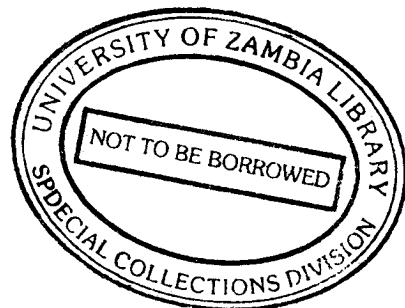


**HOW ADEQUATE AND EFFECTIVE ARE THE CURRENT
LABOUR LAWS CONCERNING CASUAL WORKERS**



BY

OSCAR MUDENDA

UNZA

2005

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CONCERNING CASUAL WORKERS**

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**Being a paper presented in partial fulfillment of the examination requirement for
the degree of Bachelor of Laws of the University of Zambia.**

December 2005

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

I recommend that the obligatory essay prepared by Mr.


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Entitled

**HOW ADEQUATE AND EFFECTIVE ARE THE CURRENT LABOUR LAWS
CONCERNING CASUAL WORKERS**

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

I, **OSCAR MUDENDA**, do declare that I am the author of this Directed Research Project Entitled **HOW ADEQUATE AND EFFECTIVE ARE THE CURRENT LABOUR LAWS CONCERNING CASUAL WORKERS**. Due acknowledgments have been made. The organisation of materials and views expressed are my own and should not be linked to those who provided me with the information.

DATE.....

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DEDICATIONS

To my father Mr. A.C.Mudenda for his unfailing support he has given me. *A man who is not a father to his children is not a real man.*

To my mother, Charity Mudenda for being such a *darling*. I uphold your unconditional love and thank you for making who I am now.

To my youngest brother Brian, we each have a star all we have to do is to find it. Keep your head up and your dreams to outwit me will be achieved.

ACKNOWLEDGEMENTS

For God has revealed his grace for the salvation of the whole human race. That grace instructs us to give up ungodly living and worldly passions, and to live self controlled, upright and godly lives in this world, as we wait for the blessed day we hope for, when the glory of our Great God and Saviour Jesus Christ will appear-Titus 2:11-13

I wish to express my gratitude to all the people who responded to my request for information as I was taking this research. My gratitude is also extended to Mr. F. Mudenda for his patience and understanding as I lagged behind during the research.

I cannot forget acknowledging my research assistants Ronald Tembo, David Nyambe Chola Mwewa and Swigart for the assistance they gave me in collecting information.

I must also thank my companions Namatanga Dindi, Innocent Hamachila and Siasiya Sikaswe for their patience understanding and generous support during the period when I was so preoccupied with this research.

Finally, I acknowledge my indebtedness to Constance, Mutinta, Lisameko and Twiza for unlocking the fullness of my life, turning the little that I had into plenty.

I trust that this study will contribute to an understanding of casualisation in Zambia and the inadequacy and ineffective laws governing casual work. Such knowledge may help lawmakers and enforcers to better the standards of such workers.

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PREFACE

In almost every nation there is an outcry for employment. It has been asserted that liberalisation of most of the young economy has resulted in loss of jobs and collapse of small industries or enterprises. For this reason most people find themselves roaming around in the streets with barely anything to support their families.

With such developments, it has been found that the trend in unemployment and poverty has been increasing on a daily basis. Due to this trend, it has become very cheap and easy to employ individuals on a temporal basis. The contract of such nature have no formalities and they are based on a take it or leave it. With the surrounding environment of high poverty, these employees are subjected to very poor working conditions without voicing out. They cannot complain of the working conditions because of the fear of being sucked from their jobs. Further, in order to encourage foreign investment, most governments have relaxed most of their labour laws. This, as stated above, makes it easy for the foreign investors to employ and pay off the workers thus yielding profits.

Because of this it becomes imperative to voice out the injustices caused on such workers. This has caused the author of this research to write on this matter. I hope and trust that such knowledge may help lawmakers and enforcers to better the standards of such workers.

Oscar Mudenda

CHAPTER ONE

INTRODUCTION

1.0 Introduction

In cases where the status of a person employed is in doubt it becomes imperative to ask the question whether that person is under a contract of service or a contract for services. Alternatively that person can be under a partnership, agency or bailment.

However, labour is defined as the rendering of service, manual or mental for remuneration covering all fields of employment¹. It has therefore been pointed out that the study of labour laws in Zambia must be confined to principles connected with purely labour matters such as the principles governing the formation of a contract of employment.

Since the general principles of contract are applicable to the contract of employment, there are certain obligations that arise from such contracts. The moment an applicant unconditionally accepts the offer of a job, a contract of employment comes into existence. The terms of the contract of employment may be oral, written, implied or a mixture of the three. An oral contract is as binding as a written one, though its terms may be more difficult to prove. The statement is not a contract itself, but in the case of a dispute can be used as evidence of an employee's terms and conditions.

¹ Mtopa A.M.1989. labour laws in Zambia. Lusaka: Kenneth Kaunda Foundation p.1

It should be noted from the onset that the express terms of a contract govern any aspect of the relationship between the parties that fall within these terms.

In practice, however, most of the aspects of the contract of employment are governed by implied terms that parties might have intended to incorporate into the contract. Some of the obligation may arise from the operation of the general law itself. The obligation may also arise from the practice and custom in that particular trade.

1.1 Categories of workers

An employment contract is defined as an agreement whereby one party, the employee, agrees to render his services to another, the employer, for a benefit. Due to the complexities to be performed in any organization or work place, the employer is generally not physically capable of personally performing all the tasks himself. In addition some employers cannot even personally perform the tasks themselves since they are legal persons and not human beings. As a result, it becomes important to employ someone to perform certain functions for the employer.

(a) Employer

An employer on the one hand is any person or firm, corporation or company, public authority or body of persons who or which has entered into a contract of service to employ any person, and includes any agent, representative, foreman or manager of such a

person, firm, corporation, company, public authority or body of persons who is placed in authority over such person employed².

(b) Employee

On the other hand an employee is any person who has entered into or works under a contract of service, whether express or implied, or is oral or in writing and whether the remuneration is calculated by time or by work done, or in cash or in kind, but does not include a person under a contract of apprenticeship made in accordance with the Apprenticeship Act or a casual worker³.

There is no single test for determining whether a person is an employee. One of the factors that were used was the control test. The control test entails that the employer has the power to direct or control the work of the employee. The ultimate question is not about specific orders or whether any specific orders were given but who is entitled to give the orders as to how the work should be done⁴.

Thus greater the amount of control exercised over the details on the work to be done, the more likely is the inference that the relationship is one of employer and employee. The greater the degree of independence, the more likelihood that it is not a contract of

² Statutory Instrument No. 17 of 1997

³ *ibid*

⁴ *Mersy Docks and Harbour Board v Coggings and Griffith (Liverpool) Ltd (1947) AC 147*

employment. This test however is not conclusive. Thus it is no longer considered sufficient especially in the case of the employment of highly skilled individuals⁵.

