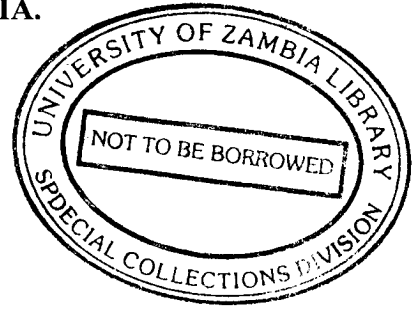


**IS THE EXISTING ZAMBIAN LEGISLATION ADEQUATE FOR CURBING  
CHILD-LABOUR AND WORK-FAMILY CONFLICT: AN ANALYSIS OF THE  
LEGAL FRAMEWORK IN ZAMBIA.**



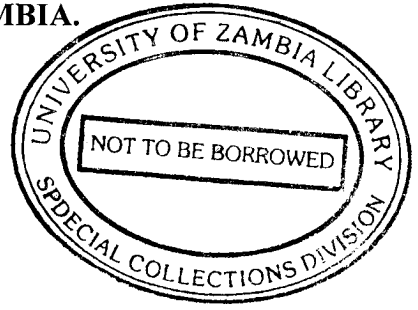
**By**

**CHIPO CHANTAL MUSHOTA**

UNZA

2006

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**By CHIPO CHANTAL MUSHOTA**

A Directed Research Paper submitted to the University of Zambia in Partial fulfillment to  
the requirements for the award of the Bachelor of Laws Degree (LL.B)

University of Zambia

School of Law

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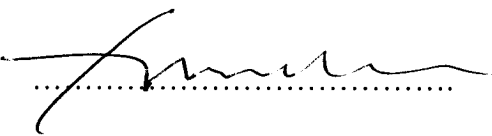
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Entitled;

**IS THE EXISTING ZAMBIAN LEGISLATION ADEQUATE FOR CURBING  
CHILD-LABOUR AND WORK-FAMILY CONFLICT: AN ANALYSIS OF THE  
LEGAL FRAMEWORK IN ZAMBIA.**

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements pertaining to format as laid down in the regulations governing directed research paper.



Mr. Fredrick Mudenda.

(Supervisor)

22/01/07

Date

## Dedications.

To my late dad and my mom, Dr. Remmy Kabanda Kaindu Mushota and Mrs. Lillian Mushota, for all that you have taught me in life. I am a true testimony of 'the sky is the limit.' I can never thank you enough for the best things you have given me. I hope, by this work (and all my other achievements), I have given back to you a small portion of the joy you have given me, and that by this, I have made you proud.

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May God richly bless you.

**Declaration**

**I, CHIPO CHANTAL MUSHOTA of Computer Number 21097846, DO HEREBY declare that the contents of this Directed Research Paper are entirely based on own findings and that I have not in any respect used any person's work without acknowledging the same to be so.**

**I therefore bear absolute responsibility for the contents, errors, defects and any omissions herein.**



.....  
**Signature**

18-01-07

.....  
**Date**

## TABLE OF CONTENTS

### Page

Submissions.....	I
Dedications.....	IV
Acknowledgements.....	V
Declaration.....	VI
Table of Contents.....	VII

### **Chapter One: General Overview of Child Labour and Work-Family**

<b>Conflict.....</b>	<b>1</b>
1.1 Introduction.....	1
1.2 Definition of Concepts.....	3
1.2.1 Work-Family Conflict.....	3
1.2.1 Child Labour.....	3
1.2.2 Child.....	4
1.3 Background And Overview.....	5
1.3.1 Background and Overview of Work-Family Conflict.....	5
1.3.2 Background and Overview of Work-Family Conflict.....	7

### **Chapter Two: Work-Family Conflict vis-à-vis Industrial Relations and the Labor Law**

<b>Framework in Zambia.....</b>	<b>9</b>
2.1 Labor Law Framework.....	9
2.1.1 The Republic Of Zambia Constitution, Cap 1 of The Laws of Zambia.....	9
2.1.2 Employment Act, Cap 268 Of The Laws Of Zambia.....	9

2.1.3	Industrial Relations Act, Cap 269 Of The Laws Of Zambia.....	12
2.1.4	Employment of Young Persons And Children Act, Cap 274 of The Laws of Zambia.....	12
2.1.5	Apprenticeship Act, Cap 275 of The Laws Of Zambia.....	13
2.1.6	Minimum Wages and Conditions of Employment Act, Cap 276.....	14
2.1.7	Other Related Legislation.....	14
2.2	Working Conditions and Family Support Facilities In the Light of Work-Family Conflicts and Child Labour.....	15
2.2.1	Working Conditions.....	16
2.2.2	Support Facilities.....	19
 <b>Chapter Three: Child Labour and Work-Family Conflict in the Light of International Law.....</b>		<b>24</b>
3.1	Introduction.....	24
3.2	International Law and Policy on Child Labour.....	24
3.2.1	Declaration on The Rights of the Child (1959).....	24
3.2.2	United Nations Convention on the Rights of the Child (1989).....	25
3.2.3	Minimum Age Convention (C 138)(1973).....	26
3.2.4	Convention 182- Worst Forms Of Child Labor Convention (1999).....	27
3.3	International Law And Work-Family Conflicts.....	27
3.3.1	Protocol Of 1990 To The Night Work (Women) Convention (Revised) (1948).....	28
3.3.2	Convention 102: Social Security (Minimum Standards) 1952.....	29

**3.3.3 ILO No.111: Discrimination (Employment And Occupation)**

Convention (1958).....30

**3.3.4 Convention No. 122: Employment Policy Convention Concerning**

Employment Policy (1964).....30

**3.3.5 Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Worker with Family Responsibilities**

(Convention 156) .....31

**Chapter Four: Reviewing National Legislation on Child Labor and Work-Family**

**Conflict in The Light of International Laws and Policy.....34**

4.1 S.W.O.T Analysis Of Child Labor Law And Policy .....34

4.1.1 Strengths And Weaknesses.....34

4.1.2 Opportunities and Threats.....37

4.2 S.W.O.T Analysis of Work-Family Conflicts in Zambia..... 41

4.2.1 Strengths and Weaknesses.....41

4.2.2 Opportunities and Threats..... 44

**Chapter Five: Conclusion and Recommendations.....47**

5.1 Conclusion.....47

5.2 Recommendations.....49

Bibliography.....53

## **CHAPTER ONE**

### **GENERAL OVERVIEW OF CHILD LABOUR AND WORK-FAMILY CONFLICT**

#### **1.1 INTRODUCTION**

Children are the most vulnerable group in society, their vulnerability being derive from their age and dependence on other people, especially their families. For this reason, in order to understand a child's interests and rights, one must take into account the context of the family. The family plays a significant role in children's lives as it often determines what is in the best interests of the child and is responsible for protecting such interests. However, the State also plays a very important role in providing for and protecting children's rights. The State being the custodian of all people in its jurisdiction, children inclusive, has the obligation of providing protection for its citizenry at all levels. This entails that the State should provide parents with assistance appropriate for raising their children.

Failure in providing adequate child care facilities for one reason or another has led to an alarming increase of children and young persons being 'forced' into assuming roles of adults in order to provide for their families. Economic hardships have also, to a large extent, influenced changes in public attitudes as well as individual households to encourage women to seek gainful employment so as to contribute to the household income, although this has led to women performing dual roles by working outside the home in addition to raising children and performing their other roles inside the home.

In both female-headed and male-headed low income households, difficulties in combining income earning with child care may be a result of poverty.<sup>1</sup> This then forces parents to assign certain duties, which they ought to carry out themselves, to their children. This is often done to enable the parents to work for longer hours in order to provide for their families. Alternatively, they encourage the children themselves look after each other to the extent of even going out to look for gainful employment, both of which may be highly risky for them. This is the usual form in which child labour takes place outside the wage sector and in the wage sector respectively. It should be noted that the psychological, physiological, moral and social dimensions of child labour necessitate a re-think of the approach of curbing the vice to contextualize the fight within the framework of law and policy vis-à-vis work-family conflict.<sup>2</sup> This can be done, for instance, by improving working conditions and providing support facilities for workers with family responsibilities.

This paper thus seeks to bring to the fore issues of child labor vis-à-vis work-family conflict in the Zambian setting, and to ascertain whether the Zambian legislation is adequate for curbing work-family conflict and thus child labor.

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<sup>1</sup> ILO Secondary Research Report on Work-Family Conflict in Zambia.2005.p5

<sup>2</sup> Mushota, C.C. 2005. Fighting HIV and AIDS Through Law and Policy. P.2.

## 1.2 DEFINITION OF CONCEPTS

In order to meet the objectives of this research, it is important to understand the key concepts that will be constantly referred to herein.

### 1.2.1 WORK-FAMILY CONFLICT

The International Labour Organization Report on Work-Family Conflict in Zambia states that the term 'work-family conflict' refers to the multi-dimension issues that relate to work and the family, which hinder either the worker's full participation and involvement in his/her work or the worker's ability to adequately provide for his/her family or both; that is to say the constant friction that exists between the roles played by a worker in the workplace and those played by him or her in the family or home. Thus work-family conflict refers to the difficulties that exist in reconciling work and family with one another.

### 1.2.2 CHILD LABOUR

Puleng Letuka in her article 'The Best Interests of the Child and Child Labor in Lesotho' states that "according to Fyfe (1995) work which does not detract from the other essential activities for children, namely leisure, play, and education are not child labor. Child labor is work which impairs the health and development of the child.<sup>3</sup> Thus child labor, as differentiated from socializing children into their different roles expected of them by society, refers to the hazardous and exploitative work that is likely to interfere with the child's physical, mental, spiritual, moral or social development.

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<sup>3</sup>Rwezaura, B. Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa. 1998. p 303.

### 1.2.3 CHILD

The term 'Child' is one of the most flexible terms and thus can assume many different meanings depending on the context in which it is used.

