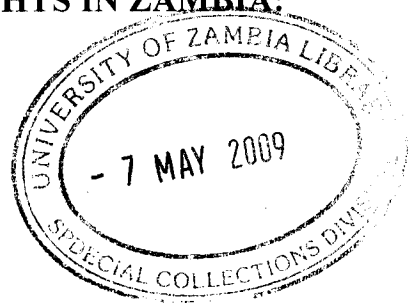


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**THE EFFECT OF INVESTMENT ON EMPLOYEE RIGHTS IN ZAMBIA:**

**CASUALISATION OF LABOUR**



**BY**

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A dissertation paper submitted to the University of Zambia Law Faculty in partial fulfilment of the requirement for the award of the Degree of Bachelor of Laws (L.L.B.)

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**THE UNIVERSITY OF ZAMBIA**

**SCHOOL OF LAW**

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## ABSTRACT

When the Movement for Multiparty Democracy government, led by Fredrick Chiluba, came into power in 1991, they liberalised the economy. The government privatised state owned businesses with the aim of creating a free market economy which led to an inflow of foreign investors who were able engage in trade. Upon privatising the companies government's intention was that jobs would be created for many Zambians. This was to be achieved by decentralising the many parastatals and making them more specialized on their work. Subsequently this resulted in a large scale of retrenchments and lay-off of workers arising from restructuring of companies and also due to closure of ineffective enterprises that were not able to withstand foreign competition.

The post liberalisation policies have consequently proved to be futile as they have not achieved the aims for which they were intended for. Instead the policies have negatively impacted on the rights of employees as the investors have been constantly engaging their employees as casuals to avoid meeting some statutory obligations that every employer ought to adhere to.

This paper examines the casualisation problem in Zambia with the view to ascertain whether the rights of employees are adequately protected under the Zambian Legal framework.

## **DEDICATION**

To my mother Abigail Tembo, you have been my pillar of strength always. Thank you for your support, steadfast love and sacrifices without which I would have given up a long time ago.

Dad, thank you for encouraging me to always strive for excellence. I am grateful for your love, support, wisdom and guidance.

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Minimum Wages and Conditions of Employment (Shop Workers) 2006

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## LIST OF ABBREVIATIONS

<b>Abbreviation</b>	<b>Explanation</b>
BIGRIMM.....	Beijing General Research Institute of Mining and Metallurgy
CSAWUZ.....	Civil Servants and Allied Workers Union of Zambia
C.....	Convention
FINDECO.....	Finance and Development Corporation
FDI.....	Foreign Direct Investment
FFTUZ.....	Federation of Free Trade Unions
ILO.....	International Labour Organisation
INDECO.....	Industrial Development Corporation
LCM.....	Luanshya Copper Mines
MINDECO.....	Mining Development Corporation
MMD.....	Movement for Multiparty Democracy
NESAWU.....	National Energy Sector and Alliance Workers
NAPSA.....	National Pension Scheme Authority Act
UNIP.....	United National Independence Party
WC.....	Workers Compensation
ZCTU.....	Zambia Congress of Trade Unions
ZDA.....	Zambia Development Agency
ZESCO.....	Zambia Electricity Supply Corporation
ZIMCO.....	Zambia Industrial and Mining Corporation

## CHAPTER ONE

### 1. INTRODUCTION

Foreign Direct Investment (FDI) is a vital driving force in the global world and is an important vehicle for channeling economic development. It is evidenced from the escalating flow of investment that the Multinational Corporations play a major role in the economies of most nations. Although it cannot be doubted that with the coming of liberalization in Zambia, Multinational Corporations have provided employment in most sectors of the economy, liberalisation has also had an adverse effect on the rights of employees in most industries. This has been alluded to the fact that the many so called investors have been taking advantage of the Zambian employees and perpetually engage them as casual workers in order to evade paying certain statutory obligations like National Pension Scheme (NAPSA)<sup>1</sup> contributions and Workers Compensation.<sup>2</sup>

#### 1.1 STATEMENT OF THE PROBLEM

There are a number of pieces of regulations that regulate the rights of the employer and employee in Zambia which among them include the Employment Act<sup>3</sup>, the Industrial and Labour relations Act<sup>4</sup>, Minimum Wages and Conditions of Employment Act<sup>5</sup>, and the Constitution<sup>6</sup> etc. It is however important to note that despite the fact that a number of legislation have been put in place to protect employee rights, the Zambian workers have continued to be exploited by their employers specifically the international companies. What is more worrying is the extent to which employment that was previously permanent is increasingly being casualised. The question then is what effect has foreign investment had on

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<sup>1</sup> Act No. 40 of 1996

<sup>2</sup> Chapter 271 of the laws of Zambia.

<sup>3</sup> Chapter 268 of the Laws Of Zambia.

<sup>4</sup> Chapter 269 of the Laws of Zambia.

<sup>5</sup> Chapter 276 of the Laws of Zambia.

<sup>6</sup> Chapter 1 of the Laws of Zambia.

the rights of casual employees? Is casualisation a good or bad practice, does it meet with the international labour standards, if not what are the shortfalls? What are the implications, potential and actual for the prospective casual employee?

### **1.2 AIM (Specific objective)**

To ascertain the extent to which the casual employee are safe guarded within the Zambian legal framework and to determine whether the foreign investors respect the rights of Zambian Employees.

### **1.3 GENERAL OBJECTIVES**

- To find out the extent and effect of casualisation in Zambia
- To outline in the spheres of Law concerned with the rights of Employees and Investment phenomenon in Zambia
- To ascertain the role played by international companies or Investors
- To ascertain whether the practice of casualisation meets with the international labour standards
- To ascertain what can be done to ensure that investors respect the rights of workers and the country continues attracting Foreign Direct Investment.

### **1.4 RESEARCH QUESTIONS**

- What is casualisation and how is it reflected in the Zambian Law
- What is the cause of casualisation
- Is casualisation a good or bad practice
- Why is there need to take action as a country
- What is the labour Law and policy in Zambia

- Does the practice meet with the international Labour standards
- If it does not what are the short falls
- Is the Law adequate in the protection of casual employees
- Is there need for law reforms
- What can be done for the country to continue attracting Foreign Direct Investment and at the same time workers rights are protected

### **1.5 SIGNIFICANCE OF THE STUDY**

In a narrow sense the research may highlight some of the flaws in the Zambian legal system concerning the spheres of law in mention. From a broader perspective, the study may signify the need for law reform to include the harmonizing of statutes.

Therefore, the significance of the proposed research attempts to highlight the current legal impediments regarding the protection of casual employees in Zambia. This is relevant in that today many employees are being exploited and this tends to hamper development in the country. Therefore the justification is that the research will identify the gaps in the pieces of legislation governing the rights of employees and those encouraging investment so that a balance is struck between workers rights and the country continues to benefit from the investors.

### **1.6 METHODOLOGY**

The study will implore desk research involving an analysis of legal materials inclusive of local legislation, international instruments, and judicial precedence and associated publications. Field research will also be undertaken in form of interviews with officers and experts from governmental departments and international organisations. The research will also include information from previous obligatory essays, the internet electronic and written media sources

To this effect therefore, this chapter will discuss the factors that have influenced labour relations in Zambia from the time of independence to date. To achieve this, the chapter will endeavor to discuss and isolate the principles and ideologies that influenced the framing of the labour laws in Zambia after the country gained its independence. Such an approach is important because for one to appreciate the efficacy of the current labour regime, knowledge of the factors that shaped the framing of such laws is indispensable. This will eventually help in determining the best way possible of reforming the laws so as suit the prevailing circumstances.

### **1.7 FACTORS THAT INFLUENCED LABOUR RELATIONS IN ZAMBIA DURING THE FIRST AND SECOND REPUBLICS**

Zambia attained its independence from the British Colonial rule in 1964 with Kenneth David Kaunda leader of the United National Independence Party (UNIP) as its first president. The Zambian economy was driven by its booming mining sector with a rise in copper prices resulting in high profits and in effect high income to the government.<sup>7</sup> It cannot be disputed that apart from government the mining industry was the largest employer where labour relations were most significant, and labour representation was first organised in the mining industry by Lawrence Katilungu as founder of the union movement in the mining industry.<sup>8</sup>

At this point it is imperative that mention is made of the fact that following Zambia's independence, the Employment Act<sup>9</sup> was enacted in 1965 with the aim of providing a legal framework for employment relationships in Zambia.

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<sup>7</sup> M.B.Kamuwanga, *Negotiating Investment Contracts: Investment Law in the Context of Development* (Lusaka: Multimedia Publications, 2005) P1.

<sup>8</sup> Chileshe, I. *Liberalization and the rise in casualisation of labour. Is the law adequate to protect workers rights a critical view of transnational corporations vis-vis Zambian companies*, Obligatory Essay, UNZA 2006, p17.

<sup>9</sup> Chapter 512 of the laws of Zambia

During Kaunda's reign, the ruling party adopted a socialist policy which in effect entails a way of organising the society in such a way that in the final analysis, exploitation of man is eliminated. All the major means of production and distribution were controlled by the state.<sup>10</sup>

Through this policy UNIP wanted to empower Zambians through what was called Zambianisation which is understood to mean the transfer of the means of production and other economic sectors into the Zambian hands. Therefore in an effort to place Zambians in strategic positions deliberate measures were undertaken to encourage employing of Zambian citizens both in the private and public sector. Private businesses were encouraged to employ Zambians in jobs which could be done by Zambians. Zambianisation of administrative, managerial, executive and technical staff was also done by applying strict criteria to the issue of employment permits. Only if a job could not be done by a Zambian would a work permit for an expatriate be renewed.<sup>11</sup>

The Zambianisation policies resulted in the Nationalisation of major private enterprises, thus in his address to the National Council of the United National Independence Party (1968) at Mulungushi Rock of Authority, President Kenneth Kaunda announced far and wide sweeping measures aimed at putting Zambian business firmly in the hands of the people themselves just as political power was in their hand<sup>12</sup>.

Therefore in his speech Kaunda appealed to the private companies to relinquish controlling interest to the government and the economy was largely driven by the state through parastatals. The government then declared its intention to acquire an equity holding (usually 51% or more) in a number of key foreign-owned firms, to be controlled by the Industrial Development

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<sup>10</sup> M.A.Ranganathan, *The Political Philosophy of Kaunda of Zambia*. (Edinburgh; Holmes McDougal 1985) p7.

<sup>11</sup> K. Kaunda, 'Humanism in Zambia and a guide to its Implementation' (1968).

<sup>12</sup> President Kaunda's Address at Mulungushi on the 19<sup>th</sup> April 1968, *Zambia's Economic Revolution* Reported by Zambia Information Services; Lusaka ZIS, at Page 27.