Another factor is the question that person is an integral part of the enterprise. This test is becoming one of the most significant criteria for identifying a contract of employment. The person is considered to be the integral part of the enterprise if he engages himself to perform services not on his own account. If he performs services on his own account, then not part of the organization, that is, he is not an employee.⁶ The method of payment, any obligation to work only for that employer, how the contract may be terminated, who provides the tools and equipment, and who bears the risk of loss or profit are other factors available to the courts.

It should be noted that apart from employees other categories of workers recognised include independent contractors, casuals, partners and bailees. An independent contractor is his own master. He is engaged to do certain work to his own discretion as to the mode and time of doing it. He is bound by his contract not by his employer's orders.

A partnership contract is one for remuneration of a person engaged in a business by a share in the profits. The Partnership Act⁷ defines partnership as the relation, which subsists between persons carrying on business in common with a view of profit.

⁵ Lord Haisham. 1992. Halsbury's Laws of England 4th ed vol. 16. London: Butterworths

⁶ Market Investigations Limited v Ministry Of Social Security (1969) 2QB 173

⁷ 1890 Section 1

However, where a salary is paid to a person by another in addition to a share of the profit, it may be implied that the relationship between them is that of employer and employee.

On the other hand, where a person hands over to another a chattel to be used by him in the course of his trade at his own discretion and subject to no control by the owner, the relationship between the owner and the other person is likely to be that of bailor and bailee and not employer and employee.

In the modern times of standard contracts, the terms of the contract are usually fixed in advance and presented to the would be workers on the basis of take it or leave it. The voluntariness of the contract is therefore more apparent than real. Thus the employer is seen to have the upper or stronger hand. As a result the employers are more likely to exploit the other side as he imposes or dictates the conditions of service to the other party.

1.2 Temporal workers

In cases of a temporal nature especially contract and casual work, it may be appropriate when deciding upon the employment status of an individual subject to such a regime to consider sufficient mutuality of obligations to justify a finding that there was a contract of employment.

These workers not legally organized such, however, work under conditions where it is not possible to organize and struggle. This is a group that does not possess any skill or

training, mostly illiterates, drop-outs or people who leave the educational system after primary school. With the increasing growth of the population this number is increasing daily. Thus there is a pool of unskilled labour larger than a number of wage earning jobs that the organized economy could support.

The contract worker on the one hand is not the direct employee of the actual employer who engages a labour contractor to undertake a job⁸. The worker is then deemed to be the employee of the contractor and the real employer is exempted from responsibilities and liability moving with these workers.

In Zambia there are companies like Total, Kobil and British Petroleum who employ dealers to man their various stations. These dealers employ their own employees and are responsible to them. Sun International Zambia limited is another precise example. Most workers at the Sun International are not employed by it but by Equal Access Limited, which is responsible over these workers.

In the case of **Construction Industry Training Board V Labour Force**⁹, it was held that where A contracts with B to render services exclusively to C the contract is not a contract of service or a contract for services but a contract *sui generis*. As no contractual relationship was formed between contractors and workmen, the respondents were not acting in an employment agency, the respondents contracted as principals with the

⁸ Googles' catch of <http://www.revolutionarydemocracy.org/rdv5n2/workclas.htm>

⁹ (1970) 3 ALL ER 220

workmen, who were to be paid on agreed terms the work carried out by them for the contractors.

The casual workers on the other hand are temporal persons engaged only for the purpose of completing a specific task, which is accessory to the main business. These unskilled workers do the strenuous work alongside the permanent workers who usually supervise them.

1.3 Conclusion

Nevertheless, it should be noted that it is not possible to say that someone is in employment when she or he has a job but earns a wage that they can hardly live on, or when their job is subject to the whims of an arrogant employer¹⁰. It should therefore be submitted that qualitative issues such as low pay, worker representation, job security and good working conditions assume an important equal with unemployment

¹⁰ Fincham Robin (Ed). **Employment In Zambia. Vol iv.** Lusaka: UNZA

CHAPTER TWO

THE MORDERN CONCEPT OF CASUAL WORKERS

2.0 Introduction

The concept of liberalization has cast some defects on employment relations. It has been stated that in the light of structural Adjustment Program (SAP) a general squeeze has been experienced¹¹. This is because the process invariably involves privatizing the public sector enterprises and in some cases, this has lead in some private enterprises being liquidated, as they could not stand the competition in a liberalize economy environment¹².

In either case this has been evidently shown that these processes lead to loss of jobs hence the matter now rests on the defining the rights of the employee who finds himself or herself in that situation. Further it also becomes imperative to define the rights that accrue to a worker in the formation of the employment contract especially where the contract is that of a temporally nature.

2.1 Growth of Casualisation

The growth in temporal work is due to a complex set of factors based on both the supply and demand side of the labour market, with most of the impetus coming from the demand side¹³.

¹¹ Banda D. 1999. A Guide To Employment Law In Zambia. Lusaka: Friedrich Ebert Stftung p.6

¹² Ibid

¹³ Goggle's Catch of [http://www. Aph.au/library/ pubs/1999-2000/2000rn.htm](http://www.Aph.au/library/pubs/1999-2000/2000rn.htm)

On the supply side, the reasons why people seek temporal work is that it allows them to combine paid work with family responsibilities, study or other interests, to ease out of the labour force if nearing retirement, and to supply family income. Actually, most young persons prefer casual work as it provides extra income and can be a stepping-stone to entering the workforce on a permanent basis.

For others such as the previously unemployed, older males seeking full timework and those with limited work experience, casual work is often an alternative to unemployment when no permanent jobs are available. Thus it could rightly be stated that casual employment does not lead to a permanent job but rather is likely to result in a cycle of involuntary employment arrangements and insecure and irregular employment.

It should be interesting to note that there has been an increase participation of females in the labour force. While more females wanting work has probably led to more temporal jobs the strongest influence is likely to have been in the opposite direction, that is, more temporal work has attracted more women into the workforce.

On the demand side, the growth in the sector is often cited as the most important factor contributed to the rise in temporal work as this sector is a disproportionate user of temporal workers.

Another factor is the regulation that applies to long-term continuous employment, making it more attractive to employers to hire staff on a temporary basis¹⁴. Temporary contracts are less costly, on wage benefits do not always apply and dismissal can be achieved without severance payments, and they allow firms to exercise much greater flexibility in hiring and firing staff¹⁵.

In terms of employment of a temporal nature, and taking into account the abundance of labour laying idol, it becomes very easy for the regulation to be relaxed. Such contracts are expected to have no formalities as most of the workers are not employed on the basis of the skill they posses.

