economic, Social and Cultural Rights of 1966

<sup>23</sup> The Business Regulatory Act no. 3 of 2014

<sup>24</sup> [www.ohchr.org/EN/.../Pages/vienna.aspx](http://www.ohchr.org/EN/.../Pages/vienna.aspx), (Accessed on 2<sup>nd</sup> June, 2015)

#### **4.4 DUTY OF THE STATE IN RELATION TO ECONOMIC SOCIAL AND CULTURAL RIGHTS**

States are responsible for regulating and ensuring that any given form of service provision respects human rights both physically as well as economically and these should be adequate for all, including vulnerable and marginalized groups.<sup>25</sup> Therefore the states must regulate by primarily providing the service by means of the public sector and controlling private providers through an efficient and effective regulatory system which includes independent monitoring and penalties for non-compliance.<sup>26</sup> Numbers of private business enterprises are on the increase, both national as well as multinational, providing basic goods and services related to the realization of ESCR. In such circumstances, the State has the obligation to ensure that such organizations and enterprises respect human rights norms and standards in the delivery of these goods and services.<sup>27</sup> One of the many reasons for providing efficient regulation in the private sector is that the State is ultimately accountable under international human rights law if privatized businesses operate in violation of such rights. The state has the primary responsibility to respect, protect and fulfill ESCR.<sup>28</sup>

Different State organs (the legislature, the executive, the judiciary) have the mandate to play roles to the fulfillment of ESCR.<sup>29</sup> The legislature plays its role by approving the ratification of international treaties that recognize ESCR. It also enacts legislation and supporting regulations to ensure that national laws conform to international norms on ESCR. Further, the legislature is

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<sup>25</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 14

<sup>26</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 28

<sup>27</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 29

<sup>28</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 29

<sup>29</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 29

charged with the approval of the national budget. Therefore it has to ensure that the maximum available resources are devoted to fulfilling these rights.<sup>30</sup> The executive complements the work of the legislature as it has an important role in ensuring that legislation is supported by adequate policies and programs. The executive also ensures that budgets are correctly prepared and executed and the use of funds is audited.<sup>31</sup> The judiciary has to ensure that the State and others respect ESCR, and provides remedies if such rights are violated. It also has an important role in expounding the legal contents of ESCR in its specific national context.<sup>32</sup>

#### **4.5 THE LEGAL EFFECT OF THE INTERNATIONAL CONVENTION ON ECONOMIC SOCIAL AND CULTURAL RIGHTS IN ZAMBIA**

Zambia is a signatory to the ICSCR but is not bound to fulfill the obligations that have been imposed by the convention on the state parties.<sup>33</sup> For any international instrument to have binding legal effect, it's a requirement that it be domesticated. In the case of *Zambia Sugar Plc v Fellow Nanzaluka*,<sup>34</sup> the Supreme Court declined to give effect to the provisions of the International Labour Convention<sup>35</sup>. The Supreme Court opined that international instruments on any law, although ratified and assented to by the state, cannot be applied unless domesticated. This was a matter in which the employer's actions in dismissing an employee were contrary to the said convention. The legal principle is that international instruments on any law, although

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<sup>30</sup> United Nations High Commissioner for Human Rights, Fact Sheet No. 33, *Frequently Asked Questions on Economic, Social and Cultural Rights*, P 29

<sup>31</sup> United Nations High Commissioner for Human Rights, Fact Sheet No. 33, *Frequently Asked Questions on Economic, Social and Cultural Rights*, P 29

<sup>32</sup> United Nations High Commissioner for Human Rights, Fact Sheet No. 33, *Frequently Asked Questions on Economic, Social and Cultural Rights*, P 29

<sup>33</sup> Zambia's International Legal Obligations, *Human Rights Watch*, <http://hrw.org/reports>, (Accessed on 20<sup>th</sup> April, 2015)

<sup>34</sup> SCZ Appeal No. 82/2001

<sup>35</sup> No. 158 of 1982

ratified and assented to by Zambia in particular, cannot be of any force but merely of persuasive value.