Corporation (INDECO). Kaunda announced the creation of a new parastatal body, the Mining Development Corporation (MINDECO).<sup>13</sup> The Finance and Development Corporation (FINDECO) allowed the Zambian government to gain control of insurance companies and building societies. In 1971, INDECO, MINDECO, and FINDECO were brought together under one parastatal, the Zambia Industrial and Mining Corporation (ZIMCO), to create one of the largest companies in sub-Saharan Africa, with Kaunda as Chairman of the Board.

In all these companies, government was directly involved in running the affairs of these businesses to an extent that the president was Chief Executive and Chairman of these companies. The president would also appoint the Managing directors and general managers thus giving him the power to intervene in the affairs of such parastatals whenever he felt like. Eventually government was made the largest employer which stretched from the civil service to the parastatal companies.<sup>14</sup>

From the policies discussed above, it would be prudent to note that UNIP policies were aimed at promoting employment as is evidenced from the Nationalisation and Zambianisation ideologies which gave employment opportunities to Zambians and restricting the controlling to government so as to avoid foreign investors taking over control.<sup>15</sup>

This in the end had a positive influence on labour relations as it ensured that there was adequate protection of workers rights by the law.

To support this assertion reference may be made to the Employment Act which placed an obligation upon the employer to provide housing<sup>16</sup> or rent allowance<sup>17</sup> to an employee and

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<sup>13</sup>President Kaunda's Address at Mulungushi on the 19<sup>th</sup> April 1968, Zambia's Economic Revolution Reported by Zambia Information Services: Lusaka ZIS, p 39.

<sup>14</sup>G.K. Simwinga, Corporate Autonomy and Government Control, Ph.D. Thesis, University of Pittsburgh, 1977, p170.

<sup>15</sup>G.K. Simwinga, Corporate Autonomy and Government Control, Ph.D. Thesis, University of Pittsburgh, 1977, p171.

<sup>16</sup> Section 41(1) (2) of Cap 512.

<sup>17</sup> Section 41 (3) of Cap 512.

medical attention<sup>18</sup> which provisions were repealed following the liberalisation of the economy in 1991.

## **1.8 FACTORS THAT INFLUENCED LABOUR RELATIONS DURING THE THIRD REPUBLIC TO DATE**

With the conversion of One-party to Multi-party democracy in 1991, the new Government led by Fredrick Titus Chiluba embarked on liberalized market-led economic policies.

Liberalisation essentially means an economy that operates without supervision by the state. The state does not participate but parties regulate their own affairs<sup>19</sup> which policy is different from Kaunda's socialist ideologies. Therefore liberalisation entailed opening up of the local market and allowing foreign private investment. It had a negative impact on employment as liberalization resulted in a mass of job losses through retrenchment and liquidation of companies.

Furthermore since the market was open to foreign investors, cheap goods were flooded on the Zambian market which led to most industries producing similar goods to close up as they could not compete favourably with cheap products, this consequently resulted in the closure of industries which could not compete with cheap goods from the foreign private investment.

In light of the above, one may conclude that unlike the UNIP regime, the MMD government was more concerned with investors and cheap labour than the welfare of the people.<sup>20</sup>

Following the liberalisation of the economy, labour laws were amended but they still do not adequately protect workers from violations of their rights from employers. Pertinent amongst

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<sup>18</sup> Section 43(1)

<sup>19</sup> J.G. Riddal The law of industrial Relations. (Butterworth: Fox, 1981) p2.

<sup>20</sup> Phiri, B.J. A Political History of Zambia from the colonial Period to the Third Republic. [www.africa.world.press.org](http://www.africa.world.press.org).

the pieces of legislation that have been amended include the Employment Act and the Industrial and Labour relations Act. As has been alluded to earlier, in the first and second republics the employer was under an obligation to provide shelter and medical allowances for an employee, this is however no longer the case in that the current Employment Act requires that this is contractually agreed between the parties.

The Minimum Wages and Conditions of Employment Act enacted in 1982 is the other piece of legislation that also has a bearing on the protection of employee right. Under this Act, the minister is empowered to make regulations and orders with respect to minimum conditions of employment for employees.<sup>21</sup> The Regulations that were put in place were the Minimum Wages and Conditions of Employment (General) Order, 2002 and the Minimum Wages and Conditions of Employment (Shop Workers) Order, 2002. The aim of this instrument is to give a worker a minimum wage that would help him meet the basic needs of life.

These regulations were repealed in 2006 under statutory Instruments No. 56 and 57 which shall be discussed in full detail later in chapter four.

Despite such legislation being in place employees are still exploited by the so called investors. This may be attributed to the reasons that were behind the amending of such Laws, which were to make them conform to the dictates of a liberal system. This has however given employers, especially the investors, a leverage to violate workers' rights at will<sup>22</sup> which has consequently resulted in the high rise in casualisation of labour. A situation in which employment is offered to any employee the terms for which provide for his payment at the end of each day and who is not engaged for a period not longer than 24 hours a day. Considering that the law has loopholes

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<sup>21</sup> W.S. Mwenda, *Employment Law in Zambia; Cases and Materials*. (Lusaka; UNZA Press) p 5.

<sup>22</sup> E.J. Nyirenda, and A. Shikwe, 'Trade Union Country Report Zambia' *Freidrich Ebert Stiftung* (December 2003), p 31.

with respect to the protection of casual employees, investors are reluctant to treat them with dignity and thereby continue to hire casual employees to fill permanent positions.

## 1.9 CONCLUSION

In light of the above, it can therefore be gathered that the differences in the policies between the UNIP and MMD governments has shown how the laws have been influenced in their enactments.

Furthermore it is plausible to note that there is legislative recognition of and lack of protection against casualisation of labour which shall be discussed later in chapter four and this has become a breeding ground for many instances of exploitation of the workers thereby impeding on their right to decent work and wages. The Federation of Free Trade Unions (FFTUZ) president Joyce Nonde bemoaned the increase in casualisation and blamed government as being the perpetrator as there is evidence to show that they too do not respect the rights of workers. She asserted that;

*“Love of workers and treating them as human beings should come first. As for foreign investors no matter how much investment they bring, if that does not come with respect for their Zambian workers, then that investment is nothing.”<sup>23</sup>*

It therefore follows that, the MMD government under the capitalist ideologies has revised the labour laws so as to accommodate and encourage investors by lessening their responsibilities to the workers. In the end workers lose out because what is mostly revised is legislation guaranteeing them payment of certain benefits or demand.

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<sup>23</sup> Article by Muyunda Lifuna Times of Zambia May 2005

## **CHAPTER TWO**

### **2. THE LEGAL FRAMEWORK FOR INVESTMENT IN ZAMBIA**

#### **2.1 INTRODUCTION**

Foreign Direct Investment is very desirable in developing countries as it plays a critical role in the growth of international trade and capital flows. With the recognized need for such capital many developing countries, Zambia inclusive, have put in place measures to ensure that foreign investors are attracted. This is normally done through local legislation, which promotes and protects foreign investment. This chapter is aimed at giving an outline of the legal framework under which the investors in Zambia operate, particularly the Zambia Development Agency Act.<sup>24</sup> This will be achieved by first understanding the concept of investment and then delve into the gist of our discussion.

#### **2.2 WHO IS A FOREIGN INVESTOR?**

A foreign investor according to the Zambia Development Agency Act<sup>25</sup> is a person who makes direct investment in the country and who in case of a natural person is not a citizen or a permanent resident of Zambia and in the case of a company is incorporated outside Zambia.

#### **2.3 WHAT MOTIVATES AN INVESTOR TO INVEST IN A FOREIGN COUNTRY?**

Before looking at the factors that influence investors to invest in a foreign country, it is prudent that one gets to appreciate what the concept of investment is all about. In common parlance investment is any activity that involves the conversion of money into some species of property from which the profit can be derived.<sup>26</sup> The ZDA Act defines investment as the contribution of capital in cash or in kind by an investor to a new business enterprise, to the expansion or

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<sup>24</sup> No. 11 of 2006

<sup>25</sup> Section 3 the ZDA Act

<sup>26</sup> <http://www.wisegeek.com/what-is-investment>.

rehabilitation of an existing business enterprise or to the purchase of an existing enterprise from the state.<sup>27</sup>

From the above definitions, investment can be seen as the input of capital in a business. At country level the common type of investment is Foreign Direct Investment (FDI) which is the transfer of capital and technology from one country to another.<sup>28</sup> This is done mainly by Multinational Corporations (MNC's) that invest in other countries by establishing subsidiaries affiliates or joint ventures.

MNC's in Zambia play a critical role in the growth of the economy and capital flows. It is therefore important to increase foreign capital so as to enhance the growth of the economies for most developing countries.

However there are a number of factors that a country has to satisfy in order to attract FDI. Thus it is vital at the outset to mention that the main determinant for the flow of FDI is a good investment climate. By this is meant that there are certain policies that a country must pay attention to before experiencing an inflow of FDI. These include political, social and economic stability.<sup>29</sup>

Although a country may have good policies, most investors are not given assurance unless the said policies are backed by a sound legal framework. This legal framework is the one that gives investors the assurance that their undertaking will thrive properly and that it will also meet the aspirations of the business community if the country is to ever attract FDI. It is the same legislation that promotes and protects foreign investors thereby creating a secure, stable and predictable environment.

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<sup>27</sup> Section 3 of the ZDA Act No 11 of 2006.

<sup>28</sup> <http://www.en.wikipedia.org/wiki/Foreign-invest>

<sup>29</sup> <http://www.jctr.org.zm/bulletins/for-di-invest.htm>

## **2.4 THE ZAMBIAN LEGAL FRAMEWORK FOR INVESTMENT.**

For the past years, investment has generally been governed by a number of laws which have since been repealed, namely Investment Act 1993; Zambia Privatization Act 1992; Export Development Act No 29 of 1994 Export Processing Zones Act number 7 of 2001; Small Enterprises Development Act no. 29 of 1996. Under each piece of legislation there was a statutory board entrusted with running the affairs of investment in Zambia. These however did not effectively fulfill their mandates due to the fact that investors and exporters alike were subjected to a number of licenses when, in fact, one license could serve the purpose. More to it, there was duplication of effort and responsibilities which would have been avoided through the creation of an effective one-stop facility and lastly, the cost of maintaining five different boards, and Chief Executives among other reasons was too expensive.

Therefore on 1 January 2007 the complexities of investors having to refer to a number of statutes and statutory bodies was lessened by the Zambian parliament when it enacted the Zambia Development Agency Act (ZDA Act) in a bid to enhance the effectiveness of the legal machinery in attracting Foreign Direct.