Such workers are mostly needed to supplement the already existing permanent workers who work as supervisors. The temporal workers mainly do the strenuous work. Thus they are the workers who are mostly unskilled and uneducated employed to perform specific tasks involving muscle.

As a result, the employers have found it so cheap to pay off and end the contract at any time. Because of lack of security, these employees would do anything to protect their jobs as there is a large number waiting outside.

¹⁴ ibid

¹⁵ ibid

Coercion comes to play an important role in exploiting these workers. Terror reigns in these units. These workers fear that if they say this or do this, they will lose their jobs. Once they are out of employment they think they cannot enforce any rights.

2.3 Occupations attributed to casualisation

Most temporal workers are concentrated in just a few occupations, and these tend to be relatively low skilled. According to an Australian research, intermediate and elementary clerical, sales and service workers as well as laborers and related workers account for the most percentage of female casuals while the occupations of tradespersons and related workers, intermediate production and transport workers and laborers and related workers account for male casuals¹⁶.

However the most significant sector for males is the construction and agricultural industries. As for construction upon the completion of that to be constructed the contract ends. On the other hand the agricultural sector is seasonal. Therefore it is not expected to maintain the employees until the next season. Nevertheless, temporal work has now found itself in the mineral, queries, factories and manufacturing sectors, which are either private or public.

2.4 Casual work contrasted from permanent work

Temporal work is mainly associated with casual work. Casualisation has become so pronounced that it has become the talk of the day in employment spheres. A casual

¹⁶ ibid

worker is defined to include any employee the term of whose employment provide for his employment at the end of each day and who is engaged for a period of not more than six months¹⁷.

At common law, the main difference between a permanent and casual worker is the notion that a permanent employee has an on going contract of employment of unspecified duration while a casual employee has not¹⁸. The characteristics of casual employment that flow from this notion are limited entitlement to benefits generally associated with continuity of employment such as annual and sick leave, and no entitlement to prior notification of retrenchment and only a limited case for compensation or reinstatement.

2.5 Legislations enacted to protect casual workers in general

It therefore becomes imperative in this pronouncement to view legislation that has been enacted to protect the plight of these workers. There are various statutes that provide for the protection of the workers and among them include the following discussed below.

One of the important legislation enacted to protect the interests of workers is the Employment Act¹⁹. The objective of the Act is the formation and enforcement of the contract of service. The employment of service arises where one party, the employee, agrees to render his services to the other, the employer, for a benefit.

¹⁷ Statutory Instrument No. 15 of 1997 section 3

¹⁸ Goggle's Catch of <http://www.Aph.au/library/pubs/1999-2000/2000rn.htm>

¹⁹ Chapter 268 of the laws of Zambia

Under the Act the employee is defined as any person who has entered into or works under a contract of service, whether the contract is express or implied, is oral or in writing and whether the remuneration is calculated by time or work done, or in cash or kind, but does not include a person employed under a contract of apprenticeship made in accordance with the Apprenticeship Act or a casual worker²⁰. This it should be submitted does not favour the casual employees. This is based on the ground that a casual worker is not recognized as an employee so protected by the Act.

Another statute that protects the employee interests is the Industrial And Labour Relations Act²¹. The objective of the Act is to minimize the cause of the industrial unrest by encouraging and protecting the freedom of association for both the employer and employee, promote sound and stable industrial peace by settlement of issues, terms and conditions of employment through collective bargaining; encourage and promote the settlement of disputes in an orderly and efficient manner by prescribing the procedure and machinery for settling them and to discourage and prevent unfair labour practices²².

The Workers Compensation Act²³ is designed to provide for the establishment and administration of a fund for the compensation of workers disabled by accidents occurring during the course of their employment or disease contracted by the workers. It also provides for the compensation or grants of pensions and allowances to certain dependants of workers who, being receipt of pensions for such disablement, die from causes not

²⁰ Section 3 chapter 268

²¹ Chapter 269 of the Laws of Zambia

²² The Industrial Relations Department (NCMDS) **Industrial And Labour Relations Act Handbook 1993**; Kabwe

²³ Chapter 271 of the Laws of Zambia

connected with such accident or disease. Despite that, this Act does not apply to the casual worker. This is because the Act excludes a casual worker in its definition of an employee²⁴.

In addition to the above there is also the Factories Act, which is Chapter 441 of the laws of Zambia. Its objective is to further and better provisions for the regulation of the conditions of employment in factories and other places as regards safety, examination and inspection of certain plant and machinery. This Act does not have a precise definition of a worker as it does not exclude the casual worker nor restrict those to benefit from the provisions of the Act hence favourably covers a large number of workers.

The Zambian legislature has also been keen to enact a legislation that sets the minimum conditions of employment. This Act is referred to as the Minimum Wages And Conditions of Employment Act²⁵. The Act generally provides for a broad guide to the basic minimum standard on any particular issue especially outside the scope of collective bargaining or where bargaining unit has failed to agree on a particular issue or where Trade Union do not exist. This makes the Act to apply to most employees in the private sector, excluding domestic workers, who do not belong to a trade union.

It should therefore be noted that it's not the case that various apply only to workers in the formal sector. Laws like the Employment Act, Factories Act, and the Minimum Wages And Conditions of Services Act apply to workers in the informal sector. However, the

²⁴ Section 3 (d)

²⁵ Chapter 276 of the laws of Zambia

sheer practical difficulties and high costs associated with implementation and enforcement of such legal provisions ensures that most worker do not benefit from them.

Nevertheless, most of the legislations are so drafted as a to leave out the casual workers. Though some of them provide for the protection of these workers, they only do so in passing lacking the teeth or effective enforcement.

Further, one is able to find that after the Act has defined a casual worker, it exempts them from certain provisions²⁶. The Employment Act gives a god illustration on this. There is a nice provision for terminating a worker's employment by redundancy and benefits to be earned after termination. However section 26B (4) exempts casual workers to these benefits.

2.6 Conclusion

It is therefore a founded conclusion to state that although there are a lot of legislations enacted, which guarantee the basic rights of workers, regulate the employment relationship in an equitable manner and protects workers in respect of their condition of work, including safety and health at work places, the existing labour legislation however does not sufficiently provide for the protection of the casual worker.

²⁶ Section 26B(4) of cap 268

CHAPTER THREE

RIGHTS OF CASUAL WORKERS UNDER LEGISLATIONS

3.0 Introduction

It has been noted from the previous chapter that there are various legislations that protect the rights of the workers in general and it has been shown how sufficient the statutes consider the casual workers. From a general point of view, these legislations only mention the casual workers in passing without really recognizing them. If these workers were sufficiently recognized then it would have been easy to enforce the provisions in order to protect the rights of these workers.

This chapter will examine in detail the legislations that provide for the casual workers and attempt to show how effective they are in the protection and enforcement of the rights of the casual workers.

