
LEGAL EMPOWERMENT OF THE POOR – LABOUR RIGHTS IN ZAMBIA

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INTRODUCTION

While there are shortcomings in the legal protection of organised labour, the position of the vast majority of the poor who work in the informal sector is far worse because they work without any legal protection. Indeed, the World's poor perceive the Law to be for the rich. This perception has largely been vindicated by the work of Hernando de Soto² and others who have demonstrated that when the law is made to recognise and work for the poor, enormous economic benefits can accrue to them and the affected economies generally. The task for World governments is to recognise that informal or extra-legal systems, dominated by the poor, constitute working parallel structures and that these structures can work more productively and achieve much higher levels of economic performance if legal systems were made more responsive to their needs and made to work more effectively for them. This is the hypothesis that is driving this important initiative, the UNDP Commission on Legal Empowerment of the Poor (Commission).

The establishment of the Commission on Legal Empowerment of the Poor is rooted in the growing realisation that there is a clear link between the failure of legal systems to give equal protection to all citizens and the pervasiveness of poverty in the World. Consequently, with the general profile of relatively poor economies being pyramidal with the base of the pyramid being made up of the vast majority of poor people, the starting point in efforts to reduce and ultimately eradicate poverty is the creation of a legal framework that addresses the legal incapacities of the poor as economic actors. The Commission has developed a legal empowerment agenda which focuses on four areas:

- Access to Justice and the Rule of Law
- Property Rights
- Labour Rights
- Legal Mechanisms to Empower Informal Businesses

This issue paper focuses on the labour rights environment for the working poor. The ultimate objective is to develop and put forward nationally agreed proposals on the development of a legal empowerment agenda for the poor in Zambia.

The relevance of this timely initiative to Zambia is compelling. The country's social and economic indicators show that poverty levels remain high. Approximately 68% of Zambians are classified as poor, and 53% of these are designated as being extremely poor.³ There is little doubt that these poverty levels are linked to the failure

² Mystery of Capital by Hernando de Soto

³ Living Conditions Monitoring Survey Report, Central Statistical Office, CSO, Lusaka, 2004

of the economy to create sufficient numbers of jobs that are productive and sustainable. A vast majority of the people are eking out a precarious living in the informal sector. Official figures indicate that, of the total number of 4.1 million persons that are categorised as constituting Zambia's employed population, 3.2 million are in the informal sector while a much smaller proportion, estimated at 416,000 persons, are in the formal sector⁴. Almost by definition, the informal sector operates outside the regulated employment sector, consequently, the challenge of legally empowering the working poor, largely translates into the challenge of developing strategies for empowering the informal sector in the economy. According to surveys conducted by the Zambian-based Jesuit Centre for Theological Reflection, JCTR, currently, most of the workers in the informal sector earn well below what they term the "Basic Needs Basket, BNB". According to these estimates the cost of the monthly BNB in Lusaka for a family of six, comprising of basic food items and essential non-food items (primarily shelter, energy and water) stands at ZK1, 520,000 or approximately US\$390 while the Government's Central Statistical Office, CSO, reports⁵ that the average monthly earnings in the informal sector are ZK107,529 or roughly US\$28! On the basis of these figures, aggravated income poverty, covers practically the whole of Zambia's informal sector. Within the formal sector, the casualisation of labour is receiving much attention from Government and has been the subject of consultation among the tri-partite social partners i.e. Government, Labour Unions and Employers who make up the Tri-partite Consultative Labour Council. Government, in its efforts, to provide a safety net for vulnerable employees introduced regulations which provided for redundancy and retirement benefits under the Minimum Wages and Conditions of Employment Act. These were unjustifiably but widely adopted as the minimum requirements in negotiated employment contracts and collective agreements. The high labour market costs that resulted from the high redundancy and retirement benefits led to a significant numbers of employers to increase the use of casual workers at the expense of permanent and pensionable employees. Without a baseline survey, it is difficult to assess the increase in the casualisation figures. Nonetheless, the vast number of unemployed or underemployed Zambians is what makes exploitation of labour so widespread. An employed Zambian in the formal sector, whether casualised or not, considers himself or herself in a more fortunate position than his counterpart in the informal sector or worse still a fellow unemployed Zambian who is below casualisation. Within the employment sector child labour and gender inequalities pose special challenges with regard to legal protection of labour standards and rights.

⁴ CSO 2005 Labour Force Survey

⁵ CSO 2005 Labour Force Survey at p.54

Mirrored against the labour standards that the International Labour Organisation has developed and articulated in a large number of conventions, most countries, including Zambia, are in deficit. Zambia has ratified a good number of the conventions and incorporated some of them in domestic legislation, however, with the largest portion of its labour force being in the informal sector which is legally unprotected and unrecognized, labour legislation caters for a very small segment of the workforce that is in the formal sector of the economy. Consequently, the approach in this issue paper is on how to make Zambia's labour law relevant to the legal and economic empowerment of the working poor, most of whom operate in the informal sector. The outline of the paper comprises:

- **Structure of Zambia's workforce**
- **The informal economy and its impact on the labour rights of the working poor in Zambia**
- **Labour rights and standards - Deficits in Zambia**
 - *Inadequate protection of employment benefits*
 - *Deficits in the standards of health, safety and social welfare*
 - *Inadequate social protection*
 - *Unemployment and under-employment*
- **Zambia's Progress towards achieving best practices in labour rights and standards**
- **Recommendations and conclusion**
- **What role can the Commission play**

The legal deficits cover all aspects of employment of the working poor. Without a doubt, the most glaring of the deficits is the exclusion of the informal sector from the country's labour law provisions. For Zambia where the informal sector accounts for 80% of the country's employment, the various pieces of labour legislation (the Employment Act, the Minimum Wages and Conditions of Employment Act, the Industrial Relations Act, the Employment of Young Persons Act, etc) apply to a minority of the working population estimated at only 10% of the country's workforce who comprise the formal sector. In practical terms, the challenge of legal empowerment is how to make the law relevant to the informal sector. Instead of treating informal sector workers as law breakers and tax evaders, the main objective should be the removal of imperfections and hindrances in the existing legal and regulatory environment which are largely responsible for the economic stagnation and legislative non-compliance exhibited by informal sector players. As mentioned above, Hernando de Soto's work and the World Bank's Doing Business series of survey reports have clearly demonstrated the economic benefits of facilitating and simplifying the entry of informal businesses into the legal system.

Though not central to the issues of concern here, the cultural dimension in a multi-cultural workplace is a legitimate area of inquiry as regards tolerance of abuses of labour rights. The extent to which labour law and its administration are in harmony or alien to the way labour relations have been handled historically in Zambia is material. Colonial and post-colonial Zambia has been applying imported English law which is not always in accord with customary tradition. Without the benefit of an in-depth study into pre-colonial labour hire practices and the settlement of labour disputes, culturally, Zambian society is essentially consensual in character in contrast to the broadly contractual societies which gave birth to modern labour law. Labour law is founded on individual and collective contracts of service which govern the rights and obligations of employers and employee/s which, generally, rely on adversarial dispute settlement mechanisms. The level of tolerance of abuse of workers, especially the poor, is much greater in consensual societies where patronage dominates employer/employee relations than in contractual societies which are governed by contractual rights and obligations. This cultural disposition, if entrenched, can slow progress towards achieving improved labour standards and rights especially for the large class of unrepresented workers. These distinctions were evident in the way different employees conducted themselves in a multicultural Zambian mining conglomerate, Zambia Consolidated Copper Mines Limited, ZCCM, a company in which the author served. Workers of different nationalities and cultural backgrounds exhibited their contractual/patronage biases during disciplinary hearings and performance appraisal interviews. This may not be necessarily grounded in cultural behaviour. It may be a colonial legacy. During the colonial era, the purpose of the law was not economic empowerment it was to keep natives in check, which has implanted the notion that the law is not an empowerment tool but a control weapon for those in power including employers. The negative image of the law in general and labour law, in particular, should be targeted for reform to facilitate entry of the working poor within the boundaries of its protection. This is a subject that requires more in depth research.