Mushota L, states as follows:

*"A child is a person under the age of eighteen. However, different Statutes describe a child as a minor, a person under age, an infant, as the case may be in respect of the aspect legislated upon. For instance, with respect to marriage, the Marriage Act describes a person below sixteen years as a child who requires parental consent to marry. He or she is old enough to obtain a National Registration Card or too young to enter a pub or similar place where alcohol is sold. He or she is old enough to vote or to obtain a driving license. A child below the age of eighteen years has no capacity to enter into a valid contract except under special circumstances. He or she may not hold public office (though under customary law a person of seventeen years has been enthroned as Senior Chief Kalindawalo of Petauke). A person below eighteen years may not make a Will unless he or she is in military service..."<sup>4</sup>*

Thus to define who a child is, it is necessary to ascertain in what context the definition is being made and to make reference to Statutes which define the word child based on subject matter. The Employment of Young Persons and Children Act, for instance, defines a child as a person under the age of fourteen, and a "young person" is that person "who has ceased to be a child and who is under the age of eighteen years."<sup>5</sup>

### 1.2.4 FAMILY

"There is no consensus on the definition of "family". Contemporary Zambian 'family' is neither traditional nor modern but a synthesis of both. This arises from both the definitions of family (reinforced by the dual legal system), as well as practice whereby

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<sup>4</sup> Mushota L. Family Law in Zambia: Cases and Materials.2005.p 396

<sup>5</sup> See 2.1.4 below

the western-educated elite and high income –earning groups continue to reinforce the extended family system by continuing to support poorer kin. The family has increasingly become important as a social safety net, but at the same time its capacity has been weakened due to high poverty levels and the impact of HIV/AIDS pandemic....the co-existence of two radically different family systems (traditional African extended and Modern/Western nuclear) means that norms, regulations and practices relating to care of children or the elderly , socio-economic roles of men and women, etc are often contradictory and not well understood by the majority of Zambian women and men.”<sup>6</sup>

### **1.3 BACKGROUND AND OVERVIEW**

Having defined the relevant concepts in this research, it is also necessary to have an overview of the major concepts of work-family conflict and child labor.

#### **1.3.1 BACKGROUND AND OVERVIEW OF WORK-FAMILY CONFLICT.**

Work-family conflicts are influenced by socio-cultural as well as legal factors. For instance, “the prevailing values emphasizing women’s primary role as that of mother and housewife, economically dependant on her breadwinning husband and the general subordination of women to men in society operate against full participation of females in national development.”<sup>7</sup> This illustrates the socio-cultural aspect of work-family conflict in that despite the persistence of attitudes in favor of men, Zambian women are increasingly participating in earning for their families, in addition to performing their

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<sup>6</sup> ILO Secondary Research Report on Work-family Conflict in Zambia.2005.p15

<sup>7</sup> IBID. P. 16

domestic tasks. Nevertheless, even in wage employment there is potential conflict between roles relating to family and to formal employment where one person performs both of these, for example, in cases of employed single parents, and women generally. They find themselves in multiple and conflicting roles with a heavy work burden.

An example of the legal influence on work-family conflict is the current Zambian Constitution, which lays foundation for discrimination against women in all aspects of social life such as education and training, employment and access to and control over resources. It does so by allowing application of customary law to matters of personal law or gender inequalities within the family.<sup>8</sup> Further, regardless of the fact that there are several approved policy frameworks relevant to addressing work-family conflict issues, implementation thereof is weak. For example, existing legal and policy frameworks relating to leave entitlements and organization of work are based on the assumption that exempt men and fathers from sharing child care responsibilities and domestic tasks. The official and general expectation is that childcare and care for the sick family members is the sole responsibility of women, irrespective of their employment status.

In the light of the illustrations above work-family conflict can be tackled in relation to its effects on poverty, families and dependants, use of human resources and gender equality in the labor market. There is thus need to formulate law and policy that seek to address these issues.

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<sup>8</sup> IBID. P. 21

### 1.3.2 BACKGROUND AND OVERVIEW OF CHILD LABOR

“Child labour is a growing problem in Zambia and if left unchecked, threatens to reach unprecedented levels. This problem is not only peculiar to Zambia.”<sup>9</sup> It has been observed that due to a general decline in overall economic activities, increase in poverty and failure to adequately provide for child rights in the Country, the plight of children living and working on the streets and other forms of child labour has worsened. The problems that have led to the escalating rate of child labor thus include poverty, low income or no income at all due to lack of employment or poor working conditions of both parents and guardians and in both formal and informal sectors, etc.

With the increase of single-parent household and child-headed households, more children are seeking gainful employment in both formal and informal sectors to earn a living. In other cases, children are overworked within the family as huge tasks are assigned to them so as to relieve the parent(s) of such work and accord them an opportunity of making more money by working longer hours outside the home. Thus the labour of such children is a way of contributing to the family whilst the adult members seek gainful employment. Both of these types of child labor however have a negative impact on children because they are subjected to live with and work for their other family members, either as domestic servants or by merely assuming work that is not fit for a child and thus affects its development and wellbeing. Child labour, being most rampant within the household, threatens to reach unprecedented levels if not adequately dealt with within the framework of law and policy. Zambian children have become more vulnerable as there is a constant increase in the number of children living and working on the street and of child workers;

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<sup>9</sup> Mwenda, W. Employment Law in Zambia.2004. P 103

increase in unemployment and poor working conditions for those in employment; inadequate legal protection of those in employment, formal and especially informal; poor quality of education; increase in HIV and AIDS and restrictions on access to health care; increase in the number of orphans and lack of adequate child care facilities, etc. This vulnerability calls for quick action from all stakeholders so as to contain the vice of child labour.

## CHAPTER TWO

### WORK-FAMILY CONFLICT VIS-A-VIS INDUSTRIAL RELATIONS AND THE LABOR LAW FRAMEWORK IN ZAMBIA

#### 2.1 LABOR LAW FRAMEWORK

There are a number of Zambian statutes that govern contracts of employment and incidents thereof. This chapter seeks to consider such statutes and provide some commentary and analysis with respect to child labor and work-family conflict.

##### 2.1.1 THE REPUBLIC OF ZAMBIA CONSTITUTION, CAP 1 OF THE LAWS OF ZAMBIA.

This is the supreme law of the Land from which other Statutes derive their authority. It provides in Article 24 (1) that “a young person shall not be employed and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development<sup>9</sup>; provided that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions.” It defines a young person in sub-article (4) of the same Article as a person under the age of 15years.

##### 2.1.2 EMPLOYMENT ACT, CAP 268 OF THE LAWS OF ZAMBIA.

The Employment Act does not require a contract of employment to take any strict or particular form. What is required is merely an agreement between eligible parties, which said agreement may be expressly stated or implied from conduct and other surrounding circumstances, and it may be oral or in writing. The Act defines an employee 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 by work done, or is in cash or kind, but does

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<sup>9</sup> This can be compared with Article 32 of the UNCRC. Supra P.28

not include a person employed under a contract of apprenticeship made in accordance with the Apprenticeship Act or a casual employee.<sup>10</sup>

The Employment Act regulates the employment of people who enter into contracts of employment or of service. And in section 12, the Act prescribes a minimum contractual age as being 15 years.

With regard to oral contracts, the Act provides that in the absence of any agreement to the contrary, an oral contract shall be deemed to be a contract of service for the period by reference to *which wages are calculated. Thus an oral contract would be deemed to determine at the end of the period by which all the wages of an employee are calculated and paid out.*<sup>11</sup> The Act requires all oral contracts to be evidenced in writing, and for all employers to prepare and maintain a record of the contract for each of his/her employees.<sup>12</sup> The employer is also expected to avail such record to the employees, failure of which the former commits an offence under the Act. In the absence of the record and in the event of a dispute between the employer and the employee concerning the terms and conditions of employment, the courts will rely on the latter's version of events unless the former proves the contrary, as stated in section 24(5) of the Employment Act.

With regard to written contracts of employment, the Act places employers under duty of reducing the contract to writing and presenting it to the proper officer for attestation under section 28(3). The Act further provides that a written contract of service made under the provisions of the Employment Act shall not be enforceable unless it bears an attestation under the hand of a proper officer to the effect that such contract was read over and explained to the employee in the presence of such officer and was entered into by the employee voluntarily and with full understanding of its meaning.<sup>13</sup> There is however a qualification to this section which provides

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<sup>10</sup> Section 3 of the Employment Act.

<sup>11</sup> Section 18 of the Employment Act.

<sup>12</sup> Section 24 of Employment Act.

<sup>13</sup> Section 29.

that where the parties to the contract are literate and entered the agreement in good faith, such contract will be enforceable even if it was not attested.

Sections 32(3) and 32(4) state the effects of not having a written contract attested. The Act reads:

**Section 32 (3)** *“if a contract of service is not attested by a proper officer within forty days of the making thereof, the employer shall cease to have any rights under such contract.”*

**Section 32 (4)** *“an employee who is a party to a contract of service shall, in the case of failure to present the contract for attestation or refusal of a proper officer to attest the contract, be entitled to the fair value of any service rendered by him to the employer and a labor officer may, on the matter coming to his notice, assess and certify under the provisions of this subsection:*

*Provided that a court may vary or set aside such certificate of a labor officer and itself assess the fair value of such a service.*

With regard to capacity to enter into a contract of service, the Act provides that notwithstanding the provisions of the Employment of Young Persons and Children Act, the minimum contractual age is 15 years.<sup>14</sup> It further provides, in the 1997 Amendment Act that, where any contract of service is entered into between an employer and an employee or a casual employee who is below the age of 16 years, such contract shall be deemed a daily contract regardless of any oral or written agreement to the contrary, and the employer will cause such a contract to be attested by a proper officer. The Act also provides that any contract entered into with a child under the age of 15 years will only be valid if the terms, conditions and nature of employment are approved by the Minister of Labor and Social Services.

The rationale for this is that terms of employment for persons under the age of 15 years should not be oppressive. The aim is to protect children from conditions which could prove to be hazardous and exploitative, thus endangering the child's physical, spiritual, moral or social development, as in terms of Article 27 of the UNCRC. Terms of concern would be those relating to wages, working hours, type of work. Children should be able to live and enjoy their childhood and carry out work consistent with their capacities.

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<sup>14</sup> Section 12

### **2.1.3 INDUSTRIAL RELATIONS ACT, CAP 269 OF THE LAWS OF ZAMBIA.**

Prior to the enactment of the Industrial Relations Act (IRA) I 1971, the common law applied to the employer-employee relationship. This was a purely contractual relationship, with dominance of the employer over the employee in what was characterized as ‘master and servant’ relationship. The master had free will to hire anyone and to decide what wages and other remunerations to pay and conditions of service, however pathetic. The master also had the free will to fire anyone for no reason and without any obligation to give reasons therefor. This left workers in general open to abuse, discrimination and without job security or remedy.

With the enactment of the Industrial Relations Act (IRA) in 1971, Zambia has since made a departure from the common law position as outlined above. The Act in its current form was enacted to “revise the law relating to trade unions, the formation of trade unions and federations of employers organizations, recognition and collective agreements, settlement of disputes, lock outs essential services and the Tripartite Labor Consultative Council, Industrial Relations Court and to provide for matters incidental thereto.”<sup>15</sup> Section 108 of the IRA provides for grounds on which discrimination in employment is restricted and these are: race, sex, marital status, religion, political opinion or affiliation, tribal extraction, or status of the employee. The shift from common law to enactment of the IRA provides employees with some bargaining power for improving their conditions of services.<sup>16</sup> Hence workers can to some extent invoke the Act (or the law) to try and cope with work-family conflicts.