3.1 Permanence provision

One of the mother statutes in employment law is the Employment Act²⁷. This Act has provision relating to the employment of persons, makes provisions for the engagement of persons on contracts of service and provides for the form of and enforcement of contracts of service. The Act is so wide that it includes almost all the workers apart from persons in the Defence Force, Zambia Police service and Zambia Prison Service²⁸.

²⁷ Cap 268 of the Laws of Zambia

²⁸ Section 2

Section 3 of the Act²⁹ provides that a casual employee means any employee the terms of whose employment provide for his payment at the end of each day and who is engaged for a period of not more than six months thus the employment status of a casual worker is that the maximum period for continuous engagement is six months those are engaged for a longer continuous period should be confirmed as regular or permanent workers. It is a sad note to know that companies with about 1000 casual employees only come to formally employ 56³⁰.

The question that now stands is whether the employers follow this provision. An employee who had been working for ten months was not confirmed and asked for advice of his employer's conduct he was advised that by law he was deemed to be a permanent employee if the contract was not renewed in his sixth month of his contract³¹.

In another instance, eight **Non-Ferrous Company-Africa Mining** casual workers were dismissed after alleging asking for employment contracts. It is alleged that the company's memorandum dated 27th March 2005 offered the casuals contracts after six months³². However, some of them worked for two years and when they asked for the contracts they were told that they no longer work for the company. The management further told the workers that they should ask President Mwanawasa to give them contracts

²⁹ Cap 268

³⁰ <http://www.times.co.zm/news/viewnews.cgi?category=10&id=1058915810>

³¹ Legal Resource Foundation Newsletter February 2004

³² Op cit

Shoprite Checkers is one of the largest food retailers in Zambia with a bulk of employees being casual workers. In a survey carried on by the Zambia Congress of Trade Union (ZCTU) it was revealed that some workers have been working for more than two years³³. It was revealed that when a permanent worker is fired a casual worker replaces him or her.

The retailers have benefited from this arrangement to the detriment of the workers by avoiding responsibilities that go along with permanent employment. The casual workers have no benefits apart from their weekly pay and fired at will.

3.2 Safety Provisions

Under common law the employer has the obligation to provide safety measures against his employees. The employer has the duty to take reasonable care to see to it that the plant, tools, equipment, premises and system of work used in his business are safe. In **Black v Fife Coal Ltd**³⁴, the court held that the employer is liable for the breach of the duty to safety where the employee causes the accident. This is because the employer has the duty to select employees who are competent.

The Act that provides for the safety of the employees in working premises is the factories Act³⁵. It thus provides for adequate means of escape and warning in cases of fire³⁶.

³³ <http://www.union-network.org/uniafrican.nsf/0/4f3d91abad30e7c5c125702d00404bd9>

³⁴ (1912) AC 149

³⁵ Cap 441 section 41(1)

³⁶ Section 41(1)

Employers have developed habits of locking up their employees inside the factory premises with no means of escape either as a way of preventing thefts or in order for the workers to finish the days' work in order to achieve high productivity and high profits³⁷. Nevertheless it has been alleged that the high levels of accidents because employers did not bother about the safety education of their workers³⁸.

Mr. Mwanngala observed that one would even rarely see safety signs in factories that are supposed to guide workers. Thus the **Chambishi disaster** has become a good example in many aspects because even there the majority of those killed in the blast were the casual workers³⁹.

This disregard of the law is so rampant mainly in bakeries, as the workers have no say. Being scared to lose their jobs, these workers would be exploited without voicing out. Even the minister concerned only issues out threats without taking the due process of the law. As a matter of law, the court is empowered by section 99 in addition to a fine to order the factory owner to remedy the matters in respect of contravention of the Act.

3.3 Right to be paid wages

As already stated in the previous chapter, it is indeed not possible to say that someone is in employment when she or he has a job but earns a wage that they can hardly live on or their working conditions are degrading or when their job is subject to the whims of an

³⁷ Mwenda 2004. Employment law in Zambia. Lusaka: UNZA Press

³⁸ Zambia Typographical and Allied Workers Union Workshop held at Fairview Hotel in Lusaka Reported by Jessie Ngoma Simengwa

³⁹ *ibid*

arrogant employer. It is unfortunate to find that the Minimum Wages and Conditions of Work Act provides for a minimum wage that cannot sustain an individual in such a biting economy.

It is widely acknowledged that work is an essential part of human life. One needs to work in order to earn money for buying food, paying bills and generally other necessities. A recent research by the **Jesuit Center for Theological Reflection in Zambia** discovered that many people employed as casual workers receive a minimum of **K400 per hour**⁴⁰. It further found out that those who were lucky were employed on a three months contract but at the end of the contract they are entitled to no pension.

In an instance case mentioned were eight workers were fired, they alleged that they were exposed to insults and low salaries. They were never off duty yet paid **K150, 000** and not entitled to overtime.

A survey conducted out by Zambia Congress of Trade Union (ZCTU) reviewed that Shoprite employs casual workers for a period of 24 hours per week at the rate of K22, 000⁴¹. In some shops it was discovered that some workers work more than 45 hours but still earn K22, 000. To make things worse, casual workers earning depend on the sales targets being reached. If sales fall below the targets, the weekly rate of K22, 000 is reduced accordingly.

⁴⁰ Times of Zambia 'JCTR Joins Others against Casual Work' 17 may 2005

⁴¹ <http://www.union-network.org/>

The wages being so unsustainable, the employers still do not want to pay the workers. One of the instances is were some casual employees of **World Vision Zambia Kala Refuge Camp** were not paid their May and June wages despite their contracts ending on June 30th⁴².

In fact some of these employers after engaging the casual workers runaway without paying them. There are some villagers who were engaged as casual workers by a contractor from 14th April to 10th May without pay⁴³. The contractor runaway and even alleged that the workers could not be paid in the month of December because the banks are normally closed.

3.4 Termination Provision

Another issue that arises to the contracts of employment is the issue of termination of the contract. A contract of employment is terminated in various ways. One of the ways is by agreement of the parties. Subsequent to the entry of the contract, the parties may agree to discharge each other or it may be agreed by the parties to discharge themselves at the end of a certain time or at the end of a particular task.

Furthermore, a contract of employment may be terminated by any supervening event that renders performance of a contract impossible.⁴⁴ Transfer of an employee can also terminate the contract of employment. Where there is non-consensual agreement to

⁴² <http://www.times.co.zm/news/viewnews.cgi?category=10&id=1058915810>

⁴³ Q FM (Radio) Afternoon News

⁴⁴ Morgan v Manager (1948) 1 KB 184

transfer the rights and obligations of the contract are discharged. Section 35(1) of the Employment Act provides that;

Rights arising under any written contract of service shall not be transferred from one employer to another unless the employee bound by such contract consents to the transfer and the particulars thereof are indorsed upon the contract by a proper officer.