It is also important to note that other pieces of legislation such as the Mines and Minerals Development Act<sup>30</sup> and the Securities Act<sup>31</sup> also have provisions relevant for the purposes of investment in Zambia, however in this study; the focus will be on the ZDA Act.

### **2.4.1. The Salient Provisions of the ZDA Act**

The essay now proceeds to outline the main provisions of the ZDA Act;

### **2.4.2. The Objectives**

Before looking at the objectives it is vital that regard is given to the main aim of the Act. The Act is aimed at fostering growth and development by promoting trade and investment in

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<sup>30</sup> Act No 7 of 2008.

<sup>31</sup> Chapter 354 of the Laws of Zambia.

Zambia through an efficient, effective and coordinated private sector led economic development strategy. Further, the agency will strive to develop an internationally competitive Zambian economy through innovations that promote high skills, productive investment, and increased trade.<sup>32</sup>

The following are the objectives of the Act;

- To harness existing skills, knowledge and expertise
- To encourage investment inflows
- To ensure that targeted investments and trade related services are achieved within Zambia in order to create wealth, jobs and enhance economic development
- To develop an internationally competitive Zambian economy through innovations that promote high skills, productivity, investment and increased trade all based on a partnership between the government and the private sector
- To perform all the functions that were previously undertaken by the dissolved authorities.<sup>33</sup>
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### **2.4.3 Application of the Act**

The ZDA Act applies to investors who may invest in all regions of the Republic and in all sectors and industries except the following;

- An industry manufacturing arms and ammunition, explosives, military vehicles and equipment, aircraft and any other military hardware
- An industry manufacturing poisons, narcotics, dangerous drugs and toxic, hazardous and carcinogenic materials

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<sup>32</sup> Preamble to the ZDA Act No. 11 of 2006.

<sup>33</sup> Preamble to the ZDA Act No. 11 of 2006.

- An industry producing currency, coins and security documents.<sup>34</sup>

However, notwithstanding the above restrictions, an investor may invest in any of the restricted industries subject to authorization from the relevant regulatory authority and any written law.<sup>35</sup>

#### **2.4.4 Procedure for Application of a certificate**

The Act makes a formal distinction between domestic and foreign investors.<sup>36</sup> It requires both to apply to the newly established ZDA for an investment certificate by stating that a person who wishes to either develop premises as a multi-facility economic zone; export prescribed goods and services; invest in any business enterprise, should apply to ZDA Board for a license, permit or certificate of registration.<sup>37</sup>

The conditions under which ZDA allow to issue an investment certificate to a foreign investor are restrictive and include;

- (a) the need to promote economic development and growth in Zambia;
- (b) the extent to which the proposed investment will lead to the creation of employment opportunities and the development of human resources;
- (c) the degree to which the project is export oriented;
- (d) the impact the proposed investment is likely to have on the environment and, where necessary, the measures proposed to deal with an adverse environmental consequence in accordance with the Environmental Protection and Pollution Control Act.
- (e) the possibility of the transfer of technology; and

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<sup>34</sup>First Schedule of the ZDA Act.

<sup>35</sup>Section 2 (2) of the ZDA Act.

<sup>36</sup>Section 3 of the ZDA Act.

<sup>37</sup>Section 68 of the ZDA Act.

(f) if any other considerations that the Board considers appropriate.<sup>38</sup>

#### 2.4.5 General Incentives

Another relevant feature of the Act is part VIII which has provisions for incentives. Incentives are obtained through the granting of an investment certificate, license, or permit of registration by ZDA. Such incentives are only valid for a period of five years.<sup>39</sup> The purpose of such incentives is to help out an industry during the initial years of its operation, when there are recognized hardships including unfair competition from older enterprises.<sup>40</sup> The incentives offered under part 8 of the Act include the following;

- For incentives specified under the Income Tax Act or Customs and Excise Act., an investor must invest not less than five hundred thousand United States Dollars or the equivalent in convertible currency, in a priority sector or product, for instance textiles.<sup>41</sup>
- Machinery or equipment acquired by a business enterprise in a priority sector or a rural enterprise is exempt from customs duties as specified by or under the Customs and Excise Act.<sup>42</sup>
- for the purposes of promoting major investment in an identified sector or product, by statutory instrument, and in consultation with the Minister, additional incentives for investment in an identified sector or product of not less than ten million United States Dollars or

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<sup>38</sup> Section 69 of the ZDA Act.

<sup>39</sup> Section 55 of the ZDA Act.

<sup>40</sup> M.Ndulo, "Foreign Investment in Zambia" Zambia Law Journal, Vol 12; 1980.p 4

<sup>41</sup> Section 56 of the ZDA Act.

<sup>42</sup> Section 57 of the ZDA Act.

the equivalent in convertible currency, in new assets that qualify for those incentives.<sup>43</sup>

- Where a double taxation agreement exists, between Zambia and another country, foreign tax payable by an investor to the other country in respect of any foreign income shall be as determined under that agreement.<sup>44</sup>
- Exemptions from any tax or duty are effected by the Commissioner-General of ZRA after the board certifies that the investor has fully complied with the Act.<sup>45</sup>

It is important to further note that the regulations on incentives under the Act are to be made by the Minister for Finance in consultation with the Minister for Commerce, Trade and Industry. The importance of incentives is simply to steer investment into favoured industries or regions or to influence the character of investment that the government deems fit.<sup>46</sup>

#### **2.4.6 Dispute Settlement**

When it comes to the interpretation, application or implementation of a statute there is a possibility of disagreements or disputes arising. The ZDA Act takes cognizance of this fact and has made a provision for dispute settlement by arbitration under section 21, though it does not provide a detailed outline of dispute settlement but makes reference to the Arbitration Act. The said section provides:

“any dispute arising as a consequence of an investment under this Act shall be settled in accordance with the Arbitration Act”.<sup>47</sup>

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<sup>43</sup>Section 58

<sup>44</sup>Section 61

<sup>45</sup>Section 60

<sup>46</sup> UNCTAD: United Nations Conference on Trade and Development; Incentives and FDI: New York and Geneva, 1996, P1.

<sup>47</sup> Act No. 19 of 2000 of the Laws of Zambia.

#### **2.4.7 Zambia Development Agency and Its Role in Promoting Investment**

The Zambia Development Agency is established by section 4 of the ZDA Act as a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name. The Zambia Development Agency acts as the first point of contact for potential investors in Zambia.

Section 6 of the Act provides for the establishment of a Board of the Agency which consists of the following sixteen members:

*(a)* A representative of—

*(i)* Zambia Chamber of Commerce and Industry;

*(ii)* The farmers;

*(iii)* Civil society organisations involved or interested in commerce and industry; and

*(iv)* Agencies promoting small scale industries;

*(b)* Two private businesspersons;

*(c)* A representative of the Environmental Council of Zambia;

*(d)* Eight representatives from the Ministries responsible for trade and industry, finance, labour, agriculture, tourism, education, skills training and mining; and

*(e)* The Attorney General or the Attorney General's representative.

With the Agency set and the board outlined, it is suffice to say that we now turn to examine the respective functions of the Agency under the ZDA Act.

According to section 5 of the Act, the functions of the Agency are to further the economic development of Zambia by promoting efficiency, investment and competitiveness in business and promoting exports from Zambia.

Some of the other numerous functions of ZDA as provided for by section 5(2) of the Act include:

- (a)* to give advice to the Minister on matters relating to industry, industry development and productivity, investments, exports of goods and services, operations of multi-facility economic zones and matters relating to micro and small scale business enterprises;
- (b)* on the request of Government, study market access offers received from trading partners under COMESA, WTO or SADC and advise the Government on opportunities and challenges generated by those offers;
- (c)* make detailed impact analysis on select sectors of the economy;
- (d)* establish a database of facilities, human resources and their skills, sources of finance, technology, raw materials, machinery, equipment and supplies with a view to promoting accessibility of these to industry;
- (e)* develop entrepreneurship skills and a business culture in citizens of Zambia;
- (f)* promote and facilitate the development of micro and small business enterprises;
- (g)* formulate investment promotion strategies;
- (h)* promote and coordinate Government policies on, and facilitate, investment in Zambia; *(i)* assist in securing from any State institution any permission, exemption, authorization, licence, bonded status, land and any other thing required for the purposes of establishing or operating a business enterprise;
- (j)* undertake economic and sector studies and market surveys so as to identify investment opportunities;
- (k)* plan, manage, implement and control the privatisation of State owned enterprises and oversee the aspect of implementation;
- (l)* encourage and promote the transfer of appropriate technology and promote public understanding of matters relating to industry development and productivity;
- (m)* provide a framework for the provision of enterprise development services to industry and business enterprises and source for financial aid for the development of trade and industry in

order to assist business enterprises meet economic and social costs of adjusting to a competitive international trading environment;

(n) explore ways of fostering business linkages, such as partnerships, joint ventures and other strategic alliances, in green-field investments.

## **2.5 ADVANTAGES OF THE ZDA ACT**

The Act has created the Zambia Development Agency which has consolidated the various investment promotion agencies to a one-stop shop for all investment related regulations and activities.<sup>48</sup> This was intended to streamline the unnecessary bureaucratic and tedious procedures that were faced by investors.

In helping create a friendly and suitable environment for investment, the investors are assisted in identifying land suitable for investment and other support services as provided for under part IX of the Act.

Another advantage is the fact ZDA will support and assist enterprises to acquire land and support services. This will help in expediting investment development.

The registration of enterprises in order to qualify for any incentives is one of the major advantages of the Act, in that it will enable the identification of all foreign and major local enterprises in the country and access the investment inflows.

Further, the Act establishes the Trade and Development Fund under section 48 and the Privatization Trust Account, under section 52.<sup>49</sup> These funds are established to support economic growth and development by promoting trade and investment. The Development Fund

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<sup>48</sup> F. Husain, 'An Investment Guide to Zambia' *Opportunities and conditions*, (Mission Press, Zambia August 2006) p59.

shall be used to support micro small business enterprises, rural business enterprises and other enterprises, as determined by the board.<sup>50</sup> As for the Privatization Trust Account, section 52 of the Act provides that it shall be used to hold shares in trust for citizens of Zambia for divestiture after a state owned enterprise has been privatized. This undoubtedly provides good opportunities for investment growth.

In its functions the Act provides that the Agency should give regard to the protection of the interest of employees that are likely to be affected by measures proposed by the Agency and also the increase in employment in Zambia.<sup>51</sup> To this extent it shows that there is regard given to workers' rights as the nation pursues development through investment.