In applying and construing Zambian statutes, courts of law can take into account international instruments to which Zambia is a signatory. However, these instruments are only of persuasive value, unless they are domesticated in the laws.<sup>36</sup> Therefore, in relation to the Business Regulatory Act<sup>37</sup>, Zambia has to take into account the ICESCR in the interpretation and application of the Act<sup>38</sup>

#### **4.6 THE BUSINESS REGULATORY ACT IN RELATION TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

In evaluating the Act<sup>39</sup>'s extent of compliance with the ESCR, it is appropriate to do so by taking into consideration the duty of the state to respect, protect and fulfill the ESCR. Respect means refraining from interfering with the enjoyment of the right, to Protect refers to preventing others from interfering with the enjoyment of the right and to Fulfill means adopting appropriate measures towards the full realization of the right<sup>40</sup>. Below are some facilities that the Business Regulatory Act provides for, that relate to the provisions of the ICESCR as steps in fulfillment of the ESCR.

##### **4.6.1 THE GENERAL PRINCIPLES FOR LICENSING**

It is noteworthy that the principles of licensing provided for by the Act,<sup>41</sup> seek to take a protective and fulfilling and respectful approach in relation to the ESCR. Some provisions appear

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<sup>36</sup> Attorney General v Roy Clarke (2008) Z.R. 38 Vol.1

<sup>37</sup> The Business Regulatory Act no. 3 of 2014

<sup>38</sup> Business Regulatory Act no. 3 of 2014

<sup>39</sup> The Business Regulatory Act no. 3 of 2014

<sup>40</sup> United Nations High Commissioner for Human Rights, *Fact Sheet No. 33; Frequently Asked Questions on Economic, Social and Cultural Rights*, P 27

<sup>41</sup> The Business Regulatory Act no. 3 of 2014

to take into account the ESCR. The chapter will highlight some provisions and show how they may be construed to protect, respect and fulfill ESCR.

#### **4.6.1.1 PROTECTIVE MEASURE OF ECONOMIC SOCIAL AND CULTURA RIGHTS IN THE NEW LICENSING SYSTEM**

The obligation to protect requires the State to take positive measures to ensure that non-state actors such as multi-national corporations, local companies, private persons, and armed groups do not violate ECSR<sup>42</sup>. This includes regulating and monitoring the commercial and other activities of non-state actors that affect people's access to and equal enjoyment of ESCR and ensuring the effective implementation of relevant legislation and programs and to provide remedies for such violations<sup>43</sup>. To this extent, the Act<sup>44</sup> is a devise used to monitor the private business sector and echoes protection of stakeholders as it facilitates an easy and clear regulatory role of the business environment.

Government has undertaken to regulate licensing of businesses by public bodies for a clearly defined public policy goal or objective that cannot be better achieved through any other means.<sup>45</sup> A regulatory law is required to specify the criteria when an application for a license, permit, certificate or authorization may be granted or rejected<sup>46</sup>. A law is also required to provide a clearly stipulated procedure of appeals. Licenses are generally to be valid for a standard period of three years unless otherwise the reasons for departure are provided for by the law.<sup>47</sup> The procedure for regulating business activity is mandated to be simplified, to the greatest extent

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<sup>42</sup> Principles and Guidelines on the Implementation of Economic, *Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, <http://www.oau.org> (Accessed on 4<sup>th</sup> April, 2015), P. 12

<sup>43</sup> Principles and Guidelines on the Implementation of Economic, *Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, <http://www.oau.org>, P. 12

<sup>44</sup> The Business Regulatory Act no. 3 of 2014

<sup>45</sup> The Business Regulatory Act no. 3 of 2014

<sup>46</sup> The Business Regulatory Act no. 3 of 2014

<sup>47</sup> The Business Regulatory Act no. 3 of 2014

possible. Fees payable in respect of the licenses are required to be minimal, clearly fixed and imposed for the sole purpose of defraying administrative costs for licensing.<sup>48</sup>

Further, the Act<sup>49</sup> has proved to be a protective instrument as it implores Public bodies to only make laws that are reasonable and are not oppressive to the stakeholders in the business environment. It also has consideration of the poor and marginalized Zambians as it only require minimal payment of fees for obtaining licenses. Clarity of procedure in licensing is also emphasized echoing simplicity and time efficiency.

