

**SOCIAL SECURITY LEGISLATION IN
ZAMBIA AND THE ILO SOCIAL SECURITY
(Minimum Standards) Convention, 1952 (No. 102)**

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I

INTRODUCTION

From time immemorial, societies have recognised the need for social security to protect individuals from uncertainties that would occur in one's life due to among other things, death of a bread winner, retirement and old age. The occurrences of any of these eventualities pose a threat to people's economic stability and the wellbeing of the family. Therefore, social security contributes to a country's overall growth by encouraging savings and sustaining the living standards of those covered. The concept of social security has no established definition. However, the International Labour Organisation (ILO), which has done considerable work in this field has offered a working definition of the concept of social security. The ILO defines social security as;

The protection furnished by society to its members through a series of public measures against economic and social distress that would otherwise be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age, death, medical care and subsidies for families and children.¹

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The ILO has taken a leading role in setting up international standards for social security which member States need to adhere to. The ILO, through various Conventions and Recommendations, provides for the minimum level of protection to be covered by either non-contributory or contributory schemes. The Zambian social security system is based mainly on a contributory system; it is a social insurance model which requires one to have a record of contribution in order to be entitled to a benefit. This social insurance model is designed to protect income earners and their dependants against the occurrence of certain contingencies that would prejudice their capability to earn income.²

The aim of this article is to evaluate social security legislation in Zambia. To this end, Part II of this article will present an overview of Convention 102 of the ILO. Part III highlights the development of social security in Zambia before and after independence while the nature of social security schemes available in Zambia and benefits provided to members are presented in part IV. This is closely followed in Part V by an analysis of Zambia's social security legislation in the context of Convention No. 102 of the ILO. Part VI focusses on the importance of social security particularly, its ability to mitigate poverty and lastly, Part VII offers concluding perspectives.

II

ILO Convention 102 ON Social Security

The Second World War and its aftermath brought about significant developments at national, regional and international levels in the area of social security. Lord Beveridge's landmark 1942 report, prepared at the request of the British government, marked a turning point in the development of social security.³ The report identified the

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Johannes Jutting, Strengthening social security systems in rural areas of developing countries. Discussion papers on development policy No. 9 (June, 1993) 3

² Winnie S. Mwenda, *Employment Law in Zambia, Cases and Materials*, (Lusaka: UNZA Press, 2011) 239

³ Jean-Michel Servais, 'International Standards on Social Security, lessons from the

State as the appropriate entity for the development and promotion of social security in a country. It argued for a systematic promotion and a broadened scope of benefits which the State can extend to its citizens. This development later culminated in the social security system promoted by the ILO. The involvement of the ILO in matters of social security saw the birth of Recommendation No. 67 in 1944.

The Recommendation called for income security schemes that relieve want and prevent destitution. The recommendation provided that income security was to be provided on the basis of compulsory social insurance and that the needs not covered by compulsory social insurance were to be met by social assistance.⁴ On the other hand, recommendation No. 69 concerning medical care suggested medical care coverage to all members of the community which was to be provided either through a social insurance medical care service or by way of social assistance to meet the requirements of needy persons or through a public medical care service.

Further developments continued to be recorded in the area of social security. One such development was the confirmation of social security as a human right under the Universal Declaration of Human Rights (UDHR) in 1948. The declaration protects the right to social security and provides that;

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.⁵

past for a better implementation'<http://islssl.org/wp-content/uploads/2014/12/Servais_2014_Asian_Conf.pdf> accessed on 10/11/ 2018

⁴ Income Security Recommendation, 1944 (No. 67)

⁵ Article 22, Universal Declaration of Human Rights of 1948

The recognition of social security as a human right was followed by the adoption of the minimum standards of social security. These standards were adopted at the thirty-fourth session of the International Labour Conference in June 1951. It was at this conference that the minimum standards of social security were considered, and tentative conclusions drawn as to what should be included in international social security standards.⁶ However, a more decisive step towards the development of social security was taken in 1952 with the adoption of the Convention on minimum standards of Social Security which is Convention 102. This Convention prescribes the minimum standards of social security for the nine branches of social security which are, sickness, unemployment, medical care, old age, work injury, maternity, invalidity, survivors and family benefits.⁷