The Act further provides that one of the considerations to be made before approving an application for an investment licence, permit or certificate of registration, is the extent to which the proposed investment will lead to the creation of employment opportunities and the development of human resources.<sup>52</sup> This is also a good development because it shows that Zambia intends to reaffirm its commitment to the welfare of its workers even as it pursues economic bliss.

## **2.6 DISADVANTAGES OF THE ZDA ACT**

Although the legal framework has strived to create an investor friendly environment, the Act does have some inadequacies which do not help it achieve one of its aim to the fullest, specifically the provision relating to job creation.

When an investor is applying for an investment certificate, they do present the ZDA with a business plan and amongst the important things that are taken into account include the number

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<sup>50</sup> Section 48 (2)

<sup>51</sup> Section 5 (1)

<sup>52</sup> Section 69(b)

of locals that will be employed.<sup>53</sup> In as much as this is the position, it is difficult for the agency to enforce this because there is no mechanism for them to trace and ensure that the locals have not only been given jobs but decent ones. It can therefore be seen that this Act does not fully support the worker, as it does not provide the criteria and model to be used in determining the extent of employing locals.

Investors therefore take advantage of such lacunas and continue exploiting Zambian employees. This has also led to an increase in the cases of casualisation of labour, which has made most employees to become prone to indecent working conditions.

## **2.7 CONCLUSION**

The chapter examined the ZDA Act as a legal framework under which investors operate in Zambia. It has looked at the various provisions that help in the promotion of investment and the weaknesses have also been considered.

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<sup>53</sup> Interview with Jessica Mwiinga Chombo Manager Investment Promotion ZDA, 13<sup>th</sup> November, 2008, at Privatization House, Lusaka.

## **CHAPTER THREE**

### **3. EFFECT OF LIBERALISATION ON THE RIGHTS OF WORKERS IN ZAMBIA**

#### **3.1 INTRODUCTION**

This chapter discusses the effect that the liberalization of the economy has had on employee rights in Zambia. This will be achieved by first giving a brief background to liberalization and then discuss its effect on the rights of employees. The chapter will then proceed to an analysis of the extent of casualisation of labour in Zambia supported by examples.

#### **3.2 BACKGROUND TO LIBERALISATION OF THE ZAMBIAN ECONOMY**

When Zambia attained its independence from the British colonial rule in 1964, its economy was driven by the mining sector and as has been earlier alluded to in chapter one the mining industry was Zambia's prime mover of the economy as the rise in copper prices would yield high profits, making the government to generate more profits. As a result of this, the Zambian economy depended primarily on the mining sector as it contributed to three-quarters of the country's foreign exchange earnings.<sup>54</sup>

This total dependence on the mining industry brought about serious problems as the rise of copper prices slumped due to the world wide depression brought about by the sudden increase in the price of crude petroleum prices and collapse of commodities like copper on the world market in the mid 1970s.

The government of Zambia was hopeful that the oil and copper trends would be reversed, however this never materialized. Despite the situation being like this, government still continued with its socialist policies. This was devastating because the economy became

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<sup>54</sup> Republic of Zambia, The Monthly Central Statistical Office, Volume 52 July 2007, p6.

stagnant, infrastructure was bad and there was a general failure to maintain the industrial sector due to lack of these industries to absorb the ever changing increasing population in gainful employment.<sup>55</sup> In short the mining sector failed to spark the growth of the many secondary industries which could have provided employment opportunities.

This situation continued until 1991 when the Movement for Multiparty Democracy (MMD) took over government and introduced drastic economic changes. Anderson described the crisis that the new government had to deal with as:

*"a declining GDP, triple digit inflation rates budget deficits averaging 14% GDP, declining investment savings, a flourish black market for foreign exchange, shortage for basic goods and services dilapidated state of physical infrastructure, low levels of business and consumer confidence, huge external debts and poverty embracing 70% of that population."*<sup>56</sup>

This economic crisis prompted the Chiluba government to discard the socialist oriented policies of the former government which were geared towards a centrally planned economy. When the MMD government introduced a free market economy, its intention was to redeem the country from the economic difficulties it faced during the UNIP era and to achieve this, the government embarked on economic policies that dwelled on diversifying the economy. This was done by privatizing state owned businesses, market liberalization, promotion of the Agriculture and tourism sectors, economic stabilization and public service reformation.<sup>57</sup> In its quest to save the economy, the government also needed financial aid from the international community. It therefore followed that the governments' policy of liberalization hinged by and large on conditionalities placed by the International Monetary Fund and World Bank upon governments' intention to use the Banks resources.

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<sup>55</sup> Julian Shoko, Impact of Privatisation on Contracts of Employment, Obligatory Essay, UNZA 2000 p viii.

<sup>56</sup> G.L.Anderson, 'The Global Economy and Society' A world Survey Report. Paragon House, (2000) p166.

<sup>57</sup> Zambia Investment Climate Statistics, 2007.

Driven largely by the anticipated privatization of the country's copper mines, which represent the largest earnings in Zambia's foreign exchange, foreign direct investment has seen a significant increase in recent years. The comprehensive sale of nearly all government owned enterprises since 1992 has effectively reduced the state's control on 80% of the country's economic activity.<sup>58</sup>

These new policies entailed opening up local markets and allowing foreign private investment. Most foreign countries started investing in Zambia and China has now become the third largest investor in the country after South Africa and Great Britain. Other countries that have invested in the Zambian market include Lebanon, France, Australia, Saudi Arabia and Holland.<sup>59</sup>

In 2004, Vedanta Resources of Great Britain replaced the Anglo American Corporation as the majority shareholder in the Konkola Copper Mines. The China Non-ferrous Metal Company's (CNMC) invested \$150 million (usd) investment in the NFC Africa Mining Company in Chambishi which is China's largest copper mining investment.<sup>60</sup>

Other leading investors in Zambia's mining industry are Glencore International of Switzerland, First Quantum Minerals of Canada the owners of Lumwana Mine Limited and the jointly owned Equinox Minerals of Canada and Australia. Fresh capital investment from these and other sources has increased Zambia's copper production.<sup>61</sup>

As a result of such developments the economy responded favorably, producing four consecutive years of solid growth, with real GDP rising 3.7 percent per annum between 1999 and 2002. GDP was also seen to have grown from 5.1 percent in 2004 to 5.4 percent in 2005. The sources of this growth were construction, manufacturing, wholesale and retail trade, and

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<sup>58</sup> <http://www.thewip.net/contributors/2007/labour-day-in-zambia>

<sup>59</sup> <http://www.thewip.net/contributors/2007/labour-day-in-zambia>

<sup>60</sup> <http://www.thewip.net/contributors/2007/labour-day-in-zambia>.

<sup>61</sup> Sunday Mail, January 4 2009, p6.

the services sectors.<sup>62</sup>The economy further continued to perform well with the preliminary real Gross Domestic Product (GDP) growth estimated at 5.8 percent from 5.2 percent recorded in 2005. This growth was largely driven by the mining, construction and transport sectors.<sup>63</sup>

Cognizance must be made of the fact that the Mining Sector has been a prime mover of the Zambian economy since independence. The mining industry which faced difficulties during the 1998-2001 periods received a major boost as a consequence of the rise in prices since 2003.<sup>64</sup> Higher prices, coupled with the privatisation of the major mines, allowed for enhanced investments in the existing mines on the Copperbelt as well as in the new mining ventures in the North-Western Province. In the recent past, it has been generating between six and nine percent of GDP, and contributes about 40,000 jobs to total formal sector employment which stands at 470,000<sup>65</sup>. The rapid expansion of mining and construction were the key drivers of growth during this period. The renewed expansion of the mining sector was as a result of recapitalisation and new investments following the privatisation of state-owned mines and the buoyant world commodity markets.

Despite the adverse external shocks associated with high international oil prices, the growth in real GDP continued to be positive in 2008 at a preliminary estimate of around 6.2 percent and the nation managed to attain a single digit inflation rate which was pegged at 8.9 percent.<sup>66</sup>

The need for economic growth was by and large the chief aim on liberalisation of the economy, where the government had anticipated it would create jobs for the many Zambians who were

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<sup>62</sup> Budget Address by Honourable Minister of Finance and National Planning Peter Magande 28<sup>th</sup> January, 2005.

<sup>63</sup>E.J. Nyirenda, A.Shikwe 'Trade Union Country Report Zambia' Freidrich Ebert Stiftung Lusaka, (December 2003) p3.

<sup>64</sup> Fifth National Development Plan, Government of the Republic of Zambia. Ministry of Finance and National Planning, Lusaka, 2006, p22.

<sup>65</sup> Fifth National Development Plan, Government of the Republic of Zambia. Ministry of Finance and National Planning, Lusaka, 2006, p60.

<sup>66</sup> Budget Address by Honourable Minister of Finance and National Planning Peter Magande 25<sup>th</sup> January 2008.

unemployed. Therefore the recapitalisation of the mines, the development of support infrastructure such as the communication networks, power and water systems enhanced production and led to employment generation.<sup>67</sup>

Although such reforms were put in place, the impact on employment has been a drastic fall in the formal employment and an increase in informal and other precarious forms of labour. Therefore governments intention of job creation proved futile as a mass of Zambians even up to date are still unemployed. Commenting on the attitude of investors with regards helping to improve the Zambian Labour Market Chairperson of the Kitwe Chamber of Mines Eddie Kapungulya had this to say:

*“things have changed drastically....the new mine owners started afresh with a view to create deliberate confusion so that they could benefit not just by lowering costs but by managers themselves getting contracts,, ”<sup>68</sup>*

It can be seen from the above comment that liberalization in itself really had a great impact on the protection of the rights of local employees as it resulted in job reduction, massive job losses and shedding off and most investors filled up top positions. Most Multinational Corporations retrenched more than half of the workers and would come up with reasons like the work force was too large to sustain or there were no jobs for them. A good example is Shoprite Checkers which after buying off almost all the National Home Stores retrenched all the local workers in 1995.<sup>69</sup>

The Mining sector gives a good illustration of the drop in employment levels arising from the privatization programme and ensuing restructuring. In 1991 the Mining sector accounted for

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<sup>67</sup> Budget Address by Honourable Minister of Finance and National Planning Peter Magande 3<sup>rd</sup> February 2006.

<sup>68</sup> I. C. Musonda and N. Kalindi, 'The Minimum Wages Effect' Zambia Analysis Report, Issue No. 02 (June 2007), p18.