Under the Act<sup>50</sup>, Issuance of licenses is at high value for the protection of among others public health. The establishment of the licensing systems by public bodies is for fulfilling the legitimate regulatory purposes. It must protect a clearly defined risk in areas including public health and upholding standards of goods, food, drugs and services. This requirement reflects the provision of the ICESCR, which under Article 11 provides that the States Parties recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. Further, states are required to improve methods of production, conservation and distribution of food.<sup>51</sup> By regulating and protecting risks business dealing with health and food, Zambia is in a way taking recognition of the improved methods of production and distribution of food.

#### **4.6.1.2 FULFILLMENT OF ECONOMIC SOCIAL AND CULTURAL RIGHTS BY THE FACILITIES OF THE NEW LICENSING SYSTEM**

The duty to fulfill ESCR requires States parties to take positive steps to advance the realization of the rights. The measures should be comprehensive, co-ordinated, transparent, and contain

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<sup>48</sup> The Business Regulatory Act no. 3 of 2014

<sup>49</sup> Business Regulatory Act no. 3 of 2014

<sup>50</sup> Business Regulatory Act no. 3 of 2014

<sup>51</sup> UN International Covenant on Economic, Social and Cultural Rights of 1966

clear goals, indicators and benchmarks for measuring progress.<sup>52</sup> The duty to fulfill includes the adoption of measures that enable and assist individuals and communities to gain access to these rights on their own.<sup>53</sup> In cases where individuals and communities are unable to gain access to these rights by the means at their disposal, the obligation will be, to take measures necessary to ensure that each person within its jurisdiction may obtain basic ESCR benefits. The rights of vulnerable and disadvantaged groups should be highlighted in every way possible of social and economic development. Particular attention must be paid to vulnerable and disadvantaged groups in programs aimed at ensuring access to appropriate services and resources.<sup>54</sup>

The Electronic Registry underscores needed qualities for the realization of ESCR such as simplicity, accessibility security and certainty of regulation of businesses. The Electronic Registry can be seen to enhance ESCR as it ensures decentralization of the licensing system; enhancing economic and social development. In ensuring accessibility to appropriate service and resource, the E- registry contains texts of laws and subsidiary legislation on business regulation and licensing, names or titles of the business license, the license periods, the license fees, the downloadable application and personal contact details for issuing agencies. Further, the Act<sup>55</sup> provides for a Business Regulatory Review Agency that is responsible for the maintenance of the E – registry and ensures it is updated on continuous basis.<sup>56</sup>

The e-registry also provides for positive security and certainty by ensuring the business regulation licenses, permits, certificates and authorizations have legal effect, validity and

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<sup>52</sup> Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, <http://www.oau.org>, P. 12.

<sup>53</sup> Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, <http://www.oau.org>, P. 12.

<sup>54</sup> Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, <http://www.oau.org>, P. 12.

<sup>55</sup> The Business Regulatory Act no. 3 of 2014

<sup>56</sup> The Business Regulatory Act no. 3 of 2014

enforceability as far as business activities are concerned. It further provides for easy access to exhaustive information on Business regulation and licensing.<sup>57</sup> The Act<sup>58</sup> also provides for display of Acts of parliament for easy capturing of information and data that can be easily captured on the E-data base.<sup>59</sup>

The regulatory service centers are established by the Patents and Companies Registration Agency (hereinafter referred to as “PACRA”) in liaison with other regulatory agencies in provinces. They are to provide a database for accounting, electronic registration, ensure an effective regulatory clearance system, messenger service and system information for sharing. Application will therefore be done at nearest service centers distributed around the country.<sup>60</sup> Therefore, the Act<sup>61</sup> puts forth co-ordinated, transparent and easy access of the regulatory centers enhancing realization of ESCR.

#### **4.6.1.3 GENERAL PROVISIONS OF THE BUSINESS REGULATORY ACT SEEK TO RESPECT ECONOMIC SOCIAL AND CULTURAL RIGHTS**

The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of ECSR. <sup>62</sup> States also need to take positive measures to ensure that all branches of government which are the legislative, executive and judicial at all levels, to avoid violation of ECSR.<sup>63</sup>

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<sup>57</sup> The Business Regulatory Act no. 3 of 2014

<sup>58</sup> The Business Regulatory Act no. 3 of 2014

<sup>59</sup> The Business Regulatory Act no. 3 of 2014

<sup>60</sup> The Business Regulatory Act no. 3 of 2014

<sup>61</sup> The Business Regulatory Act no. 3 of 2014

<sup>62</sup> Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, <http://www.oau.org>, P. 12.