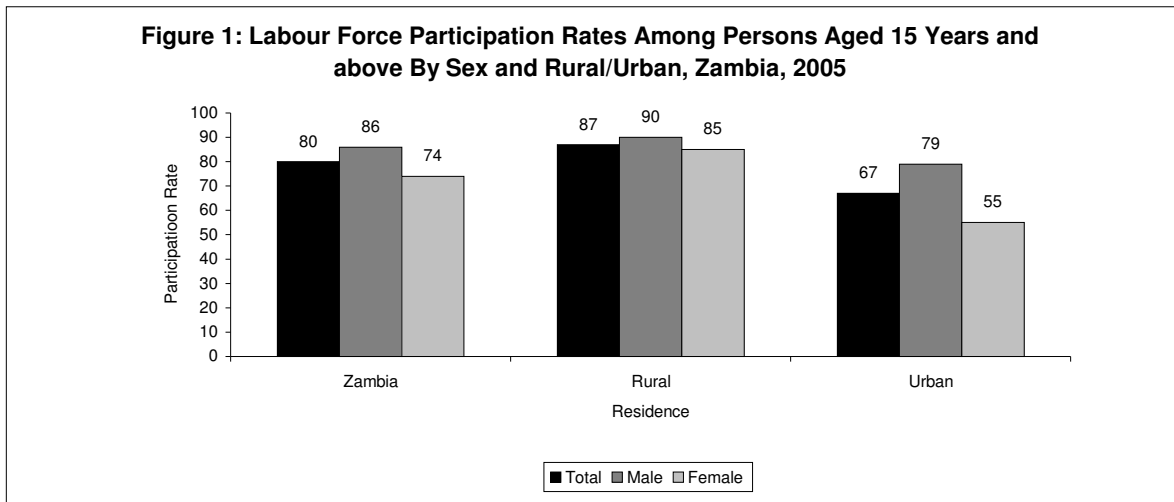
STRUCTURE OF ZAMBIA'S WORKFORCE

In this paper, we have adopted the Labour Force Survey (LFS) report⁶ definition of Zambia's labour force as being the sum of the number of persons above the age of 14 years who are employed and the number of unemployed persons, above the age of 14 years, who are available for work at any given time. Reportedly⁷, 46% of Zambia's population is under the age of 15 years, an estimated 6.2 million persons constitute the labour force in Zambia. If persons above the age of 14 years who are economically inactive such as students, home makers, pensioners, retired, incarcerated, etc are deducted from the labour force, we are able to estimate the

⁶ CSO: Labourforce Survey Report (2005), P7

⁷ Ibid, P18

labour force participation rate. As observed in the Report⁸, the latter is a useful measure in assessing the level of economic activity of the working age population. The labour force participation rate can be disaggregated into rural/urban and male/female splits as depicted below:



The figures show there are more males than females that are economically active in both rural and urban areas. This is borne out by figures on the composition of the economically inactive population. In nearly all the provinces, twice as many females as males are economically inactive. Survey figures show Northern Province, one of the less urbanized provinces, that 14 percent of females and 7 percent of males as being economically inactive. At the same time, Copperbelt province, which is mainly urban, recorded 46 percent inactivity rates among females compared to 26 percent inactivity rates among males. The age group analysis reveals that 90 percent of persons between the ages of 40 and 54 years are the most active in the labour market while persons in the age group 15 to 19 years are the least active in the labour market at 60 percent participation rate.

From the figures on the structure of Zambia's labour force it becomes apparent that youth and women are not being fully utilized in the economy. Secondly, the high labour participation rates and high poverty levels, estimated at 68% in 2004 points to widespread low productivity of those who are economically active.

THE INFORMAL ECONOMY AND ITS IMPACT ON THE LABOUR RIGHTS OF THE WORKING POOR IN ZAMBIA

Of the 4,131,531 persons reported to be employed, a total of 3,184,271 persons, or 88 percent, were in informal sector employment, compared to 416, 324 persons or 12 percent in formal sector employment.

⁸ ibid

Table :(1) Employment in the Formal and Informal Sectors – Rural/Urban Split, 2005⁹

	Formal sector		Informal Sector		Total persons 15 yrs and above employed
	No. of persons	percent	No. of persons	percent	
Zambia	495,784	12	3,635,747	88	4,131,531
Rural	60,388	2	2,959,033	98	3,019,421
Urban	389,239	35	722,872	65	1,112,110

This demonstrates the linkage between poverty and the size of the informal sector. A large proportion of those reported as being in informal sector employment are in fact living in poverty. To a large degree, poverty and poor working conditions are imbedded in most definitions of informal sector employment. As noted by Lilian Keene-Mugerwa (Uganda)¹⁰, in 1972, when the term “informal sector” was first highlighted in the International Labour Organisation (ILO) documents it described the employment of the working poor in Kenya, who were outside the scope of regulation and protection¹¹. Other definitions have stressed the nature or type of enterprise in their definitions. Thus, in 1993, the International Conference of Labour Statisticians (ICLS) adopted an international statistical definition of the ‘informal sector’ ***‘to refer to employment and production that takes place in small and/or unregistered enterprises.’*** In 1997 an International Expert Group on Informal Sector Statistics (Delhi Group) defined the informal sector to include ***‘private unincorporated enterprises (excluding quasi-corporations), which produce at least some of their goods and services for sale or barter, have less than five paid employees, are not registered, and are engaged in non-agricultural activities (including professional or technical activities).’***¹²

The definition of the informal sector as contained in Zambia’s LFS is a hybrid that contains elements of informal production enterprises and informal employment. Informal sector employment applies to employment where the employed persons are not entitled to paid leave, pension, gratuity and social security and work in an establishment employing less than 5 persons¹³. Unlike the definition by the International Expert Group on Informal Sector Statistics (Delhi Group), referred to above, in Zambia, informal agriculture is also included. Consequently, in the Zambian context, informal employment comprises:

⁹ CSO Labourforce Survey Report, 2005

¹⁰ Quoted in Uganda's Labour Rights Paper by Lilian Keene-Mugerwa

¹¹ *ibid*, ILO 1972

¹² *ibid*, ILO (2002b) No. 1 Page 5

¹³ CSO Labourforce Survey Report, 2005 at Page 44

- Own-account workers and employers who have their own informal sector enterprises.
- Contributing family workers, irrespective of whether they work in formal or informal sector enterprises.
- Employees who have informal jobs, whether employed by formal sector enterprises, informal enterprises, or as paid domestic workers by households. Employees are considered to have informal jobs if their employment relationship is not subject to standard labour legislation, taxation, social security or entitlement to certain employment benefits (advance notice dismissal, severance pay, paid annual leave, etc.) for reasons such as: non-declaration of the jobs or employees; casual jobs; employment by unregistered enterprises or by persons in households.
- Members of informal producers' cooperatives; and
- Persons engaged in the own-account production of goods exclusively for own final use by their household, such as subsistence farming.

The above breakdown, based on Zambia's definition of the informal sector suggests that workers' rights in the informal sector are inextricably linked to the incapacities and legal marginalisation of the small scale and legally unrecognised enterprises which make up the informal sector. Therefore, the core problem is that informal sector businesses are legally and economically unempowered. Consequently, they survive on low cost labour that has no rights. An integrated strategy that concurrently empowers the enterprises and the workers is needed for the informal sector.