The Act thus does not allow to transfer an employee without his consent . this is because employment contracts are personal.⁴⁵

It should be understood that a contract comes to an end at either party giving notice. A contract without any provision of notice may be terminated by giving reasonable notice. However, an employer has under the Act the power to terminate the contract for a casual worker after giving a 24 hours notice⁴⁶.

Certain employers do not even give notices. **Colgate Palmolive** is a good illustration, as it laid-off 71 casual workers without notice when they even had worked for many years diligently⁴⁷. They could not be given their benefits even if they contributed to the National Authority Pension Scheme as indicated on their paying slips.

⁴⁵ See the case of Standard Chartered Bank v Peter Zulu and 118 Others SC Appeal No. 59 of 1996

⁴⁶ Cap 268 section 20(2)(a)

⁴⁷ <http://www.times.co.zm/news/viewnews.cgi?category=10&id=1058915810>

Further a contract can be terminated by the death of the employee or the company as employer. However, when the casual dies either due to injury in the course of his work it is very difficult to compensate him or his family by provision of statutes since as it has been shown that the Compensation Act does not apply to them. Hence their only remedy can only lie in equity and common law.

However, there are times when redundancy issues and the employer have to retrench some of the employees. According to common law, the method used to remove workers is based on the principle of "first in, last out". However, this principle does not apply to casual workers. Even as early as the seventies this problem was an issue.

An investigation carried on as early as 1975 brings to light this issue. The researchers found out that the principle of "**first in, last out**" did not operate in every one of the workplaces they investigated⁴⁸. It was found that in most places it is the unskilled workers who are laid off regardless of when they joined.

Another interesting feature of the Employment Act is that it provides for redundancy. Nevertheless, Section 26B(4)(b) provides that the provisions of this section shall not apply to a casual worker. Therefore the casual workers are exempted from the redundancy provisions of the Act

⁴⁸ Finches Robin (ed) **Employment law in Zambia vol IV research by Chilufya F.K and M.I Linkando. Public and Private Workplaces in Livingstone** Lusaka: UNZA

3.5 Conclusion

It therefore goes on without saying that from the formation to the termination of a contract of a casual worker no right or provision is rightfully vested to such a worker. Thus much has to be done to help such workers. The right way may be to resort to international standards.

CHAPTER FOUR

INTERNATIONAL LABOUR ORGANISATION AND THE STANDARDS OF EMPLOYMENT

4.0 Introduction

Employment relations are currently affected by political, social and economical changes⁴⁹. In particular, the move towards democratization and a more free market. In most developing countries, globalization, the impact of structural adjustments and high levels of unemployment and poverty have affected employment relations⁵⁰. Countries that have abandoned centrally planned economic systems for a more liberised market economy face the problem of establishing effective and democratic industrial relations.

In undergoing the transition to a market economy most countries develop policies that are likely to attract foreign direct investment, promote the export of manufactured goods and enhance the transfer of technology and skill. Thus the policies of most countries are that your business is your business and you can do whatever you want to do with it. This has lead to most of the labour laws becoming relaxed.

⁴⁹ 1996-97 Biennim Report **Major Programme 80: industrial relations and labour administration** as retrieved from Googles catch

⁵⁰ *ibid*

4.1 Workers' struggles in different states

This trend is shown in most of the countries in the world trying to attract investors. One of these countries is India. In this country, cast and regional oppression forces workers to enter the labour market with various kinds of disadvantages, lack of modern education and skill⁵¹. This has resulted to a trend in the growth of casual labour in total of the workforce.

It is alleged that wherever such workers are employed, wages, working conditions, health and housing facilities area not on par with regular workers.

Further they are deprived of permanent benefits like provident fund and insurance. In fact, it is was discovered that more than half of the labourers employed by the Indian Railways have been working for two decades without being confirmed as permanent workers ignoring the fact that while laying down a railway line is temporary in nature, laying railway line itself is a permanent job of the Indian Railway Line⁵².

In Australia, over the past ten years more than two-thirds of all (1.18 million) new jobs created were casual jobs⁵³. Kryger defines a casual worker as one who is not entitled to either paid holiday leave or sick leave while any other employee is a permanent⁵⁴.

⁵¹ Googles' catch of <http://www.revolutionarydemocracy.org/rdv5n2/workclas.htm>

⁵² I bid

⁵³ Googles catch of <http://www.Aph.gov.au/library/pubs/1999-2000/2000rn.htm>

⁵⁴ Tony Kryger Research Note No.2 Statistics Group 24th August 1999 as retrieved from Googles' catch

Therefore it has come to be found that without the right to maternity leave many female casual workers have no option but to resign or be sacked if they became pregnant.

In Nigeria, about hundred casual workers at the Nigerian National Petroleum Company protested in the early hours of the morning carrying placards protesting lay-offs⁵⁵. They were demonstrating against the previous week's dismissal of about 3,000 temporal staff which they said was inhuman and lacked fairness.

In France, workers employed at a state owned energy group Electricity have continued their protest against privatization⁵⁶. Further, in German, more than 30,000 Dainler Chrysler staff walked out of the Mercedes Benz Plants on July 15, 2004. This is because the company has threatened to shed 6,000-10,000 jobs in Germany and transfer more production of its C-Class Mercedes model to South Africa considered by the workers as unfair⁵⁷.

In Zambia, the Zambia Daily Mail sacked twelve workers on July 9, 2004 for taking strike action. The president of Zambia Union of Journalists declared the action as violating the Labour and Industrial Relations provision⁵⁸. Judge Kabazo Chanda, Chairman of the Media Council of Zambia described the dismissal as too bias as everybody is entitled to ask for more money from his or her employers without any intimidation.

⁵⁵ G o o g l e's cache of <http://www.wsws.org/articles/2004/jul2004/wkrs-j16.shtml>

⁵⁶ ibid

⁵⁷ ibid

⁵⁸ Ibid

In the light of the foregoing, the international community has become concerned with labour relations. Thus the International Labour Organization (ILO) was set up to embody standards covering most aspects of the employment relations. ILO sets up certain minimum of international Labour standards of which the employers or the governments have to observe.

According to the summary of biennium 1996-97 proposals, the industrial relations, labour regulation and labour administration were considered to be central to the ILO's fundamental principles of tripartism, social protection and promotion of employment⁵⁹. It was alleged that the effectiveness of these institutions is the greatest importance in protecting the working people and taking action too combat unemployment and poverty.

4.2 International Labour Organization Conventions

There are various legislations enacted by ILO. The biennium expressed that the success of the liberisation process and the transition to a free market economy depends on the adoption of appropriate labour legislation which guarantees the basic rights of workers, regulates the employment relationship in an equitable manner and protects workers in respect of there conditions of work, including safety and health at the workplace⁶⁰.