### **2.1.4 EMPLOYMENT OF YOUNG PERSONS AND CHILDREN ACT, CAP 274 OF THE LAWS OF ZAMBIA.**

The purpose of this Act is to “regulate the employment of young persons and children; and to provide for matters incidental thereto.”<sup>17</sup> This Act defines a child in section 2 as ‘a person under

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<sup>15</sup> Preamble of IRA (amendment) Act No. 30 of 1997.

<sup>16</sup> ILO/Work-Family conflict Report, June 2005.p.70

<sup>17</sup> Preamble of the Act.

the age of 14 years.’ The Act in section 4(1) prohibits the employment of children in industrial undertakings other than those in which only family members are employed. The prohibition does not apply to work done by children in technical schools as long as such work is approved by the Permanent Secretary of the Ministry of Education or his/her appointee.<sup>18</sup> Under subsection (1) of section 11, the Act prohibits the employment of young persons in any type of undertaking or work that, by its very nature or circumstance in which it is carried out, is likely to jeopardize the health, safety or morals of such young person. A young person is defined under the Act as a person who has not yet attained the age of eighteen years.<sup>19</sup> It is contended that it is rather confusing that the legislation on employment prescribes various ages of 14, 15, 16 and uses such terms as child, minor or young person to describe the same person.

### **2.1.5 APPRENTICESHIP ACT, CAP 275 OF THE LAWS OF ZAMBIA.**

This Act provides that minors can only be employed as apprentices with the assistance of parents or guardians.<sup>20</sup> It defines a minor as any person below the age of 21years. All contracts of apprenticeship must be registered in order to be binding on the apprentice, and they must be in writing, in the prescribed form. “The Act stipulates that no person under the age of 21years may be employed in any of the designated trades<sup>21</sup> unless a contract of apprenticeship is signed and notwithstanding that such person may have capacity under the Employment Act. The test is whether such employment is in a designated trade or not.”<sup>22</sup>

During Britain’s industrial revolution, apprenticeship was the common method of recruiting and training skilled labor particularly in fields of construction, engineering and ship building.<sup>23</sup> In modern times, employers seem to spend money on recruiting unskilled labor and training them, and workers through trade unions bargain for staff development and training. One wonders

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<sup>18</sup> Section 4 (2)

<sup>19</sup> Section 2 of the Act.

<sup>20</sup> Section 11(2)

<sup>21</sup> Section 2 of the Act defines designated trade as any trade designated under subsection (1) of s.8, or if the Minister has defined such trade under paragraph (b) of s.8(1), such trade as so defined.

<sup>22</sup> Mwenda, W. Employment Law in Zambia. 2004.p 3

<sup>23</sup> Hepple and O’Higgins. Employment Law.2<sup>nd</sup> ed. 1976.p.169

whether this Act still serves any purpose in Zambia. It is this author's view that this law could take off some pressure from families which, because of poverty, are unable to pay for their children's training and/or find appropriate job.

### **2.1.6 MINIMUM WAGES AND CONDITIONS OF EMPLOYMENT ACT, CAP 276.**

The Act empowers the Minister of Labor and Social Security to make regulations and orders with respect to minimum conditions of employment for workers protected under the Act, where the Minister is of the opinion that no adequate provision exists for the effective regulation thereof.<sup>24</sup> Mwenda states that the Act generally applies to those areas which are outside the scope of collective bargaining or where trade unions do not exist, or technically, where the bargaining or where the bargaining unit has failed to agree on a particular issue. Minimum wages vary according to the category and grade of workers, and covers such areas as rates of wages to be paid to workers by the hour, day, week or month; normal hours of work done in a day, week or month; rates for any work done in excess of or outside the normal hours of work; rates of any piecework or allowances for food or housing; any other matter the Minister thinks necessary and expedient to prescribe. Consider a situation in which there is some kind of policy on the poverty datum line that people in a certain category cannot be paid below a certain wage.

### **2.1.7 OTHER RELATED LEGISLATION<sup>25</sup>**

#### **(a) The Juvenile Act, Cap 53 of the Laws of Zambia.**

This Act defines "child" as a person who has not attained the age of 16 years and "juvenile" as a person below the age of 19 years. It is an offence under the Act for a parent or legal guardian of a

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<sup>24</sup> Section 3 of the Act.

<sup>25</sup> Phiri, M. Child Labor in Zambia.2000.p.26

child to cause or encourage the abduction, unlawful carnal knowledge or prostitution<sup>26</sup> of girls under the age of 16 years. It is also an offence for any person in custody of a juvenile to allow him or her to reside or frequent a brothel to cause or allow children to be used for begging or to give intoxicating or spirituous liquor to children or to cause or allow them to be in bars. Further, children under the Act are restricted from participating in adult entertainment. In order for a child to take part as a performer or attendant in any entertainment s/he would have to be granted a license by a Juvenile Inspector. The Minister of Labor and Social Development is empowered to make exemptions from this rule. The Juvenile Inspector has to be satisfied as to the fitness of the child to participate and that proper provision has been made to secure its health, and that such performance will pose no danger to its life in any way, before granting the license.

**(b) The Liquor Licensing Act.**

Under this Act, it is unlawful to employ in bars and other places where liquor is sold or consumed, children under the age of 18 years. The rationale for this provision of the Act is the same as that discussed under the Employment of Children and Young Persons Act. Children illegally employed in such places are, more often than not, exposed to alcohol and they open themselves to abuse by adults, making them particularly vulnerable in view of current poverty levels. Thus the Acts seeks to prevent early entry of children under 18years into such business so as to prevent the exposure to alcohol at a tender age (i.e. before adulthood).

**2.2 WORKING CONDITIONS AND FAMILY SUPPORT FACILITIES IN THE LIGHT OF WORK-FAMILY CONFLICTS AND CHILD LABOR.**

Having briefly outlined and analyzed the legal framework that governs labor matters in Zambia, it is now necessary to consider this in the light of working conditions and family support facilities vis -a-vis work-family conflicts and child labor. This is done with the objective of assessing how

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<sup>26</sup> Note that all the underlined are work-related. As discussed under the Employment of children and Young persons Act, such statutory protection seeks to curb adverse implications of work-family conflicts by ensuring that working children are not exposed to physical, mental and other hazards likely to occur.

workers with family responsibilities solve their child care problems in, legal, economic and socio-cultural context, when the family support system is unavailable.

### **2.2.1 WORKING CONDITIONS.**

There are a number of factors that influence changes in relation to family and income earning environment; that is to say, family trends and work-family conflict. Such factors include low wages and long working hours, inadequate medical facilities and terms for maternity leave, inadequate housing and non availability or insufficiency of other allowances such as lunch and transport, etc.

It is a well established principle of common law that an employer will give reasonable remuneration for services rendered by an employee, failure of which the latter may bring an action in the Courts of law. Statutory law has come in to reinforce this common law provision in many countries including Zambia. Section 48 of the Employment Act, for example, states when wages of employees are to be paid. The Act makes it mandatory for wages to be paid at regular intervals but the reality on the ground is different. Some employees, especially in the informal sector are not paid their salaries for months or years after the service was rendered. This is also true of most local authorities in the Country. Low wages as well as rising unemployment all make it difficult for individual family members to adequately contribute towards family maintenance. Long working hours, particularly in the informal sector, is a potential source of work-family conflict in terms of time constraints, i.e. inadequate time spent with children and other family members requiring care. It also contributes to the practice of leaving children to look after each other, which places them at risk of accidents and other incidents of abuse. Domestic servants may experience work-family conflict more than other classes of workers because of their long working hours and much lower wages (which are not regulated by the Minimum Wages Act and Regulations or any other Statute for that matter), making it more difficult for them to hire servants to take care of their own children, obviously, for much less.

The number of men and women seeking employment in the informal sector keeps on rising due to the decline in formal employment. The decisions on types of income generating activities made therein, as well as location of business activities, often at or near home, have tended to be influenced by family responsibilities, particularly for women and mothers. An obvious consequence of earning a low-income is that the employee will not be able to provide basic needs to his or her family. One such need that is currently a major problem in Zambia is that of accommodation. Mwenda writes that

*“before the enactment of the Employment (Amendment) Act, No. 15 of 1997, every employer was under obligation to cause every employee in his service to be adequately housed at all times and at his own expense. Where he was unable to provide adequate housing for employees, he had a duty to pay such employees rent allowance in lieu of such housing.”<sup>27</sup>*

This position of the law has since changed with the introduction of the amendment of Section 41 of the Employment Act, where an employer is under no obligation to provide workers with housing or payment in lieu thereof. The employer is at liberty to grant a loan or advance towards securing accommodation for his or her employees. This amendment was made apparently with the intention of empowering Zambian workers to purchase or build their own houses through obtaining loans from employers,<sup>28</sup> however it has not met its objective as most employers have used it to their advantage and neglected to provide the loans to their workers for reasons of insufficient funds for an obviously huge demand.. The latter have thus been forced to use their meager salaries for paying rent whilst struggling to find ways of supplementing their income for upkeep. This is responsible for other members of the household including children of tender age seeking gainful employment to help supplement their parent(s)/ guardians’ income (i.e. wage sector child labor) and in other situations, children have been tasked with heavy household work so as to enable parents look for work or enable them work for long hours to make ends meet (i.e. non -wage sector child labor).

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<sup>27</sup> Employment Law in Zambia. 2004.p.7

<sup>28</sup> IBID.

Another working condition that needs special mention in this study is that of medical attention and paid sick leave. Based on outcomes of key informant interviews in the ILO Work-Family Conflict Research, employers appear to hold negative attitudes about sick leave entitlements and particularly maternity leave payments, which they tend to see as increasing financial costs to them because they often pay hired 'relief persons' while the substantive employee on maternity leave is on full pay. This attitude may influence decisions that promote discrimination against women employees.<sup>29</sup> The legal provision that entitles women to maternity leave may to some extent encourage work-family conflicts in that it provides that a female employee who has been in employment for a continuous period of two years from the date of her first engagement is entitled to ninety days paid maternity leave on production of a medical certificate as to her pregnancy signed by a registered medical practitioner. This has serious work-family implications in many respects. For example, for a female medical student who has just completed a 7years degree program and has recently gotten married, either has to postpone child bearing for a further 2years or go on unpaid maternity leave which then reduces the much needed household income in the light of the coming of a new child. The legal provisions with regard to medical attention have since changed with the amendment to section 43 (1) of the Employment Act in which an employer no longer has the obligation to provide his employees with medical aid and medicines. Legally, employers are merely required to pay full salary to sick employees on leave for the duration of 3 months and to pay half salary for a further period of 3 months, after which they are entitled to discharge the employee on medical grounds according to the provisions of the law. The work-family conflict in this situation arises in that no medical supplies are given to the employee and thus the he/she has to use his/her salary to meet medical needs as well as provide other basic needs for their families. This has the same effects as those occasioned by employers' failure to provide employees with housing.