<sup>69</sup> Zambia Privatization Agency Status Report, September, 2006.

over 64,000 employees.<sup>70</sup> As a result of privatization of the Mining Companies, in 2000, the Mining and quarrying sector accounted for only 35,000 employees. The public sector was not spared from the loss of employment as a direct result of the public service reform programme. Between 1997 and 1998 an estimated 15,000 workers were declared redundant or induced into premature voluntary retirement.<sup>71</sup> The high labour market costs that resulted from the high redundancy and retirement benefits led to a significant numbers of employers to increase the use of casual workers at the expense of permanent and pensionable employees. Nonetheless, the vast number of unemployed or underemployed Zambians is what makes exploitation of labour so widespread.<sup>72</sup> For example three years ago, 51 Zambian miners were killed in an accident at the BIGRIMM (Beijing General Research Institute of Mining and Metallurgy) explosive factory, a multi-million dollar joint venture between China, and the NFC Africa Mining Company.<sup>73</sup> The accident, caused by a massive explosion inside the manufacturing plant, killed all of the workers who were trapped inside. Neither management nor the Chinese staff employed at the plant were among the injured.

In July of 2006, underground operations at a Chinese-owned coal mine in Sinazongwe were suspended due to unsafe working conditions. When Regional Minister Alice Simango attempted an unannounced visit to the mine she found that the workers are kept like pigs and subjected to a dangerous environment," she said. "They are kicked and beaten as though they are not human beings."<sup>74</sup>

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<sup>70</sup> E.J. Nyirenda, and A. Shikwe, 'Trade Union Country Report Zambia' Freidrich Ebert Stiftung Lusaka, (December 2003), p4.

<sup>71</sup> E.J. Nyirenda and A. Shikwe, 'Trade Union Country Report Zambia' Freidrich Ebert Stiftung Lusaka, (December 2003), p4.

<sup>72</sup>The National Employment and Labour Market Policy (Increasing Employment with Decent Working Conditions) GRZ, November, 2004, p3.

<sup>73</sup> Article by Nebert Mulenga, 'Poor Pay A Thorny Labour Issue' Times of Zambia 30 April 200, p8.

<sup>74</sup> <http://www.thewip.net/contributors/2007/labour-day-in-zambia>

Furthermore owing to the recent collapse in copper prices on the International Market, Zambia is still experiencing a massive shed off of workers by the investor companies who claim to have no financial capacity to keep a large workforce. A recent sad development is that which happened at Luanshya Copper Mines in December 2008 where all the workers were retrenched and the company ceased operations. This has led to an increase in the number of unemployed people thereby resulting in an increase in the poverty levels in the nation. To make matters worse, amongst the people that lost their jobs most of them were casual workers without decent working conditions thus making it difficult for them to be entitled to any benefits.

Due to such happenings, the Zambian labour market continues to be characterized with high levels of unemployment, as a result the structure and quality of employment has equally changed with a shift from durable and permanent jobs to part time, temporal and casual employment<sup>75</sup>

### **3.3 ANALYSIS OF THE EXTENT OF CASUALISATION IN ZAMBIA**

Before laying out the extent of casualisation it is important to understand what the concept entails. Traditionally, casual labour referred to work conducted for defined period and during peak business period. Casual workers will be called to supplement full time workers in times of high business activity, particularly in retail.<sup>76</sup>

In Zambia the Employment Act<sup>77</sup> does recognize the existence of a permanent employee, whose contract operates for more than six months (legally called a written contract)<sup>78</sup> and a

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<sup>76</sup> O.Bodibe, The Extent and Effects of Casualisation in Southern Africa: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe. Research Report for the Danish Federation of Workers (November, 2006), p 4.

<sup>77</sup> Chapter 268 of the Laws of Zambia.

<sup>78</sup> Section 28 of CAP 268 of the Laws of Zambia.

casual worker<sup>79</sup>, one who works under a specific arrangement for discreet jobs that are paid on a daily basis for each contract running for a maximum of six (6) months.

It is not in dispute that employing workers on a casual basis is legal, the major problem is how increasingly casual employees are filling up positions that are permanent in nature. It is thus imperative at this point to make a distinction between casual work and casualisation. The former entails work which is not of a permanent nature whilst the latter is understood to be a practice that makes the continual use of casual work a permanent feature.

Casualisation further entails that the employers have deliberately decided to create a situation where despite their being permanent work they do not want to engage permanent workers to avoid paying them social and terminal benefits defined under the employment Act. Casualisation is a process by which employment shifts from a preponderance of full time and permanent positions to higher levels of casual positions.<sup>80</sup> Casualisation involves the spread of bad working conditions, insecurity, irregular working hours, low wages and the absence of standard employment benefits.<sup>81</sup>

It is imperative to also note that casualisation is driven by three forces;<sup>82</sup> the first is economic influence, Liberalisation and privatization which have brought about an influx of international capital to Zambia especially in the mines. To maximize and keep labour costs low, employers may decide to go the casualisation route. The second is corporate strategy, where companies adopt an out and out policy of engaging labour on flexible terms. Under this type of force, workers are regarded as tools of production whose interests do not matter so long what is done

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<sup>79</sup> Section 3 of CAP 268 of the Laws of Zambia.

<sup>80</sup> O. Bodibe, The Extent and Effects of Casualisation in Southern Africa: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe. Research Report for the Danish Federation of Workers (November 2006), p11.

<sup>81</sup> L.M. Mulusa, The Impact of South African on the Liberalised Zambian Economy, University of Stellenbosch, 2005, p11.

<sup>82</sup> K. Muluzi, 'Roots of Casual Work Run Deep' Zambia Analysis Report Issue No.02 (June 2007), p16.

is good for the company or organization.<sup>83</sup> The third force is the weakness in the labour legislation as shall be shown in the next chapter.

The increased global competition has also been a cause of casualisation, companies argue that through casualising employment they cut costs and also enhance flexibility. As a prelude to privatisation, casualisation has been effected as a cost cutting measure and as a way of attracting investment (as low labour cost would result in high profits). Also government and employers tendency to put investment and profits before decent and dignified work has equally exacerbated casualisation of labour.

It is really sad to note that casualisation as a form of labour injustice has been compounded by numerous other injustices on workers therefore the status quo of most of the workers in Zambia prompted the late president Mwanawasa to express governments dislike of casualisation and other forms of injustices on the worker. He stated that the government was against casualisation and as such no one should take advantage of the high prevailing unemployment levels to engage workers on casual basis<sup>84</sup>

The incidence of casualisation is more visible and on the increase in the formal sector and this can be said to be more evident in almost all the sectors of the economy. In the mining sector for example, it has been observed that the levels of casualisation are far above what obtained when the mines were under state control.<sup>85</sup> This is surprising because levels of unemployment reduced to zero or half at the time when the economy was liberalized.<sup>86</sup> On the Copperbelt the workers complain that the mining companies have exacerbated the employment issue by

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<sup>83</sup> Jennipher Bwalya, Effects of A Liberal Economy on the protection of the rights of the worker, Obligatory Essay, UNZA 2006, p20.

<sup>84</sup> A speech by the late President Mwanawasa during labour day celebrations, Article by Muyunda Lifuna Times of Zambia, 2<sup>nd</sup> May 2006.

<sup>85</sup> Julian Shoko, Impact of Privatisation on Contracts of Employment, Obligatory Essay, UNZA 2000 p vii.

<sup>86</sup> O.Bodibe, The Extent and Effects of Casualisation in Southern Africa: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe Research Report for the Danish Federation of Workers (November 2006), p 130.

subcontracting labour to firms which then engage casual workers on continuous short term contracts. What is practically obtaining is that investors are taking in more profits but the miners are not seeing the benefits as they continue shifting between these short term contracts.

No wonder there have been cries that in industries like mining and construction there has been a growing army of permanent casuals who are continually rolled from one short term contract to another.”<sup>87</sup>

Most investors are exploiting Zambia workers due to the feeling that Labour Laws make excessive demands to pay terminal benefits to employees. Many employers plead that they simply cannot afford to hire workers on contracts longer than 6 months because they will have to pay huge pensions benefits, gratuities etc

### **3.4 EXAMPLES OF CASES ON CASUALISATION**

#### **3.4.1 THE MINING SECTOR**

The mining sector has been the major culprit that practices casualisation, thus in an incident concerning complaints about the tendency to employ casual workers for a long time without confirming them into permanent staff, the Republican Vice President when he visited one of the foreign companies on the Copperbelt had this to say:

*“Casual workers are here to stay, but they should not outstrip permanent employees because they are not pensionable”<sup>88</sup>.*

This came after widespread condemnation of the casualisation of labour in the country which surfaced following the accident at BGRIMM Explosives Limited in Chambishi in which 49

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<sup>87</sup>Grayson Koyi Director of Research and Information for the Civil Servants and Allied Workers of Zambia (CSAWZ) *Zambia Analysis Report*, Issue No. 02 (June 2007), p17.

<sup>88</sup>K. Kaswende and Z. Katasefa, ‘Casual Workers are here to stay’ The Post Newspaper 7 May 2005. p2.

workers, most of them employed on casual basis, perished. It emerged that casual workers at BGRIMM were earning between K60, 000 and K100, 000 per month. Vice-President Mwape had earlier questioned LCM management on why they had more casual workers than permanent ones and why the company could not devise better ways of turning contractual jobs into permanent ones. LCM chief operating officer James Arthur told Vice-President Mwape that he was aware of the statutory limits of how long an employee should be employed on a casual basis and promised to work to solve the problem.<sup>89</sup>

Furthermore an interview with some casual workers from Lumwana Mine Limited in North Western Province revealed that most of them were being subjected to ten hours of work every day and in as much as they get 1.5 million as a monthly salary, they are not entitled to any leave days or retirement package.<sup>90</sup> As a result of this most of them are deprived of decent working conditions.

On the other hand Chambishi Mines operates a rather unusual system in which of the 2,200 workers only 52 have permanent jobs.<sup>91</sup> Taking into account the prevailing economic ramifications and the situation in the mining industry it is sad to note that in an event that such workers employment contracts are terminated, they will go back to join the poverty stricken informal sector without anything to keep them going. This is a point illustrating how bad the conditions of casual workers are in the mining sector. One would therefore sympathise with the more than 2000 employees retrenched from Luanshya Copper Mines where it is difficult to tell what their plight will be following the conditions of service that are prevailing in the mining sector.

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<sup>89</sup>K. Kaswende and Z. Katasefa, 'Casual Workers are here to stay' The Post Newspaper 7 May 2005. p2.

<sup>90</sup>Personal Interview with Kawawa Banda from Lumwana Mine Limited, 13<sup>th</sup> November 2008.

<sup>91</sup> Survey of the Zambia Mining Industry, 1995-2005, Chamber of Mines Zambia, Ndola 2005, p24.

Furthermore casualisation is more prominent in the retail trade sector. The best case in point are the retailers from South Africa such as Pep stores, Game and Shoprite etc who have set up shops in the country to take advantage of the liberalization of the economy. Shoprite Manda Hill is the second most profit making branch in Lusaka and has spread shops in almost all the nine provinces of Zambia.<sup>92</sup>

From the trend in casualisation, it is evident that these retailers commitment is to promote South African products and not job creation as their activities do reveal that they are purely interested in seeking markets and profits and not help in job creation.