⁵⁹ 1996-97 biennium Major programme 80: industrial relations and administration as retrieved from Googles' catch of <http://www.revolutionarydemocracy.Org/rdv5n2/workclas.htm>

⁶⁰ *ibid* para 80.17

However, it should be asserted at this point that most countries as seen above do not meet these objectives. The reasons being that most countries are adopting an approach where the government does not want to interfere in the business of the individuals.

It should be noted that Zambia is a signatory to many international conventions enacted to protect the rights of workers thus the conventions standing as the international standards in guidance of work. As of 2002 Zambia is signatory of 39 conventions out of the total of 184, including conventions that call for a minimum wage tied to costs of basic needs and productivity of a worker (C26), legislation to protect the wages of employees in case a company is liquidated (C95), legal protection of workers to severance pay on termination of employment (C158), and convention 98 (Freedom of expression) and convention number 87 (the right to organize and Collective Bargaining)⁶¹.

These conventions are designed to protect the workers against interference with their rights by the government or the employers. However what should be considered is whether these conventions are adhered to in the country. Quite well the Industrial and Labour Relations Act provides for organization and collective bargaining for the workers.

⁶¹Chris Petrauskis 'Restoring Dignity To Employment In Zambia: Legal And Moral Motivation To Promote The Common Good' Preliminary Reaction 26th September 2005 Jesuit Center For Theological Reflection; Lusaka

Nevertheless, the employers, especially the new investors, are making it difficult to do so or are reluctant to do so. This can be seen from the fact that most employers are reluctant to allow their workers to be unionized.

This can be inferred from the assertion of the Mineworkers Union of Zambia (MUZ). MUZ rejected to be blamed for the Chambishi blast stating that most of the workers injured by the blast were not its members⁶². By the time the blast occurred, the Union was still negotiating with management.

Under the freedom of speech convention, it is a true assertion that most casual workers are denied to speak against injustices. For instance if a casual worker speaks against low wages then they are dismissed or intimidated.

⁶² Times of Zambia 'We Are Not To Blame For Chambishi Tragedy' 9-17 may 2005

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

The general objective of the study was generally to demonstrate that the current labour laws relating to the casual workers in Zambia are inadequate and ineffective. The study specifically demonstrated that the casual workers are not fully recognized by the law as opposed to the other categories of workers. In doing so the study attempted firstly to define the word 'labour' as used in the Zambian context. The word, it has been noted, is confined to principles connected with purely labor matters such as the principles governing the formation of a contract of employment⁶³.

An employment contract on the other hand has been defined as an agreement whereby one party, the employee, agrees to render his services to another, the employer, for a benefit⁶⁴. It has been agreed that employee is just a broad group of workers in which the casual workers are one of them. It is within these cycles that the study was concentrated.

5.1 The objective of the study

To achieve the objective, the study attempted to answer the following three questions.

- (i) Are the casual workers considered as workers?
- (ii) Are the general principles and laws enacted to protect casual workers adequate?

⁶³ See note one chapter one

⁶⁴ See page one chapter one

- (iii) To what extent have these principles and laws been able to protect the casual workers?

In attempting to answer question one, chapter one attempted to define casual workers contrasting them with the other categories of workers.

Unfortunately, a casual worker is only defined by the Employment Act. The main objective of the Act is for the formation and enforcement of the contract of service. The Act defines a casual worker as including persons the term of whose employment provide for his employment at the end of each day and who are engaged for a period of not more than six months⁶⁵. Thus a casual worker is a temporal person engaged only for a purpose of completing a specific task that is accessory to the main business⁶⁶.

Notwithstanding that the Act further defines an employee as any employee who has entered into or works under a contract of service, whether the contract is express or implied, is oral or in writing and whether the remuneration is calculated by time or work done or in kind but does not include a person employed under the contract of apprenticeship made in accordance with the Apprenticeship Act or a casual worker.

Therefore even though the Act defines, thereby recognizing the casual workers, it exempts them from its provisions as it excludes them in its definition of employees.

⁶⁵ Statutory Instrument No. 15 of 1997 section 3

⁶⁶ See chapter one

In answering the second question, chapter two has attempted to bring out the legislations that protect the casual workers in general and it has been found out that even though some of the Acts recognize the casual workers they do so in passing as they do not adequately protect the casual workers.

In answering the third question the third chapter demonstrated that although there are some legislations that provide for the protection of these workers, in the light of violations of these provisions there has been no effective enforcement measures. Thus the provisions lack the teeth to bite.

In light of all these, it has come to be concluded that what has really lead to the laws to be ineffective and inadequate is the movement to a free market society (liberisation) and democracy. In the name of developing their economies these countries have relaxed their labour laws in order to attract foreign investors.

5.2 Recommendations

To improve the effectiveness and adequacy of the current labour laws the author of this research has made the following recommendations.

Firstly it is recommended that the Employment Act should be amended. This should be done by especially dealing with section 3 that define an employee. The definition of an employee should include casual workers. Similarly the redundancy provision should not exclude the casual workers from benefiting from the provision of the section. Infact even

if the casual workers were to benefit from the redundancy provisions, they would still get lesser benefits as they only their contract is only for a few months.

Secondly, the Minimum Wages And Conditions of Services Act should be amended. This would ensure the increase of the minimum wage as prescribed by the Act.

Thirdly, the government's attitude towards a market economy should be changed. The government should intervene in order to help these workers. It can do so by promoting and encouraging inspections and monitoring. Inspections and monitoring in the working places provided by various legislations should be done regularly. Further, the inspectors should be paid better wages to prevent them from being bribed by the owners of the working places.

Furthermore, the concept of contract work should be abolished. This is because the workers are normally confused as to who is responsible for their working conditions and remuneration. It should be brought to light that an employer like Sun international in Livingstone does not employ casuals but contract workers. This is because it is not the one responsible for the remuneration of the workers.

As held in the case of **Construction Industry Training Board v Labour Force**⁶⁷, where A contracts with B to render services exclusively to C the contract is not a contract of service or a contract for services but a contract *sui generis*. As no contract relationship was formed between the contractors and the workmen the respondents were not acting in

⁶⁷ (1970) 3 ALLER 220

an employment agency, the respondents contracted as principals with the workmen, who were to be paid on agreed terms of the work carried out by them for the contractors.

Lastly, the government should work hand in hand with the civil society in cases of labour. The government can do so by giving an ear to the voices of the civil society. For instance, the Jesuit Center For Theological Reflection recently submitted a detailed position paper to the ministry of labour that outlines 13 recommendations for the revision of labour laws in order to uplift the human dignity⁶⁸.

These include establishment of a just minimum wage tied to the cost of basic needs across the country, with exceptions provided only to new or other small employers who honestly cannot pay over K1million per month to each worker⁶⁹.