LABOUR RIGHTS AND STANDARDS - DEFICITS IN ZAMBIA

Protection of employment deficits

Except for unemployment compensation, Zambia has ratified the key ILO Conventions relating to the protection of employment, notably those covering rights such as freedom from forced labour and equality of treatment in employment. Zambia's labour legislation also provides for protection of wages against unlawful deductions; minimum wage requirements; proper notification of wage conditions; the payment of wages in legal tender; the freedom of a worker to dispose of his wages; regularity in wage payments and the treatment of wages as a privileged debt

Although Zambia has ratified the major Conventions promoting the fundamental principles and rights at work, significant numbers of workers do not benefit from the protection and entitlements that these Conventions (and their related Recommendations) offer, as approximately 80 percent of these workers are in the informal economy. As noted in Zambia's draft Decent Work Country Programme, DWCP, the majority of these are women, who are often exposed to "personal, financial, economic and social risks and vulnerabilities resulting from their need to find employment and generate income". Due to the nature of the informal economy, the enforcement of laws protecting workers' rights, occupational health and safety, and other core labour issues has proved to be challenging and difficult for the Ministry of Labour and Social Security (MLSS) and other enforcement agencies. This

has denied large numbers of workers their rights, and led to the high incidence of poor health and safety conditions at places of work.

Despite significant developments with workplace programmes, awareness and prevention programmes on HIV and AIDS have not yet reached many of those working in the informal economy. The issues relating to child labour, particularly in its worst forms, and the rights of children require further attention and direct action in the Zambian context. Child labour is widespread, particularly in the informal economy in both rural and urban areas. It is reported¹⁴ that in 1999, the number of working children was approximately 600,000. The figure for the 2005-06 is estimated to be 900,000, thus confirming that a large number of children below the minimum age for employment (15 years) work to supplement family income and offset economic shocks in the household. The HIV and AIDS pandemic has made a large number of children highly vulnerable to child labour, and the increase in the number of working children is seen as a result of the growing number of children being orphaned.

Even in the formal economy, a large number of workers remain unaware of their rights and remain unprotected from potential injustices or victimization at work¹⁵. The large numbers of job seekers in Zambia's labour market, lead some employers to take advantage by not providing employees with the conditions of service that are stipulated by the law. There has been an increasing trend towards casualisation, to avoid the country's labour law obligations on decent work that attach to permanent and pensionable employment.

Deficits in the standards of health, safety and social welfare

From its origins of providing safety rules for mines and other risky undertakings, now safety and health issues of working people cover the full spectrum of dangers arising from modern industrial processes, for instance, health and safety regulations 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. A proportionally higher number of poor people are likely to be affected by environmental degradation. In Zambia, in recent years there has been an increase in the number of occupational accidents. In a recent accident at an explosives factory, 46 lives were lost¹⁶. The inability of government departments to enforce the Occupational Safety and Health laws (such as the Factories Act and Safety Regulations under the Mines and Minerals Act) due to inadequate implementation

¹⁴ Reported in draft DWCP

¹⁵ Draft DWCP for Zambia

¹⁶ BIGRIMM Accident

capacity, has contributed to this deteriorating situation. The increase in industrial accidents negatively impacts on the country's GDP growth rate¹⁷.

The campaign by Government, the private sector, trade unions and other stakeholders in the prevention and mitigation of HIV and AIDS in the workplace, has not yet reached its goal. A high proportion of workers and those of working age continue to be vulnerable. Cases of discrimination and stigmatization are commonplace in workplaces across the country.

Inadequate social protection

Globally, social security has expanded well beyond employers' liability for occupational accidents to where it now embraces income security in times of sickness, unemployment, old age, work place injury, maternity, survivor's benefits and medical care. To provide workers' income maintenance, workers compensation schemes; pension insurance (acknowledged as Otto von Bismarck's legacy to Germany) and pension funds have been introduced in many parts of the World. Pre-industrial societies and the extended family tradition in Africa use family or community responsibility to take care of hazards which may befall individuals in their communities. In Zambia, like in the rest of Africa, social protection is progressively being institutionalised along the lines of providing income maintenance in the event of loss of employment or loss of a breadwinner.

The limited social security benefits under the National Pension Scheme Authority, NAPSA, for workers in formal employment. Workers in the informal sector do not meet the requirements of the Scheme. NAPSA is a contributory fund which pays benefits to those who have reached the retirement age, those five years below the retirement age who have contributed to the Scheme for a prescribed minimum period or those who have contributed for at least 12 months and "are incapable of gainful employment due to total or partial mental or physical incapacity"¹⁸. In the absence of well-defined contractual relationships between employers and employees, informal sector jobs are ineligible under NAPSA. Indeed, any social security scheme which excludes the informal sector in Zambia cannot succeed in providing a comprehensive and effective social security system that is sustainable. benefits.

The Public Pension Fund, PPF for workers in the public service covers severance packages, monthly pensions and survivor's benefits. Unlike NAPSA, the PPF is non-contributory. It is funded from the national treasury. Because of its severe funding

¹⁷ Zambia, 2006 Budget Speech

¹⁸ *ibid*

constraints, the PPF is in arrears and fails to discharge its obligations to retirees¹⁹. The PPF falls short of the ILO recommended package of social protection as it does not cater for, unemployment, sickness, employment injury, medical care, family benefit and maternity.

While social protection for workers in the formal sector is deficient in many areas, for the informal sector workers, social protection is practically non-existent. Employers of small enterprises are not in a position to meet the legal requirements of NAPSA contributions for their employees and opt to flout the law and avoid registration. Informal sector workers are among the lowest paid and most of them work in unhealthy and filthy environments whilst women workers are often subjected to sexual harassment. The extended family support system which, in the past, provided a social protection safety net for the elderly, orphans and the sick has, in all but name, broken down.

Up until recently, there was a glaring omission in the framework for social protection of workers in Zambia due to the absence of a policy that describes the vision, objectives and strategies as a roadmap to the goal of comprehensive social protection for all. Government has recognised the omission and elaborated the vision, goals, programmes, objectives and strategies on social protection in the Fifth National Development Plan, FNDP²⁰, and is in the process of concluding a social protection policy for Zambia.

Unemployment and under employment

Zambia has an enormous deficit of jobs of all kinds which exposes the working poor to sub-standard employment and denial of their rights. Many job seekers, particularly young people and school-leavers, women and people with disabilities are left without the opportunities for obtaining decent employment. Women with disabilities and people living with HIV and AIDS are particularly disadvantaged. Many opt to join the informal economy as a source of income and work. The lack of access to market-oriented technical and management skills training opportunities for these target groups has hindered their ability to compete for the limited number of jobs that are available. They move into the informal sector where they perform jobs whose earnings, as mentioned earlier, fall well below the poverty datum line. The lack of opportunities for decent employment holds back human development, exacerbates the poverty situation, and limits the prospects for achieving the MDGs. These are among the Decent Work deficits that are highlighted in the NELMP, the FNDP, and the draft DWCP.

Under employment which, according to the 2005 Labour Survey, stands at 84.3% of total employed persons presents the economy with a much bigger problem than the

¹⁹ Public Pension arrears have been reported regularly in Budget Speeches, 2004, 2005, 2006 and 2007

²⁰ FNDP, p.211 paras 22.4 and 22.5

unemployment rate which in 2005 was estimated as 16%. The non-optimal performance of the informal sector is a consequence, largely, of the prevalence of under employment in it.

Unemployment

Unemployment poses a major challenge for the Zambian economy. The economy has lacked the capacity to facilitate the generation of productive and sustainable jobs in the formal economy and has ignored the informal sector which provides a livelihood, however, meagre for the vast majority of Zambians. When unemployment figures are disaggregated by gender and Province, as shown in Table 2 notable trends emerge.