<sup>63</sup> Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, <http://www.oau.org>, P. 12.

The Act<sup>64</sup> provides for the procedure of appeals by aggrieved parties with decisions of the Business Regulatory Review Agency (hereinafter referred to as the “BRRA”) to the committee against such a decision, within 30 days. If aggrieved by the decision of the Committee a party may appeal to the High Court within thirty days of the service of the decision. In this regard the Act<sup>65</sup> is undertaking to ensure that the executive branch under which the regulatory centers fall is not in violation to such rights by providing an appellant system to the stakeholders in the business sector.

#### **4.7 POSSIBLE REVISIONS TO THE ACT TO ENHANCE REALISATION OF SOCIAL, ECONOMIC AND CULTURAL RIGHTS**

Despite the fact that there are provisions that seek to reflect the ESCR in the Act<sup>66</sup>, there are a lot of authored areas that remain lacking; one of them is that of providing education and training to members of the public in the business sector on how to use the new facilities. Zambia being one of the least developed countries has the majority of its population technologically challenged.<sup>67</sup>

As pointed out in chapter two, the IFC highlight the need for a training and awareness creation program to ensure that government officials are trained to use new procedures and those entrepreneurs are informed about key changes, enabling them to understand the improvements made. The training should also be extended to the stakeholders in the public sphere on how they can effectively benefit from the new technological facility of the Electronic Registry.<sup>68</sup> They also need to understand that permits obtained from the e-registry have legal effect and that an

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<sup>64</sup> The Business Regulatory Act no. 3 of 2014

<sup>65</sup> The Business Regulatory Act no. 3 of 2014

<sup>66</sup> The Business Regulatory Act no. 3 of 2014

<sup>67</sup> Panos London Illuminating Voices, ICT and Development in Zambia: Challenges and opportunities, <http://www.panos.org.uk>,( accessed on 6<sup>th</sup> April, 2014)

<sup>68</sup> The Business Regulatory Act no. 3 of 2014

appellant system is provided for by means of which rights can be enforced. The training awareness program is clearly not provided for by the Act.<sup>69</sup>

#### **4.8 CONCLUSION**

The chapter aimed at assessing the effectiveness of the provisions of the Act<sup>70</sup> in relation to ESCR in the business sector in Zambia. The chapter gave the provisions of the Act and the extent to which it has complied with the ESCR. It also gave suggestions on how the Act<sup>71</sup> can be revised so that it can as much as possible cover the rights and other state obligations in relation to the stakeholders in the business environment. The suggestion that has been discussed is that of giving a provision that facilitates the running of training and awareness programs.

The next chapter gives a general conclusion of this research and advances a number of recommendations on how the business licensing system can be more efficient and effective in order to enhance the development businesses at all levels in the country.

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<sup>69</sup> The Business Regulatory Act no. 3 of 2014

<sup>70</sup> The Business Regulatory Act no. 3 of 2014

<sup>71</sup> The Business Regulatory Act no. 3 of 2014

## CHAPTER FIVE

### RECOMMENDATIONS AND CONCLUSIONS

#### 5.1 GENERAL CONCLUSION

The objective of this research was to evaluate the licensing system under the Business Regulatory Act<sup>1</sup> (hereinafter referred to as “the Act”) by examining the improvements the Act was intended to bring to the licensing environment and whether or not it effectively reconciles with them. This chapter draws conclusions from the preceding chapters as to the adequacy of the provisions of the Act<sup>2</sup> in improving the licensing in the business environment of Zambia.

Chapter one entitled ‘Introduction’ gave a general overview of the components that the research would encompass in assessing the licensing system in Zambia. The chapter gave a brief background of the business licensing system in Zambia. Further, the chapter gave the statement of the problem, research objective, research questions, the significance of study, literature review and the methodology.