Further, JCTR recommends that casualisation of labour should be abolished, the transition of workers from one job to another should be made easy and that there should be established a mandatory gratuity at the termination of all short-term employment⁷⁰.

The recommendations and the arguments by the JCTR are given below.

⁶⁸ The Post Newspaper 'Government Must Lead in improving Quality of Employment' Thursday December 1, 2005

⁶⁹ ibid

⁷⁰ Ibid

5.3 POLICY RECOMMENDATIONS BY THE JCTR⁷¹

The Government of the Republic of Zambia ought to:

- 1) Harmonise within all labour laws, including those on income tax and NAPSA, definitions of “employee” and “casual employee” and clarify which legal provisions are guaranteed to distinct categories of employees, including casual employees, temporary employees, permanent salaried employees, permanent employees paid hourly wages, employees on fixed contracts, employees paid for work done and not for time of work (i.e., pieceworkers, consultants, etc.), government employees, unionised employees and informal sector employees.
- 2) Educate employers, employees, employer groups, employee groups and the public at large on the obligations of employers and rights / duties of each employee category in regard to wages and conditions of employment.
- 3) End the “casualisation” of labour in Zambia, by closing the loophole in The Employment Act (CAP. 268) that allows the re-hiring of a casual worker or multiple casual workers on short-term contracts to fill a position that is continuous in nature.
- 4) Revise the Minimum Wages and Conditions of Employment Act (CAP. 276) in such a manner that it sets the minimum acceptable standards for the treatment of *any employee* in Zambia, including employees in previously excluded groups (casual employees, domestic workers, government employees, unionised workers, etc.).

⁷¹ Extract from a research paper by Chris Petrauskis ‘Restoring Dignity To Employment In Zambia: Legal And Moral Motivation To Promote The Common Good’ Preliminary Reaction 26th September 2005 Jesuit Center For Theological Reflection; Lusaka

- 5) Modify the Minimum Wages and Conditions of Employment Act (CAP. 276) so that the legal minimum wage is linked to a *Poverty Datum Line* (PDL) set at the cost of basic needs for an average-sized family in Zambia, in the manner detailed below:
- Establishment of *Poverty Datum Lines* in each district tied to the total cost of essential food and non-food items for an average sized family (through consultation of the CSO and JCTR Basic Needs Baskets)
 - Fixing of the Legal Minimum Wage to the *Poverty Datum Line* in each district of Zambia.
 - To be updated *annually* in line with rises in the cost of basic needs
 - To provide exemption for small and nascent (new) employers to pay employees in line with the cost of essential food items alone (*Extreme Poverty Datum Lines*).
- 6) Offer incentives such as greater access to bank facilities and loans, subsidies on utility bills, marketing opportunities, etc., to those businesses that cannot afford to pay the full minimum wage, especially those within the informal economy.
- 7) Establish a legal obligation for employers to pay gratuity benefits (at a minimum 2-months pay per year of service) to any employee whose employment is terminated (through either redundancy or through expiration of a contract) before legal retirement at age 55 or after 25 years of service.
- 8) Strive to make NAPSA a viable social security scheme for all workers in the long-term, by embracing the informal employee and the self-employed through special contribution schemes and by increasing the flexibility for contributors and

survivors to collect accrued benefits before a contributor reaches the age of 55, while also maintaining the fund's financial sustainability.

- 9) As NAPSA reaches 25 years of existence and if NAPSA proves its viability as a national pension scheme, remove the legal obligation of employers to pay retirement benefits (at minimum 3-months pay per year of service) to employees in Zambia.
- 10) Pay all outstanding terminal benefits owed to former employees of the GRZ and to retrenched employees of any privatised company.
- 11) Increase the wages of the lowest paid government employees to exceed the *Poverty Datum Lines* in each district (in line with legal minimum wage), while at the same time maintaining a wage bill of 8% of government expenditure.
- 12) Enshrine the rights of the worker within the Bill of Rights of the New Constitution, by approving Provision 66 (2) of the Draft Constitution that states: "a worker has the right to (a) fair remuneration, equal work for equal pay, and to work under satisfactory, safe and healthy conditions."
- 13) Strengthen the capacity of the Ministry of Labour and Social Security to monitor employment across all districts of Zambia and ensure compliance with all provisions of the labour laws.

These 13 recommendations of the JCTR in regards to amending labour laws have been carefully constructed to promote the common good of Zambian employers and employees and the Zambian society at large. The majority of the labour laws were originally drawn up before independence or before the liberalisation of the Zambian

economy, and the present *Zambian* context demands revised, harmonised laws to promote both the protection of the vulnerable employee and the growth of private sector employment. The JCTR proposes that the heart of the revised labour laws needs to be a clear, comprehensive and grounded Minimum Wages and Conditions of Employment Act (CAP.276) that promotes the common good within individual places of employment. In terms of minimum wage, the JCTR proposes that the legal minimum wage for an employee should be tied to a *Poverty Datum Line*, which is the cost of essential food and non-food items for an averaged sized family in a specific area. According to the JCTR *Basic Needs Basket* for October 2005, the cost of essential food and non-food items for a family of six in Lusaka totalled K1, 348,860.

Therefore, employers in Lusaka would be required to pay a monthly minimum wage of over K1.3 million, with workers paid hourly wages and pieceworkers guaranteed an equivalent rate of pay.

The JCTR also recommends that an absolute minimum wage be set in Zambia, and that it be tied to an *Extreme Poverty Datum Line* set at the cost of essential food items for an average sized family in a particular area of Zambia. Looking again at the JCTR *Basic Needs Basket* for October, the cost of essential food items totalled K509, 060 in Lusaka.

Therefore, the absolute minimum wage in Lusaka would be at least K500, 000 per month. This absolute minimum wage would apply only for those employers who financially could not afford to pay the full legal minimum wage. These small or nascent employers

would be allowed to apply through the Ministry of labour and Social Security for an exemption from the legal minimum wage, subject to approval through inspection of employer records. These employers who could not afford to pay the full minimum wage could also be a target group for offering government incentives, such as access to loans, banking services, subsidised utility bills, etc., to encourage the growth of these establishments. This would also serve as an entry-point for informal businesses to enter the formal economy in a gradual manner.

In terms of terminal benefits, the JCTR also makes two distinct proposals to clarify the legal obligations of employers. First, for all employees who are terminated from employment before legal retirement (after either 25 years of service or reaching the age of 55), employers should be legally obligated to pay gratuity of at least 2 months pay per year of service. This money could be set-aside by the employer or contributed by the employer to a private pension scheme approved by the Ministry of Labour and Social Security. In the case of death of employee, terminal benefits must also be made available to survivors. This guaranteed terminal benefit is in recognition of the vulnerability of any employee in Zambia who loses employment, and is meant to ease the transition of an employee from one job to another.