### **3.4.2 RETAIL TRADING SECTOR (SHOPRITE CHECKERS)**

The research did reveal that these companies engage a bulk of their employees on casual basis even for jobs that are essentially permanent such as cashiers. Interviews carried out with a few casual employees from Shoprite Checkers Manda Hill revealed the following.

Aaron Simwinga 33 has been working as a cashier for Shoprite Checkers Manda Hill in Lusaka for the past eight years. His initial six-month contract has been rolled and renewed during this period. His basic pay is K 150,000 per week for ten hours in a day. He is not entitled to any allowances including transport and lunch. Traveling by bus to work costs Aaron K6000 per day which comes to K60, 000 per week. Even if he is earning so little money, he is happy to have a job than nothing and would never raise his complaints with management for fear of losing his job.

Eunice Mwale aged 28 is employed as a cashier on a six month contract. She has been working for 6 years and her contract has been renewed on several occasions under similar conditions. She stays in Kaunda Square and is not married but has two children. She complained about the

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<sup>92</sup> The Post Newspaper, 24 May, 2003.

low wages to which she attributed as being inadequate to meet her basic needs as she has to pay rentals and also send her children to school.

Francis Mwamba 26 years old has been with Shoprite for 4 years on the same salary as Eunice and Aaron. Despite being single he complained of the salary being too little to cater for what he needs but opts to continue working for the company as it's the only means through which he can earn a living.<sup>93</sup>

The foregoing studies are examples of the struggles for survival that most casual workers go through. It therefore follows that even if these workers had to work for ten years or more they would still be treated as casuals and never be entitled to terminal benefits.

### **3.4.3 ELECTRICITY PROVIDER: ZAMBIA ELECTRICITY SUPPLY CORPORATION**

It is important that cognizance is made of the fact that local investors are equally culpable in the suppression of workers' rights. A case in point is the government owned parastatal Zambia Electricity Supply Corporation (ZESCO) with Headquarters in Lusaka where a number of casual employees were fired upon complaining about their poor working conditions. In early January, 2007 police arrested and, according to media reports, imprisoned 30 casual workers at the Kafue Gorge project of the Zambian state electricity company ZESCO who had gone on strike. Yotam Mtayachalo, General Secretary of the National Energy Sector and Alliance Workers (NESAWU) explained that they were protesting because many casual workers in ZESCO were getting low salaries that are never paid on time.<sup>94</sup> Amidst such realities workers try to endure these substandard working conditions hoping for a light at the end of the tunnel.

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<sup>93</sup> Personal Interviews with the affected casual employees at Shoprite Checkers Manda Hill Branch, 3<sup>rd</sup> December, 2008.

<sup>94</sup> International Trade Union Confederation (ITUC) - Confederation Syndicale Internationale (CSI) and International Gewerkschaftsbund (IGB) Annual Survey Report of violations of Trade Union rights 2007, Lusaka.

Employers regularly punish or fire workers who demand or merely require their rights. Despite being a parastatal body ZESCO has continued to engage many of its workers as casuals but the extent is worrying. This trend in casualisation by ZESCO prompted the late President Mwanawasa to direct Rodney Sisala to furnish him with information related to complaints of casualisation in ZESCO. The president stated that it did not matter whether the companies involved were private or parastatal.<sup>95</sup> It is therefore saddening to note that even though the president had recognized and expressed his dislike for casualisation, ZESCO has continued with the malpractice as revealed by the following case study.

George Banda 33 has been working in the operations maintenance department for three years. He reports for work at 06.45am everyday and his employment contract is renewed every 6 months. His salary is K1400 per hour and instances where there are no shut downs or any faults to repair the day for him comes to an end thus getting less cash. Like any other casual worker he is not entitled to any benefits enjoyed by permanent workers for example part of his salary is not remitted to NAPSA, no leave or leave pay. Therefore in the event that his employment was terminated today he would just go home with a salary for that month and no benefits to continue sustaining him.

In a similar situation is Chali Musonda who has been employed for 2 years 5 months, he has a craft certificate in electricity but he is still succumbed to the poor working conditions that casual workers without any qualifications go through. His complaint was that casual workers are more or less not recognized and respected by the company. This he attributed to the fact that despite them working for many hours, their salaries are not commensurate to the number of hours. And also when they are bereaved, no funeral assistance is rendered to them thus making them more or less a shadow of employees. He however averred that he will still hold on to the

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<sup>95</sup> Post Monday October 23, 2006 by Mwala Kalalika, Kabompo and Zumani Katasefa, Ndola pp 1 & 4.

job as it is the only means he has to enable him sustain his family and send his three children to school, though the salary barely caters for the basic needs.<sup>96</sup>

### **3.4.5 HOSPITALITY SECTOR (RIDGEWAY SUN)**

The findings also revealed that there is an ongoing trend of casualisation in the hospitality service sectors. A good example is Ridgeway Sun formerly known as Holiday Inn in Lusaka, where most workers are employed on casual basis. Lydia Chibulu Kabamba 23 was employed by Holiday Inn in 2005 as a waiter and cashier on a 6 months contract. Her salary was pegged at K351000 per month and was entitled to one day leave per month. Moving from Kaunda Square to Holiday Inn every day is expensive and at the most she used to spend K10, 000 as transport per day, being the bread winner for the family this salary was just too little to sustain her. After 6 months she was not confirmed as a permanent worker but was advised that she would be confirmed after another 6 months and she continued working.

In 2008 she became pregnant, and her employer terminated the contract of employment on grounds that she would not be efficient on duty though the contract had no such provision. Having worked for more than two years, she was only entitled to the number of days she had worked for in that month.<sup>97</sup> This story is a sad one as it illustrates the injustices that are faced by casual employees especially in such an instance where one has to be dismissed because of getting pregnant. This attitude by employers has been attributed to the weakness in the labour market thus they take advantage of the high levels of unemployment in the country to employ casuals who they can engage and fire on impulse.<sup>98</sup>

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<sup>96</sup> Personal Interviews with the casual workers at ZESCO Head Office Lusaka, 2<sup>nd</sup> December 2008.

<sup>97</sup> Personal interview with the affected worker in Kaunda Square, Lusaka, 15<sup>th</sup> October, 2008.

<sup>98</sup> Zambia Analysis Report, Issue No 02 of June 2007, p16.

### **3.4.6 SECURITY COMPANY: (GUARD ALERT ZAMBIA)**

This is a Zambian Company that has been operating in Zambia for a number of years and has also adopted the trend in casualisation of labour. An interview with Fides Mwape 26 a Security Guard at Kambendekela House in Kamwala revealed that the working conditions for most of the security guards are alarming. She has been working with the company for 1 year 6 months with a monthly salary of K250, 000. Although she is not married her complaint was that the salary can hardly sustain her as she has to pay rentals, and also cater for the bus fares from Kamwala to Matero which is about 12000 per day. In order to cut down on expenses she instead walks from Kamwala to town and only gets on one bus home, thus saving money to carter for other needs. Her further complaint was the number of working hours they are succumbed to, for instance she reports for work at 07.00hours and works for 10 hours every day of the week. She stated that although they work for such abnormal hours, they are not paid overtime and that if you are working night shifts there is no shift differential for you. Her contract of service provides that probation will be for six months but she has been working for more than one year on the basis that she would be confirmed later.

Geoffrey Chibinga 28 who is married with a child has been employed by the same company for 2 years 3 months and also gets a salary of K250000. He resides in Kaunda Square and like Fides has to report to Kamwala at 07.00 hours every day of the week for 10 working hours. He complained that his salary cannot see him through the month and in most instances the salaries are not paid on time. He also averred that employees are not entitled to any leave days and that this is not even compensated for as leave pay. Attempts to look for alternative means to help

sustain his family have not been successful considering the many number of hours that he has to be at work.<sup>99</sup>

The above studies clearly show why casualisation has become a problem of great controversy, because increasingly casual employees are filling positions that are permanent in nature. To make matters worse their working conditions are very poor and most of them have been turned into slaves in their own country.

### **3.5 THE IMPACT OF CASUALISATION ON THE ZAMBIAN ECONOMY**

Although casualisation impacts negatively on workers, its effects on the economy may be dire. To begin with casualisation deprives the government of the revenue which should have accrued in contributions required by statute such as National Pension Scheme Authority (NAPSA)<sup>100</sup> and Workers Compensation (WC)<sup>101</sup> this makes the economy not to develop. Casualisation does not also provide stability for the affected employees, as a result consumer spending falls since casuals do not have the confidence to help sustain it. Furthermore casual workers end up feeling detached from their jobs and also lack a sense of loyalty to their employers. This later leads to a drop in productivity as the employers will be reluctant to invest in training workers who are on short term contracts. Such trends may have a long term effect on the quality of labour and the economy at large.

Most Companies use casual workers not only to reduce labour costs but to also expand capacity beyond permanent's normal working hours. Casuals more often work late and work on Sundays and public holidays. This is definitely a strategy to increase total employment but avoid obligations in the law to pay overtime. In addition, employers opt to use casual labour in order

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<sup>99</sup> Personal Interviews with the affected Security Guards at Kambendekela House in Kamwala, 13<sup>th</sup> December 2008.

<sup>100</sup> Act No. 40 of 1996.

<sup>101</sup> Chapter 271 Of the Laws of Zambia.

to extend the working hours that would typically be worked by permanents. They find it easier to hire casuals and fire them whenever they feel like, this is a mechanism to evade the provision relating to the hiring and dismissal of permanent employees.<sup>102</sup>

Another effect is that the unstable working conditions that casuals are subjected to lead to economic insecurity for both the worker and the family. In the event that a worker is a breadwinner and earn below the poverty line, and if there is no other person working or receiving some income then the entire family is placed at risk.

### 3.6 CONCLUSION

Following the liberalisation of the economy, Zambia has created a lot of incentives to attract investment. These incentives have ranged from tax havens, tax rebates to several other investment incentives such as loosened foreign exchange controls and other exemptions given prescribed under the Zambia Development Agency Act.<sup>103</sup> As a result of the tax relief's, the investors make huge profits which they alone benefit from. It is saddening to speak the least, that despite the special treatment given to investors most of them have continued to practice Casualisation where they perpetually engage employees on long term contracts so as to fill positions meant for permanent workers. Most of these casual workers especially in the mining industry work in unsafe conditions, and earning only meager salaries no wonder the Deputy President for Zambia Congress of Trade Unions Sam Phiri lamented that:

*"Most of the foreign investor companies are purely seeking profits at the expense of the local workers leaving some workers to be turned into slaves in their own country."*<sup>104</sup>

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<sup>102</sup>O.Bodibe, The Extent and Effects of Casualisation in Southern Africa: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe. Research Report for the Danish Federation of Workers (November 2006), p11.