Table : (2) Proportion of Currently Unemployed Persons by Sex and Residence²¹

Sex/ Province	Unemployment Rates									Labour Force
	Total			Rural			Urban			
	Both Sexes	Male	Female	Both Sexes	Male	Female	Both Sexes	Male	Female	
All Zambia	16	14	17	10	9	10	28	23	36	4,918,788
Province										
Central	23	20	27	21	19	23	32	25	39	478,480
Copperbelt	22	17	29	6	8	4	27	20	38	688,314
Eastern	6	7	6	4	4	4	36	38	33	704,202
Luapula	7	6	8	6	4	7	17	16	18	422,668
Lusaka	29	22	39	26	22	32	29	22	40	613,798
Northern	6	6	6	3	3	3	22	21	22	707,362
North-western	5	6	4	3	4	2	14	15	14	309,698
Southern	11	12	11	7	8	7	28	26	30	591,691
Western	30	28	33	28	25	30	52	48	57	402,575

²¹ CSO 2005 Labourforce Survey

Unemployment rate is dominantly higher in urban areas, 28 percent, than in rural areas, 10 percent. There are no major differences between the unemployment rates of male and female in rural areas, the unemployment figure for females is only one percentage point more than that for males while for urban areas, unemployment is 23 percent among the male and 36 percent among the female labour force.

The impact of education on unemployment is demonstrated in Table (3) below:

Table (3): Unemployed Persons by Literacy and Education Status, Sex and Rural/Urban, 2005²²

Education background	Both Sexes	Male	Female	Both Sexes	Male	Female	Both Sexes	Male	Female	Both Sexes
										4,918,788
Not Stated										164,764
Literate	10	2	20	6	2	12	15	3	30	3,442,531
Illiterate	10	3	14	8	3	10	26	6	35	1,311,493
Level of education										
										4,918,788
None	-	-	-	-	-	-	-	-	-	1,416
Grade 1-7	10	3	16	7	2	11	22	5	32	2,308,629
Grade 8-9	15	3	28	7	3	14	23	4	40	819,498
Grade 10-12	9	2	22	5	1	12	11	2	24	855,502
A Level	2	.	6	3	.	9	2	.	5	38,150
Degree	2	1	2	.	.	.	2	1	2	134,625
Not stated										760,968

Overall, there is no difference in unemployment rates between the literate and illiterate. Of the unemployed literate population 2 percent are male whilst 20 percent are female. The picture is not very different in terms of illiteracy higher percentage of females are unemployed than males at 20 and 3 percent respectively.

²² CSO 2005 Labourforce Survey

The table further shows that the level of education determines the economic activity of an individual. As evident from Table (3), persons with low levels of education are more likely to be unemployed than persons with higher levels of education. The scenario is not different even between rural and urban, though higher unemployment rates were observed in urban areas for persons with primary and secondary education.

Underemployment

Table (4): Time related Underemployment Rates among Employed Persons Aged 15 Years and Above by Age-Group 2005²³

Age Group	Under employment rate			Number of persons
	Both	Male	Female	
Total	84.3	81.7	87.0	4,131,531
15-19	88.8	87.9	89.7	583,295
20-24	86.2	84.4	88.0	663,463
25-29	82.5	79.6	85.7	694,658
30-34	81.6	79.0	84.9	542,615
35-39	82.0	78.3	86.0	412,466
40-44	81.6	77.4	86.2	320,949
45-49	81.8	79.2	84.5	271,912
50-54	82.0	77.6	86.7	190,447
55-59	83.8	81.2	86.5	146,965
60-64	87.5	85.9	89.1	105,161
65+	87.7	86.1	89.6	199,600

EFFORTS BEING MADE TOWARDS REALISING LABOUR RIGHTS FOR THE POOR IN ZAMBIA

²³ CSO 2005 Labourforce Survey

Against the backdrop of a dominant informal sector which, to all intents and purposes, is outside its regulatory control, Government has made important strides in developing a pro-employment agenda based on a decent work culture as demonstrated below:

Creation of a conducive policy and legal framework

Zambia's policy and legislative framework has progressively included affirmative plans to provide for a growing employment sector that is underpinned by a decent work culture.

Support of labour rights and standards through policies and strategies - The country's Vision 2030 seeks to promote "decent work opportunities that ensure respect for fundamental human rights and principles". The Employment and Labour chapter of the Fifth National Development Plan also includes "Decent Work Promotion". The main objective of the primary policy instrument, the National Employment and Labour Market Policy, NELMP, completed in 2005, is "to create adequate and quality jobs under conditions that ensure adequate income, protection of workers' and basic human rights". The policy is also directed towards the elimination of child labour, creation of quality jobs for women, young people and people with disabilities and the prevention of HIV and AIDS at places of work. Empowerment policies for the promotion of employment among the youth and women have been strengthened. The National Youth Policy and the National Strategy on Children, Youth and Sports Development, both of which were introduced in 2006, and stress the creation of youth employment and youth entrepreneurship, are in place. The National Gender Policy identifies employment as a means of empowering women both economically and socially. In efforts to achieve improved social protection, the Government has developed a draft Strategy on Social Security. Much more specifically, the Government with the technical support of ILO has drafted Zambia's Decent Work Country Programme which focuses on four major priorities:

- Rights at Work – extending and enforcing rights contained in labour legislation and ratified ILO Conventions to the working poor (most of whom are in the informal sector), to vulnerable groups i.e. persons with disabilities, women, the youth, and to victims of the HIV/Aids pandemic
- Employment – the priority task being the facilitation of creation of productive and sustainable jobs that comply with internationally acceptable standards of decency. The programme attaches high priority to enhancing the access of women, persons with disabilities and the youth to job markets by increasing opportunities for them to acquire marketable skills and competences
- Social Protection – the major challenge is the limited scope of the existing social security system because, at present, it does not cater for the 80% or so of the working population who are in the informal sector. Beneficiaries from the formal employment sector are not significantly better off because the benefits are grossly inadequate for purposes of escaping the poverty trap. The programme aims to develop strategies capable of arresting falling standards of occupational health and safety. Oversight agencies responsible

for ensuring that high standards of occupational health, safety and environmental protection are maintained are facing severe capacity constraints. Lastly, is the challenge of limiting the spread of the HIV/Aids scourge which continues to be prevalent at places of work with devastating economic consequences for affected employees, their employers and the national economy

- Social Dialogue – The DWCP will develop plans and strategies to entrench and strengthen the tri-partite consultative system involving Government, Employers and the Unions, established under the Industrial Relations Act, in order to improve the capacity of the social partners in dispute resolution and in the development of progressive labour policies. Extending the social dialogue to the informal sector, which is a formidable challenge, is an important milestone that the DWCP is targeting.

The realisation of the above reform agenda primarily rests on evolving strategies that complement the demonstrated entrepreneurship of informal sector operators so they can achieve much higher productivity, improved product quality and better consistency and growing competitiveness. The message that a good and successful business invests in quality standards for both its workers and its products should be constantly and effectively communicated.

Enhancement of labour rights through labour legislation and ratified ILO Conventions

Since it joined the ILO in 1964, Zambia has ratified a total of 43 conventions (see Annex 1), of which 39 are currently in force. Included among the ratified conventions are all eight core conventions²⁴. These are: Forced Labour, 1930 (No.29); Freedom of Association and Protection of the Right to Organise, 1948 (No.87); Right to Organise and Collective Bargaining, 1949 (No.98); Abolition of Forced Labour Convention, 1957 (No.105); Discrimination (Employment and Occupation), 1958 (No.111); Minimum Age, 1973 (No. 138); and Worst Forms of Child Labour, 1999 (No.182). In a 1998 Declaration, ILO reaffirmed the fundamental principles and rights embodied in the core Conventions as being the elimination of forced labour, the right to organize and collective bargaining, equal remuneration, non-discrimination and abolition of the worst forms of child labour. The Zambian Government is at present in the process of ratifying the Labour Inspection Convention No. 81 (1947). However, the lack of domestication of ratified ILO conventions in local laws has rendered some of them unenforceable in Zambian courts.

