

AN EVALUATION OF THE LAW THAT REGULATES OCCUPATIONAL HEALTH
AND SAFETY IN ZAMBIA

BY

JERE CATHERINE

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BY

JERE CATHERINE

(26027411)

A dissertation submitted to the University of Zambia in partial fulfilment of the Bachelor of
Laws degree (LLB)

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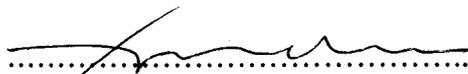
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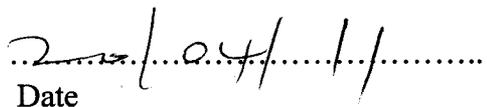
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Abstract

It is essential that there are adequate laws and the efficient enforcement of those laws to ensure that work places are safe and not posing a risk to the health of the workforce. The object of the research therefore, is to evaluate the law regulating occupational health and safety and its enforcement and in addition, considers areas in which it can be improved based on the International Labour Organization (ILO) standards. This is achieved by the use of primary and secondary sources.

The research establishes that there is a high prevalence of occupational accidents and diseases in Zambia, particularly in the agricultural, mining, construction, health and transport sectors. This is due to lack of education and information pertaining to health and safety, lack of quality clothing, silent suffering of employees for the fear of losing their jobs, the increase of investors from countries where labour laws are not respected and inadequate legislation and enforcement of occupational health and safety laws.

In addition, specific legislation that substantially aids in regulating occupational health and safety in Zambia is considered, that is, the objects, the adequacy and enforcement. The research establishes that occupational health and safety legislation exists; however, this legislation is highly fragmented. In addition, enforcement is mostly centralised.

Further, the ILO standards pertaining to health and safety have been considered. In view of these standards Zambia's ratification and domestication record has been considered. It has established that several relevant Conventions have not been ratified and domesticated.

In view of the findings of the research the following recommendations are made; that a national policy should be put in place to guide efforts towards health and safety in Zambia, thus making health and safety a priority in Zambia; the ILO Conventions concerning the sectors most affected by the high prevalence of occupational accidents and diseases should be ratified and domesticated; a legal duty should be imposed on the employer to ensure that their employees are adequately educated on the health and safety risks associated to their work; a legal duty should be imposed to ensure that protective clothing meets the requisite standards; investors should be informed of the health and safety laws in Zambia and subjected to stiff penalties if they fail to adhere to them; there is a need to harmonise the laws on occupational health and safety and decentralise the enforcement of these laws and more ILO Conventions pertaining to health and safety should be ratified and domesticated as this would aid in the improvement of standards in Zambia.

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LIST OF ACRONYMS

ILO:	International Labour Organization
PAYE:	Pay As You Earn
GDP:	Gross Domestic Product
ECZ:	Environmental Council of Zambia
CSO:	Central Statistical Office
HIV:	Human Immune Virus
AIDS:	Acquired Immune Deficiency Syndrome

TABLE OF STATUTES

Environmental Protection and Pollution Control Act, Chapter 204 of the Laws of Zambia

Explosives Act, Chapter 115 of the Laws of Zambia

The Factories Act, Chapter 441 of the Laws of Zambia

Ionizing Radiation Act, Act No 16 of 2005

Mines and Minerals Development Act, Chapter 213 of the Laws of Zambia

Occupational Health and Safety Bill, No 35 of 2010

Public Health Act, Chapter 295 of the Laws of Zambia

Workers Compensation Act. No 10 of 1999

TABLE OF CONVENTIONS

Asbestos Convention No 162 of 1986

Benzene Convention, No 136 of 1971

Chemicals Convention No 170 of 1990

Examination of Young Persons (Industry) Convention No 77 of 1946

Guarding Of Machinery Convention No 119 of 1963

Hygiene (Commerce and Offices) Convention No 120 of 1964

Labour Inspection Convention and Its Protocol of 1995 to the Labour Inspection Convention
No 81 Of 1947

Labour Inspection (Agriculture) Convention No 129 of 1969

Maximum Weight Convention No 127 of 1967

Maternity Protection Convention (Revised) No 103 of 1952

Medical Examination of Young Persons (Non-Industrial Occupations) Convention No 78 of
1946

Medical Examination of Young Persons (Underground Work) Convention No 124 of 1964

Minimum Age Convention No 138 of 1973

Night Work (Women) Convention (Revised), No 89 of 1948

Night Work of Young Persons (Non-Industrial Occupations) Convention No 79 of 1946

Night Work of Young Persons (Industry) Convention (Revised) No 90 of 1948

Occupational Safety and Health Convention No 155 of 1981

Occupational Health Services Convention No 161 of 1985

Occupational Cancer Convention No 139 of 1974

Protection against Accidents (Dockers) Convention, No 28 of 1929

Protection against Accidents (Dockers) Convention (Revised) No 32 of 1932

Prevention of Major Industrial Accidents Convention No 174 of 1993

Radiation Protection Convention No 115 of 1960

White Lead (Painting) Convention No 13 of 1921

Working Environment Convention No 148 of 1977

Safety and Health in Agriculture Convention No 184 of 2001

Safety and Health in Construction Convention No 167 of 1988

Safety and Health in Mines Convention No 176 of 1995

Safety Provisions (Building) Convention No 62 of 1937

Underground Work (Women) Convention No 35 of 1945

This therefore, necessitates adequate laws to ensure that work places are safe and not posing a risk to the health of the workforce. This research shall therefore, evaluate the law on occupational health and safety and consider ways in which it can be improved based on the International Labour Organisation (ILO) Standards.

1.2 Statement of the Problem

The laws that govern occupational health and safety in Zambia include the following; the Factories Act⁴, the Workers Compensation Act⁵, the Mines and Minerals Development Act, the Explosives Act⁶, the Ionising Radiation Protection Act⁷ and also to some extent the Public Health Act⁸ and the Environmental Protection and Pollution Control Act.⁹ The existing literature reveals that these Acts are not adequate as there are certain sectors of the workforce for example those in the agricultural sector who are not adequately protected by the existing legislation. Further, there is inadequate enforcement of the current legislation. This research aims to explore this problem in view of the International Labour Organisation (ILO) Standards which shall be the standard by which the Zambian law on occupational health and safety shall be measured.

1.3 Purpose of the Research

The main objective of the research shall be to evaluate the current state of the law on occupational health and safety and its efficacy. Further, consideration shall be made as to how the law on occupational health and safety can be improved in view of the current problems that are manifest by the high rate of occupational illness and accidents, that is, 69% of the labour force have been affected by occupational illness and accidents and have even been absent from work as a result.¹⁰ This will be achieved in view of the International Labour Organisation (ILO) standards.

⁴ Chapter 441 of the Laws of Zambia

⁵ Act No.10 of 1999

⁶ Chapter 115 of the Laws of Zambia

⁷ Act No 16 of 2005

⁸ Chapter 295 of the Laws of Zambia

⁹ Chapter 204 of the Laws of Zambia

¹⁰ S.Siziya ,A.S Muula , A,Ryan , E,Rudatsikira ,' Compensation patterns following occupational injuries in Zambia: Results from the Zambian Labour Force Survey'International Archives of Medicine (2010) <http://www.intarchmed.com/content/3/1/19>

1.4 Rationale and Justification of the Study

Information obtained from the Central Statistical Office (CSO) of the Government of the Republic of Zambia revealed that the prevalence of work related illness in Zambia is high and associated with significant levels of absence from work. The data was collected from fifty nine thousand one hundred and eighteen (59118) people over the age of eighteen from all the provinces of Zambia. Sixty nine percent of the sample population had suffered from occupational illness and had even stayed away from work due to illness.¹¹

In addition, according to the Workers Compensation Control Board, current statistics show that an average of one thousand and two hundred accidents and diseases are reported to the Board annually for the purpose of settling compensation claims in respect of occupational accidents and diseases.¹²

In addition, the inadequacy of the law has resulted in a large proportion of the workforce being inadequately protected. For example the Factories Act¹³ which is the major health and safety Act in Zambia provides for occupational health and safety in factories, construction sites and other work places. Concern has been raised over the limitation of the Act particularly with regard to occupational health and safety in the agricultural and other employment places falling outside the scope of the Act.¹⁴

For these reasons the existing law and ways in which it can be strengthened shall be considered.

1.5 Specific Research Questions

- 1) What is the current situation generally as regards occupational health and safety in Zambia?
- 2) What is the nature of the existing law as regards occupational health and safety and to what extent is it adequate and effective in view of the current general situation of occupational health and safety in Zambia?

¹¹ S.Siziya ,A.S Muula , A,Ryan , E,Rudatsikira ,' **Compensation patterns following occupational injuries in Zambia: Results from the Zambian Labour Force Survey**'*International Archives of Medicine* (2010) <http://www.intarchmed.com/content/3/1/19>

¹² www.workers.com.zm

¹³ Chapter 441 of the Laws of Zambia.

¹⁴ E.J,Nyirenda and A .Shikwe,'Trade Union Country Report,Zambia'Friedrich Ebert Stiftung(December 2003),p7

- 3) What are the standards that occupational health and safety legislation should meet?
- 4) In view of the standards, what should be done for the Zambian law on occupational health and safety to reach the requisite standards?

1.6 Methodology

The methodology shall be based on primary and secondary sources. Specifically, interviews with various personnel who will be able to give information based on their experience in the area of occupational health and safety, internet sources and various publications shall be utilised in addressing the research questions that have been outlined.

1.8 CONCLUSION

This chapter has provided a general introduction. It has been defined what a safe and healthy workplace is and why it is important to have a workplace that does not pose a risk to the health and safety of employees. It has further been considered the nature of the problem to be discussed, the rationale and justification of the study, the outline of the questions to be addressed and the methodology to be used in addressing the research questions.

CHAPTER TWO

2.0 SITUATIONAL ANALYSIS OF OCCUPATIONAL HEALTH AND SAFETY IN ZAMBIA

2.1 Introduction

This chapter shall consider the current scenario in Zambia as far as occupational health and safety is concerned as it is essential to have an understanding of the current scenario in order to ascertain the law's response to the challenges of occupational health and safety in Zambia. This chapter shall provide statistics on the composition of the Zambian labour force, that is, the sectors it consists of and the prevalence rate of occupational illnesses and accidents generally and in the various sectors labour is employed in Zambia. The causes of occupational illnesses and diseases shall also be considered.