Secondly, the JCTR recommends that if NAPSA proves itself as a viable pension scheme in the long-term, employers should be excluded from a legal obligation to pay their employees retirement benefits of 3 months pay per year of service. For NAPSA to prove its viability, it needs to prove its financial sustainability while also increasing the

flexibility of contribution and collection options. In terms of contributions, options must be afforded to members of the informal sector and to the self-employed.

In terms of collection options, pension collection points must be made available in decentralized locations across the country. Also, collection of pension must be made available to those who legally retire (after 25 years of service) before the age of 55 and to survivors of contributors who never legally retire. As the system stands now, a survivor of an employee who makes 25 years of contributions yet dies before collecting a pension check is not legally entitled to a pension from NAPSA. Only after all of these concerns are remedied could the law be revised to remove the legal obligation of employers to pay retirement benefits to employees at the rate of 3 months pay per year of service. Also, this legal change could only be made after the year 2024, when the first employee to make at least 25 years of contributions to NAPSA reaches retirement age.

In essence, these two legal changes in combination would remove the pressure on employers to hire on a short-term basis and instead would motivate long-term employment in Zambia. The only way for an employer to escape the legal obligation to pay terminal benefits would be to employ a worker until he or she could legally retire and collect a pension from NAPSA. The “penalty” for making an employee redundant or for hiring an employee on a fixed contract would be the legal obligation to pay gratuity of at least 2 months pay per year of service. Can employers afford to pay wages in line with the cost of living and mandatory gratuities for all short-term employees?

While it may seem like only Zambian employees would benefit from these proposed changes, employers could also save money from these proposals in the short and long-term. Of course, the average Zambian employee who earns far below K1, 000,000 would receive an immediate pay increase and would also be guaranteed gratuity at the end of employment. In the short run, the unavoidable monthly cost to private-sector employers (and government) due to increases in cost of labour would effectively motivate employers to cut costs elsewhere, either by managing operations more efficiently or by giving pay-cuts to employees earning in great excess of the legal minimum wage (i.e., high-ranking figures in government, managing directors, etc.). It is time that all employers are challenged on the notion that the only variable of total operational costs that can be minimised is the cost of hiring labour especially the poorest-paid labour. Setting a floor price for the cost of each employee would serve as a sudden shock to lethargic or inefficient management.

In response to the argument that employers would then inevitably fire employees, the revised labour laws could actually encourage employers to re-negotiate contracts to guarantee long-term service from all of their employees. In addition to this incentive of increased stability of labour, employers would face financial difficulties in immediately retrenching workers due to the obligation to pay gratuities to all employees. And if an employer truly could not pay the full minimum wage to all workers, the option would still remain to apply for an *exemption* from the Ministry of Labour and Social Security. (This would, of course, require capacity building in this Ministry to undertake the task of deciding who should get exemptions.)

In the long run, the removal of the legal obligation for an employer to pay retirement benefits to each and every employee would allow individual employers to save significant amounts of money, ranging into the billions of Kwacha for medium to large employers.

Furthermore, the benefits would promote the common good of the Zambian society at large. Putting more money into the hands of the average Zambian equates to greater support of Zambian workers, especially farmers in the rural areas. Whereas those at the top have an inclination to spend money on luxury items (vehicles, electronics, flights abroad, etc.) that benefit workers outside of Zambia, the average Zambian is more likely to spend money to buy more food, send children to school, visit relatives within Zambia, etc. In addition, by setting the minimum wage in line with district-specific *Poverty Datum Lines*, economically deprived districts with lower minimum wages could attract greater business investment.

It is clear, therefore, that promotion of the common good of Zambia begins more importantly with the promotion of the common good of Zambian employees.

BIBLIOGRAPHY

BOOKS

- Banda D. 1999. **A Guide To Employment Law In Zambia**. Lusaka: Friedrich Ebert Stiftung
- Fincham Robin (Ed). **Employment In Zambia. Vol iv**. Lusaka: UNZA
- Kumar H.L.1996. **Employer's Rights Under Labour Laws** New Delhi: Universal Law Publishers
- Lord Haisham.1992. **Halsbury's Laws of England4th ed vol. 16**. London: Butterworths
- Legal Resource Foundation Newsletter February 2004
- Mwenda W.2004. **Employment Law In Zambia** Lusaka: UNZA Press
- Mtopa A.M. 1989. **Labour laws in Zambia**. Lusaka: Kenneth Kaunda Foundation
- The Industrial Relations Department (NCMDS). **Industrial and Labour Relations Act Handbook 1993**. Kabwe

NEWSPAPERS AND ARTICLES

- The Post Newspaper Thursday December 2, 2005
- Times Of Zambia 9-17 May 2005
- Chris Petrauskis '**Restoring Dignity To Employment In Zambia: Legal And Moral Motivation To Promote The Common Good Preliminary Reactions**': Jesuit Center For Theological Reflection 26th September 2005

Zambia Typographical and Allied Workers Union Workshop held at Fairview Hotel in Lusaka Reported by Jessie Ngoma Simengwa

CASES

Construction Industry Training Board v Labour Force (1970) 3 ALL ER 220

Market Investigations Limited v Ministry Of Social Security (1969) 2QB 173

Mersey Docks and harbour Board v Coggins and Griffith (Liverpool) Ltd (1947) 147

Morgan v Manager (1948) 1KB 184

Standard Chartard Bank v Peter Zulu and 118 Others Supreme Court Appeal No. 59 of 1996

WEBCITES

Googles' catch of [http://www.revolutionary democracy. Org/rdv5n2/workclas.htm](http://www.revolutionarydemocracy.Org/rdv5n2/workclas.htm)

Googles' catch of [http://www.Aph.gov. au/library/pubs/1999-2000/2000.htm](http://www.Aph.gov.au/library/pubs/1999-2000/2000.htm)

<http://www.times.co.zm/newscgi?category=10&id=1058915810>

http://www.union.network.org/uniafrica.nsf/0/4f3d91_abad3oe7c5c125702d00404bd9

LEGISLATIONS

Employment Act chapter 268

Employment Act chapter 268 Statutory Instrument No. 15 of 1997

Factories Act chapter 441

Industrial and Labour Relations Act chapter 269

Industrial and Labour Relations Act chapter 269 statutory instrument No.30 of 1997

Minimum Wages and condition of Services Act Chapter 276

Partnership Act 1890

Workers Compensation Act chapter 271

CONVENTIONS

Convention Number 98 (Freedom of expression)

Convention number 87 (the right to organize and Collective Bargaining)

Convention Number 26 (Minimum wage tied to costs of basic needs and productivity of a worker)

Convention Number C95 (legislation to protect the wages of employees in case a company is liquidated)

Convention Number 158 (legal protection of workers to severance pay on termination of employment)