The Employment Act (Cap 268) regulates the employment relationships between employers and employees. In this respect, it provides provisions on conditions of employment such as the minimum contractual age, repatriation, employer to provide

²⁴ The ILO core conventions are: Forced Labour, 1930 (No.29); Freedom of Association and Protection of the Right to Organise, 1948 (No.87); Right to Organise and Collective Bargaining, 1949 (No.98); Abolition of Forced Labour Convention, 1957 (No.105); Discrimination (Employment and Occupation), 1958 (No.111); Minimum Age, 1973 (No. 138); and Worst Forms of Child Labour, 1999 (No.182).

transport on repatriation, holidays with pay, maternity leave, and prohibition of termination of employment for reasons connected with pregnancy. There are firm proposals to amend the Employment Act, CAP 268, which will include a proposed chapter on the prevention and management of HIV and AIDS in the workplace.

The Government through Ministry of Labour and Social Security, MLSS, has established a Child Labour Unit to spearhead the programme on the elimination of child labour in Zambia, and the social partners are actively engaged in this process. The United Nations system, in particular UNICEF, is also involved in child labour prevention. Zambia has ratified C182 Worst Forms of Child Labour Convention, 1999.

The Employment Act does not expressly exclude informal sector workers. However, proof of the existence of an employer/employee relationship in the informal sector is practically impossible. For instance, an oral contract, under the Employment Act, is only valid if it can be reduced into a Record of Contract of Service stipulating the basic conditions and terms of service and section 24 requires such a record to be signed by both the employer and the employee. These requirements are not fulfilled in the informal sector.

The Industrial and Labour Relations Act (Cap 269) regulates industrial relations in Zambia. The Act provides for the establishment of the Tripartite Consultative Labour Council (TCLC) as the primary instrument for social dialogue and consultation among the social partners i.e. the unions, Zambia Congress of Trade Unions (ZCTU) and the Federation of Free Trade Unions representing the workers; the Zambia Federation of Employers (ZFE) representing the employers; and the Ministry of Labour and Social Security representing the Government. The TLC has an important role in securing tripartite cooperation on policies relating to employment, labour and industrial relations matters, including equal opportunities in employment. Notwithstanding the difficulties of organisation, the ZCTU adopted the informal sector through their constitutional provisions an area of interest. This is in line with the Tripartite Consultation (International Labour Standards) ILO Convention No 144 which Zambia has ratified. The Convention requires each member of the ILO to ensure effective consultations with respect to matters concerning the activities of the ILO between representatives of government, workers and employers.

The Minimum Wages and Conditions of Employment Act provides important safeguards against erosion of decent working conditions mainly targeted at the vulnerable working groups. Zambia has ratified a number of ILO Conventions in this regard. They include the Minimum Wage-Fixing Machinery Convention, 1928; the Protection of Wages Convention, 1949; the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951; and the Minimum Wage Fixing Convention, 1970. The interpretation that the Act sets the minimum wage level and the minimum standards for other conditions of employment run into difficulties when under

Statutory Instruments 2 and 3 of 2002, the Government prescribed minimum wage levels and also stipulated the redundancy and retirement benefits. They provided that employees with 10 or more years' service, are, as a minimum, entitled to 3 months pay for every year served on retirement, whilst, on being declared redundant, their entitlement is 2 months pay for every year served. The wide and erroneous adoption of these redundancy and retirement benefits in contracts of employment was said to have led to increased casualisation of employees and generally was considered to have made a significant contribution to the contraction in formal employment resulting in harming both the welfare of workers and the sustainability of businesses. Government has since taken steps to make it clear that the minimum wages and the other conditions of service stipulated in the Act and its subsidiary legislation apply to vulnerable employees only i.e. the defenceless working poor. Of course, the most defenceless of the working poor are those in the informal sector. The application of minimum standards of wages and conditions of service to the informal sector can be problematic²⁵. Firstly, a preponderance of protective legislation can stifle the development and growth of informal sector enterprises into SMEs. Secondly, the sheer size of the informal sector is beyond the capacity of the inspectorate to ensure compliance. Thirdly, the disparity in the power relationships between informal sector employers and their employees contributes to the unenforceability of work standards. Almost certainly, the latter reason, has contributed to the exclusion of certain categories of employees such as those in domestic service from the application of minimum wages and conditions of service as well as the application of safety and social security legislation.

The Employment of Young Persons and Children Act (Cap 274) is the country's major legal instrument for the protection and regulation of child labour. The Act prohibits the employment of a child under the age of 14 years in any industrial undertaking as defined under the Act. The prohibition applies to industrial undertakings that are hazardous or those which may be detrimental to health, safety and morals. The law also categorises the ages of eligibility to perform various types of employment and generally provides for regulations governing the conditions of employment such as restrictions relating to work at night and hours of work.

Zambia's ratification of the Minimum Age (Industry) Convention, 1919; the Forced Labour Convention, 1930; and the Minimum Age Convention, 1973 has provided an important platform for addressing child labour abuses.

The Factories Act and the Mining Regulations under the Mines and Minerals Act provide a legal and regulatory framework for regulating the safety, health and welfare of persons employed in factories and mines. Both Acts also provide for the safety, examination and inspection of specified plant and machinery. A factory under

²⁵ Zambia – Focus Group meeting on Labour Rights

the Act is interpreted widely to include “any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process” for or incidental to a large variety of business-related activities in which workers from both the formal and informal sectors are engaged. Section 2 paragraphs 5 and 7 of the Factories Act would appear to extend the meaning of “factory” to markets and other open air places of business that fall under the control of local authorities and which are dominated by informal sector workers. If this interpretation is correct, then, the Factories Act, commendably, has a jurisdiction that is of wider application than other labour rights legislation.

Environmental protection of mine areas and all other areas of employment are provided for under the Environment and Pollution Control Act and the Mines and Minerals Act (in mine areas). There is no reason to suppose that enforcement of environmental standards would exclude artisanal and other unlicensed operators of mining and/or quarrying operations.

Government has made the prevention and mitigation of HIV and AIDS at places of work especially the elimination of discrimination and stigma a major priority. It recognises that the containment of the HIV/Aids pandemic is one of the pre-requisites to sustaining and achieving a high productivity workforce. Government’s efforts in this area are reinforced by the National AIDS Council, and the work of UNAIDS amongst others. Again, these efforts are not limited to workers in the formal sector. They apply, perhaps with greater relevance to workers subjected to inhumane conditions that are prevalent in the informal sector.

Workers’ rights legislation, though deficient in a number of areas, is comparable to other jurisdictions elsewhere. However, the inability to implement labour rights legislation combined with non-incorporation of some of the ratified ILO Conventions 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.

Enhancement of workers’ rights through job creation

The creation of productive jobs which meet acceptable standards of decency is a benchmark policy position of Zambia’s NELMP. Indeed it is the opinion of the author of this paper that joblessness is the fundamental cause of widespread poverty in the country. In the draft DWCP, it is aptly stated that “decent work for all can only be achieved within a policy and regulatory context where policies and laws consistently and coherently support pro-employment approaches and the application of International Labour Standards”. In this regard, the NELMP is in harmony with the ILO Convention 122 on employment policy which binds ratifying countries like Zambia to pursue an active employment policy designed to promote the goal of full, productive and freely chosen employment.