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<sup>29</sup> ILO Report. June 2005. P.69-70.

Poor working conditions thus have adverse effects on households and particularly with regard to children vis-à-vis child labor and are a source of work-family conflict.

### **2.2.2 SUPPORT FACILITIES**

The role that the extended family system plays as a social safety net of looking after orphans is of great importance as a tool for curbing child labor as well as work-family conflicts. However, as the need for the extended family support system increases, its capacity weakens by the increase in burden of care due to the impact of HIV/AIDS as well as high poverty levels. This has led to sourcing alternative means of child care.

There are different care facilities available to families in Zambia and these include day care centers, schools (primary and secondary), skills training facilities, health centers and hospices, orphanages and other community centers. Most of these are provided by Government agencies, NGOs and private individuals or companies, the Church and Faith Based Organizations (FBOs). It is reported in the ILO/ Work-Family Conflict Report that there is no empirical data on the provision of care facilities by employers. The Report further states that given that the law does not provide for nursing breaks, many employers may not feel obliged to provide support of care facilities to families. At the same time, the spread of HIV/AIDS and the change in Government policy in favor of home-based care and cost sharing with care givers have worsened the problem of work-family conflict, judging from newspaper reports and official statements on the effects of the pandemic on family life.

It should be noted that even with the existence of alternative coping strategies, the availability thereof to most families is almost non-existent, mainly due to low income. This is illustrated in the table at the end of this Chapter.<sup>30</sup> The ILO report reflects a host of coping strategies that are adopted by families to deal with the issue of child care. This is based on key informant interviews and is reflected at the end of this Chapter. Suffice to say that, different categories of workers employ different strategies to cope with child care. Domestic workers are popularly used to

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<sup>30</sup> See pages 24-25 below

provide child care while parents seek gainful employment. As earlier stated, their conditions of work are not adequately covered in terms of labor legislation or enforcement thereof. For example, although registration of employees is a requirement and a means by which employers ensure their workers have rights and that employers contribute towards payment of benefits to their employees, this is not effectively implemented even where businesses are formally registered. The situation cuts across many fields and areas of employment but is worse in the case of domestic workers because, even if the National Pension Scheme Authority expects **all categories of workers** to be registered for purposes of pension benefits, this requirement is not effectively enforced.<sup>31</sup> Thus, although the Government has done well in setting up a pension's authority, this type of support facility is weak in the sense that it is not effectively implemented and thus families do not derive much benefit from it.

Government policies and measures are an important part of this research because of the role that Government plays in policy making (which involves decisions about the type of change desired- legal or other wise) and planning (a process involving decisions about how best to bring about desired change, translating policy into practice and the allocation of resources among various social and economic sectors, as well as different sectors of the Country's population).<sup>32</sup>

Government, through policy and planning, can provide better support facilities to enable families overcome work-family conflicts. For instance, the change in Government policy in favor of home- based care for chronic illnesses has resulted in women experiencing work-family conflict more than their male counterparts, in the light of prevailing cultural system of division of labor which assigns care giving roles to women.<sup>33</sup> Further, Zambia does not have a comprehensive national social welfare system, which makes the extended family the only viable alternative to child care. In the light of the preceding discussion, this provides fertile ground for enhancing child labor vis-à-vis work family conflict. If, through government policies, an effective social

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<sup>31</sup> IBID p.87

<sup>32</sup> IBID .p88

<sup>33</sup> IBID p.69

security system were established, it would go a long way in alleviating poverty, work-family conflict and eliminating child labor.

**TABLE 1: TYPES OF CARE FACILITIES, TARGET GROUPS AND ACCESSIBILITY TO POOR FAMILIES, BASED ON LITERATURE REVIEW.**

TARGET GROUP	CARE FACILITIES/ SERVICES	PROVIDERS OF THE FACILITIES	ACCESSIBILITY (COST)
Children 6 months – 3 years	<ul style="list-style-type: none"> <li>▪ Day care centers/Crèches.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Private sector</li> <li>▪ Churches</li> <li>▪ councils</li> </ul>	Generally expensive and so not accessible to majority of low income families.
Children 3 years -5 years	<ul style="list-style-type: none"> <li>▪ nursery and pre-school</li> </ul>	<ul style="list-style-type: none"> <li>▪ private sector</li> <li>▪ churches</li> <li>▪ councils</li> <li>▪ NGOs</li> </ul>	Generally expensive and not accessible to majority of low income families. However, some NGOs, church based organizations; community schools specifically target the poor.
6years-12 years	<ul style="list-style-type: none"> <li>▪ Primary schools (grades 1-7)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Government</li> <li>▪ Churches</li> <li>▪ Private sector</li> <li>▪ community</li> </ul>	GRZ has free education policy up to Grade 9, but families still have to buy uniforms, pay statutory school funds, school requisites. Church and private sector providers charge fees. Community schools target orphans and vulnerable children (OVCs)

13-18years	<ul style="list-style-type: none"> <li>▪ secondary schools (grades 8-12)</li> </ul>	<ul style="list-style-type: none"> <li>▪ government</li> <li>▪ private sector</li> <li>▪ churches</li> </ul>	School fees charged by all providers, but privately owned schools are more expensive (generally inaccessible to the poor)
18years+	<ul style="list-style-type: none"> <li>▪ colleges</li> <li>▪ university</li> </ul>	<ul style="list-style-type: none"> <li>▪ government</li> <li>▪ churches</li> <li>▪ private sector.</li> </ul>	Fees charged by all. GRZ also offers scholarships to children from poor families and girls into university.
Children with special education needs.	<ul style="list-style-type: none"> <li>▪ Special education schools</li> <li>▪ Integrated schools</li> </ul>	<ul style="list-style-type: none"> <li>▪ Government</li> <li>▪ Churches</li> <li>▪ NGOs</li> </ul>	Free education in GRZ but families share costs for uniforms, other requisites. NGOs and churches also specifically target low income and poor communities.

## CHAPTER THREE

### CHILD LABOR AND WORK-FAMILY CONFLICT IN THE LIGHT OF INTERNATIONAL LAW.

#### 3.1 INTRODUCTION.

This chapter seeks to introduce international law and policy on work-family conflicts and child labor. This is done with the aim of viewing how these vices are sought to be curbed at an international level and to measure the effectiveness of the Zambian legislation against such background. In order to meet this objective, the following Conventions and International instruments will be considered.

#### 3.2 INTERNATIONAL LAW AND POLICY ON CHILD LABOR.

There is strong broad-based international commitment to the elimination of child labor and the protection of children who work as will be demonstrated below.

##### 3.2.1 DECLARATION ON THE RIGHTS OF THE CHILD (1959).

The Declaration recognizes, in its preamble, that children need special safeguards and care, including appropriate legal protection, before as well as after birth, by reason of their physical and mental immaturity. The General Assembly proclaims the Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his/her own good and for the good of society the rights and freedoms therein set forth, and call upon parents, men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the principles laid down therein.<sup>34</sup> Principle 1 guarantees all children the rights set forth in the Declaration and prohibits discrimination on the grounds of race, color, sex, language, religion, political or other opinion national or social origin, property, birth, or other status of the child or its family. The Declaration also states under Principle 2 that the child shall

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<sup>34</sup> Preamble of the Declaration on the Rights of the Child

enjoy special protection and shall be given opportunities and facilities, by law and other means, to enable him/her to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.

The child is also guaranteed the benefits of social security and is entitled to grow and develop in health.

The child shall have the right to adequate nutrition, housing, recreation and medical services.<sup>35</sup> The child is entitled to receive free and compulsory education at least in the elementary stages.<sup>36</sup> Under Principle 9 the child is entitled to protection against all forms of neglect, cruelty and exploitation and shall not be the subject of traffic in any form. Further under this Principle, the child shall not be admitted to employment before an appropriate minimum age; she or he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his/her health or education or interfere with his physical, mental or moral development.

### **3.2.2 UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (1989).**

This Convention was adopted and opened for signature, ratification and accession by the General Assembly resolution of 20<sup>th</sup> November 1989. The States Parties to this Convention, of which Zambia is one, recall that in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance. The rights and duties set forth therein are done in full recognition of the fact that in all countries in the world, there are children living in exceptionally difficult conditions and that they need special consideration.<sup>37</sup>

Article 9(1) of the Convention provides that:

*“State Parties shall ensure that a child shall not be separated from his or her parents*

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<sup>35</sup> Principle 4

<sup>36</sup> Principle 7

<sup>37</sup> Preamble UNCRC

*Against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. This may be necessary in the case of child labor particularly one involving abuse or neglect of the child by the parents.”*

Article 19(1) of the UNCRC states that States Parties thereto should take appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardians or other child-care givers. Member states further recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to its health or physical, mental, spiritual, moral or social development.<sup>38</sup> Article 36 provides that all member states shall protect the child against all forms of exploitation prejudicial to any aspect of the child’s welfare.

### **3.2.3 MINIMUM AGE CONVENTION (C 138)(1973).**

This is the ILO Convention concerning the minimum age for admission to employment. According to the SCREAM INTERNATIONAL DECLARATIONS AND CONVENTIONS AND IMAGES OF CHILD LABOR, published by ILO, the Convention 138 came into force on 19<sup>th</sup> June 1976. Each Member State for which this Convention is in force undertakes to pursue a national policy designed to ensure that member states progressively achieve the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.<sup>39</sup> Article 3 of the Convention states that the minimum age for admission to any type of employment or work by which its nature or circumstances under which its carried out, is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years; and such types of work or employment shall be determined by national laws or competent authorities. Furthermore, the

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<sup>38</sup> Article 32(1)

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Convention provides for exceptional cases in which children and young persons below the minimum age would be permitted to work. It also provides for the different categories for employment or work available to such children.<sup>40</sup> Presumably, exceptional cases would be those where a child takes up employment intended to provide him or her with a skill which he/she can rely on in adulthood.