<sup>103</sup> Act No.11 of 2007.

<sup>104</sup>The Post Newspaper, 2 May 2007.

It can thus be seen that Casualisation has really become a serious problem which needs urgent attention. The practice has continued due to the loopholes that exist in our labour laws allowing the employers to hire casual employees to fill up permanent positions. These loopholes are taken advantage of by many employers to minimize investment in their employees. Employers have also taken advantage of the poverty and high levels of unemployment in the country to perpetually engage casuals.

There is therefore need for the government to strengthen the laws and fill up this lacuna so as to cater for this vulnerable group of workers who for a long time have continued to be exploited.

To this effect, the National Employment and Labour Market Policy launched by the Ministry of Labour and Social Security in 2005 has proposed to deal with this problem by ensuring that any employee who has served for more than six months with a particular company automatically becomes permanent.

## CHAPTER FOUR

### 4.1 THE EFFECT OF THE CURRENT LAWS ON RIGHTS OF EMPLOYEE AND THEIR FLAWS

#### 4.1 INTERNATIONAL LABOUR ORGANISATION

Since the year 1919 the International Labour Organisation (ILO) has formulated international Conventions on the rights of workers, and these conventions stand as the International Labour Standards in guidance of work.<sup>105</sup> By 1997, Zambia ratified a good number of ILO Conventions standing as the economy with the highest number of ratifications in Southern African Sub Region.<sup>106</sup> The protection of workers against the excessive exploitation is the very premise upon which the ILO was formed and it commits all member states to respect, promote and realise good faith in the principles and rights enshrined in the eight fundamental ILO Conventions (C).<sup>107</sup> These include the principle human rights relating to Freedom of Association and the Protection of the Right to Organise C. No.87 of 1948, Collective Bargaining C. No.98 of 1949 Forced Labour C. No. 29 of 1930, The Abolition of Forced Labour C. No. 105 of 1957, The Minimum Age C.No. 138 of 197, The Elimination of the Worst Forms of Child Labour C.No. 182 of 1999, The Equal Remuneration C. No. 100 of 1951 and The Discrimination (Employment and Occupation) C. No.111 of 1958. Most relevant labour standards are ILO Convention 26 on Minimum Wage Fixing Machinery that calls for minimum wage tied to cost of basic needs and productivity. ILO Convention 158 on Termination of Employment that calls for legal protection of workers to severance pay on termination of employment and ILO Convention 87 and 98 (Freedom of Association and

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<sup>105</sup> W. Sengenberger 'Decent Work: The International Labour Organization Agenda' *Friedrich-Ebert-Stiftung* 2/2001 p1.

<sup>106</sup> C. Anyangwe, 'Application of International Labour Standards in Zambia' presentation Paper, Lusaka, 1997, p8.

<sup>107</sup> W. Sengenberger, 'Decent Work; The International Labour Organization Agenda' *Friedrich-Ebert-Stiftung* 2/2001, p1.

Protection of the Right to Organize and the Right to Organize and Collective Bargaining respectively) that calls for the right of workers to organise and join unions without intimidation. The aforementioned instruments generally provide for the protection of workers against excessive exploitation. The ILO therefore commits all member states to respect, promote and realise good faith in the principles and rights enshrined in the eight fundamental ILO conventions. Furthermore these binding and international applicable Labour standards were laid down to ensure that in this globalised world, every country and multinational or other investor is aware of, respects and adheres to the necessary labour standards.<sup>108</sup>

Although Zambia has ratified the major Conventions promoting the fundamental principles and rights at work, significant numbers of workers do not benefit from the protection and entitlements that these Conventions offer, because a large number of workers remain unaware of their rights and remain unprotected from potential injustices or victimization at work.

As has been alluded to in the preceding chapters the large numbers of job seekers in Zambia's labour market, lead some employers to take advantage by not providing employees with the conditions of service that are stipulated by the law. This is what has led to an increase in the trend towards casualisation, to avoid the country's labour law obligations on decent work that attach to permanent and pensionable employment.<sup>109</sup> Furthermore Convention 95 which Zambia ratified to in 1979 provides for the protection of wages. This Convention aims at securing full and prompt payment of wages in a manner which provides against abuse. Therefore abuse practices of worker by the investors are in defiance of the convention.

A government has to ensure that there is a legislative policy making mechanism that will effectively combat or prevent workers rights violations.

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<sup>108</sup> Jennipher Bwalya, Effects of a Liberal Economy on the Protection Workers Rights in Zambia. Obligatory Essay, UNZA, 2006, p27.

<sup>109</sup> S. K. Mwenechanya, 'Legal Empowerment of the Poor -Labour Rights in Zambia' An Issue Paper prepared for the UNDP Commission, Lusaka. (August 2007), p 30.

In Zambia however what is seen is that government is not interested in the type of jobs that will be created by the investors. In that investors constantly give Zambian workers poor conditions of service that eventually expose them to inhumane working conditions. Therefore it is usually not keen to confront these investors by prescribing the type of jobs that they need to create for fear of losing these investors. As such government is willing to give a blind eye to some of the violations of workers' rights that come with the jobs created by these multinational companies even were labour laws are being violated.<sup>110</sup>

From the foregoing, one may argue that the ILO standards do play a limited role in Zambia as there has been no significant pressure by the government to reform National Standards that need to be in line with ILO requirements. However, the lack of domestication of ratified ILO conventions in local laws has also rendered some of them unenforceable in Zambian courts making it possible for investors to continue with their exploitative acts. To support this point one may cite the case of Zambia **Sugar PLC V Fellow Nanzaluka**<sup>111</sup> the respondent was employed by the appellant in 1992. His employment was terminated without notice in 1996 and was paid three months salary in lieu of notice. He took out an action in the industrial relations court, the IRC accepted that the conditions of service had been complied with but held that the action was contrary to the international labor convention No. 158 of 1982 which forbids termination of workers' employment without valid reasons. On appeal the Supreme Court held that international instruments on any law although ratified to an assented by the state cannot be applied unless they are domesticated and Zambia had not domesticated the convention.

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<sup>110</sup>O, Bodibe, 'The Extent and Effects of Casualisation in Southern Africa: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe'. Research Report for the Danish Federation of Workers, (November 2006), p134.

<sup>111</sup>S.C.Z. Judgement No. 82 of 2001.

## 4.2 THE CONSTITUTION

In Zambia, employment is guided by both international instruments and local pieces of legislation. The Constitution which is the supreme Law of the land has some provisions that aim at protecting workers rights.

Under part III of the Constitution there are certain fundamental rights which are an employee may enjoy, namely; the Protection of fundamental rights and freedoms,<sup>112</sup> Protection from slavery and forced labour,<sup>113</sup> Protection of freedom of assembly and association<sup>114</sup> and Protection from discrimination on grounds of race sex.<sup>115</sup>

Due to the increase in foreign investors in the country, Casualisation has become rampant and most casuals are deprived of the fundamental rights which are prescribed in the constitution as they are subjected to indecent working conditions.

What is obtaining on the ground is that these new investors take advantage of the high poverty levels in the country to apply slave conditions of work on Zambians workers. Such a practice is really against the country's constitution which protects Zambian workers from exploitative employment that exposes them to slavery and slave condition. It is also against ILO conventions which set International Labour Standards at protecting the dignity and basic human rights of workers at the place of work.<sup>116</sup>

## 4.3 THE EMPLOYMENT ACT

The Act was enacted in 1965 to provide a legal framework for regulating the employment relationships between employers and employees in Zambia. In this respect it provides for engagement of person's on contracts of service, appointments of officers of the Labour

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<sup>112</sup> Article 11 of Chapter 1 of the Laws of Zambia.

<sup>113</sup> Article 14 of Chapter 1 of the Laws of Zambia.

<sup>114</sup> Article 21 of Chapter 1 of the Laws of Zambia.

<sup>115</sup> Article 23 of Chapter 1 of the Laws of Zambia.

<sup>116</sup> Permanent Human Rights Commission, Annual Report of 2000, p 4.

Department and conferring of powers on such officers, protection of wages of employees, control of employment agencies among other things. The Act was amended in 1997 to accommodate the investors by lessening their responsibilities towards the workers. This may be seen from the statutory obligations withdrawn from the employer which include, mandatory provision of housing, medical and transport allowances.<sup>117</sup> It follows that after taking away the benefits of the employee under the repealed law everything that was mandatory on the employer to satisfy, is in the current law a subject of collective agreement.

The Act does have provisions that make reference to a casual worker, pertinent amongst them is section 3 which defines a casual worker as any employee the terms of whose employment provide for his (or her) payment at the end of each day and who is engaged for a period of not more than six months.<sup>118</sup>

From the definition above it can be seen that engaging someone on casual basis is legal, the only problem is that the Act never set the minimum number of limits the same person can be re-hired as a casual worker without being engaged as permanent and pensionable member of staff.

Therefore the practice of casualisation exploits this loophole in the Employment Act which fails to explicitly make it illegal to hire casual workers on permanent positions. Due to this ambiguity, one would fail to tell whether the practice by most of the investors is illegal or not.

It would not be surprising therefore for one to conclude that the law in its current form is a recipe for industrial unrest due to its being too vague. Since section 3 provides that a casual is one paid at the end of the day and the contract not more than six months, most employers have misunderstood this provision by perpetually engaging casuals to work even as long as ten years. They work under the impression that so long they keep renewing the six months contracts it suffices as treatment for a casual worker.

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<sup>117</sup> Section 41 and 42 of the Act prior to the Amendment Act No. 15 of 1997.

<sup>118</sup> Section 3 of Act No. 25 of 1997

### **4.3 THE INDUSTRIAL AND LABOUR RELATIONS ACT**

This Act<sup>119</sup> regulates industrial relations in Zambia, it provides for the establishment organisation and management of trade unions, employers associations as well as employers organizations. The Act guarantees the rights of employees to undertake collective bargaining to negotiate conditions of service. Recognition Agreements serve as a way that the employer will show that he has recognized the trade union as a representative of, and bargaining agent for the eligible employees represented by the trade union so recognized for the purpose of regulating relations between the employer or employers organisation and the trade union.<sup>120</sup>

It therefore follows that a casual employee is free to join a trade union as guaranteed in the Industrial and Labour Relation Act. However, in most instances causal employees are extremely reluctant to join trade unions due to the short term nature of their contracts of service. Owing to this, most casuals end up not being covered by collective agreements in a number of cases and as such the labour laws offer little or no protection to them as they remain highly vulnerable in the work place.