2.2 Zambia's Labour force Composition

Zambia's labour force consists of the informal and the formal sector. Informal labour is most widespread in agriculture (99%), followed by commerce, that is, trade, wholesale and retail(89%) as well as transport, storage and communication (also 89%) and construction (66%). By contrast, manufacturing has by far the largest share of formal labour (93%), followed by mining (69%). Thus the main sectors are commerce, agriculture and transport in the informal sector and mining and manufacturing in the formal sector.¹⁵

2.3 General Prevalence of Occupational Accidents and Diseases in Zambia

Information obtained from the Central Statistical Office (CSO) of the Government of the Republic of Zambia revealed that that the prevalence of work related illness in Zambia is high and is associated with significant levels of absence from work. The data was collected from 59118 people over the age of 18 from all the provinces of Zambia, 69% of the sample population had suffered from occupational illness and had even stayed away from work due to illness.¹⁶

In addition, according to the Workers Compensation Control Board, current statistics show that an average of one thousand and two hundred accidents and diseases are reported to the

¹⁵ Zambia Labour Force Survey 2005 <http://www.wageindicator.org/main/projects/decisions-for-life>.

¹⁶ S.Siziya ,A.S Muula , A,Ryan , E,Rudatsikira ,'Occupational Illnesses in Zambia: results from the Zambian Labour Force Survey 2009'International Archives of Medicine (2010) <http://www.intarchmed.com/content/3/1/19>

Board annually for the purpose of settling compensation claims in respect of occupational accidents and diseases.¹⁷

However, data on occupational injuries and diseases is scarce and unreliable in Zambia and it is therefore difficult for stakeholders (government, employees or employers) to estimate their health and socio-economic impacts and target or assess the efficacy of interventions. While data is routinely collected in Zambia through accident notifications to the Ministry of Labour and Social Security, and Worker's Compensation Fund Control Board, there is widespread underreporting of cases.¹⁸

An interview conducted at Public Health Department at the Lusaka City Council with an inspector revealed that these statistics would be an underestimation because most people do not usually relate their illness with their line of work.¹⁹ Further in most sectors other than the mining sector there is no requirement for post retirement checkups.²⁰ In addition, Zambia keeps records, for instance, death certificates but that is just an end in itself, and there is no follow up as to what would have been the cause of the illness so as to take measures to prevent similar cases in the future. This is further worsened by the lack of research on occupational health and safety in Zambia so that problems may be identified and measures taken to curb them.²¹

2.4 Sectors Most Affected By Occupational Accidents and Diseases in Zambia

Occupational accidents and diseases are prevalent in all sectors of the economy with the most affected being mining, agriculture, construction, transport, manufacturing and health.²² The most affected sectors shall be considered in detail.

¹⁷ www.workers.com.zm

¹⁸ www.workers.com.zm

¹⁹ Interview conducted with an inspector who declined their name to be mentioned(but was authorised to respond to questions asked during the interview) at the Lusaka City Council's Public Health Department on 17th December 2010

²⁰ Interview conducted with an inspector who declined their name to be mentioned(but was authorised to respond to questions asked during the interview) at the Lusaka City Council's Public Health Department on 17th December 2010

²¹ Interviews conducted with inspectors at the Ministry of Labour and Social Security, Occupational Health Department and the Lusaka City Council ,Public Health Department who declined that their names be mentioned on 1st December 2010 and 17th December 2010 respectively.

²² www.workers.com.zm

2.4.1 Agricultural Sector

72% of the labourers in Zambia are engaged in the agricultural sector.²³ Most of these are in the informal sector and are mainly engaged in subsistence farming. The common crops grown include maize, groundnuts, cotton and tobacco. Tobacco and cotton are prone to pests and therefore pesticides which pose a health risk due to lack of protective clothing are used to control them. Hence most labourers in Zambia suffer from agriculture related injuries and illnesses that include pesticide poisoning, backache and muscle pain.²⁴

2.4.2 Mining Sector

Zambia is one of the major copper producers in the world and the mining sector employs fifteen percent of the formally employed workers in the country.²⁵ Workers in the mines experience various injuries such as noise induced hearing loss caused mainly by blasting and drilling rocks and head injuries as a result of rock falls and blasts.²⁶ Data ranging from 2006 to 2010 obtained from the Mine Safety offices in Kitwe Zambia revealed that on average 17 people die annually in the mines. The following are the major causes of death; fall of ground, falling from heights, electricity, lifting equipment, rail transport, blasting ,trackless transport ,material handling, suffocation, rolling stock, moving machinery and gassing.²⁷

Information obtained from the Occupational Health and Safety Board in Kitwe Zambia further, revealed that the most common diseases affecting miners are Pneumoconiosis and Tuberculosis which are currently at a prevalence rate of 14% and 20-35% annually. The main cause is the inhalation of silica dust in the mines.²⁸

²³ S.Siziya ,A.S Muula , A,Ryan , E,Rudatsikira , ' Compensation patterns following occupational injuries in Zambia: results from the Zambian Labour Force Survey'International Archives of Medicine (2010) <http://www.intarchmed.com/content/3/1/19>

²⁴ S.Siziya ,A.S Muula , A,Ryan , E,Rudatsikira , ' Compensation patterns following occupational injuries in Zambia: results from the Zambian Labour Force Survey'International Archives of Medicine (2010) <http://www.intarchmed.com/content/3/1/19>

²⁵ P. Michelo,M. Bratveit ,B.E .Moen' Occupational Injuries and Fatalities in Copper Mining in Zambia'2010<http://www.intarchmed.com/content/3/1/19>

²⁶ P. Michelo,M. Bratveit ,B.E .Moen' Occupational Injuries and Fatalities in Copper Mining in Zambia'2010<http://www.intarchmed.com/content/3/1/19>

²⁷ Interview conducted with a mine inspector who declined that his name be mentioned under the authority of the Office of the Director in the Mine Safety Department Kitwe, Zambia on 14th February 2011

²⁸ Interview conducted with a medical doctor who declined that his name be mentioned under the authority of the Director at the Occupational Health and Safety Board in Kitwe, Zambia on 14th February 2011

Small scale mining which basically mines gemstone, base metal and precious stones has brought about the following occupational health and safety problems: dust inhalation which may cause respiratory problems and general discomfort; emissions to air in confined spaces from transport and blasting; exposure to heat, noise and vibrations; physical risks at the plant or at the site and unsanitary living conditions.²⁹

The major causes of mine accidents and diseases can be attributed to deviation from the set standard practices, that is, the regulations on both the part of the employers and the employees.³⁰

2.4.3 Construction Sector

The construction sector is one of the sectors where high risk is prevalent. There are high incidences of fall from heights. The most common causes are the lack of adequate skills on the part of the workers and negligence on the part of the employers.³¹ The recent death of a newly recruited worker after several tons of glass fell on him during the recent renovations of Manda Hill Shopping Centre in Lusaka provides an illustration of this.³²

2.4.4 Manufacturing Sector

The manufacturing sector is one of the most affected by occupational accidents and diseases. The information obtained from Central Statistical Office (CSO) revealed that occupational illness consisted of the following; fatigue was the most common illness among persons exposed to vibrations (31.7%), breathing in smoke, fumes, powder or dust (40.1%), pesticide (37.6%), skin contact with chemicals (38.4%), handling infectious materials or waste (26%), and lifting heavy objects (39.5%). Chest infections were common among persons exposed to temperatures causing perspiration (26.8%), breathing in vapours from other chemicals such

²⁹M. Masialeli 'Small Scale Mining in Zambia' Department of Mining Engineering, University of Zambia Lusaka. <http://www.ies.ac.zw/santren/Projects/ssm/masialeli.htm>

³⁰ Interview conducted with a medical doctor who declined that his name be mentioned under the authority of the Director at the Occupational Health and Safety Board in Kitwe, Zambia on 14th February 2011

³¹ Interviews conducted with inspectors who declined that their names be mentioned at the Ministry of Labour and Social Security, Occupational Health and Safety Department on 1st December 2010

³² www.lusakatimes.com/2010/10/22/cons

as solvents and thinners (27%), noise (24.2%), and radiation (21.8%). Fever was most common among persons exposed to low temperatures (26.8%).³³

According to officers in the Occupational Health and Safety Department at the Ministry of Labour and Social Security who are mandated with the enforcement of the Factories Act, the high rate of factory illnesses is due to the lack of adequate clothing or merely just the neglect to wear the clothing because the protective clothing lacks comfort. In addition to the lack of use of proper protective clothing most of the workers are not educated on issues pertaining to health and safety.³⁴

2.4.5 Health Sector

By the nature of their work the medical sector are also at high risk of occupational accidents and diseases. For example, in the medical sector, health workers are exposed to infections or diseases such as tuberculosis, Hepatitis B, Human Immune Deficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS).³⁵

2.4.6. Transport Sector

The transport sector is at risk of accidents and diseases due to risks inherent with the nature of the work. For example, long distance transport officers are exposed to communicable diseases and Sexually Transmitted Infections due to the disparate sexual networks. HIV vulnerability is known to be high along transport routes particularly around 'hot spots' such as truck stops and border posts. Factors that exacerbate the vulnerability of workers in the transport industry include long periods of time spent away from home and lack of access to medical services.³⁶

2.5 General Causes of the Prevailing Health and Safety Situation in Zambia

Historically, there were only safety rules for mines and other risky undertakings under the Factories Act. However, now safety and health issues of labourers cover a full spectrum of dangers arising from modern industrial processes. For instance, health and safety regulations

³³ S.Siziya ,A.S Muula , A,Ryan , E,Rudatsikira , ' Compensation patterns following occupational injuries in Zambia: results from the Zambian Labour Force Survey' International Archives of Medicine (2010) <http://www.intarchmed.com/content/3/1/19>

³⁴ Interview conducted with officers in the office of the inspector of factories in the Occupational Health and Safety Department at the Ministry of Labour and Social Security.

³⁵ S.Siziya ,A.S Muula , A,Ryan , E,Rudatsikira ,'Occupational Illnesses in Zambia: results from the Zambian Labour Force Survey 2009'International Archives of Medicine (2010) <http://www.intarchmed.com/content/3/1/19>

³⁶ HIV/AIDS Policy by the Transport Sector in Zambia iom.org.za/site/images/stories/zambia

for agriculture and forestry have been necessitated by mechanization and the widespread use of chemicals and pesticides. The rising scale of pollution and the degradation of the environment arising from industrial and other economic activities are posing serious risks to the health of workers and the working environment.³⁷

In addition, the high prevalence of occupational illnesses and accidents is caused by lack of education of the employees in health safety and lack of adequate clothing which if available is of poor quality or is used beyond the stipulated time.³⁸ The problems of the protective clothing is worsened by the fact that there is no mandatory legal requirement that the Zambia Bureau of Standards should approve the health and safety clothing used in Zambia and hence poor quality and ineffective clothing is being used.³⁹

In addition to the lack of education and inadequate protective clothing, staff in the office of the inspector of factories at the Ministry of Labour's Occupational Health and Safety department revealed that the situation is worsened by the silent suffering of workers who for fear of losing their jobs in view of the high unemployment rate do not speak out on the unsafe working conditions in which they work under.⁴⁰

The high prevalence of occupational accidents and diseases is further worsened by investors who come from countries where labour laws are not respected and they tend to bring the same tendency to Zambia. This is as opposed to companies from Europe such as Parmalat, Lafarge and companies in the oil sector such as Total who bring very high standards from their countries of origin which are even higher than Zambian Occupational Health and Safety Standards.⁴¹ This suggests that Zambian laws on occupational health and safety are not yet at

³⁷ S.K,Mwenchanya,'Legal Empowerment of the Poor –Labour Rights in Zambia' An Issue paper prepared for the UPND Commission on the Legal Empowerment of the Poor,(August 2007),12-13

³⁸ Interviews conducted in the office of inspectors(who declined that their names be mentioned except Mr Mwale at Environmental Council of Zambia at the Environmental Council of Zambia), the Lusaka City Council and the Occupational Health and Safety Department at the Ministry of Labour and Social Security. Interviews were conducted on the 17th of December 2010, 1st December 2010 and 3rd December 2010 respectively.