In its policy, one of Government's principal aims is the development and growth of small to medium scale enterprises mainly from the large informal sector. To this end, Government is committed to capacity-building in its efforts to overcome skill deficits and inaccessibility of financial resources. Institutionally, Government has established a Small Enterprises Development Board (SEDB) as a statutory organ for the promotion and facilitation of SMEs. With respect to skills generation, Government has established a statutory authority through TEVET Act No. 13 of 1998 for promoting, monitoring and regulating institutions involved with the training of those engaged in SMEs. To facilitate the access of SMEs to credit, Government aims to promote micro financing. Other measures include facilitating the wider adoption of appropriate technologies, creating a data bank on SMEs activities and establishing Business Advisory Centres (BACs) both at local and national levels.

The creation of decent jobs for women has been highlighted in the National Employment and Labour Market Policy (NELMP), and it is a priority for Ministry of Gender in Development and Ministry of Commerce, Trade and Industry, as well as for the Joint Assistance Strategy (JASZ) Gender Sector Cooperating Partners. Similarly, the NELMP attaches priority to Job creation for young people which is also the focus of the Ministry of Youth, Sport and Child Development which administers the National Youth Development Fund. The NELMP has also directed its attention to the employment and economic empowerment of people with disabilities which is also an important area of action for the Ministry of Community Development and Social Services, as well as being a major focus for the Zambia Agency for Persons with Disabilities.

In 2004, after consultations with the private sector and other relevant stakeholders, Government adopted a Private Sector Development Action Plan which embodies strategies and reform actions for developing and growing Zambia's private sector. Accelerated development of the private sector in priority economic sectors namely agriculture, non-traditional/gemstone mining, tourism, and resource-based manufacturing is expected to result in the creation of sustainable jobs.

Government efforts towards achieving social protection for the working poor

As noted earlier, the recognition, by Government, of the inadequacies and the scope limitations of the current social protection arrangements in the country is an important step in the search for a solution. In a concept paper prepared by a sub-committee of the National Social Security Reform Implementation Committee (NSSRIC), appointed to review the social security arrangements in the country the following was brought to the attention of Government:

- The need to expand the reach of pension coverage;
- The need to reform and strengthen the existing national pension scheme and the many occupational pension schemes which are now estimated to number 265; and
- The need to address the social security needs of the wider population which currently remains uncovered

In consequence, Government proposed the development of a national Social Security Policy which should be operationalised through the enactment of harmonised Social Security legislation. Among the areas that will be targeted for reform in the proposed Policy are:

1. **Retirement Benefits** targeted at improving the adequacy and timeliness of benefits; strengthening private occupational and personal pension plans; ensuring long term sustainability of retirement plans; improving coverage of the basic retirement pension;
2. **Unemployment Insurance** which does not currently exist should be introduced to avoid income deprivation during periods of temporary unemployment
3. **Health Insurance**, on a national basis, does not exist in Zambia, apart from a very basic “Scheme” administered under the Ministry of Health and a few private schemes. The policy objective is to extend basic health care to the entire population
4. **Work Injury** compensation is covered by one employer liability scheme, the Workers’ Compensation Fund Control Board. Among other concerns, the proposed policy will address the challenges of low benefits, administrative weaknesses and non coverage of certain categories of workers, principally those in the informal sector
5. **Social Welfare**, which is administered by the Ministry of Community Development and Social Services, is currently confined to the provision of assistance to the elderly, income support to distressed households and street children. The policy recommendations seek to widen the scope of social welfare assistance to vulnerable groups but also to improve the transparency and accountability of the programme
6. **Maternity Insurance** is not currently provided for. Its introduction is being recommended to reduce the burden on employers who currently are obligated to meet the costs of maternity leave of a growing population with a high incidence of maternity
7. **Housing** is in very short supply primarily because mortgage finance is scarce and expensive to service. Government will encourage social security institutions to invest in housing

The proposed reforms are expected to address the current and future social protection needs of Zambia's working population before and after retirement. The funding needs of the reform programme which are beyond the capacity of the relatively small number of persons in formal employment pose a special challenge. Beyond funding is the need for reform of the various delivery institutions, NAPSA, Workmen's Compensation Board and others in order for them to improve the service to their respective constituencies as well as increasing their contribution to domestic savings for capital formation.

RECOMMENDATIONS

The exclusion by default or expressly of the informal sector from benefitting from the comprehensive reform policies, strategies and legislative enactments that the Zambian Government has in place or plans to implement for the protection of labour rights and standards centred on the four major pillars that ILO has identified as constituting the Decent Work agenda i.e. Rights at work; Employment; Social Protection and Social Dialogue is, as we have seen, the greatest obstacle to achieving decent employment conditions for the working poor. The informal sector is the home of 80% or so of the working population in Zambia. If reforms to cure Zambia's deficits in the decent work programme do not penetrate the informal sector, a large proportion of the working poor will not benefit. In effect, the reform programme would essentially become a status quo strategy capable, at best, of only producing marginal improvements to the overall uplift of standards of the working poor. Consequently, the proposed road map concentrates on creating conditions capable of unleashing the economic power lying latent in the informal sector with emphasis on the legal dimension:

Organisational empowerment of the informal sector

The informal sector is largely voiceless in matters relating to their self-improvement economically. The organisational amorphousness of the informal sector has hindered the channelling of many of the benefits that accrue from the four pillars of the decent work agenda. The simple but powerful message in support of organisational empowerment is that informal sector workers need each other for increased prosperity and improved working conditions. In urban areas, most informal sector businesses are located at markets. Government should encourage the evolution of multi-skilling in group businesses. In one of the townships of Lusaka, Garden compound, a community-based youth training centre, Dzithandizeni is using trainee furniture makers to support a thriving furniture business that is now well capitalised and is producing high quality furniture. There are similar opportunities for other trades. For instance, the fabrication of door and window frames, burglar bars and many other items is a major activity at virtually all the markets. For reasons of capital formation and skill complementarities, informal sector fabricators and others

in brick-making etc require to associate in order to generate better and more consistently better quality products and services for increased earnings. There are, of course, difficulties of disaggregation of informal sector operatives into employers and employees which will require to be approached more innovatively especially that a large proportion of informal sector operatives are self-employed.

Secondly, the Government should encourage the progressive development of self-management boards at markets in order to facilitate economic integration of the informal sector. The growth of businesses and employment opportunities in the informal sector will, to a large extent, depend on group or co-operative action involving the operators themselves and, therefore, location specific management schemes in respect of common interests is essential. The enactment of the Markets and Bus Stations' Act No 79 of 2007 is a step in the right direction even though the wide veto powers of the Minister of Local Government under the Act erodes their operational authority.

Success in organisational empowerment of the informal sector will enable Government to register and facilitate the transformation of the informal sector into a targeted economic sector.