Chapter two entitled, ‘Business licensing in Zambia and the Fight against Corruption’ examined the background of Zambia’s business environment. By so doing the chapter showed how the political ideologies have influenced the business environment overtime in that in the early days after independence few people had businesses and there were few regulatory laws. Zambia entered the period of nationalization in which few regulatory laws were required. It was only after the embracing of multi-party democracy that capitalism was adopted and the regulatory laws came to be an essential aspect of the business environment. The chapter showed the extent to which the business licensing system has conformed to the best practice standards by the International Finance Corporation (hereinafter referred to as the ‘IFC’). It was observed that

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<sup>1</sup> The Business Regulatory Act no. 3 of 2014

<sup>2</sup> The Business Regulatory Act no. 3 of 2014

new licensing system under the Act<sup>3</sup> has not provided for a training program that the system embraces. Overall, the chapter cited transparency as a fundamental principle in fighting corruption and showing some sections of the Business Regulatory Act<sup>4</sup> that reflect it.

Chapter three entitled, ‘An Examination of Business Licensing System on Investment, Poverty Reduction, and Promotion of Employment in Zambia’ examined the licensing system under the Act<sup>5</sup> in relation to its effectiveness in sustaining Investment, poverty reduction and Employment in the Country. In relation to investment a single licensing system is encouraged for easy process in establishing business and attracts investors. Thus, the provision new licensing system containing the single licensing system is a positive development on investment in Zamia. The licensing system has efficient costs and timing that encourages creation of employment and wages in the private sector and reduction of poverty. The chapter indicated that conditions for imposing of licensing, e – registry and control numbers, and single licensing system are the major provisions of the act that will enhance investment, bring about poverty reduction and create more employment opportunities.

Chapter four was entitled ‘The Effect of Business Licensing System on the Development of Economic, Social and Cultural Rights in Zambia’ assessed the effectiveness of the provisions of the Act<sup>6</sup> in relation the development of economic, social and cultural rights in the business sector in Zambia. This is due to the fact state parties are expected to adhere to them on the international community and also their founding principles as provided for in the International convention on economic, social and cultural rights. Further, the chapter gave the importance of the development of the rights and the merits such an occurrence will give Zambia on the international community.

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<sup>3</sup> The Business Regulatory Act no. 3 of 2014

<sup>4</sup> The Business Regulatory Act no. 3 of 2014

<sup>5</sup> The Business Regulatory Act no. 3 of 2014

<sup>6</sup> The Business Regulatory Act no. 3 Of 2014

Finally, this chapter gives recommendations on how the Act<sup>7</sup> can be revised so that it can as much as possible cover the rights and other state obligations in relation to the stakeholders in the business environment.

## **5.2 FINDINGS**

The following are the major findings from this research:

- 5.2.1** In Chapter one, the research found that the concept of the new licensing system is an improvement to the business licensing system in Zambia.
- 5.2.2** In Chapter two, the finding was that under the Act,<sup>8</sup> transparency is reflected in the provisions of disclosure principles, immunity covering only acts done in good faith, accounts and audits of the committees established by the minister. The e – registry in itself is an improvement on the fight against corruption as e- governance reduces personal contacts with the agents that may seek a bribe from the business man.
- 5.2.3** Chapter two also found out that the disclosure or publication of information without the consent of the committee is criminalized. The extent to which this principle is to apply may be clarified by bringing in exception under which information may be disclosed as an indication of transparency and enhancement of freedom of expression and information.
- 5.2.4** Further, in Chapter two the research found that the training awareness program should be put in place for the stakeholders in the business environment for the total benefit of this facility to be realized. Failure to which, it will remain in theory as opposed to practice and a foreign concept for the majority of the Zambian people to understand.

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<sup>7</sup> The Business Regulatory Act no. 3 of 2014

<sup>8</sup> The Business Regulatory Act no. 3 of 2014

**5.2.5** In Chapter three, the finding was that the e – registry, minimal costs and improved timing are necessary for an improved business environment in relation to investment, reduction of poverty and employment.

**5.2.6** In chapter four the finding was that the provisions of the Act attempt to realize the economic, social and cultural rights in fulfilling, protecting and respecting. The Electronic Registry underscores simplicity, accessibility security and certainty of regulation of businesses; and ensures decentralization of the licensing system thereby enhancing economic and social development. The Act<sup>9</sup> provides for the procedure of appeals by aggrieved parties with decisions of the Business Regulatory Review Agency a party may appeal to the High Court within thirty days of the service of the decision. The Act<sup>10</sup> ensures that the executive branch under which the regulatory centers fall is not in violation to rights through an appellant system to the stakeholders in the business sector. Government also regulates licensing of businesses by public bodies for a clearly defined public policy goal or objective ensuring that the rights of persons doing business are protected.