³⁸ Interviews conducted with inspectors who declined at the Ministry of Labour and Social Security, Occupational Health and Safety Department

³⁹ Interviews conducted with inspectors who declined at the Ministry of Labour and Social Security, Occupational Health and Safety Department

⁴⁰ Interviews conducted with inspectors who declined at the Ministry of Labour and Social Security, Occupational Health and Safety Department

⁴¹ Interviews conducted with inspectors who declined at the Ministry of Labour and Social Security, Occupational Health and Safety Department

par with the requisite standards as most companies that are observing high labour standards are not observing the Zambian laws but the laws of their country of origin.⁴²

In addition and of much concern in this research, inadequate legislation can be said to be contributing to the poor health and safety standards in Zambia. This is because even though the legal framework exists, it does not adequately cover all the workers as the workers who are most covered are those who are work in the mines and in factories and other places(of which the Act does not expressly define) covered by the Factories Act⁴³. In addition, the legislation does not include or adequately provide for certain principles pertaining to health and safety as shall be seen by the analysis of the existing legislation in the next chapter. These laws do not cover agriculture, small enterprises, the informal sector or civil servants which are the bulk of the work force. The mining sector is covered in separate legislation. In countries operating within this framework, the legislation is a highly fragmented set of legal protections that generally leaves most of the workers out.⁴⁴

Other countries have progressed toward a more modern legal framework, under Occupational Health and Safety Acts. These are essentially drawn from International Labour Organisation [ILO] Conventions such as The Safety and Health in Mines Convention⁴⁵, the Occupational Safety and Health Convention⁴⁶ and the Occupational Health Services Convention⁴⁷. The Conventions provide the standards for the regulation of occupational health and safety⁴⁸. It shall be discussed in detail in the subsequent chapters how Zambian legislation governing occupational health and safety falls short of the standards set by ILO and further what can be done to bring them at par with ILO standards.

Occupational health and safety legislation in Zambia though deficient in a number of areas, is comparable to other jurisdictions elsewhere. However, the inability to implement occupational health and safety legislation combined with non-incorporation (domestication) of some of the ratified ILO Conventions such as the Safety and Health in Mines

⁴² Interviews conducted with inspectors who declined at the Ministry of Labour and Social Security, Occupational Health and Safety Department

⁴³ Chapter 441 of the Laws of Zambia

⁴⁴ R.Loewenson, 'Worker Organisation and Workplace Safety in Southern Africa' The Multinational Monitor,21(November 2000),9-10

⁴⁵ International Labour Organisation Convention No.176 of 1995

⁴⁶ International Labour Organisation Convention No 155 of 1981

⁴⁷ International Labour Organisation Convention No.161 of 1985

⁴⁸ International Labour Organisation Convention No.161 of 1985

Convention⁴⁹, the Occupational Safety and Health Convention⁵⁰ and the Occupational Health Services Convention⁵¹ into Zambia's municipal law has left workers without legal remedies when their rights have been violated. The position of informal sector workers is worse since the current labour legislation does not directly cover them.⁵²

In addition, the inability of government departments to enforce the Occupational Safety and Health laws (such as the Factories Act⁵³ and Safety Regulations under the Mines and Minerals Development Act⁵⁴) due to inadequate implementation capacity, has contributed to this deteriorating situation.⁵⁵

2.6 Conclusion

This chapter has provided a general situational analysis of occupational health and safety in Zambia. It has been considered the composition of the Zambian labour force. It has further been considered the general prevalence of occupational accidents and diseases in Zambia. In addition, the sectors most affected by occupational accidents and diseases in Zambia have been considered, that is, the agricultural sector, mining sector, construction sector, health sector and the transport sector. It has also been considered the general causes of the prevailing health and safety situation in Zambia which include the lack of education, the lack of adequate and quality clothing, silent suffering of employees for the fear of losing their jobs, the increase of investors from countries where labour laws are not respected and inadequate legislation and enforcement of occupational health and safety laws.

⁴⁹ International Labour Organisation Convention No.176 of 1995

⁵⁰ International Labour Organisation Convention No 155 of 1981

⁵¹ International Labour Organisation Convention No.161 of 1985

⁵² S.K,Mwenchanya(Dr), 'Legal Empowerment of the Poor –Labour Rights in Zambia' An Issue paper prepared for the UPND Commission on the Legal Empowerment of the Poor,(August 2007),12-13

⁵³ Chapter 441 of the Laws of Zambia

⁵⁴ Chapter 213 of the Laws of Zambia

⁵⁵ S.K,Mwenchanya(Dr), 'Legal Empowerment of the Poor –Labour Rights in Zambia' An Issue paper prepared for the UPND Commission on the Legal Empowerment of the Poor,(August 2007),12-13

CHAPTER THREE

3.0 AN EVALUATION OF OCCUPATIONAL HEALTH AND SAFETY LEGISLATION AND ITS ENFORCEMENT IN ZAMBIA

3.1. Introduction

This Chapter evaluates the legislation that governs occupational health and safety and its adequacy and enforcement in Zambia. This will be achieved by evaluating specific Acts that aid in regulating occupational health and safety in Zambia. The proposed Occupational Health and Safety Bill⁵⁶ will also be considered.

3.2 Specific Legislation That Governs Occupational Health and Safety in Zambia

The Acts that will be considered include the following; the Factories Act⁵⁷, the Explosives Act⁵⁸, the Mines and Minerals Development Act⁵⁹, The Public Health Act⁶⁰, the Environmental Protection and Pollution Control Act⁶¹, the Workers Compensation Act⁶², the Ionising Radiation Protection Act⁶³ and the Occupational Health and Safety Bill⁶⁴.

3.2.1 The Factories Act

The Factories Act⁶⁵ is an Act to make further and better provision for the regulation of the conditions of employment in factories and other places as regards the safety, health and welfare of persons employed therein; to provide for the safety, examination and inspection of certain plant and machinery; and to provide for purposes incidental to or connected with the matters aforesaid.⁶⁶

⁵⁶ No.35 of 2010

⁵⁷ Chapter 441 of the Laws of Zambia

⁵⁸ Chapter 115 of the Laws of Zambia

⁵⁹ No.7 of 2008

⁶⁰ Chapter 295 of the Laws of Zambia

⁶¹ Chapter 204 of the Laws of Zambia

⁶² Act No 10 of 1999

⁶³ No 16 of 2005

⁶⁴ No.35 of 2010

⁶⁵ Chapter 441 of Laws of Zambia

⁶⁶ The Preamble of the Factories Act , Chapter 441 of the Laws of Zambia

The salient features of this Act include; in the first part referred to as the preliminary section provides for the title to the Act, the definition of the word factory, interpretations, and the scope of application of the Act.⁶⁷

The second part of the Act provides for the administration of the Act, that is, it provides for the delegation of powers of commissioner and for inspectors and all matters that pertain to inspectors⁶⁸

The third part of the Act provides for the registration of factories. In addition, it also provides for drawings of Factories⁶⁹

The fourth part provides for the Appeals. It provides for the establishment of the appeals board, appeals to the board and powers of the board.⁷⁰

The fifth part provides for health general provisions. These include provisions pertaining to cleanliness, overcrowding, general ventilation, lighting and sanitary conveniences. This part further provides for the enforcement by local authorities of sanitary conveniences.⁷¹

The sixth part provides for general provisions pertaining to safety. It specifically provides for prime movers, transmission machines and other movers. Provisions as to unfenced machinery, construction and maintenance of fencing, construction and supply of machinery, vessels containing dangerous substances, self-acting machines, training and supervision of inexperienced workers, floors, steps, stairs, passages and gangways ,safe means of access and safe place of employment. In addition, precautions in places where dangerous fumes are liable to be present, precautions with respect to explosive or inflammable dust, gas, vapour or substance, prevention and fighting of fire, means of escape and warning in case of fire, testing and examination of fire warning, fire drills, regulations for means of escape, regulations for fire prevention and regulations for special safety arrangements for the prevention of accidents.⁷²

⁶⁷ Part I of the Factories Act , Chapter 441 of the Laws of Zambia

⁶⁸ Part II of the Factories Act, Chapter 441 of the Laws of Zambia

⁶⁹ Part III of the Factories Act , Chapter 441 of the Laws of Zambia

⁷⁰ Part IV of the Factories Act , Chapter 441 of the Laws of Zambia

⁷¹ Part V of the Factories Act , Chapter 441 of the Laws of Zambia

⁷² Part VI of the Factories Act ,Chapter 441 of the Laws of Zambia

The seventh part provides for safety as regards lifting machinery. These include provisions pertaining to chains, lifts hoists, cranes and ropes.⁷³The eighth part provides for safety as regards to the steam boilers.⁷⁴

The ninth provision provides for welfare provisions. These include drinking water, washing facilities, accommodation for water and change rooms, facilities for sitting, first aid and welfare regulations.⁷⁵

The tenth Part provides for special provisions and regulations pertaining to health, safety and welfare. These include removal of and prevention of the inhalation of dust and fumes ,meals in certain dangerous places, protective clothing ,appliances and screening, lifting excessive weights, power of inspector to require certificate for work, power to make regulations for safety and health and power to take samples.⁷⁶

The eleventh part provides for notification and investigation of dangerous occurrences, accidents and industrial diseases.⁷⁷

The twelfth part provides for special applications and extensions to tenement factories, parts of buildings let off as separate factories, building operations and works of engineering construction, mines and the power to extend the application of the provisions of the Act.⁷⁸

Part thirteen provides for miscellaneous provisions⁷⁹. In addition, part fourteen provides for offences, penalties and legal proceedings⁸⁰. Lastly, part fifteen provides for regulations and penalties.⁸¹

The Adequacy of the Legislation

The Factories Act is undergoing review is so that it can be in line with the ever growing technological changes.⁸²It shall be considered the inadequacies of the Factories Act which