The Social Security (Minimum Standards) Convention, 1952 (No. 102) establishes a general system whose scope is progressively extended to all sectors of the economy. Convention 102 defines the nine branches of social security and sets minimum standards for the level of social security benefits. It sets standards concerning scope of coverage, type of benefits as well as the conditions under which they are granted.⁸ To ensure that it could be accepted in all national circumstances, the Convention offers States the possibility of ratification by accepting at least three of its nine branches and subsequently accepting obligation under other branches, thereby allowing them to progressively attain all the objectives set out in the Convention. In accordance with the Convention, of the three branches that a ratifying State should accept, one branch should at least be from; unemployment, old age, invalidity, employment injury or survivor's benefits.⁹ This allows gradual extension of social security coverage by ratifying Member States.

6 Robert J. Myers, 'New International Convention on Social Security' *Social Security Bulletin*, (October, 1951)

7 Jef Van Langendonck, 'The meaning of the right to social security' (2008) <<http://dfj.emnuvens.com.br/dfj/article/view/553/107>> accessed 12 November, 2016.

8 ILO, undated, International Labour Standards on Social security.<[http:// www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/socialsecurity/lang-en/index.htm#P49_9596](http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/socialsecurity/lang-en/index.htm#P49_9596)> accessed 21/ 10/ 2018.

9 Article 2(ii) Convention, 1952 (No. 102)

The Convention further provides for temporary exceptions for countries in which the economy and medical facilities are insufficiently developed. For instance, under Article 3¹⁰, a member State whose economy and medical facilities are insufficiently developed may avail itself of the temporary exceptions provided for every branch of social security as long as the competent authority considers it necessary. Such a flexible provision was needed by developing countries whose economies were still underdeveloped.

The flexible provisions of the Convention, makes it remain relevant to all its member States regardless of levels of national economic development. However, proponents like Langendonck,¹¹ have argued that, the flexible provisions that allow member countries to choose, when ratifying the Convention the percentage of the active population to cover, make the application of Convention 102 fall short of the principle in the UDHR. The principle enunciated in the UDHR seeks to make the right to social security a fundamental right of everyone as a member of society. The flexibility permitted by the ILO to its member States implies that the issue of universality of coverage may be an illusion as it will not always be practical to cover all situations of vulnerability. Against the background of the development of social security instruments at international level, it is now opportune to examine the development of social security in Zambia.

III

The Development of Social Security in Zambia Before and After Independence

The development of social security in Zambia was greatly influenced by colonial heritage. The social security system that was in place during the colonial period almost exclusively protected the interests of the white settlers. The majority of Africans derived their livelihood from agricultural activities. Those who got jobs in urban areas worked

¹⁰ Ibid

¹¹ Jef Van Langendonck, 'The meaning of the right to social security' (2008) <<http://dfj.emnuvens.com.br/dfj/article/view/553/107>> accessed 12 November, 2016.

as labourers and their labour was exploited in many ways, including in this instance, denial of social security protection. The general exploitation of workers that characterised the British industrialised system did not spare Zambia. Semakula sums it when he states that;

all colonial regimes advanced economic justification of empire and the common denominator was a concern for the economic utility of the colonies. African colonies were colonies of exploitation and the aim was to maximize their resources. Labour policies also had a great deal in common since every colonial regime relied on cheap and often compulsory labour in an attempt to make the colonies pay their own way.¹²

Black Africans were being exploited by whites and could not benefit from their labour. Due to lack of skills among many Africans, all the good positions were taken up by whites. Blacks were only engaged as labourers which consequently made their wages very low. Despite the lack of skills and the exploitation many Africans suffered at the hands of the settlers, they had no choice but to work in order to meet their obligations of paying the Hut tax that was introduced by the colonialists. Africans were coerced to work for menial wages in the colonial economy through instruments like the hut and poll taxes.¹³ The indigenous population had to abandon their crops and livestock to take up jobs in town so as to enable them meet their obligations of paying tax. This development further contributed to urbanisation as many young and able-bodied men were forced to leave their homes and families in rural areas to take up waged employment in towns.