Legal Recognition of the Informal Sector

To informal sector workers, legalisation constitutes a major threat to their economic well-being. It usually takes the form of eviction notices from their places of work and sometimes results in demolition of their work premises. Gemstone miners who have opted to obtain gemstone mining licences have been taxed on the basis of a deemed turnover when they have declared zero production returns for 2 years or more. Illicit gemstone miners escape the taxation. For as long as the Government treats the informal sector as illegal, persons operating in it, which is the vast majority of the working population, will shun legal compliance because of the legitimate apprehension that it will deepen their poverty. A different approach, one that relies on the economic self-interest of informal sector operators to promote their legalisation is advocated. Government must take the initiative to demonstrate that legal compliance will enhance the prosperity of informal sector operatives. It is proposed that Government invests in the provision of value adding services through the host of measures being proposed for consideration:

Informal sector enterprises

- Make voluntary registration of informal enterprises rewarding to these businesses through tangible measures which include – 1. Access to credit; 2. Improve security of tenure at business premises; 3. Reduce the business tax burden to affordable levels; 4. Simplify the registration process; 5. Decentralise the Zambia Bureau of Standards and expand the provision of support services with respect to performance and quality standards of goods

and services; 6. Demonstrate the financial superiority of voluntary business registration through pilot schemes at strategic business locations for the informal sector. The demonstrated business and economic benefits that have accrued from improved tax measures for private bus operators has provided a model worth replicating

- Work towards self-regulation and self-management to improve compliance with workplace standards and labour rights legislation. Statutory regulatory and enforcement agencies have failed to implement labour rights law affecting a meagre 10% of the labour force in the formal sector. It is utterly unrealistic to expect these same agencies to take on the complex and much larger task of extending their responsibilities to the informal sector without fundamental reform of the regulatory delivery system

Informal sector employees

- ❖ Educate both workers and owners of informal enterprises that reliance on the benefits of respecting labour rights and high standards. The key concept is that cheap labour undermines competitiveness and productivity. Firms which base their price competitiveness on low labour costs are often inefficient, unproductive and outdated. There is no incentive to invest in new technologies and improved skills because of the added cost. For workers paid well below the minimum living wage, the incentive to increase productivity is lost. This is a recipe for business stagnation.
- ❖ Informal sector employees are largely weak because they are voiceless. Because of the small employment numbers in informal sector firms, employees are fragmented and unable to form effective occupational or trade organisations. The right of wage earners to associate and negotiate collectively should be extended to the informal sector by reforming the law to remove restrictions based on occupation or industry. The law should enable marketeers, for instance, to constitute themselves into marketeers associations embracing all market-based workers to join and have the capacity to campaign for adherence to acceptable labour rights and standards under the law.

Extending Rights at Work to the Informal Sector

The informality of the employer/employee relationship in the informal sector has hindered inclusion of informal sector workers in initiatives aimed at extending rights at work to them. A paradigm shift is needed in the way labour rights and standards are protected in the informal sector. The need for human dignity and decency at places of work transcends employer/employee distinctions and should be protected under the Constitution as part of the inalienable Bill of Rights. Arguably, this may be considered hollow if the right to work itself is not constitutionally protected. In my view there is a distinction in that the right to decency is a human right that belongs to the unemployed, the employed and indeed the employers. Employees cannot lose

this right through employment. With the large numbers of job seekers, upholding decent working standards requires integration of labour standards beyond formal employment. In this regard, the legal approach to environmental protection is instructive.

Strengthening the workers rights to social protection

With the development of a draft social security policy, considerable headway has been made towards agreeing the parameters for fulfilling the goal of providing social protection for all in Zambia. The policy addresses social protection needs relating to:

1. Retirement Benefits/Old Age/Social Welfare
2. Unemployment Insurance/Redundancy
3. Health Insurance
4. Work Injury
5. Maternity Insurance
6. Social Security HIV and AIDS Mainstreaming

A multi-pillar Retirement Benefits scheme is envisaged comprising (“Zero Pillar - this relates to social assistance; 1st Pillar- National basic scheme that is mandatory in nature. In effect, this relates to the National Pension Scheme Authority (NAPSA); 2nd Pillar – This relates to all occupational pension schemes; and the 4th Pillar – Personal/individual accounts, voluntary pension plans”²⁶)

The contributory base of NAPSA is too small to support adequate pension benefits sustainably. The severe solvency problems of the Public Service Pensions Fund, PSPF, and the Local Authorities Superannuation Fund, LASF, point to the fact that the funding sources for these Schemes need major reform. For NAPSA to assume the added responsibility of handling redundancy benefits will require increase in contributions by both employers and employees and much more importantly, is the need to broaden the subscriber base by qualifying an appreciable proportion of informal sector operatives into the Scheme. All the pension funds require prudent management as investment funds for the benefit of both pensioners and capital formation for the domestic economy.

Correlation of employment figures with poverty statistics

The completion and publication by the Central Statistical Office, CSO, of the 2005 Labourforce Survey, LFS, Report, after an absence of 19 years, is most commendable. The human resource and how it is deployed in a country’s economy is the best barometer of its progress. In my view, an economy’s capacity to give and absorb its people has a strong bearing on its poverty levels; there is an inverse relationship between employment and poverty. The higher the employment levels

²⁶Zambia: Draft National Security Policy

the lower the poverty levels. This is not borne out by the figures in the LFS Report. Poverty in Zambia is given as engulfing 68% of its population, with 53% being in extreme poverty. The LFS Report shows that unemployment in 2005 stood at only 10%. The labour participation rate which measures the percentage of the population that is economically active (employed and unemployed) was found to be as high as 80%. These LFS figures do not accord with the reality on the ground. It is strongly suggested that definitions of unemployment and under-employment should be re-visited in order for them to be more closely indexed to definitions of poverty. There should be a threshold job value that should form a criterial standard for a job.

WHAT ROLE CAN THE COMMISSION PLAY?

Clearly the Commission should seek to influence the World community to appreciate the new weapon for fighting poverty, particularly in the developing world. The informal sector that is legally enabled to access entrepreneurial resources of business finance and technical support has the power to deliver improved labour rights and standards to a much larger catchment of workers than is possible in the formal economy. The Commission should leave no stone unturned in disseminating information on the latent economic assets and entrepreneurial power in the informal sector. The informal sector is a major reservoir for enterprise development and business growth.

The Commission is well-placed to influence a new and more relevant re-definition of the employer/employee relationship with respect to the informal sector. The current body of labour law concerns itself with labour rights and standards in a capital-based power relationship in the formal sector. By and large, in the informal sector, the work arrangements reflect a skill-based hierarchical and collaborative relationship. Very often in the informal sector, enterprise owners are individuals with skills as electricians, welders, carpenters, bricklayers, etc who, hire co-workers to offer services as apprentices or junior status co-workers. Informal sector sellers typically use relatives as assistants without defined conditions of service. It is clear, that the employer/employee relationship that exists in the formal sector is fundamentally different to that exhibited in the informal sector. The Commission should use its persuasive power to initiate studies which will lead to a better understanding of work relations in the informal sector. Labour law can then be adapted to the needs of the informal sector.

Finally the Commission is a perfect vehicle for enabling the global community to share in the initiatives in various countries which are succeeding in addressing the deficits in labour rights and standards affecting the working poor. In this regard, the

Commission should spotlight the work of ILO and encourage World governments to ratify and domesticate ILO conventions that safeguard the rights of the working poor.

CONCLUSION

The constituents of Zambia's policy and legal framework devoted to the protection of labour rights and standards has substantially responded to the requirements of a decent work programme as laid out in relevant ILO Conventions. Most notably, the ILO core conventions have been ratified. The country's Vision 2030, the Fifth National Development Plan, the National Employment and Labour Market Policy, the draft National Security Policy, the Strategy for Social Security --- and the draft Decent Work Country Programme, all affirm the country's commitment to the creation of jobs that respect workers rights and meet decent standards. The high level of joblessness and grossly inadequate implementation capacity, has resulted in widespread decent work deficits. Availability of decent work has been declining in line with the shrinkage of the formal economy; casualisation of jobs is on the rise; use of under-age children and generally child abuse are growing and being aggravated by higher numbers of orphans resulting from the HIV and AIDS pandemic. Social Protection of workers is inadequate both in terms of benefits and the extent of coverage. Insufficient capacity of workers representative unions and associations has weakened the functioning of the tripartite Social Dialogue mechanism comprising Government, the Unions and the Employers. Other abuses of labour rights affecting the absence of unemployment insurance, sexual harassment of female workers, absence maternity insurance, absence of health insurance, all contribute to an enormous backlog of decent work deficits in Zambia. These deficits are scaled up several fold when account of the informal sector is taken. LFS figures show that there are 416,000 formal jobs in the economy and an estimated 3.2 million informal jobs. All the informal jobs are outside the protection of labour legislation on decent work standards.