⁷³ Part VII of the Factories Act, Chapter 441 of the Laws of Zambia

⁷⁴ Part VIII of the Factories Act , Chapter 441 of the Laws of Zambia

⁷⁵ Part IX of the Factories Act, Chapter 441 of the Laws of Zambia

⁷⁶ Part X of the Factories Act , Chapter 441 of the Laws of Zambia

⁷⁷ Part XI of the Factories Act, Chapter 441 of the Laws of Zambia

⁷⁸ Part XII of the Factories Act, Chapter 441 of the Laws of Zambia

⁷⁹ Part XIII of the Factories Act, Chapter 441 of the Laws of Zambia

⁸⁰ Part XIV of the Factories Act, Chapter 441 of the Laws of Zambia

⁸¹ Part XV of the Factories Act, Chapter 441 of the Laws of Zambia

⁸² S.K,Mwenchanya,'Legal Empowerment of the Poor –Labour Rights in Zambia' _An Issue paper prepared for the UNDP Commission on the Legal Empowerment of the Poor,(August 2007),12-13

include the following. Firstly, in the current Factories Act there is little provision regarding risk management.⁸³

Secondly, the Act does not further provide for the safety of visitors, providers, contractors and the general public that visit the workplaces covered by the Factories Act⁸⁴

Thirdly, the Factories Act not provide for the responsibility of workers over their own health and safety. For example, employees should have the duty to remove themselves from an unsafe workplace.⁸⁵

Fourthly, the Factories Act does not provide for training and informing of workers of risks involved with regard to their jobs and the preventive measures to be adopted.⁸⁶

Fifthly, the Factories Act does not provide for workers participation in occupational health and safety issues through the formation of workers committees.⁸⁷

Sixthly and lastly, the Factories Act does not provide for the guidelines for the manufacturers and suppliers of machinery and equipment used at the workplace. This is pertaining to the safety requirements to be met by the equipment.⁸⁸

⁸³ Interviews conducted with inspectors who declined that their names be mentioned at the Ministry of Labour and Social Security, Occupational Health and Safety Department on 1st December 2010

⁸⁴ Interviews conducted with inspectors who declined that their names be mentioned at the Ministry of Labour and Social Security, Occupational Health and Safety Department on 1st December 2010

⁸⁵ Interviews conducted with inspectors who declined that their names be mentioned at the Ministry of Labour and Social Security, Occupational Health and Safety Department on 1st December 2010

⁸⁶ Interviews conducted with inspectors who declined that their names be mentioned at the Ministry of Labour and Social Security, Occupational Health and Safety Department on 1st December 2010

⁸⁷ Interviews conducted with inspectors who declined that their names be mentioned at the Ministry of Labour and Social Security, Occupational Health and Safety Department on 1st December 2010

⁸⁸ Interviews conducted with inspectors who declined that their names be mentioned at the Ministry of Labour and Social Security, Occupational Health and Safety Department on 1st December 2010

Enforcement

This Factories Act is enforced by the Occupational Health and Safety Department which falls under the Ministry of Labour and Social Security. However, the challenges include understaffing. The department does not have the facilities to do their work such as motor vehicles to go and inspect the different workplaces that fall within the Factories Act⁸⁹

In addition, it is difficult for the Occupational Health and Safety Department to fulfil its mandate as its operations are to a large extent centralised in Lusaka and this poses a problem for those workplaces that fall within the scope of the Act that are outside Lusaka.⁹⁰

3.2.2 The Public Health Act

The purpose of the Public Health Act is to provide for the prevention or the suppression of diseases generally, to regulate all matters concerning public health in Zambia.⁹¹ This Act provides for, *inter alia*, the control of land use, approval of proposed building plans and type of ventilation, lighting, adequate sanitation that is proportionate with the people, disposal of waste and grant of licences.⁹²

Adequacy of the Public Health Act

The Public Health Act provides for the enactment of statutory instruments that regulate, *inter alia*, the control of land use, approval of building plans and type of ventilation, lighting, adequate sanitation that is proportionate with the people, disposal of waste and grant of licences.⁹³ However, in most cases proactive steps are not taken to come up with statutory instruments or by-laws before health problems arise. In most cases it is after health problems have arisen that laws are enacted to curb them. In addition, there are weak links between the inspectors who know the nature of health problems pertaining on the ground and the

⁸⁹ Interviews conducted with inspectors who declined that their names be mentioned at the Ministry of Labour and Social Security, Occupational Health and Safety Department on 1st December 2010

⁹⁰ Interviews conducted with inspectors who declined that their names be mentioned at the Ministry of Labour and Social Security, Occupational Health and Safety Department on 1st December 2010

⁹¹ Preamble to Chapter 295 of the Laws of Zambia

⁹² Section 75 of the Public Health Act provides for the power of the minister to issue Statutory Instruments on these matters.

⁹³ Section 75 of Chapter 295 of the Factories Act

legislator. The delay in the enacting of statutory instruments is further delayed by the lack of research in order to identify the public health problems due to inadequate funding.⁹⁴

Enforcement

This Public Health Act is enforced by the councils under the Ministry of Local Government. Enforcement of the Public Health Act has been inadequate due to the lack of human resource. Even the available human resource is underpaid, lacks incentives and is under equipped, that is, they lack the requisite protective clothing for inspection and lack transport to do the inspections.⁹⁵

3.2.3 Workers Compensation Act

The Workers Compensation Act is an Act that is meant to revise the law on the compensation of workers for disabilities suffered and diseases contracted during the course of employment. It further provides for the mergers of the functions of the Workers Compensation Fund Control Board and Pneumoconiosis Fund Control. In addition, it provides for the compensation of workers disabled by accidents occurring or diseases contracted in the course of employment, to provide for payments of compensation to dependents of workers who die as a result of accidents or diseases; to provide for the appointment and powers of a Workers' Compensation Commissioner. In addition, the establishment and the functions of the Workers Compensation Fund Control Board and Workers Compensation Tribunal and provide for matters connected to or incidental to the foregoing.⁹⁶

Enforcement of the Workers Compensation Act

A survey undertaken by the Zambia Labour force Survey⁹⁷ revealed that although 60.5% of all injured participants reported staying away from work because of workplace injury, only

⁹⁴ Interview conducted with an inspector who declined their name to be mentioned(but was authorised to respond to questions asked during the interview) at the Lusaka City Council's Public Health Department on 17th December 2010

⁹⁵ Interview conducted with an inspector who declined their name to be mentioned(but was authorised to respond to questions asked during the interview) at the Lusaka City Council's Public Health Department on 17th December 2010

⁹⁶ Preamble to the Worker's Compensation Act , No.10 of 1999

⁹⁷ Zambia Labour Force Survey 2005 <http://www.wageindicator.org/main/projects/decisions-for-life>.

5.5% of the respondents received compensation. This indicates that there is a lack of effective compensation system in Zambia.⁹⁸

Among the reasons the Workers Compensation Control Board is limited in its effectiveness include firstly, it is merely an advisory and not an enforcer of health and safety, that is, the Workers Compensation Control Board merely advises the party in breach of occupational health and safety standards as it does not have any authority to take measures against the party in breach.⁹⁹ This is unfortunate because the Workers Compensation Control Board is strategically placed in such a way that it would be an effective enforcer of health and safety as more people who get occupational injuries and diseases report them to the Workers Compensation Control Board compared to other enforcers.¹⁰⁰ In addition, a check at the Industrial and Labour Relations Court revealed that workers do not take occupational health and safety matters to the court as their main interest is to be compensated therefore; they take their claims to the Workers Compensation Control Board.¹⁰¹

Thirdly, the rate of compensation is too low and is not compatible with the economic situation on the ground. This is because the Workers Compensation Fund Control Board who has the mandate and knows the nature and gravity of the problems is not given the mandate to come up with the rates of contributions and compensation.¹⁰² On the contrary the legislature is given this mandate and therefore even when there is a need to revise the rates of contributions and compensation, it is delayed.¹⁰³

3.2.4 Mine Safety Legal Regime

The mines in Zambia are regulated by the following statutes; The Mines and Minerals Development Act¹⁰⁴, the Explosives Act¹⁰⁵ and the Explosives Regulations. These are the

⁹⁸ Zambia Labour Force Survey 2005 <http://www.wageindicator.org/main/projects/decisions-for-life>.

⁹⁹ www.workers.com.zm

¹⁰⁰ Interview conducted at the Workers Compensation Control Board (Kitwe Branch) with an officer who declined to be mentioned on 14th February 2011.

¹⁰¹ A check at the Industrial and Labour Relations Court Library/ Records Department

¹⁰² Interview conducted at the Workers Compensation Control Board (Kitwe Branch) with an officer who declined to be mentioned on 14th February 2011

¹⁰³ Interview conducted at the Workers Compensation Control Board (Kitwe Branch) with an officer who declined to be mentioned on 14th February 2011

¹⁰⁴ No.7 of 2008

¹⁰⁵ Chapter 115 of the Laws of Zambia

Acts that the Mine Safety Department under the Ministry of Mines and Minerals Development enforces.

The Mines and Minerals Development Act

The Mines and Minerals Development Act in part IX provides for safety, health and environmental protection. The Act provides that the environment and human health is to be considered when granting mining rights and mine processing rights. It further provides for liability and redress in instances when there is harm caused as a result of mining operations.¹⁰⁶

Explosives Act

The Explosives Act is an Act that makes provision for regulating control over the manufacture, use, possession, storage, importation, exportation, transportation and destruction of explosives; and to provide for matters incidental thereto or connected therewith.¹⁰⁷

Adequacy of the Law

This Act was passed in 1974 and therefore the Mine Safety Department is of the view that review is required as most of the provisions of this Act have become outdated and is thus coming up with the Draft Amendment Bill.¹⁰⁸

Enforcement

Some of the challenges the Mine Safety Department faces include the fact that it has a mandate to ensure that the law is being complied with in every province in Zambia where mining activities are taking place. However, the operations of the Mine Safety Department are largely centred on the Copperbelt Province. There is therefore need to decentralise the operations of the Mine Safety Department as there are mining activities that are now taking place in other provinces other than the Copperbelt and the Mine Safety Department is having challenges performing its mandate in places outside the Copperbelt. There should be provision made for the decentralisation of the enforcement of the laws regulating mine safety as now mining activities are no longer just on the Copper belt as was historically the case.¹⁰⁹

¹⁰⁶ Part IX (section 115 -123) of Act No.7 of 2008

¹⁰⁷ Preamble of Chapter 115 of the Laws of Zambia

¹⁰⁸ Interview conducted with a mine inspector who declined that his name be mentioned under the authority of the Office of the Director in the Mine Safety Department Kitwe, Zambia on 14th February 2011

¹⁰⁹ Interview conducted with a mine inspector who declined that his name be mentioned under the authority of the Office of the Director in the Mine Safety Department Kitwe, Zambia on 14th February 2011

The Mine Safety Department like other government departments is limited by financial constraints that hinder their effectiveness. They further lack the relevant facilities such as motor vehicles to carry out their functions effectively.¹¹⁰