### **3.2.4 CONVENTION 182- WORST FORMS OF CHILD LABOR CONVENTION (1999).**

This is a Convention concerning the prohibition of and encouraging the immediate action for the elimination of the worst forms of child labor. It came into force on 19<sup>th</sup> November 2000. Article 3 of the Convention states that the term 'worst form of child labor' comprises of the following:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or circumstances in which it is carried out, is likely to harm the health, safety or morals of children.<sup>41</sup>

### **3.3 INTERNATIONAL LAW AND WORK-FAMILY CONFLICTS.**

Despite the fact that work-family conflicts are a fairly recent term in labor matters, international law has provided for it in several instruments and conventions as its effects have been felt for a very long time. Understanding of issues relating to working conditions and work-family conflicts at international law have thus been placed within the background to the current international legal framework for work.

#### **3.3.1 PROTOCOL OF 1990 TO THE NIGHT WORK (WOMEN) CONVENTION (REVISED) (1948).**

Convention 89(NIGHT WORK (WOMEN) CONVENTION (REVISED) 1948 provided

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<sup>40</sup> Articles 4, 5, 6, 7 and 8.

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Convention 89(NIGHT WORK (WOMEN) CONVENTION (REVISED) 1948 provided that women, without distinction of age, shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed.<sup>42</sup> In 1990, following the protocol cited as the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, national laws or regulations could provide exemptions from the prohibition of night work contained in Article 3 of the Convention, after consulting the most representative organizations of employers and workers and by a decision passed by a competent authority. The Protocol however prohibits any variations and exemptions to women workers during a period before or after childbirth of at least 16 weeks of which at least 8 weeks shall be before the expected date of childbirth.<sup>43</sup> Further the Protocol provides in Article 2 (3) that:

- (a) *a woman worker shall not be dismissed or given notice of dismissal, except for justifiable reasons not connected with pregnancy or childbirth;*
- (b) *the income of a woman worker concerned shall be maintained at a level sufficient for the upkeep of herself and her child in accordance with a suitable standard of living. This income maintenance may be ensured through assignment to day work, extended maternity leave, social security benefits or any other appropriate measure, or through a combination of these measures.*

Article 2(4) states that the provisions of paragraphs 1, 2 and 3 of this Article shall not have the effect of reducing the protection and benefits connected with maternity leave.

The rationale for this is that child birth should not be penalized as a matter of public policy, unless taken before the prescribed 2 years. Even then, employment should not be terminated. Instead a woman should be permitted to go on unpaid leave, although this does not resolve the work-family problem.

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<sup>42</sup> Article 3

<sup>43</sup> Article 2 (1)

### **3.3.2 CONVENTION 102: SOCIAL SECURITY (MINIMUM STANDARDS) 1952.**

Part II of this Convention deals with medical care and provides for such contingencies as any morbid condition, pregnancy, and confinement and their consequences.<sup>44</sup> In Article 9, it states the persons that are protected under medical care, which cover different classes of employees, their spouses and children. Part III of the Convention states that

*'each member ...shall secure to the persons protected the provision of sickness benefit in accordance the articles 14-18. Article 14 covers incapacity for work resulting from illness defined by national laws and regulations. Article 15 states the classes of persons protected under the sickness benefit and Article 16 states how this benefit is calculated. Part IV deals with unemployment benefits which covers suspension of earnings due to inability to obtain suitable employment in the case of a person protected who is capable of and available for work, as defined by national laws or regulations. Part V covers old age benefit of a prescribed age which the Convention states is 65years or such higher age as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned. Part VI covers employment injury benefit caused by accident or a prescribed disease resulting from employment. Part VII covers family benefit and Article 40 thereunder states that 'the contingency covered shall be responsibility for the maintenance of children as prescribed by or in virtue of national laws or regulations.'*<sup>45</sup>

Part VIII deals with maternity benefit while Part IX covers invalidity benefit which deals with inability to engage in any gainful activity to an extent prescribed by national laws, which inability is likely to be permanent or persist after the exhaustion of sickness benefit.<sup>46</sup> Part X provides for survivors' benefit which covers the loss of support suffered by the widow or child as a result of the death of the breadwinner; in the case of the widow, the right to benefit may be made conditional on her being presumed, in accordance with national law, to be incapable of self-support.<sup>47</sup> Lastly, Part XI sets

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<sup>44</sup> Article 7 and 8.

<sup>45</sup> Article 32 of the Convention

<sup>46</sup> Article 54.

<sup>47</sup> IBID Article 60(1)

standards to be complied with by periodical payments which is summarized by the Schedule to this part, at the end of this chapter.

### **ILO NO.111: DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION.(1958)**

The preamble of this Convention affirms that all human beings, irrespective of race, creed or sex have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity and takes into consideration the fact that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights. Under Article 2 of the Convention, all Member States are required to pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. They ought to seek the co-operation of employers' and employees' organization in promoting the acceptance and observance of the policy; to enact legislation and promote educational programs to secure such acceptance; to pursue the policy in respect of employment under the direct control of a national authority; to ensure observance in activities of vocational guidance, training and placement services under the direction of a national authority and to indicate in its annual reports on the application of the Convention.<sup>48</sup>

### **CONVENTION No. 122: EMPLOYMENT POLICY CONVENTION CONCERNING EMPLOYMENT POLICY (1964)**

This Convention was passed in full recognition of the obligation of the ILO objective to further among the nations of the world programs which will achieve full employment and the raising of standards of living and in full recognition of its role to prevent unemployment and to provide for an adequate living wage, and to examine and consider

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<sup>48</sup> Article 3 of Convention 111

the bearing of economic and financial policies upon employment policy in the light of the fundamental objective that “ all human beings, irrespective of race, creed, sex, have the right to pursue both their material well being and their spiritual development in conditions of freedom and dignity of economic security and equal opportunity: ‘with a view to stimulate economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and under-employment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.’<sup>49</sup> To this effect Article 1(2) states that:

*‘The said policy shall aim at ensuring that:*

- (a) there is work for all who are available for and seeking work;*
- (b) such work is as productive as possible;*
- (c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, color, sex, religion, political opinion, national extraction or social origin.’*

### **3.3.5 CONVENTION CONCERNING EQUAL OPPORTUNITIES AND EQUAL TREATMENT FOR MEN AND WOMEN WORKERS:WORKER WITH FAMILY RESPONSIBILITIES(CONVENTION 156).**

This Convention was passed bearing in mind that the Discrimination (Employment and Occupation) Convention 1958 does not expressly cover distinctions made on the basis of family responsibilities, and in consideration of the fact that supplementary standards are necessary in this respect.

It recalls and upholds the principle laid down in the United Nations Convention on the Elimination of All Forms of Discrimination against Women to the effect that States Parties are “aware that a change in the traditional role of men as well as women in society and in the family is needed to achieve full equality between men and women.

The Convention further recognizes that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should

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<sup>49</sup> Article 1(1) of Convention 122

be taken into account in national policies. It also recognizes the need to create effective equal opportunities and equal treatment between men and women workers with family responsibilities as well as between such workers and other workers.<sup>50</sup> This is further done in full appreciation of the fact that many of the problems facing all workers are aggravated in the case of workers with family responsibilities.

The Convention recognizes the need to improve conditions of service for workers with family responsibilities by encouraging and implementing measures that respond to their special needs as well as by measures designed to improve the conditions of all workers generally. Thus Convention 156 applies to “men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.”<sup>51</sup> It also extends to workers with responsibilities in relation to other members of their immediate family who need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity; and it applies to all branches of economic activity and to all categories of workers.<sup>52</sup> Under the Convention, workers with family responsibilities should be able to exercise their right to free choice of employment and to have their needs in terms and conditions of employment and in social security taken into account. The Convention also provides for the needs of such workers to be taken into account with regard to community planning. To this effect, it urges all Members to take measures that develop or promote community services, public or private, such as child-care and family services and facilities.<sup>53</sup> Competent authorities and bodies are further required to take appropriate measures to promote information and education which empower the broader public to

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<sup>50</sup> Preamble to Convention 156

<sup>51</sup> Article 1

<sup>52</sup> Article 2

<sup>53</sup> Article 5

understand the principle of equality of opportunity and treatment for men and women workers and the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.<sup>54</sup> Article 7 provides for measures to be taken (which include vocational guidance and training), to enable workers with family responsibilities to become and remain integrated in the labor force, as well as to re-enter it after leave of absence due to those responsibilities. It is prohibited, under Article 8 to terminate any worker's employment on the basis of family responsibilities.

## **CONCLUSION**

The above discussion has presented International Law and Policy on child labor and work-family conflicts which will be further analyzed in the next Chapter to assert whether, against the background of Chapter two and Chapter three, Zambia has adequate laws that can curb child labor that arises from existing or potential work-family conflict.

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<sup>54</sup> Article 6

## CHAPTER FOUR

### REVIEWING NATIONAL LEGISLATION ON CHILD LABOR AND WORK-FAMILY CONFLICT IN THE LIGHT OF INTERNATIONAL LAWS AND POLICY.

Notwithstanding the existence of a host of laws covering the involvement of children and young persons in the labor industry, as well as laws governing conditions of service and incidents of employment, child labor vis -a- vis work-family conflicts is still prevalent in the Country. It is thus pertinent to take a fully analysis which examines the strengths, weaknesses, opportunities and threats (SWOT) of the Zambian legislation and policy in a bid to review its effectiveness in the light of international law and policy.

#### 4.1 S.W.O.T ANALYSIS OF CHILD LABOR LAW AND POLICY

This analysis involves reviewing the strengths, weaknesses, opportunities and threats of the child labor situation in Zambia, highlighting legislative and policy efficiencies, or inefficiencies for that matter, in curbing or containing child labor within the framework of the law.

##### 4.1.1 STRENGTHS AND WEAKNESSES

The first strength that can be noted about child labor policy in Zambia is that it acknowledges the existence of the problem of child labor and the fact that there are legislative weaknesses that have permitted and sustained the flourishing of the vice. This is contained in the Initial and First Periodic Report on the Implementation of the UN Convention on the Rights of the Child that Zambia submitted to the Committee on the Rights of the Child in 2002.<sup>55</sup> It is said that the first step to healing an alcoholic is admission of the problem. The Zambian Government as well as other stakeholders' acknowledgement of the existence and persistent growth of child labor has led to the enactment of various pieces of legislation as well as signing a number of international

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<sup>55</sup> 2002. p 24.

instruments. The Government has also embarked on a number of policies, i.e the National Child Policy and National Youth Policy which constitute core guidelines for improving the welfare and quality of life of children as well as protecting their survival and developmental rights. More recently, the Government embarked on the development of the National Child Labor Policy which aims at preventing the premature entry of children into the labor market. The Permanent Secretary in the Ministry of Labor and Social Security stated at a national symposium for the National Child Labor Draft Policy held on the 29<sup>th</sup> of March 2006 that:

*“the national child labor policy is a policy that will specifically aim at addressing the problem of child labor in the Country and prevent premature entry of children and young persons into the labor market so that Zambia eventually eliminates the worst forms of child labor in the Country.”*

Thus the admission of the problem of child labor in the Country has led to stakeholders taking a number of active measures to contain the vice.