### **4.4 THE MINIMUM WAGES AND CONDITIONS OF EMPLOYMENT ACT**

The Minimum Wages and Conditions of Employment Act<sup>121</sup> provide important safeguards against erosion of decent working conditions mainly targeted at the vulnerable working groups. There are a few exceptions, such as government employees, employees of a district, Municipal and city councils, domestic employees, unionised employees and those with a specific employment contract attested by the Ministry of Labour and those in management positions.<sup>122</sup>

Prior to the repeal of the Minimum wages and Conditions of Employment General Order and Shop Workers Order 2002, a casual worker was not protected under any labour law instrument.

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<sup>119</sup> Chapter 269 of the Laws of Zambia.

<sup>120</sup> W.S. Mweenda, *Employment Law in Zambia Cases and Materials*.(Lusaka: UNZA Press, 2004) p97.

<sup>121</sup> Chapter 276 of the Laws of Zambia.

<sup>122</sup> Section 2(1) of both Acts.

It was not until June 2006 when the Minimum Wages and Conditions of Employment (General) Order and (Shop Workers) Order 2002 were repealed under Statutory Instruments No.56 (Shop Workers) Order and No.57 (General) Order that the casual worker was offered some protection. Under these Statutory Instruments a casual worker is at least guaranteed an hourly wage equivalent to the monthly wages spelled out in the wage tables.<sup>123</sup>

Although it may appear that a casual employee is protected under certain provisions of the Statutory Instrument's it is difficult to tell what provisions they qualify for. For instance the Statutory Instruments are silent on whether a casual worker is entitled to allowances such as lunch, transport or housing. Considering that the Statutory Instruments were meant to cover vulnerable employees and also ensure that a worker gets a minimum wage it may be argued that these pieces of legislation are discriminatory. This is because a casual worker who is one of the most vulnerable types of employee in this country is *prima facie* not covered by the two Statutory Instruments. It is sad to note that despite such laws having been put in place, they serve no purpose as they are ambiguous and discriminatory in nature. As a result of this, employers take advantage of the loopholes and continue exploiting casual workers who can not rely on the law for their protection.

#### **4.6 THE NATIONAL EMPLOYMENT AND LABOUR MARKET POLICY**

In order to respond to various changes on the labour market, the Government, through the Ministry of Labour and Social Security, has developed a National Employment and Labour Market Policy (NELMP).<sup>124</sup> The policy stipulates the role of government in creating a conducive environment that will generate employment and ensure an effective and efficient labour market. It further gives guidance on all labour matters in the country. Through the adoption of this policy Zambia was conforming to the ILO Convention 122 on employment

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<sup>123</sup>Section 1(1) (a) of the (General) Order.

<sup>124</sup> The National Employment and Labour Market Policy (Increasing Employment with Decent Working Conditions) GRZ, November, 2004.

policies that it ratified. Despite the fact that the NELMP emphasizes on safeguarding workers rights, strengths, social dialogue and improving their conditions which are all oriented towards productivity and social economic growth, the government has failed to ensure that the fundamental rights and principles of work are realised.<sup>125</sup> As a result the investors have continued to break the Labour laws and consequently subjecting Zambia workers to inhumane conditions of service.

#### **.4.7 CONCLUSION**

From the foregoing it is clear that the Zambian Labour laws operate to the detriment of the local employees. This is because despite cries from the labour movement in Zambia to end Casualisation, the practice has continued by many investors who take advantage of the laxity in the Employment Act.

Furthermore, although Minimum Wages and Conditions of Employment Statutory Instruments No. 56 and 57 were reviewed, a casual worker receives little or no protection at all under the said instruments. This is evident from the fact that the Statutory Instruments are silent on the type of allowances that a casual worker may be entitled to. As a result of such uncertainties and the governments' reluctance to improve the labour laws, it has been blamed as the main perpetrator of Casualisation.<sup>126</sup>

It is however regrettable to note that despite the Industrial and labour Relations Act being amended, the amended Act<sup>127</sup> still has no provisions expressly protecting the casual employees. Hence the reformations in the labour laws do not seem to be serving any purpose as a mass of the workers are not being guaranteed the requisite protection.

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<sup>125</sup> Article by Anne Sampa, 'Human Resource Management: Caring for Workers' The Post Newspaper, Tuesday 1<sup>st</sup> May, 2007, p4.

<sup>126</sup> Interview with Joyce Nonde FFTUZ president, at Luangwa House Room 8 Cairo Road, Lusaka. 4<sup>th</sup> December, 2008.

<sup>127</sup> Industrial and Labour Relations (Amendment) Act No. 8 of 2008.

There is therefore need to fight this scourge by ensuring that government comes up with better legislation and other labour market changes that will bring about dignity and respect for the workers of this country. As Sengenberger aptly stated:

*“Labour Law is a necessary and important condition for the realization of labour Standards but it is not sufficient. An enabling policy framework is needed to promote labour standards effectively for the final responsibility of enforcing lies with the government”.*<sup>128</sup>

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<sup>128</sup> W. Sengenberger, Globalization and Social Progress. ‘The Role and Impact of ILO Standards.’ Bonn, (September 2005), p124.

## **CHAPTER FIVE**

### **5.1 RECOMMENDATIONS AND CONCLUSION**

#### **5.2 INTRODUCTION**

The objective of this paper was to determine the extent to which the rights of workers are safeguarded within the Zambia legal framework, and also the role investors play in ensuring that the rights of workers are respected. To this effect, the paper has shown that the prevailing conditions that are eminent in relation to the conditions of service of Zambian employees and particularly the casual workers are very bad. This is attributed to the liberalization of the economy by the government in 1991 which opened up markets to a lot of foreign investors. Government also amended the labour laws to make them conform to the dictates of a liberal system which action has impacted negatively on the rights of workers. In that the employers, especially new investors, have been given a leverage to violate workers' rights at will. This has been made possible by the loopholes existing in the labour laws which fail to expressly make it an offence for the employers to re-engage workers on positions that are permanent in nature. In leaving such lacunas unaddressed the investors continue running away from the obligations that go with long-term employment by using casual labour.

Taking into account the analysis of the research, it would be unwise for the author to conclude the essay without suggesting any solutions to the problem in casu. Based on this argument the following are the most important recommendations to be made in order to ensure that workers in Zambia enjoy adequate protection of the law.

#### **5.3 RECOMMENDATIONS**

Firstly, it must be noted that it is quite impossible to end casual labour but the casualisation practice can easily be done away with by closing the loophole in the Employment Act that allows

for the re-hiring of workers to fill up permanent positions. The Employment Act must therefore identify the type of work that should be termed as casual work. In addition the Act must further adopt the proposal by National Employment and Labour Market Policy to the effect that any employee who has served for more than six months with a particular company automatically becomes permanent

Even though the two statutory Instruments No. 56 and 57 on Minimum wage and Conditions of Employment appear to protect the casual employee with respect the qualification for a minimum monthly wage, loopholes still exist. There is therefore need to revise the Statutory Instruments so that it expressly states the minimum acceptable standards for the treatment of employees in Zambia and also the type of benefits that a casual employee is entitled to.

Furthermore the Zambia Development Agency Act must also include a provision to the effect that, the disregard of employment laws and gross abuse of workers' rights must be another ground for revoking the investment licence. The Act must further give a specific provision defining the investors' parameters in relation to their responsibilities towards workers. With such policies in place, foreign employers may strictly adhere to protecting workers rights.

The Ministry of Labour and Social Security which has been given the mandate to ensure that people comply with the labour policies is somewhat financially unstable. There is therefore need for improved funding which will contribute to the strengthening of the institutional and legal enforcement framework of the labour market. It is likely that these will contribute to the reduction in the number of violations of workers' rights.

The labour movement and government in particular must identify sectors in which casualisation of labour is most prevalent and develop innovative campaign strategies on casualisation of labour to

bring about public awareness on the adverse effects of casualisation on workers rights and the economy at large.

Considering that there are talks going on with respect to adopting a new Constitution, government and the concerned stakeholders must ensure that the rights of the worker are enshrined within the Bill of Rights of the New Constitution by expressly including among others the workers right to fair remuneration, equal work for equal pay, working under safe and healthy conditions.

In addition, it is important to note that the safety of workers needs to come first in the economic activities of the country. Therefore every employer must ensure that they invest in the safety of their employees as one cannot separate profits from labour.<sup>129</sup> In this regard, there is need to strengthen the Factories Act,<sup>130</sup> so that the working environment is safe for both the employer and employees.

It is also recommended that the two government institutions, Ministry of Labour and Zambia Development Agency should conduct regular sensitization programme for their offices with regards to their respective roles towards respect of employee rights when carrying on their investment ventures.

Finally it has been shown that due to lack of domestication of international labour standards some acts of abuse by the investors may not be enforced in our local courts. There is therefore need for the government to come up with an effective policy so as to domesticate the International Labour Standards so that such cases can be enforceable in our courts.

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<sup>129</sup> Labour Day Speech by late President Mwanawasa, Times of Zambia, 1 May 2005.

<sup>130</sup> Chapter 144 of the Laws of Zambia.

## 5.4 CONCLUSION

In finality, it may be expressed that the contents of this research reveal how inadequate the labour laws are with regards protecting the rights of workers in Zambia, particularly the casuals. However it is regrettable to note that despite a number of labour law reforms having taken place, a lot still needs to be done because there are a number of loopholes in the pieces of legislation governing labour matters. As a result most of the investors are taking advantage of such ambiguities to exploit Zambian workers.

Correlative to this argument, the study has also shown that investors mainly focus on making quick profits and not paying attention to the workers conditions of service. And since government equally places more importance on investors as they are a channel for generating revenue, as such government is willing to give a blind eye to some of the violations of workers' rights that come with the jobs created by these multinational companies even were labour laws are being violated. There is therefore need for the investors and government to stop putting the quest for investment and profits before decent or dignity of employment.

In the light of the foregoing it is therefore recommended that there is a strong need for a more comprehensive legislative intervention of a stronger institutional set up and wider approaches so as to curb this problem. No wonder the International Labour Organisation country director Gerry Finnegan was quoted saying that:

*“Zambian labour laws should seriously be updated and modernised if people are to feel the value and importance of employment”<sup>131</sup>*

This battle is however not for the labour movement and government alone, but for all stakeholders advocating for good working conditions. Hence the political will on the part of

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<sup>131</sup> Post Newspaper 27 March 2008.

government and multinational companies in addressing the loopholes in labour laws and stopping employment practices that encourage casualisation of labour is not only necessary but also essential.

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