3.2.5 The Environmental Protection and Pollution Control Act

The Environmental Protection and Pollution Control Act is an Act that provides for the protection of the environment and the control of pollution; to establish the Environmental Council and to prescribe the functions and powers of the Council; and to provide for matters connected with or incidental to the foregoing.¹¹¹ In pursuit of this goal, occupational health and safety hazards are controlled. Some of the workplace health hazards include water pollution, waste management, radiation, noise levels and pesticides and toxic substances all of which are monitored and regulated by this Act. Environmental impact assessments are conducted before licences are issued for one to set up a factory in Zambia by the Environmental Council of Zambia (ECZ). In this regard it is evident how in fulfilling its mandate of ensuring the environment is free from pollution the Environmental Protection and Pollution Control Act¹¹² (through the Environmental Council of Zambia who are charged with the mandate of enforcing this Act) inevitably aids in safeguarding occupational health and safety as most of the pollutants of the environment are workplace generated.¹¹³

Adequacy of the Act

The Environmental Pollution and Control Act and the various regulations that fall under it adequately help in safeguarding the environment from pollution and inevitably help in safeguarding health and safety in the workplace.¹¹⁴

Enforcement

One major challenge of the enforcement of this Act as regards occupational health and safety is that its main mandate is not to ensure occupational health and safety but to ensure that the environment is free from pollution. Therefore, the Environmental Council of Zambia will not be moved solely because there exists at some workplace hazards to health and safety if the hazards are not essentially polluting the environment. This is unfortunate because the

¹¹⁰ Interview conducted with a mine inspector who declined that his name be mentioned under the authority of the Office of the Director in the Mine Safety Department Kitwe, Zambia on 14th February 2011

¹¹¹ Preamble to Chapter 204 of the Laws of Zambia

¹¹² Chapter 204 of the Laws of Zambia

¹¹³ Interviews conducted with the Public Relations Officer and Mr Mwale (an inspector) at the Environmental Council of Zambia (ECZ) on 3rd December 2010

¹¹⁴ Interviews conducted with the Public Relations Officer and Mr Mwale (an inspector) at the Environmental Council of Zambia (ECZ) on 3rd December 2010

Environmental Council of Zambia is strategically placed to aid in enforcing occupational health and safety standards.

3.2.6 The Ionising Radiation Protection Act

This Act establishes the Radiation Protection Authority and defines its functions and powers. In addition, it provides for the protection of the public, workers and the environment from hazards arising from the use of devices or materials capable of producing ionising radiation.¹¹⁵

Enforcement of the Ionising Radiation Protection Act

The Radiation Protection Authority which is mandated to enforce this Act has challenges that include firstly, the lack of experts as there are only three out of the thirty three required to cover the whole country in overseeing the serious and highly sensitive issues of radioactive materials in mining, health and other sectors, including the transit of radioactive material through the country.¹¹⁶In addition, there is lack of equipment to monitor the industry.¹¹⁷

In addition, the Radiation Protection Authority has not been properly established according to the structure proposed in the Act.¹¹⁸In addition, Zambia has a lot of Uranium deposits in Lumwana and Sinazongwe, it is therefore essential that a system should be put in place to enable people working in these mines to be checked for contamination which is currently not the case.¹¹⁹

3.2.7 The Occupational Health and Safety Bill

The Occupational Health and Safety Bill¹²⁰ provides for some of the shortcomings in the health and safety legislation, it provides for the following;

- a) It provides for the Occupational Health and Safety Institute and its functions
- b) Provides for the establishment of health and safety committees at workplaces and for the health and safety and for the welfare of persons at work.
- c) Provide for the duties of manufacturers and importers and suppliers of articles, devices ,items and substances for use at work;

¹¹⁵ The Preamble of Act No.16 of 2005

¹¹⁶ National Assembly of Zambia Parliamentary Debates –Tuesday 22nd March 2011, www.parliament.gov.zm

¹¹⁷ National Assembly of Zambia Parliamentary Debates –Tuesday 22nd March 2011, www.parliament.gov.zm

¹¹⁸ National Assembly of Zambia Parliamentary Debates –Tuesday 22nd March 2011, www.parliament.gov.zm

¹¹⁹ National Assembly of Zambia Parliamentary Debates –Tuesday 22nd March 2011, www.parliament.gov.zm

¹²⁰ No.35 of 2010

- d) Provide for the safety of persons other than those at work against risk to health and safety arising from or in connection with the activities of the person at work and
- e) Provide for matters incidental or connected to the foregoing.¹²¹

This Bill seeks to increase coverage of occupational health and safety legislation to cover all sectors in the country and in all places of work. The focus will not only be on pneumoconiosis and pulmonary tuberculosis but other worksite diseases caused by organic dust, noxious fumes, gases and other work related injuries.¹²²

Adequacy of the Bill

The proposed Bill reasonably addresses most of the long standing occupational health and safety legislation inadequacies however some of the areas that need to be addressed include the following:

The Bill in its current form has not included important provisions outlined in the International Labour Organisation Conventions of which Zambia has ratified particularly Convention No.161 on Occupational Health Services as no provisions have been included on a national policy on occupational health services, the function of occupational health services, organisation and conditions of operation of occupational health services.¹²³ In addition, provisions contained in Convention No.155 concerning health and safety and the working environment have not been included. These provisions include principles of national policy as well as the action that needs to be taken at national level and at the level of an undertaking in order to address issues of occupational health and safety.¹²⁴

Secondly, it is not clear what will happen to the other regulators, that is, will the board take over all the responsibilities of Occupational Health and Safety or will they be complementary

¹²¹ No.35 of 2010

¹²² No.35 of 2010

¹²³ Report Of The Committee On Health, Community Development And Social Welfare On The Occupational Health And Safety Bill, N.A.B No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly, Appointed On 23rd September, 2010

¹²⁴ Report Of The Committee On Health, Community Development And Social Welfare On The Occupational Health And Safety Bill, N.A.B No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly, Appointed On 23rd September, 2010

bodies with the existing regulators .The Bill does not seem to solve the problem of the lack of harmonisation of the work of the regulators.¹²⁵

It was further observed by the stakeholders that the Bill was enforced in the absence of a national policy on occupational health and safety and the working environment. Furthermore, the Bill has not provided for the education and training of workers and representatives in occupational health and safety policies.¹²⁶

The Bill provides for medical examination¹²⁷ but however the type of medical examination has not been specified. Furthermore, the period for periodical reviews is not specified. In this regard it is difficult to tell whether the reviews will be quarterly and monthly. The Bill is silent on whether other institutions will be authorised to conduct medical examinations on behalf of the institute if the need arises.¹²⁸

The Parliamentary committee on health, community development and social welfare, further recommended that the board be given the authority to be able to appoint experts. This is because the composition of the board as provided by the Bill lacks the relevant expertise to effectively carry out their duties.¹²⁹

As far as the duties of employers to employees are concerned about the use of the words ‘as far as is reasonably practicable’, it was feared that if this was not specified in the proposed law it would give latitude to the employers to justify their failure to perform duties placed on them.¹³⁰

¹²⁵ Report Of The Committee On Health, Community Development And Social Welfare On The Occupational Health And Safety Bill, N.A.B No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly, Appointed On 23rd September, 2010

¹²⁶ Report Of The Committee On Health, Community Development And Social Welfare On The Occupational Health And Safety Bill, N.A.B No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly, Appointed On 23rd September, 2010

¹²⁷ Section 6 of Bill No 35 of 2010

¹²⁸ Report Of The Committee On Health, Community Development And Social Welfare On The Occupational Health And Safety Bill, N.A.B No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly, Appointed On 23rd September, 2010

¹²⁹ Report Of The Committee On Health, Community Development And Social Welfare On The Occupational Health And Safety Bill, N.A.B No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly, Appointed On 23rd September, 2010

¹³⁰ Report Of The Committee On Health, Community Development And

Some stakeholders were of the view that the appeals board should consist of independent people and not those who are part of the Occupational Health and Safety Board, for instance Law Association of Zambia or Zambia Medical Association.¹³¹

Further it was argued that clause 33 that provides for exemptions should provide for instances when exemptions can be made to prevent abuse of the clause and to promote transparency.¹³²

Some stakeholders before the parliamentary committee felt that the definition of occupational illness and injury in the Act was ambiguous in that it was left to the discretion of the minister; they were of the view that a definition should be provided and a list of the occupational diseases should be provided in the Bill.¹³³

In addition, that the employers should provide for measures to deal with emergencies and accidents including adequate first aid arrangements.¹³⁴

It was further suggested that the Chairperson and the Vice Chairperson of the Board should be elected by the Board members in line with the principles of corporate governance as opposed to the Bill which suggests that the minister should appoint them.¹³⁵

Social Welfare On The Occupational Health And Safety Bill, N.A.B
No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly,
Appointed On 23rd September, 2010

¹³¹ Social Welfare On The Occupational Health And Safety Bill, N.A.B
No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly,
Appointed On 23rd September, 2010

¹³² Report Of The Committee On Health, Community Development And
Social Welfare On The Occupational Health And Safety Bill, N.A.B
No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly,
Appointed On 23rd September, 2010

¹³³ Report Of The Committee On Health, Community Development And
Social Welfare On The Occupational Health And Safety Bill, N.A.B
No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly,
Appointed On 23rd September, 2010

¹³⁴ Report Of The Committee On Health, Community Development And
Social Welfare On The Occupational Health And Safety Bill, N.A.B
No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly,
Appointed On 23rd September, 2010

¹³⁵ Report Of The Committee On Health, Community Development And
Social Welfare On The Occupational Health And Safety Bill, N.A.B
No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly,
Appointed On 23rd September, 2010

The Bill provides that the board should consist of a member of a trade union but it has been suggested that the Bill should provide instead for a representative from the federation or congress of trade union.¹³⁶

The proposed Occupational Health and Safety Bill is a step in the right direction for health and safety legislation which is well framed, however, the lack of detail and the vagueness will result in it being not as effective as it should be.

The proposed Occupational Health and Safety Bill should also create a basis where the various stakeholders can work together and ideally be found in one department, that is, the Environmental Council of Zambia, The Lusaka City Council Public Health Department, the Inspectors of The Occupational Health and Safety Department (Ministry of Labour and Social Security), Zambia Bureau of Standards, The Zambia Federation of Employers and other stakeholders of occupational health and safety. This is because there are problems due to the fragmentation of the laws at present as all the enforcers have limited power which is highly fragmented and even in the event that they find a health and safety problem in the course of their work but since it falls outside the scope of the authority given to them by the Act that governs them, they are unable to do anything about it. The Act should seek to strengthen the coordination and collaboration of the different stakeholders and clearly state how it is to be achieved which is not the case with the current state of the Bill.