In terms of legislation, it should be noted that a few statutes such as CAP 274 have been amended to take into account some of the provisions of international law contained in conventions signed and ratified by Zambia. Firstly, the age in the principle Act has been amended to meet that recommended in the Minimum Age Convention, from fourteen years to fifteen years. The Act also introduces the concept of ‘worst forms of child labor’ in Section 17B, adopted from ILO Convention 128. Section 4 of the principle Act which prohibits the employment of children in industrial undertakings is amended by removal of the proviso that children could be employed in such undertakings if only members of the same family are employed there.<sup>56</sup> This is replaced by a new and child friendly section 4A which prohibits employment of children in any covered worksite; but permits children by 13 and 15 years of age to lawfully engage in light work which is not likely to be harmful to that child’s health or development.

Enactments of this kind, even though not in themselves adequate to eliminate child labor, are “potentially one of the most powerful instruments available to governments to deal directly with

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<sup>56</sup> “Recent Legislation: The Employment of Young Persons and Children (Amendment) Act, 2004 No. 10 of 2004.” Zambia Law Journal Vol.37 2005 p.140

the workplace endangerment of children. Any effective policy to eliminate child labor and especially the participation of children in hazardous work should ensure the country enjoys the benefit of a solid framework of child labor laws.”<sup>57</sup>

In terms of weaknesses of the legislative framework, it should be noted that despite the enactment of a number of laws dealing with children in the labor industry, child labor is still escalating to alarming levels. Instead of addressing the problem of child labor, the multiplicity of statutes has invited confusion and misunderstanding thereby adversely affecting enforcement. “The relevant legal provisions are so numerous and in different parts of the law such that even those responsible for enforcing them can easily get confused.”<sup>58</sup>

Despite having undergone several amendments, the principle Act that directly deals with child labor does not generally meet current day needs in the fight against child labor. The principle Act, having been enacted in 1933, brings to life Roscoe Pound’s views that even though law be stable, it cannot and must not standstill.<sup>59</sup> Child labor is a global phenomenon which has tenets of cancer, taking various forms and thus making it complex to deal with. There is thus need to constantly devise new methods of containing it. Similarly child labor has become a different vice from what it was initially known to be. Being one of the most powerful tools available to governments (and other stakeholders) to fight it, legislation needs to be alive to the existing realities in society; and “although the fight against child labor will not be won through legislation, it certainly cannot be won without it...such laws can play a catalytic and supportive role in efforts to establish a more humane order and in prodding society to give the child the best it has to offer.”<sup>60</sup>

Further, it should be noted that even though there is a realization of the problem by stakeholders, it is difficult to trace specific reported records of practical cases of child labor. Most victims don’t officially report such incidents to the authorities as they see them not as an evil, but as a benefit.

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<sup>57</sup> Phiri, M.2000. Child Labor in Zambia: Legislative Attempt to Eliminate Work Hazards to Children. P.20

<sup>58</sup> Miyanda, T. 2003. Reviewing and Examining the Role and Impact of Existing Legislation on Child Labor in Zambia.p.25

<sup>59</sup> Bodenheimer, E. 2001. Jurisprudence: The Philosophy and Method of the Law.

<sup>60</sup> ILO: Child Labor Law and Practice in Conditions of Work Digest (Geneva ILO)Vol.1. 1991

The few cases that are reported are not properly documented.<sup>61</sup> Furthermore, section 18 of CAP 274 permits any labor officer and any police officer of or above the rank of assistant inspector to enter upon any land or premises of any industrial undertaking affected by the provisions of the Act to examine any person affected by the provisions of the Act and /or exercise any other powers as may be necessary for carrying the Act into effect. However, the said authorities do not have the capacity to carry out this task due to inadequate human resource and financial constraints, as well as insufficient administration of records alluded to earlier. It is evident from the above that there is no means of effectively monitoring and enforcing the legal provisions of Acts of Parliament, thus declaring them virtually useless. This is further illustrated in the failure to ascertain the real age of employees who claim to be older than they look. The Births and Deaths Registration Act, Cap 512 of the Laws of Zambia provides for a uniform law for the registration of all births and deaths in Zambia, without distinction of origin or descent. However, this register has not operated effectively and thus there is no mechanism of effectively ascertaining the age of such employees. Lastly, even though the parliament has enacted laws that prohibit child labor, the penal sanctions imposed therein are not severe enough to deter and/or punish would-be or actual offenders of the law. The Employment of Young Persons and Children Act, of example, provides that contravention of the provisions of the Act attracts a fine of 600 penalty units or imprisonment for three months or both.

#### **4.1.2 OPPORTUNITIES AND THREATS**

Zambia has had a good share of opportunities to fight and curb child labor. One such opportunity is the signing of international treaties such as the CRC and ILO treaty No.138 on Minimum Age and Convention No.182 on the Worst Forms of Child Labor. The UN CRC is said to be “the most complete statement of children’s rights ever made and is the first to give these rights the force of

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<sup>61</sup> Supra note 58, p.30

international law.”<sup>62</sup> The ILO on the other hand, has conducted research in child labor and through accurate analysis of the situation, has helped many countries devise appropriate policies. Zambia can thus benefit from such expertise if and when it submits its periodical reports to the relevant committees that are mandated to implement them. These Conventions thus offer Zambia a wide range of opportunities to uphold child rights and combat child labor.

Zambia can, and in some cases has,<sup>63</sup> domesticate(d) some or all provisions of such international laws so as to meet present day societal needs in order to contextualize the fight against child labor within the framework of the law.

The draft constitution prepared by the Mun’gomba Commission has presented an opportunity for Zambia to enact laws which recognize children’s rights. In Article 42(1) it provides that parents, wider family, society and the State have a duty to nurture, protect and educate children for the benefit of society; a provision similar to that of the CRC stated above. Article 42(5)(d) further states that every child has a right to be protected from discrimination, neglect, abuse and harmful cultural rites and practices...before attaining the age of eighteen years. Furthermore, children are protected against all forms of exploitation and any work that is likely to be hazardous or adverse to the child’s welfare.<sup>64</sup> Article 42(5) (f) states that “every child has a right to adequate nutrition, shelter, basic health care services, social security and social services. The Zambian Government thus has an opportunity to put in place a National Constitution which takes into account children’s rights and provides legal solutions to curb child poverty and thus child labor.

With the need to raise community and national awareness on child rights and specifically child labor in Zambia, the Country, being one with many Non Governmental Organizations (NGOs), increasing number of print and electronic media, professional bodies involved in community development programs, governmental institutions and Churches, and many other such human and

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<sup>62</sup> Chanda, A.W. Gaps in the Law and Policy in the Implementation of the Convention on the Rights of the Child in Zambia. Zambia Law Journal No 200 . p.1

<sup>63</sup> For example, it has incorporated the Minimum Age Convention in Cap 274 as well as some provisions of C 182 on Worst Forms of Child Labor.

<sup>64</sup> Draft Constitution Article 42(5)(e)

institutional resources, has what it takes to stage campaign messages that would give heart to a fledgling child rights' movement as was done by such similar institutions in Brazil, which consequently has since experienced a reduction in child labor in many sectors of the labor industry. Having signed several treaties, what is now required is to educate the masses on the contents of such treaties and create awareness. More importantly, there is to lobby for domestication of such treaties so that they can become legally justiciable.

With the strengths, weaknesses and opportunities that exist in Zambia, come threats. The fight against child labor is not a straight forward one hence challenges are faced in containing the vice. One such threat that exists and undermines both law and policy framework is the existence of poverty; discrimination between, for example, children working in formal sector and those in the informal sector, those working in the wage and non wage sectors etc; and cultural attitudes which are beyond mere socialization of children. They affect the effectiveness of legal and other responses to child labor (and work family conflicts) as they are deeply entrenched in our society.

Another threat that exists, and is a subject of discussion in this dissertation and will be discussed fully in the next sections, is that of work-family conflicts. The fight against child labor and other forms of child abuse cannot be won without improving the conditions under which these children are kept. As Federico Mayor, then Director General of the United Nations Educational Scientific and Cultural Organization (UNESCO) expresses it: "The struggle to save children's lives must go hand in hand with an effort to change the lives thus saved." It is a cruel paradox, he says, that children whose lives are being saved through the efforts of UNICEF, some 7000 of them daily, are growing up in a world in which their prospects for self betterment are actually diminishing. There is need to support and better families that have difficulty meeting their children's needs by implementing viable social welfare programs and improving working conditions.

The street child phenomenon is also a threat to the fight against child labor as for most of these children, the streets are a permanent escape from broken families or is a means of supplementing

family income or escaping from the overcrowded conditions at home.<sup>65</sup> Many child workers are so much a part of the street scene and rarely get any education. It should be noted that it is *extraordinarily difficult for children who lack education or a solid family support to rise above a very marginal existence in the informal economy.* Corollary to this is the threat of no alternative means for supplementing the meager income earned by child workers or their guardians. Child workers resort to working under harsh conditions as there are no viable alternatives. This is why they are passive about reporting this economic exploitation to the authorities.

Most international conventions leave it up to member states to implement the provisions therein. It is evident in the conventions discussed in Chapter Three that “the international machinery for the advancement and protection of children’s rights is largely dependent upon the efforts and measures taken at the national level.”<sup>66</sup> Thus international conventions are premised on the willingness of states to actively protect children’s rights nationally as most of them provide that states parties shall undertake all appropriate legal, administrative and other measures for the implementation of the rights recognized therein. However, some states parties do not take their treaty obligations seriously and there is no effective implementation mechanism that ensures that they oblige. If, for instance, a state party does not submit periodic reports to CRC committee (which Zambia was slow in doing) they stand to lose on the expert opinion and competent review of their children’s rights situation which normally follows the submission of the initial report. *Other than such losses, there is nothing much the international community can do to ensure Zambia, or any other country, is treaty compliant.*

Lastly, the response especially of Government, to the problem of child labor in enacting and amending legislation, formulating policy and implementing other administrative measures has been slow due to, *inter alia*, heavy bureaucracy. This is a threat in that the counter attack is slower than the spreading of the vice, which means by the time any action is implemented, child labor

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<sup>65</sup> Agnelli, S. 1986. *Street Children: A report for the Independent Commission on International Humanitarian Issues*, Weidenfeld and Nicolson London.