The adaptation of the policy and legislative environment in order to extend the regime of protection of labour rights and standards to the informal sector is central to this issue paper on Zambia. The approach is centred on introducing reforms which are wealth creating. Crudely, the only justification for informal sector players to subscribe to a reform initiative is if it pays. The reason they avoid the law is that compliance harms their bottom line. For instance, the quid pro quo of registration of informal businesses and registration of informal sector workers is a clear linkage with any one or more of benefits such as improved access to social security benefits, reduced cost of doing business, better access to business opportunities, improved productivities, better and more consistent quality standards. This is the reason for such strong advocacy for the use of pilot schemes as success models for changing

the culture of doing business and improving the work environment in the informal sector.

APPENDICES

APPENDIX 1: A LIST OF MAJOR LABOUR LEGISLATION

CHAPTER 256

THE NATIONAL PENSION SCHEME ACT

An Act to establish the National Pension Scheme Authority; to constitute the National Pension Scheme and to provide for matters connected with or incidental to the foregoing.

CHAPTER 268

THE EMPLOYMENT ACT

An Act to provide legislation relating to the employment of persons; to make provision for the engagement of persons on contracts of service and to provide for the form of and enforcement of contracts of service; to make provision for the appointment of officers of the Labour Department and for the conferring of powers on such officers and upon medical officers; to make provision for the protection of wages of employees; to provide for the control of employment agencies; and to provide for matters incidental to and consequential upon the foregoing.

CHAPTER 269

THE INDUSTRIAL AND LABOUR RELATIONS ACT

An Act to revise the law relating to the formation of trade unions and employers' representative organisations, including the formation of federations of trade unions and federations of employers organisations, recognition and collective agreements, settlement of disputes, strikes, lockouts, essential services and the Tripartite Labour Consultative Council; the Industrial Relations Court and to provide for matters connected with or incidental to the foregoing.

CHAPTER 270

THE EMPLOYMENT (SPECIAL PROVISIONS) ACT

An Act to make special provision with respect to employment during any period when a declaration under section 29 of the Constitution is in force; and to provide for matters incidental thereto.

CHAPTER 274

THE EMPLOYMENT OF YOUNG PERSONS AND CHILDREN ACT

An Act to regulate the employment of young persons, and children; and to provide for matters incidental thereto.

CHAPTER 276

THE MINIMUM WAGES AND CONDITIONS OF EMPLOYMENT ACT

An Act to repeal and replace the Minimum Wages, Wages Councils and Conditions of Employment Act; to make provision for regulating minimum wage levels and

minimum conditions of employment; and to provide for matters connected with or incidental to the foregoing.

CHAPTER 441 THE FACTORIES ACT

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.

APPENDIX 2: ILO CONVENTIONS RATIFIED BY ZAMBIA

Convention	Country	Ratification date	Status
<u>C5 Minimum Age (Industry) Convention, 1919</u>	Zambia	02:12:1964	denounced on 19:06:1976
<u>C11 Right of Association (Agriculture) Convention, 1921</u>	Zambia	02:12:1964	ratified
<u>C12 Workmen's Compensation (Agriculture) Convention, 1921</u>	Zambia	02:12:1964	ratified
<u>C17 Workmen's Compensation (Accidents) Convention, 1925</u>	Zambia	02:12:1964	ratified
<u>C18 Workmen's Compensation (Occupational Diseases) Convention, 1925</u>	Zambia	22:02:1965	ratified
<u>C19 Equality of Treatment (Accident Compensation) Convention, 1925</u>	Zambia	02:12:1964	ratified
<u>C26 Minimum Wage-Fixing Machinery Convention, 1928</u>	Zambia	02:12:1964	ratified
<u>C29 Forced Labour Convention, 1930</u>	Zambia	02:12:1964	ratified
<u>C45 Underground Work (Women) Convention, 1935</u>	Zambia	02:12:1964	denounced on 03:03:1998

<u>C50 Recruiting of Indigenous Workers Convention, 1936</u>	Zambia	02:12:1964	ratified
<u>C64 Contracts of Employment (Indigenous Workers) Convention, 1939</u>	Zambia	02:12:1964	ratified
<u>C65 Penal Sanctions (Indigenous Workers) Convention, 1939</u>	Zambia	02:12:1964	ratified
<u>C86 Contracts of Employment (Indigenous Workers) Convention, 1947</u>	Zambia	02:12:1964	ratified
<u>C87 Freedom of Association and Protection of the Right to Organise Convention, 1948</u>	Zambia	02:09:1996	ratified
<u>C89 Night Work (Women) Convention (Revised), 1948</u>	Zambia	22:02:1965	denounced on 10:09:2001
<u>C95 Protection of Wages Convention, 1949</u>	Zambia	23:10:1979	ratified
<u>C97 Migration for Employment Convention (Revised), 1949</u>	Zambia	02:12:1964	ratified
<u>C98 Right to Organise and Collective Bargaining Convention, 1949</u>	Zambia	02:09:1996	ratified
<u>C99 Minimum Wage Fixing Machinery (Agriculture) Convention, 1951</u>	Zambia	20:06:1972	ratified
<u>C100 Equal Remuneration Convention, 1951</u>	Zambia	20:06:1972	ratified
<u>C103 Maternity Protection Convention (Revised), 1952</u>	Zambia	23:10:1979	ratified
<u>C105 Abolition of Forced Labour Convention, 1957</u>	Zambia	22:02:1965	ratified

<u>C111 Discrimination (Employment and Occupation) Convention, 1958</u>	Zambia	23:10:1979	ratified
<u>C117 Social Policy (Basic Aims and Standards) Convention, 1962</u>	Zambia	02:12:1964	ratified
<u>C122 Employment Policy Convention, 1964</u>	Zambia	23:10:1979	ratified
<u>C123 Minimum Age (Underground Work) Convention, 1965</u>	Zambia	03:04:1967	denounced on 13:10:1999
<u>C124 Medical Examination of Young Persons (Underground Work) Convention, 1965</u>	Zambia	10:03:1967	ratified
<u>C131 Minimum Wage Fixing Convention, 1970</u>	Zambia	20:06:1972	ratified
<u>C135 Workers' Representatives Convention, 1971</u>	Zambia	24:05:1973	ratified
<u>C136 Benzene Convention, 1971</u>	Zambia	24:05:1973	ratified
<u>C138 Minimum Age Convention, 1973</u>	Zambia	09:02:1976	ratified
<u>C141 Rural Workers' Organisations Convention, 1975</u>	Zambia	04:12:1978	ratified
<u>C144 Tripartite Consultation (International Labour Standards) Convention, 1976</u>	Zambia	04:12:1978	ratified
<u>C148 Working Environment (Air Pollution, Noise and Vibration) Convention, 1977</u>	Zambia	19:08:1980	ratified
<u>C149 Nursing Personnel Convention, 1977</u>	Zambia	19:08:1980	ratified
<u>C150 Labour Administration</u>	Zambia	19:08:1980	ratified

<u>Convention, 1978</u>			
<u>C151 Labour Relations (Public Service) Convention, 1978</u>	Zambia	19:08:1980	ratified
<u>C154 Collective Bargaining Convention, 1981</u>	Zambia	04:02:1986	ratified
<u>C158 Termination of Employment Convention, 1982</u>	Zambia	09:02:1990	ratified
<u>C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983</u>	Zambia	05:01:1989	ratified
<u>C173 Protection of Workers' Claims (Employer's Insolvency) Convention, 1992</u>	Zambia	25:05:1998	ratified
<u>C176 Safety and Health in Mines Convention, 1995</u>	Zambia	04:01:1999	ratified
<u>C182 Worst Forms of Child Labour Convention, 1999</u>	Zambia	10:12:2001	ratified