In addition the Bill propounded that the Director “may” ask the employer or the employees to come up with a health and safety policy, the use of the word “may” makes the requirement tentative however the best approach would be to make a health and safety policy mandatory in every organisation and the wording of the Act should be such as to make it a mandatory requirement.¹³⁷

¹³⁶ Report Of The Committee On Health, Community Development And Social Welfare On The Occupational Health And Safety Bill, N.A.B No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly, Appointed On 23rd September, 2010

¹³⁷ Report Of The Committee On Health, Community Development And Social Welfare On The Occupational Health And Safety Bill, N.A.B No. 35 Of 2010 For The Fifth Session Of The Tenth National Assembly, Appointed On 23rd September, 2010

3.3 General Observations of the Legislation that Regulates Occupational Health and Safety and its Adequacy and Enforcement

The current legal regime is highly fragmented. It gives piecemeal power to different enforcers. It is disappointing to find that the Ministry of Labour and Social Security that is supposed to be the umbrella ministry is only mandated to enforce the Factories Act.¹³⁸ The ideal situation is that the Ministry of Labour and Social Security should be a one stop place as a general overseer of all occupational health and safety issues not just those falling within the Factories Act.¹³⁹ It can thus be said that there is a need to harmonise the law on occupational health and safety, that is, codifying them in one piece of legislation (hopefully the proposed Occupational Health and Safety Bill will help in achieving this) and further the enforcement equally needs to be harmonised.

In addition, there is need to decentralise the enforcement of occupational health and safety as currently the enforcers are mainly located in the places that were historically first to be industrialised in Zambia, that is, Copperbelt and Lusaka but however, at present industrialisation is spreading to other parts of the country.

3.4 Conclusion

This Chapter has considered the specific legislation that substantially aids in regulating occupational health and safety in Zambia. It was also considered the adequacy and enforcement of this legislation. The specific Acts considered include ; the Factories Act, the Public Health Act, the Mines and Minerals Development Act ,the Explosives Act, the Environmental Protection and Pollution Control Act, the Workers Compensation Act ,the Ionising Radiation Protection Act and the proposed Occupational Health and Safety Bill. A general overview of the legislation pertaining to occupational health and safety in Zambia has been given. It has therefore been established that Occupational health and safety legislation in Zambia though deficient in a number of areas, is comparable to other jurisdictions elsewhere. However, the inability to implement occupational health and safety legislation has made the occupational health and safety legislation not to be as effective as it should be. Further, there is a need to harmonise the laws and their enforcement. In addition, there is also the need for

¹³⁸ Chapter 441 of the Laws of Zambia

¹³⁹ Chapter 441 of the Laws of Zambia

the decentralisation of the enforcement of occupational health and safety legislation. This should be done under the supervision of Ministry of Labour and Social Security.

CHAPTER FOUR

4.0 .REQUISITE STANDARDS OF OCCUPATIONAL HEALTH AND SAFETY LEGISLATION ACCORDING TO THE INTERNATIONAL LABOUR ORGANISATION

4.1 Introduction

This chapter shall examine the International Labour Organisation Standards on occupational health and safety. In addition, it shall be considered whether Zambia has ratified and domesticated these Conventions. This is because the International Labour Organisation (ILO) is concerned with standard setting in labour and social matters.¹⁴⁰ The Standards take the form of recommendations and conventions.¹⁴¹ About seventy of the conventions and recommendations deal with occupational health and safety matters¹⁴².

In addition to the ILO Conventions and Recommendations dealing with occupational safety and health matters, further guidance is provided in Codes of Practice and manuals which are used as reference material by those in charge of formulating detailed regulations or responsible for occupational safety and health.¹⁴³ In some cases other instruments like resolutions have been introduced to address a certain problem.¹⁴⁴

It is fair to say that both Conventions and Recommendations have influenced laws and regulations of member States.¹⁴⁵ Many texts have been modelled on the relevant provisions of ILO instruments; drafts of new legislation or amendments are often prepared with ILO standards in mind so as to ensure compliance with ratified Conventions or to permit the ratification of other Conventions; trade unions use ILO standards to support arguments in bargaining and in promoting legislation; governments frequently consult the ILO standards both formally and informally, about the compatibility of proposed texts with international labour standards.¹⁴⁶ Therefore, making them an appropriate standard by which occupational health and safety legislation in Zambia can be measured.

¹⁴⁰ International Labour Organisation SafeWork <http://www.ilosafework.com>

¹⁴¹ International Labour Organisation SafeWork <http://www.ilosafework.com>

¹⁴² International Labour Organisation SafeWork <http://www.ilosafework.com>

¹⁴³ International Labour Organisation SafeWork <http://www.ilosafework.com>

¹⁴⁴ International Labour Organisation SafeWork <http://www.ilosafework.com>

¹⁴⁵ International Labour Organisation SafeWork <http://www.ilosafework.com>

¹⁴⁶ International Labour Organisation SafeWork <http://www.ilosafework.com>

4.2 Categories of Occupational Health and Safety Standards

There are four types of occupational health and safety standards and they include; guiding policies for action, protection in given branches of economic activity, protection against specific risks and measures of protection.¹⁴⁷ The Standards of health and safety will be considered in accordance with these categories.

4.2.1 Guiding Policies for Action

The following are the conventions and recommendations that fall under this category and what they contain. The List of Occupational Disease Recommendation¹⁴⁸ is the first to be considered under this category. This is a recommendation concerning the list of occupational diseases as well as the recording and notification of occupational accidents and diseases.¹⁴⁹

The second one to be considered is The Occupational Safety and Health Convention¹⁵⁰. These standards prescribe the progressive application of comprehensive preventive measures and the adoption of a coherent national policy on occupational safety and health, while establishing the responsibility of employers for making work and equipment safe and without risk to health, as well as the duties and rights of workers.¹⁵¹ Zambia has ratified this Convention; however, it has not been domesticated.¹⁵²

The third to be considered is The Occupational Health Services Convention¹⁵³ and its accompanying Recommendation¹⁵⁴. These standards stress that occupational health services are entrusted essentially with preventive functions and responsible for advising employers, workers and their representatives on maintaining a safe and healthy working environment, as well as on the adaptation of work to the capabilities of workers. The emphasis of these instruments is on roles, best use of resources and cooperation rather than on administrative

¹⁴⁷ International Labour Organisation SafeWork <http://www.ilosafework.com>

¹⁴⁸ International Labour Organisation Recommendation No 194 of 2002

¹⁴⁹ International Labour Organisation Recommendation No 194 of 2002

¹⁵⁰ International Labour Organisation Convention No 155 of 1981

¹⁵¹ International Labour Organisation Convention No 155 of 1981

¹⁵² <http://www.ilo.org> Accessed on 28/03/2011

¹⁵³ International Labour Organisation Convention No.161 of 1985

¹⁵⁴ Recommendation No 171

structures that are not always flexible.¹⁵⁵This Convention has been ratified; however, it has not been domesticated in Zambia.¹⁵⁶

The fourth Convention to be considered is the Working Environment Convention.¹⁵⁷ This Convention provides for the protection of workers against occupational hazards in the working environment due to air pollution, vibration and noise. This Convention has been ratified in Zambia.¹⁵⁸ In addition it can be said that the Convention has been domesticated to some extent in the Environmental Protection and Pollution Control Act.¹⁵⁹There is however, no domestic law in Zambia that specifically protects workers against occupational hazards in the working environment due to air pollution vibration and noise.

4.2.2 Protection in Given Branches of Economic Activity

The following are the Conventions and Recommendations found in this category and what they contain. The first to be considered under this category is The Safety and Health in Agriculture Convention.¹⁶⁰ In article 1 this Convention it is provided that the scope of the Convention includes matters pertaining to health and safety in agricultural and forestry activities carried out in agricultural undertakings including crop production, forestry activities, animal husbandry and insect raising, the primary processing of agricultural and animal products by or on behalf of the operator of the undertaking as well as the use and maintenance of machinery, equipment, appliances, tools, and agricultural installations, including any process, storage, operation or transportation in an agricultural undertaking, which are directly related to agricultural production. However, article 2 of the Convention provides that this convention does not provide for subsistence farming; industrial processes

¹⁵⁵ International Labour Organisation Convention No.161 of 1985

¹⁵⁶ <http://www.ilo.org> Accessed on 28/03/2011

¹⁵⁷ International Labour Organisation Convention No.148 of 1977

¹⁵⁸ <http://www.ilo.org> Accessed on 28/03/2011

¹⁵⁹ Chapter 204 of the Laws of Zambia

¹⁶⁰ International Labour Organisation Convention No.184 of 2001

that use agricultural products as raw materials and the related services and the industrial exploitation of forests.¹⁶¹ This Convention has not been ratified by Zambia.

The second Convention to be considered is The Safety and Health in Construction Convention¹⁶² lays down the basic principles and measures to promote safety and health of workers in construction.¹⁶³ This Convention has not been ratified by Zambia.¹⁶⁴

The third to be considered is The Safety and Health in Mines Convention¹⁶⁵ and its accompanying Recommendation¹⁶⁶ address the risks unique to mining and applies to all mining activities whether on the surface or underground, as well as to the preparation of extracted material. This Convention has been ratified by Zambia and is in force in Zambia.¹⁶⁷

The fourth to be considered is the Hygiene (Commerce and Offices) Convention¹⁶⁸ . This Convention provides for general principles of hygiene in trading establishments; institutions and administrative services in which the workers are mainly engaged in office work; in so far as they are not subject to national laws or regulations or other arrangements concerning hygiene in industry, mines, transport or agriculture, any departments of other establishments, institutions, or administrative services in which departments the workers are mainly engaged in commerce or office work. Zambia has not ratified this convention.¹⁶⁹

The fifth to be considered is the Safety Provisions (Building) Convention¹⁷⁰. This convention provides for safety provisions in the building industry with reference to scaffolding and hoisting machinery. Zambia has not ratified this Convention.¹⁷¹

¹⁶¹ International Labour Organisation Convention No.184 of 2001

¹⁶² International Labour Organisation Convention No .167 of 1988

¹⁶³ International Labour Organisation Convention No .167 of 1988

¹⁶⁴ <http://www.ilo.org> Accessed on 28/03/2011

¹⁶⁵ International Labour Organisation No .176 of 1995

¹⁶⁶ International Labour Organisation Recommendation No .183

¹⁶⁷ <http://www.ilo.org> Accessed on 28/03/2011

¹⁶⁸ International Labour Organisation No 120 of 1964

¹⁶⁹ <http://www.ilo.org> Accessed on 28/03/2011

¹⁷⁰ International Labour Organisation No.62 of 1937

¹⁷¹ <http://www.ilo.org> Accessed on 28/03/2011

The sixth to be considered is the Protection against Accidents (Dockers) Convention,¹⁷² and Protection against Accidents (Dockers) Convention (Revised)¹⁷³ which concerns the protection against accidents for those that are employed in the loading and unloading ships.¹⁷⁴ Zambia has not ratified this Convention.¹⁷⁵