### **5.3 RECOMMENDATIONS**

The following are the recommendations arising from the study:

#### **5.3.1 THERE IS NEED FOR THE LICENSING SYSTEM TO ADHERE TO ALL INTERNATIONAL FINANCE CORPORATION STANDARDS**

As seen in Chapter two, the Act<sup>11</sup> has adhered to some of the principles of the best practice standard of the International Finance Corporation (herein after referred to as the “IFC”) in that it

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<sup>9</sup> The Business Regulatory Act no. 3 of 2014

<sup>10</sup> The Business Regulatory Act no. 3 of 2014

<sup>11</sup> PMRC, *The Business Regulatory Act 2014. Does It Deliver in Improving The Zambian Business Licensing. P.15*

has introduced an e-registry and centralized database which will enable simplified issuance of permits.<sup>12</sup> The Act<sup>13</sup> has also implemented regulatory impact assessments, and stipulations that licenses are automatically approved after a certain period of time.

The realization of the idea of simplification remains lacking in that there is no reference to reducing the number and coverage of permits. Similarly, there is a need to focus on training and awareness creation, and improve definitions of how monitoring and evaluation will operate. The training awareness program is clearly not provided for by the Act<sup>14</sup>.

### **5.3.2 THERE IS NEED FOR THE LICENSING SYSTEM IN ZAMBIA TO ENHANCE TRANSPARENCY AS BUFFER AGAINST CORRUPTION**

As seen in Chapter two at, Zambia has to adopt an explicit policy on regulatory reform and the principles and objectives of regulatory reform, in order to ensure that they are mutually consistent and supportive of each other.<sup>15</sup>

While legislation and stated policies on anti-corruption are adequate, implementation sometimes falls short. Zambia lacks adequate laws on informer protection, asset disclosure, evidence, and freedom of information.<sup>16</sup> For instance, under section 7 of the Act<sup>17</sup>, disclosure or publication of information without the consent of the committee is criminalized. This may be clarified by bringing in exception under which information may be disclosed as an indication of transparency. This is evidence of prevalence of a law that can be argued in given circumstances to hinge on the right to freedom expression and to information.

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<sup>12</sup> Section 8 of the Business Regulatory Act no. 3 of 2014

<sup>13</sup> The Business Regulatory Act no. 3 of 2014

<sup>14</sup> The Business Regulatory Act no. 3 of 2014

<sup>15</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, Washington DC, 2010, P. 15

<sup>16</sup> The World Bank Group, *Regulatory Capacity Review of Zambia*, Washington DC, 2010, P. 15

<sup>17</sup> The Business Regulatory Act no. 3 of 2014

### **5.3.3 THERE IS THE NEED FOR THE LICENSING SYSTEM TO IMPROVE REALISATION OF ECONOMIC SOCIAL AND CULTURAL RIGHTS COULD BE ENHANCED BY PROVIDING FOR A TRAINING AWARENESS PROGRAM**

The International Finance Corporation highlights the need for a training and awareness creation program to ensure that government officials are trained to use new procedures and that entrepreneurs are informed about key changes, enabling them to understand the improvements made. The training should also be extended to the stakeholders in the public sphere on how they can effectively benefit from the new technological facility of the Electronic Registry.<sup>18</sup> They also need to understand that permits obtained from the e-registry have legal effect and that an appellant system is provided for by means of which rights can be enforced. The training awareness program is clearly not provided for by the Act.<sup>19</sup>

## **5.4 FINAL CONCLUSION**

It is hoped that the recommendations highlighted in this chapter will be of value in the understanding of the current development of business licensing regulation in Zambia. Further, these recommendations will contribute to the improvements in the administration and formulation of regulatory laws and policies in general.

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<sup>18</sup> The Business Regulatory Act no. 3 of 2014

<sup>19</sup> The Business Regulatory Act no. 3 of 2014

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