<sup>66</sup> Rwezaura, B. 1997. *Law, Culture and Children’s Rights in Eastern and Southern Africa*. P.303-304

would have taken a different turn and thus render the actions thus taken useless or inadequate to curb the vice.

## **4.2 S.W.O.T ANALYSIS OF WORK-FAMILY CONFLICTS IN ZAMBIA.**

The S.W.O.T Analysis of work-family conflicts in Zambia that will be undertaken in this section will seek to examine the extent of the problem as well as identify responsive policies and legislative measures critical for reducing work-family conflict issues and their effect on child labor.

### **4.2.1 STRENGTHS AND WEAKNESSES**

Zambia has taken a few significant strides in narrowing the gap of work-family conflicts. This is evident from the enactment of Statutory Instruments No 56 and 57 of 2006 on Minimum Wages and Conditions of Employment for Shop Workers and General Workers respectively. Instrument No 57 provides for a number of issues that are not adequately catered for in the Employment Act. These include funeral assistance, transport allowance for employees whose duty station is beyond a three kilometer radius from the area of residence, lunch allowance, subsistence allowance, tool allowance, protective clothing, housing allowance and upset allowance.<sup>67</sup> The SI further provides for the number of hours of work and overtime payments.<sup>68</sup> All these provisions will, to a great extent, address the concerns of the Employment Act laid out in Chapter Two.

Further, success can be noted in the legislative provision of the law relating to maintenance of children as is provided for by the Affiliation and Maintenance of Children Act.<sup>69</sup> This Act brings Zambian law into conformity with the CRC in terms of affiliation and maintenance of children.

Another legislative success that Zambia can boast about is that of amending the Income Tax Act, in 1984.<sup>70</sup> Prior to this, income tax of women in Zambia was heavier than that of men. This was

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<sup>67</sup> Statutory instrument no 57 of 2006. paragraphs 13-20.

<sup>68</sup> Id. paragraphs

<sup>69</sup> Cap 64 of the Laws of Zambia.

<sup>70</sup> Mushota L. Supra note 4 .

justified by the common law position that it was the duty of the man to maintain his spouse and children. Mushota writes<sup>71</sup>:

*“ ...before the 1984 amendment to the Income Act, a man’s income was not as heavily taxed on the assumption that he was head of the family and needed more money to support his spouse and children and provided them with adequate shelter, food, clothing and attend to their medical and educational needs...The amendment to the Act to remove the differentiation in tax may be attributed to the women’s activism, against the discrimination in the tax law, because women were being burdened with the heavy responsibility of taking care of the family and providing for its daily needs while the men, because of the tax “exemption,” had more money in their pockets which they spent on other activities not for the benefit of the family. ”*

Other than legislative successes, Zambia has recorded other administrative and policy successes. These include the Public Welfare Assistance Scheme (PWAS) which was introduced to assist poor parents to provide for their children. The Initial and First Periodic Report on the Implementation of the Convention on the Rights of the Child reports that in 1999 a total of 59,423 people (25,201 males and 34,222 females) received some form of assistance from the scheme.<sup>72</sup> Further the Department of Social Welfare introduced community-based initiatives to assist family incomes such as micro-finance, food for work and relief programs which to date it continues encouraging. The Government has also set up a total of eleven shelters country wide and placed vulnerable children in foster homes in order to better their lives.

All the above successes have not been without problems. The enactment of SI no.57 on Minimum Wages, for instance, does not wholly address the issue of work-family conflicts in that certain categories of workers, e.g. those engaged in domestic service, who experience more work-family conflict than any other category of workers, are not covered under the Order. Further, the Statutory Instrument specifically provides that “...the provisions of this Order shall not be used as a basis for any negotiations in contracts of employment for any employees exempt under subsection (1).”<sup>73</sup> As alluded to in earlier chapters, employees generally, have a weaker bargaining power than employers. It might thus be easier for them to have some guidelines when

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<sup>71</sup> 2005. Family Law in Zambia, Cases and Materials. P.358

<sup>72</sup> (1999)P.43

<sup>73</sup> Section 2 (2)

bargaining for covered by the wages and conditions of service, especially for those not covered by the Orders. The Statute however, denies them the benefit of using it as a basis for any negotiations for this purpose. Further, it was a general concern at a public discussion organized by the Law Association of Zambia on Minimum Wages and Conditions of Service held on 1<sup>st</sup> September 2006 that the mandatory nature of the entire instrument was likely to have the effect of:

- (i) employing less females as they would be more expensive to maintain;
- (ii) Weakening promotion chances of female employees as they are entitled to more days off work than their male counterparts who would then have more chances of proving themselves worthy of promotion.
- (iii) Reducing the number of people an employer is willing to employ as the cost of keeping and maintaining a large workforce would be too high. Employers were willing to meet the provisions of the Act only if, and reasonably so, they could see an increase in production.
- (iv) As a corollary to the above point, the Statutory Instrument would make it even more difficult for unqualified persons to get employment.

All the above stated concerns raise serious work-family conflict issues that would provide a fertile ground for the growth and sustenance of child labor. The obvious being that what affects the working conditions and wages of parents or guardians affects their ability to look after and provide for their families.

Another concern that was raised about the Statutory Instrument was that its application made no distinction between foreign investors and Zambian investors. The failure of the Act to make this distinction also poses a work-family conflict issue for local employers as they have less resources than the foreigners against whom they compete. Their ability to meet the provisions of the law and provide for their families at the same time are weakened by the fact that they have to

compete against foreign investors who have more money, are given tax holidays and other incentives not available to local investors.

Another weakness is the inadequate monitoring of children in foster care as well as failure to establish a monitoring mechanism to ascertain the extent to which child labor child neglect and child abuse occur especially among low income families.

Lastly is the co-existence of two radically different family systems which have contradictory norms and practices relating to work, care of children and the socio-economic role of men and women. This causes confusion to the majority of people and also to law enforcement agents. “ in both rural and urban households, predominant resource allocation and control systems operate in favor of men, which contributes, not only to gender differentiation impact on poverty , but also work-family conflict against women.”<sup>74</sup> Thus not only does the existence of dual legal system have an impact on work-family conflicts, but also lays a foundation for gender inequality as this is greatly evident in Zambian customary laws. There are difficulties in terms of reconciling work and family partly because of the prevailing cultural value system which stresses segregation as opposed to shared family responsibilities.

#### **4.2.2 OPPORTUNITIES AND THREATS**

Zambia has an opportunity to ratify and/or accede to a number of international instruments, such as Convention 156 on the Rights of workers with Family Responsibilities which she has only signed. Zambia further has an opportunity to domesticate the international conventions that she has ratified so that they are justiciable.

Statutory Instruments No 56 and 57 have also presented the labor industry an opportunity to create equilibrium among different categories of workers working within the same institution; i.e. to reduce the wide gap in salaries and other allowances that exists between top management and other employees.

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<sup>74</sup> ILO. Supra note 1. p.6

Furthermore, the Draft Constitution has provided an opportunity to the Zambian Government to address work-family conflicts through legislation. For example, Article 42(5)(b) provides that every child has a right to parental care or to appropriate alternative care where the child is separated from its parents. The work-family conflict here would arise in cases where extended families are already overburdened and therefore unable to support and care for such a child. By the Draft Constitution placing the State, inter alia, under obligation to nurture, protect and educate children for the benefit of society, they could be compelled to provide more efficient support facilities for children who are neglected, or have lost their parents to HIV or other circumstances and the extended family does not have the capacity to provide for them. Further Article 44 (5) of the Draft Constitution provides that:

*“Recognizing the importance of children to the future of society, the maternity role of women and the nurturing role of both parents, the Government shall-*

- (a) ensure the right of women to adequate maternity leave;*
- (b) ensure the availability of adequate paternal leave;*
- (c) promote the availability of adequate child care facilities.”*

This provision that takes into account the family responsibilities that parents have and the fact that they are likely to interfere with their work (or vice versa).

There are a number of threats that would prevent any effort to reduce work-family conflicts that are a cause of child labor. For instance, the increased illness in the family, particularly in the context of HIV/AIDS, which has required breadwinners to take longer periods of time to take care of sick members. This conflicts with work demands in terms of productivity and availability during working hours (which play an important role in determining which employee to promote, give a raise etc).

Another threat that exists is the high level of poverty. This has the following work-family implications:

- (i) high dependency ratio, which means that one working member has to support many dependants;

- (ii) low salaries which force people to work extra hours in 'secondary jobs' in order to make ends meet;
- (iii) "...parents or even the State will not enforce obligations over children. For instance, child labor is rampant and the prevalence of HIV/AIDS has deprived many children of their parents, leaving them open to drug abuse, prostitution, begging and living on streets where they usually end up being abused as they search for ways of sustaining themselves, making the law virtually inadequate and ineffective."<sup>75</sup>

Further there is potential work-family conflict between roles relating to family and formal employment as performed by single parents and women. Emphasis on sex-role segregation for example has the effect of increasing pressure on employed mothers. This threat is eminent in the Zambian context mainly because neither customary law nor statutory law provides for paternal leave to enable single-male parents, for instance, to take care of a sick child or fathers( who have working wives) to take care of children to relieve the working mother who could have taken a lot of days off work. this is not totally reflective of the UNCRC (and other conventions that Zambia has signed) which impose joint responsibility for raising children on both parents.

This chapter has shown the nature and extent of the problem of child labor vis-à-vis work-family conflicts in Zambia, its strengths, weaknesses, opportunities and threats. From the above, the next chapter will draw a conclusion on the topic of discussion and make recommendations on how to deal with the problem as presented in this Chapter.

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<sup>75</sup> Mushota L. Supra note 4. p.396

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 CONCLUSION

This dissertation has brought to the fore various factors that contribute to the problem of work-family conflicts in Zambia. Factors such as the organization of wage employment, high levels of poverty, the different perceptions about the relationships and rights within the family, the spread of HIV/AIDS and associated to additional care responsibilities, and the co-existence of a dual legal system. It has further demonstrated that work-family conflicts, to a very large extent, contribute to the problem of child labor in Zambia.

It is evident from this dissertation that the number of successes achieved does not outweigh the number of weaknesses and threats that exist in the legal and other systems for curbing the vice. However there are a number of opportunities that are available to improve the situation in the Country. One of the most important challenges that was highlighted is the lack of documented information which shows the fully extent of the conflict and how it is currently being addressed. It is noted from the ILO Report that in the past work-family aspects of life in Zambia were not a problem mainly because there was no separation between home and workplace. The changes that take place in family structures, the role of family members, the nature of work as well as the Country's social and economic situation have had a bearing on issues of work-family and ultimately on child labor. It is therefore clear in this Paper that the need for the latest information on the subject is vital in the fight against child labor.