4.2.3 Protection against Specific Risks

The following are the conventions and recommendations and what they contain. The first to be considered under this category is The Chemicals Convention¹⁷⁶, and its accompanying Recommendation¹⁷⁷ represents international efforts to upgrade the national measures and harmonize regulatory standards. They emphasise the need to establish a coherent national policy of chemical safety ranging from the classification and labelling of chemicals to the control in all aspects of the use of chemicals. Particular emphasis would thus be placed on roles and responsibility of the competent authority, suppliers and employers, as well as duties and rights of workers.¹⁷⁸ Zambia has not ratified this Convention.¹⁷⁹

The second to be considered is the Prevention of Major Industrial Accidents Convention¹⁸⁰, aims to protect workers, the public and the environment from major industrial accidents, in particular through the prevention of major accidents involving hazardous substances and the limitation of the consequences of such accidents. It applies to major hazard installations with the exception of nuclear installations and radioactive materials processing, military installations and transport outside the site of an installation other than pipeline.¹⁸¹ Zambia has not ratified this Convention.¹⁸²

¹⁷² International Labour Organisation Convention No .28of 1929

¹⁷³ International Labour Organisation No.32 of 1932

¹⁷⁴ International Labour Organisation Convention No .28of 1929

¹⁷⁵ <http://www.ilo.org> Accessed on 28/03/2011

¹⁷⁶ International Labour Convention No.170 of 1990

¹⁷⁷ Recommendation No.177

¹⁷⁸ International Labour Convention No.170 of 1990

¹⁷⁹ <http://www.ilo.org> Accessed on 28/03/2011

¹⁸⁰ International Labour Organisation No. 174 of 1993

¹⁸¹ International Labour Organisation No. 174 of 1993

¹⁸² <http://www.ilo.org> Accessed on 28/03/2011

The third to be considered is the Asbestos Convention¹⁸³, which advances organisational, technical and medical measures to protect workers against hazardous asbestos dust.¹⁸⁴ Zambia has not ratified this Convention.¹⁸⁵

The fourth to be considered is the White Lead (Painting) Convention¹⁸⁶, which prohibits of the use of white lead in painting.¹⁸⁷ Zambia has not ratified this Convention.¹⁸⁸

The fifth to be considered is the Radiation Protection Convention¹⁸⁹. This Convention applies to all activities involving exposure of workers to ionising radiations in the course of their work. This Convention does not however apply to radioactive substances, whether sealed or unsealed, nor to apparatus generating ionising radiations which substances or apparatus, owing to the limited doses of ionising radiations which can be received from them, are exempted from its provisions by one of the methods of giving effect to the Convention mentioned in Article 1 of the Convention.¹⁹⁰ This Convention has not been ratified by Zambia; however, Zambia has an Ionising Radiation Protection Act¹⁹¹ which provides among other things for the protection of workers.

The sixth to be considered is the Benzene Convention,¹⁹² which provides for the protection from the hazard of poisoning arising from Benzene.¹⁹³ This Convention has been ratified and is in force in Zambia.¹⁹⁴

¹⁸³ International Labour Organisation No.162 of 1986

¹⁸⁴ International Labour Organisation No.162 of 1986

¹⁸⁵ <http://www.ilo.org> Accessed on 28/03/2011

¹⁸⁶ International Labour Organisation No. 13 of 1921

¹⁸⁷ International Labour Organisation No. 13 of 1921

¹⁸⁸ <http://www.ilo.org> Accessed on 28/03/2011

¹⁸⁹ International Labour Organisation No.115 of 1960

¹⁹⁰ International Labour Organisation No.115 of 1960

¹⁹¹ Act No.16 of 2005

¹⁹² International Labour Organisation No.136 of 1971

¹⁹³ International Labour Organisation No.136 of 1971

¹⁹⁴ <http://www.ilo.org> Accessed on 28/03/2011

The seventh to be considered is the Occupational Cancer Convention,¹⁹⁵ which concerns the prevention and control of occupational hazards caused by carcinogenic substances and agents.¹⁹⁶ This convention has not been ratified.¹⁹⁷

The eighth and the last to be considered under this category is the Guarding of Machinery Convention,¹⁹⁸ which is concerned with the prohibition of the sale, hire and use of inadequately guarded machinery.¹⁹⁹ This Convention has not been ratified by Zambia.²⁰⁰

4.2.3 Labour Inspection

The first to be considered under this category is the Labour Inspection Convention and its Protocol of 1995 to the Labour Inspection Convention,²⁰¹ which is concerned about labour inspection in commerce and industry.²⁰² This Convention has not been ratified by Zambia.²⁰³

The third to be considered is the Labour Inspection (Agriculture) Convention²⁰⁴. This Convention provides for the inspection of agricultural undertakings generally which include undertakings and parts of undertakings engaged in cultivation, animal husbandry including livestock production and care, forestry, horticulture, the primary processing of agricultural products by the operator of the holding or any other form of agricultural activity.²⁰⁵ This Convention has not been ratified by Zambia.²⁰⁶

¹⁹⁵ International Labour Organisation Convention No.139 of 1974

¹⁹⁶ International Labour Organisation Convention No.139 of 1974

¹⁹⁷ <http://www.ilo.org> Accessed on 28/03/2011

¹⁹⁸ International Labour Organisation Convention No.119 of 1963

¹⁹⁹ International Labour Organisation Convention No.119 of 1963

²⁰⁰ <http://www.ilo.org> Accessed on 28/03/2011

²⁰¹ International Labour Organisation Convention No 81 of 1947

²⁰² International Labour Organisation Convention No 81 of 1947

²⁰³ <http://www.ilo.org> Accessed on 28/03/2011

²⁰⁴ International Labour Organisation Convention No 129 of 1969

²⁰⁵ International Labour Organisation Convention No 129 of 1969

²⁰⁶ <http://www.ilo.org> Accessed on 28/03/2011

4.2.4 Measures of Protection

The first to be considered under this category is the Maximum Weight Convention²⁰⁷ This Convention has not been ratified by Zambia. This Convention provides for the maximum permissible weight that can be carried on by one worker.²⁰⁸

The second to be considered is the Maternity Protection Convention (Revised),²⁰⁹ This Convention provides for maternity protection. The Maternity Protection Convention (Revised)²¹⁰ has been ratified and is in force in Zambia.²¹¹

The third to be considered are the Night Work (Women) Convention (Revised),²¹² Night Work (Women) Protocol, 1990, which provides for the night work of women employed in industry. Zambia has denounced this Convention.²¹³

The fourth to be considered under this category is the Underground Work (Women) Convention,²¹⁴ which concerns the employment of women underground work in mines of all kinds. Zambia has denounced this Convention.²¹⁵

The fifth to be considered is the Minimum Age Convention.²¹⁶ This Convention provides for the minimum age by which someone can be employed. This Convention is aimed at eliminating child labour and the employment of young persons.²¹⁷ This Convention has been ratified and is in force in Zambia.²¹⁸

²⁰⁷ International Labour Organisation Convention No 127 of 1967

²⁰⁸ International Labour Organisation Convention No 127 of 1967

²⁰⁹ International Labour Organisation Convention No 103 of 1952

²¹⁰ International Labour Organisation Convention No 103 of 1952

²¹¹ <http://www.ilo.org> Accessed on 28/03/2011

²¹² International Labour Organisation Convention No 89 of 1948

²¹³ <http://www.ilo.org> Accessed on 28/03/2011

²¹⁴ International Labour Organisation Convention No 35 of 1945

²¹⁵ <http://www.ilo.org> Accessed on 28/03/2011

²¹⁶ International Labour Organisation Convention No 138 of 1973

²¹⁷ International Labour Organisation Convention No 138 of 1973

²¹⁸ <http://www.ilo.org> Accessed on 28/03/2011

The sixth to be considered is the Night Work of Young Persons (Non-Industrial Occupations) Convention²¹⁹. This Convention concerns the restriction of night work of Children and Young Persons in Non-Industrial Occupations. Zambia has not ratified this Convention.²²⁰

The seventh to be considered is the Night Work of Young Persons (Industry) Convention (Revised)²²¹. This Convention concerns the employment of young persons in industry. Zambia has not ratified this Convention.²²²

The eighth to be considered is the Medical Examination of Young Persons (Industry) Convention.²²³ This convention concerns medical examination for fitness for employment in industry of children and young persons. Zambia has not ratified this Convention.²²⁴

The ninth Convention to be considered is the Medical Examination of Young Persons (Non-Industrial Occupations) Convention.²²⁵ This Convention concerns medical examination of children and young persons for fitness for employment in non-industrial occupations. This Convention has not been ratified by Zambia.²²⁶

The tenth and the last to be considered under this category is the Medical Examination of Young Persons (Underground Work) Convention.²²⁷ This Convention concerns medical examination of young person's for fitness for employment underground in mines. This Convention has been ratified and is in force in Zambia.²²⁸

²¹⁹ International Labour Organisation Convention No 79 of 1946

²²⁰ <http://www.ilo.org> Accessed on 28/03/2011

²²¹ International Labour Organisation Convention No 90 of 1948

²²² <http://www.ilo.org> Accessed on 28/03/2011

²²³ International Labour Organisation Convention No.77 of 1946

²²⁴ <http://www.ilo.org> Accessed on 28/03/2011

²²⁵ International Labour Organisation Convention No 78 of 1946

²²⁶ <http://www.ilo.org> Accessed on 28/03/2011

²²⁷ International Labour Organisation Convention No 124 of 1965

²²⁸ <http://www.ilo.org> Accessed on 28/03/2011

4.3 Codes of Practice

The International Labour Organisation has prepared and published a series of codes of practice relating to various sectors of economic activity and various types of dangerous equipment or agents.²²⁹ Presented in the form of detailed technical specifications, these publications are intended to assist governments, employers and workers organizations in drawing up national regulations and guidelines, work regulations and collective agreements.²³⁰ They also suggest practical solutions for the application of ILO international standards. The recommendations they contain are usually finalized and approved by tripartite panels of experts.²³¹

More than 35 codes of practice have been drawn up so far, covering either different sectors of activity (such as mines, agriculture, forestry, construction, iron and steel, etc.) or particular risks (ionizing radiations, noise and vibration, exposure to airborne substances, use of synthetic vitreous fibre insulation wools), as well as transfer of technology.²³²

Codes of practice indicate "what should be done". They are prepared by tripartite meetings of experts and their publications are approved by the International Labour Organisation Governing Body.²³³

4.4 Zambia's Record in the Ratification and Domestication of International Labour Organisation Conventions Pertaining to Health and Safety

There is therefore a need for Zambia to ratify more Conventions in order to be at par with the requisite standards of occupational health and safety and further to be able to afford protection to those sectors that are most affected by occupational illnesses and diseases than is currently the case. In addition, it is hoped that even though a good number have been ratified there is a need for more domestication of these Conventions if they are to have any effect in Zambia. The Conventions that need to be domesticated are the Occupational Safety and Health Convention²³⁴, the Occupational Health Services Convention²³⁵ and the Working

²²⁹ International Labour Organisation SafeWork <http://www.ilosafework.com>

²³⁰ International Labour Organisation SafeWork <http://www.ilosafework.com>

²³¹ International Labour Organisation SafeWork <http://www.ilosafework.com>

²³² International Labour Organisation SafeWork <http://www.ilosafework.com>

²³³ International Labour Organisation SafeWork <http://www.ilosafework.com>

²³⁴ International Labour Organisation Convention No.155 of 1981

²³⁵ International Labour Organisation Convention No. 161 of 1985

Environment Convention²³⁶.The following Conventions need to be ratified and domesticated in order to aid in reducing occupational accidents and diseases especially in those sectors where occupational accidents and diseases are prevalent; the Safety and Health in Construction Convention²³⁷, the Safety Provisions (Building) Convention²³⁸and the Safety and Health in Agriculture Convention²³⁹.Other Conventions that can be ratified and domesticated in order to enhance occupational health and safety in Zambia include the following; Hygiene (Commerce and Offices) Convention²⁴⁰, Chemicals Convention²⁴¹, the Prevention of Major Accidents Convention²⁴², Asbestos Convention²⁴³,the Occupational Cancer Convention²⁴⁴, Maximum Weight Convention²⁴⁵ and the Conventions pertaining to labour inspection and young persons.

4.5 CONCLUSION

This Chapter has considered the four categories of the International Labour Organisation (ILO) standards pertaining to health and safety, that is, those that are guiding policies for action, those that provide protection in certain sectors of economic activity, those that provide protection against specific risks and those that provide measures of protection. It has also considered the codes of practice. This Chapter has also considered Zambia's ratification record and has emphasised that as much as Zambia has ratified a number of conventions, there is still the need for more ratification and domestication of the ILO standards in Zambia if they are to have any real effect. In the same vein it has been considered the specific Conventions that need to be ratified and domesticated in Zambia.

²³⁶ International Labour Organisation Convention No.148 of 1977

²³⁷ International Labour Organisation Convention No.167 of 1988

²³⁸ International Labour Organisation Convention No 62 of 1937

²³⁹ International Labour Organisation Convention No184 of 2001

²⁴⁰ International Labour Organisation Convention No 124 of 1964

²⁴¹ International Labour Organisation Convention No.170 of 1990

²⁴² International Labour Organisation Convention No.171 of 1993

²⁴³ International Labour Organisation Convention No 162 of 1986

²⁴⁴ International Labour Organisation Convention No 139 of 1974

²⁴⁵ International Labour Organisation Convention No 127 of 1967

CHAPTER FIVE

5.0 RECOMENDATIONS AND CONCLUSIONS

5.1. Introduction

This chapter is aimed at giving a general overview of what has been discussed in this paper. Following from that discussion some recommendations shall be advanced. Finally, a conclusion will be given.

5.2. An Overview of What Has Been Discussed In Chapters

This section aims to give a summary of what was discussed in the previous chapters. Chapter one provided a general introduction to the paper. This chapter defined what a healthy and safe workplace is and why it is important to have a workplace that does not pose a risk to the health and safety of the employees. The chapter further considered the nature of the problem to be discussed. In addition, the rationale and justification of the study, the outline of the questions to be addressed and the methodology to be used in addressing the research questions was considered.

Chapter two provided a general situational analysis of occupational health and safety in Zambia. It considered the composition of the Zambian labour force. It was established that there is a high prevalence of occupational accidents and diseases in Zambia. In addition, it was established that the sectors most affected by occupational accidents and diseases in Zambia are the agricultural sector, mining sector, construction sector, health sector and the transport sector. The chapter also considered the general causes of the prevailing health and safety situation in Zambia which include the lack of education, adequate and quality clothing, silent suffering of employees for the fear of losing their jobs, the increase of investors from countries where labour laws are not respected and inadequate legislation and enforcement of the occupational health and safety.

Chapter three considered the specific legislation that substantially aid in regulating occupational health and safety in Zambia. It also considered the adequacy and enforcement of this legislation. The specific Acts considered include ; the Factories Act, the Public Health Act, the Mines and Minerals Development Act ,the Explosives Act, the Environmental Protection and Pollution Control Act, the Workers Compensation Act, the Ionising Radiation Protection Act and the proposed Occupational Health and Safety Bill. A general overview of

occupational health and safety in Zambia was given, that is, that there is a need to harmonise the laws and their enforcement. In addition, there is also the need for the decentralisation of the enforcement of occupational health and safety legislation.

Chapter four considered the four categories of the International Labour Organisation standards pertaining to health and safety, that is, those that are guiding policies for action, those that provide protection in certain sectors of economic activity, those that provide protection against specific risks and those that provide measures of protection. It also considered the codes of practice. This Chapter also considered Zambia's ratification record and emphasised the need for the domestication of the ILO standards in Zambia if they are to have any real effect. It also considered the specific conventions that Zambia needs to ratify and domesticate.

5.3 Recommendations

The following recommendations can be made as far as the law regulating occupational health and safety is concerned;

The first recommendation to be made is that there is a need to make occupational health and safety a priority in Zambia. It is therefore proposed that a national policy on health and safety should be put in place in order to guide the efforts towards attaining high standards of occupational health and safety in Zambia. This can be done by domesticating the following International ILO Conventions that have already been ratified by Zambia; firstly, the Occupational Safety and Health Convention, No. 155 of 1981. This Convention prescribes the progressive application of comprehensive preventive measures and the adoption of a coherent national policy on occupational safety and health, while establishing the responsibility of employers for making work and equipment safe and without risk to health, as well as the duties and rights of workers.

Secondly, The Occupational Health Services Convention, 1985 No.161 This Convention stresses that occupational health services are entrusted essentially with preventive functions and responsible for advising employers, workers and their representatives on maintaining a safe and health working environment, as well as on the adaptation of work to the capabilities of workers. The emphasis of this instrument is on roles, best use of resources and cooperation rather than on administrative structures that are not always flexible.

The second recommendation to be made is based on the facts that since the sectors most affected by occupational accidents and diseases include mining, agriculture and transport; the following conventions should be ratified and domesticated.

Firstly, the Safety and Health in Agriculture Convention, 2001 No.184 . Secondly, The Safety and Health in Construction Convention, 1988 No.167 which lay down the basic principles and measures to promote safety and health of workers in construction. Thirdly, the domestication of The Safety and Health in Mines Convention, 1995 No. 176 and its accompanying Recommendation No. 183 as it has already been ratified which address the risks unique to mining and applies to all mining activities whether on the surface or underground, as well as to the preparation of extracted material.

Based on the fact that lack of education has been cited as one of the causes of the high prevalence rate of occupational accidents and diseases, the third recommendation is that it should be made a legal duty for the employer to inform an employee prior to the commencement of work of the health and safety risks associated with the work. In addition, the workers should be educated on measures to be taken in order to minimise the health and safety risks.

The fourth recommendation is that the Zambia Bureau of Standards should be legally mandated to ensure that the protective clothing being imported, sold, manufactured and being worn meets the requisite standards in order to effectively protect the workers. In addition, regulations should be put in place stating at what intervals protective clothing should be replaced in order to prevent them from being worn beyond the time when they are effective.

The fifth recommendation is that when investors are coming into Zambia, they should be informed about the health and safety laws and regulations in Zambia. They should be subjected to stiff penalties should they fail to adhere to the required laws and regulations. In addition, an occupational health and safety impact assessment should be done before an investor invests in Zambia. This would go beyond the mandate of Environmental Council of Zambia to conduct environmental impact assessment but also to conduct occupational health and safety impact assessments.

The sixth recommendation to be considered is that the Workers Compensation Control Board should be an enforcer as opposed to just being an advisory as is currently the case, of

health and safety standards as it is well placed to perform that role. A check at the Industrial and Labour Relations Court revealed that people rarely take occupational health and safety issues there but to the Workers Compensation Control Board as workers are mainly interested in Compensation when they are injured. The Workers Compensation Control Board receives on average 1200 reports of occupational accidents and diseases from people who are seeking to be compensated.

The seventh recommendation is that though law regulating health and safety in Zambia is fairly good, there is a need to harmonise it as it is highly fragmented. In addition, there is a need to decentralise the enforcement of the law regulating health and safety as the enforcement is concentrated in Lusaka for the Factories Act and for the mines on the Copperbelt. Ministry of Labour and Social Security's Occupational Health and Safety Department should head the efforts of enforcing occupational health and safety in Zambia, it should be a 'one stop' place for all issues pertaining to health and safety in Zambia.

In addition in order to boost the level of enforcement of health and safety standards in Zambia specifically through labour inspection the following Conventions and recommendations should be ratified and domesticated: The Labour Inspection (Health Services) Recommendation, 1919, No.5, Labour Inspection Recommendation, 1923, No.20, Labour Inspection Convention, 1947, No.81, and Protocol of 1995 to the Labour Inspection Convention, 1947, No.81 and Labour Inspection Recommendation, 1947, No.81, Labour Inspection (Mining and Transport) Recommendation, 1947, No.82, Labour Inspection (Agriculture) Convention, 1969, No.129 and Labour Inspection (Agriculture) Recommendation, 1969, No.133.

The eighth and the last recommendation is that more International Labour Organisation ILO Conventions pertaining to health and safety should be ratified and domesticated in Zambia. This is in order to provide standards and guidelines for Zambian laws regulating occupational health and safety. Failure to domesticate them would render them ineffective. The following are the specific Conventions that could be ratified and domesticated; the Occupational Safety and Health Convention, the Occupational Health Services Convention and the Working Environment Convention. The following Conventions need to be ratified and domesticated in order to aid in reducing occupational accidents and diseases especially in those sectors where occupational accidents and diseases are prevalent; the Safety and Health in Construction Convention, the Safety Provisions (Building) Convention and the Safety and Health in

Agriculture Convention .Other Conventions that can be ratified and domesticated in order to enhance occupational health and safety in Zambia include the following; Hygiene (Commerce and Offices) Convention, Chemicals Convention , the Prevention of Major Accidents Convention, Asbestos Convention ,the Occupational Cancer Convention, Maximum Weight Convention and the Conventions pertaining to labour inspection and young persons.

In conclusion, this paper has evaluated the law regulating health and safety in Zambia. Based on the findings, recommendations have been made on how the law can be enhanced and further, more effective.

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Interviews conducted with the Public Relations Officer and Mr Mwale (an inspector) at the Environmental Council of Zambia (ECZ) on 3rd December 2010

Interviews conducted with inspectors who declined that their names be mentioned at the Ministry of Labour and Social Security, Occupational Health and Safety Department on 1st December 2010

Interview conducted with a mine inspector who declined that his name be mentioned under the authority of the Office of the Director in the Mine Safety Department Kitwe, Zambia on 14th February 2011

Interview conducted with a medical doctor who declined that his name be mentioned under the authority of the Director at the Occupational Health and Safety Board in Kitwe, Zambia on 14th February 2011

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