The growing evil of child labor has dehumanized many states and nations and Zambia has not been spared. Although there are many other ways of containing child labor, legislation has been said to be one of the most powerful tools that can be used to achieve this task. However child labor legislation is only significant if it recognizes children as individuals with the right to develop physically, mentally, socially and culturally to their fullest potential, but more still, if it so recognizes with the fullest appreciation that "a nation's future is only as promising as its next

generation of citizens.” This dissertation has, therefore, demonstrated that the problems of work-family conflicts and child labor are interrelated and that measures taken to resolve work-family conflicts-whether legal, policy development, advocacy; institutional or otherwise- would go a long way in curbing child labor as families will be empowered to provide for their children.

It has also been shown that all stakeholders ought to come on board and join forces to fight child labor and work-family conflicts. The fight is a universal one and thus should not be left to Government alone because it is too huge a task to be achieved by any single body (although Government should be in the lead, championing this fight). The global phenomenon of child labor has further brought countries closer together to curb its spread, through signing of international instruments.

It has however been shown that concerning child labor, Zambia has signed and ratified a lot of international instruments but their implementation is yet to be fully realized. In this respect, Zambia has not fully lived up to its international obligations. As regards conventions that seek to address work-family conflicts, it has been shown that very few have been ratified and those that have been ratified have not been domesticated.

It can be noted in this research that work-family conflicts contribute to the tension and conflict within the family, particularly between providers on one hand and dependants on the other. This is especially true in households where resources are inadequate. Poorer families’ inability to take care of their members are likely to encourage children and dependents (irrespective of age and sex) to either engage in informal economic activities or to fend for themselves in whatever way they can.

Furthermore, this dissertation reflects the fact that child labor is not only restricted to wage sector, but a great of child labor activities also take place outside the wage sector, especially in the rural areas.

It can thus be stated, in conclusion, that work-family related issues need to be fully appreciated in order to curb child labor. Particular attention need to be paid to its effects on the welfare of

individual families and dependants, female and male labor force participation, the working environment and gender equality at both the level of household and labor market. National laws and policy have not fully taken these into account and have therefore been inadequate for curbing child labor vis-à-vis work-family conflict in Zambia.

## **5.2 RECOMMENDATIONS**

From the foregoing conclusion, and based on the whole findings of this research on child labor vis-à-vis work-family conflicts, the following recommendations are hereby made:

- A copy of this research paper, and any other on the subject, should be given to the Ministry of Labor and Social Services and Employers as well as Employee Organizations, as an advocacy tool for implementing viable legislative and other actions to curb child labor in the Country. It will not be of much help to the development of legislative and policy framework if it is merely kept in the School of Law library.
- There is need to harmonize the two radically different legal systems that exist in Zambia so as to have one system of law that is definite and concise and one which poses less confusion.
- Article 23 of the Zambian Constitution which lays the foundation for discrimination against women in all aspects of social life- i.e education, training, employment, and access to and control over resources- by allowing applications of Customary law to matters of personal law- i.e. marriage, divorce, inheritance- or gender inequalities within the home should be amended.
- Zambia should make legal provisions for paternity leave to enable men adequate time for care of their spouses, children and dependants who need care.
- The Zambia Government, employer-employee organizations and NGOs must make use of the ILO and donor agencies in terms of providing technical assistance to make or advocate for policies and programs and/or to finance policies and programs of action

which are more gender-responsive and sensitive as regards protection of rights of workers with family responsibilities.

- There is need to conduct a more comprehensive field- based research study and documentation of how men and women use their time in formal and informal sectors with the view fully appreciating the nature and extent of the problem of work-family conflicts.
- There is need for the Government to embark on a comprehensive social welfare program which seeks to support household that are either child-headed or headed by grandparents who are not earning any income. There is a further need for Government to put in place an effective monitoring and evaluation system that can check the performance and development of children who are placed in foster homes and other institutions of care under state supervision.
- A comprehensive program of public education and awareness raising program, through the media, specific training, distribution of literature etc, should be initiated and facilitates by the Ministry of Labor and Social Security, on Rights of Workers with Family Responsibilities and specifically the problem of work-family conflict. It should target key stakeholders such as social workers, policy makers, parliamentarians, churches, women's movement and other NGO and the general public.
- The Government should initiate, encourage and facilitate national dialogue on the idea of ratifying key international conventions laid out in Chapter Three.
- Government should allocate more financial resources to human resource development for both men and women, which will significantly lead to poverty reduction and enhance family welfare. It will also increase productivity in the labor industry. A good minimum wages and conditions of service legislation must be supplemented by high productivity in order to ensure compliance otherwise it may not be possible for employers to fulfill their obligations under the Act, albeit its mandatory nature.

- Challenges relating to coping with family responsibilities affect families whose breadwinners have lost formal jobs through economic restructuring measures. The slow pace at which terminal benefits are paid to retirees and retrenches causes a lot financial hardship on the families. Government should thus take legislative measure to curtail such delays.
- It is Government's responsibility to protect all workers regardless of whether they are in formal or informal employment. For this reason, they should put in place legislative and other measures to regularize the informal sector and measures that seek to eliminate such segregation and protect informal sector employees.
- There is need to level the field on which local investors compete with international investors for reasons stated in Chapter Four. The Minimum Wages Act should provide for this distinction to enable employers meet their statutory obligations without much difficulty.
- The provisions on children and family responsibilities presented in the draft constitution should be adopted in the final constitution and retained as entrenched provisions of the supreme law of the Land.
- There is also need for the *Zambian Government*, through the Legislature, to harmonize the different pieces on legislation concerning children into a comprehensive body of child-related laws to avoid confusion of such things as definition of a child and also to ensure conformity with instruments such as the CRC, as regards upholding all children's rights. There is need to enact such legislation that will take into account the present day needs of children and families to curb child labor which is caused by work-family conflicts. Child laws and policies should also reflect a comprehensive M&E mechanism that ensures that legislation is not just in the statute books but is a living law, reflecting society's realities and actually enforcing legal provisions to curb social evils.

- The Government needs to source finances for funding State authorities that are concerned with administrative tasks such as record keeping as well as enforcement of Acts of Parliament.
- Parliament should ensure that all legislative action against child labor provides for stiff penalties in order to deter perpetrators of such vices.
- All stakeholders should always take pro-active role in fighting child labor in order to curb the fast spread of its effects which the Country might not have the ability to rectify. Countries such as Namibia and South Africa have committed themselves to creating institutions or entities that monitor children's rights, in the form of either a children's ombudsman or a national committee or commission. Zambia could take a cue from such actions.

The author recommends that in as much as some of these recommendations may be achieved slowly and progressively, other should be implemented immediately and as a matter of urgency in order to fully realize the objects of curbing child labour vis- a- vis work-family conflicts.

## **BIBLIOGRAPHY**

### **LEGISLATION**

Constitution of the Republic of Zambia, CAP 1 of the Laws of Zambia.

Employment Act, CAP 268 of the Laws of Zambia.

Industrial Relations Act, CAP 269 of the Laws of Zambia.

Employment of Young Persons and Children Act, CAP 274 of the Laws of Zambia.

Apprenticeship Act, CAP 275 of the Laws of Zambia.

Minimum Wages and Conditions of Employment Act, CAP 276 of the Laws of Zambia.

Juvenile Act, CAP 53 of the Laws of Zambia.

Liquor Licensing Act, CAP 167 of the Laws of Zambia.

### **STATUTORY INSTRUMENTS**

Minimum Wages and Conditions of Employment (Shop Workers) Order, 2006. SI. No. 56 of 2006.

Minimum Wages and Conditions of Employment (General) Order, 2006. SI. No.57 of 2006.

### **INTERNATIONAL CONVENTIONS**

The Declaration on the Rights of the Child (1959)

The United Convention on the Rights of the Child (1989)

The Minimum Age Convention, C-138 (1973)

The Convention on the Worst Forms of Child Labor, C-182 (1999)

Protocol of 1990 to the Night Work (Women) Convention (Revised) (1948)

Social Security (Minimum Standards) Convention, C-102 (1952)

Discrimination (Employment and Occupation) Convention, ILO No. 111 (1958)  
Employment Policy Convention Concerning Employment Policy, C-122 (1964).  
Convention Concerning Equal Opportunities and Equal Treatment for Men and Women  
Workers: Workers with Family Responsibilities, C-156.

## **REPORTS**

Draft Constitution of the Mung'omba Constitutional Review Commission. 2005.  
ILO Secondary Research Report on Work-Family Conflict in Zambia.2005  
ILO: Child Labor Law and Practice in Conditions of Work Digest (Geneva ILO)Vol.1.  
1991  
Agnelli, S. 1986.Street Children: A report for the Independent Commission on  
International Humanitarian Issues, Weidenfeld and Nicolson London.  
The Initial and First Periodic Report on the Implementation of the UN Convention on the  
Rights of the Child, 1999.

## **NEWSPAPER**

THE DAILY MAIL, March 30th, 2006.

## **BOOKS**

Bodenheimer, E. 2001. Jurisprudence: The Philosophy and Method of the Law. New  
Delhi: Universal Law Publishing Co. Pvt. Ltd.  
Hepple and O'Higgins. 1976.Employment Law. 2<sup>nd</sup> Ed. London: Sweet & Maxwell  
Mushota, L. 2005. Family Law in Zambia: Cases and Materials. Lusaka: UNZA Press  
Mwenda, W. 2004. Employment Law in Zambia. Lusaka: UNZA Press.  
Ncube, Welshman (Ed). 1997. Law, Culture and Children's Rights in Eastern and  
Southern Africa. Nairobi: East Publishing Co.

## **OBLIGATORY ESSAYS**

Miyanda Triphine 2003: Reviewing and Examining the Role and Impact of Existing Legislation on Child Labour in Zambia. University of Zambia. November, 2003.

Phiri Moses.2000. Child Labour in Zambia: Legislative Attempt To Eliminate Work Hazardous to Children. University of Zambia. May, 2000.

## **JOURNALS/ARTICLES**

Chanda, Alfred W. 2000. "Gaps in the Law and Policy in the Implementation of Convention on the Rights of the Child." Zambia Law Journal. Vol 32. Pp1-19.

Recent Legislation. "The Employment of Young Persons and Children (Amendment) Act, 2004 No. 10 of 2004." Zambia Law Journal .Vol.37 2005 p.140

Mushota, C.C. 2005. "Fighting HIV/AIDS through Law and Policy." A Paper presented at a Conference organized by VSO-RAISA in Pretoria. October, 2005.