12 Semakula Kiwanuka, *Colonial policies and Administration in Africa: The myths and contrast*. African Historical Studies. Vol 3 No. 2 (Boston University African Studies Center, 1970) 295-315

13 Ndagwa Noyoo, *Social Policy and human development in Zambia*, (Lusaka: UNZA Press, 2008) 43

The most common feature of companies during the colonial era is that they took no responsibility for social security. Integral to these racially-motivated policies was the belief that the African workers should look to the village for support and social security in sickness and old age.¹⁴ The companies also reduced the costs of labour in the areas of housing, health, school and social security by constantly changing the labour force¹⁵. The companies made sure they would not have to award salary increments that were due to experienced and long-serving workers. This was so evident a fact that colonialism did not have the interest of Africans in their operations.

The combination of the emerging cash economy, labour migration and State taxation policies disrupted the entire social structure of Africans. The family which was once considered an economic as well as a social unit was no longer effective due to urbanisation. The commercial economy brought about a train of significant changes in the way of life, attitudes and social needs in urban centres.¹⁶ This also increased the levels of poverty as the traditional approach to the mitigation of poverty became obsolete and inadequate.

The traditional way of living, where community resources were shared and care given to needy members, was breaking down and becoming unreliable. Individuals in urban areas who occasionally lost their jobs became stranded without resources to meet their basic needs of life. Some failed to return to their villages and they became town vagrants, while most of those who returned to the village lived there in abject poverty.¹⁷ This brought about the desire for a social security scheme that would take the needs of retirees into consideration so that people have a decent standard of living despite leaving employment.

¹⁴ Lawrence Mukuka, et al., "Social security Systems in Zambia" *African Journal of Social work*, Vol 17(2) (2002), pp 65-96

¹⁵ Ibid

¹⁶ Gordon A Hosking, *Pension Schemes and Retirement Benefits*, (London: Sweet & Maxwell, 1968) p.7

¹⁷ Godfrey, V. N, *The ability of Provident Funds to meet social needs: The Zambian experience*. East African Symposium of the relationship of social security. Social Planning and economic Development. (Dar-es Salaam 1-19 October, 1973)

After the attainment of its independence on 24th October, 1964, the country was now under the rule of the United National Independent Party (UNIP) under the leadership of David Kenneth Kaunda. In 1967, UNIP adopted the philosophy of humanism. This socio political philosophy, stressed communal responses to social issues and commitment to equitable distribution of resources to the population.

As the Zambian Government was now in charge of the economy, it was thought necessary to look back at issues of social security that had been considered but not concluded in the legislative council debates of 1958. The need for social security scheme to alleviate destitution was already felt in the pre independence era. However, due to lack of good will on the part of colonial Government, the proposal to introduce an old age pension was turned down on grounds that the need for payment of old age pension had not yet arisen and that such a scheme could not be afforded by the Government. The reality was that by the end of 1950s many Africans in the urban areas were dependent on money for their livelihood.

Independence brought with it rapid growth in the formal employment sector, especially during the economic boom years (1964-1974). The paradox was that, the more the people were being employed and drawn into the money economy, the greater was the need for new forms of security as the extended family system had been rendered ineffective due to rapid urban migration. There was no one in the villages to receive and look after the aged and some Africans were unwilling to return to their home areas because intergenerational family support had been weakened by urbanisation and most families lost ties with their relatives. Thus, even though the jobs in urban areas provided a new opportunity, there was also considerable insecurity that was created as a result. Thus, the need for a National Scheme to deal with the problem of destitution was obvious.

Though the need for social security scheme in Zambia was identified during the colonial period, it was only after independence that concrete arrangements were made to critically examine the

practicality of a social security scheme for all workers in Zambia. A Working Party that had been formed prior to independence had suggested a National Provident Fund Scheme as an appropriate form of social security. The Fund was to operate on principles which included the following:

Membership of the Provident fund should be open to all regularly employed persons over the age of 18 years but coverage had to be achieved in stages; the employer and employee was to contribute to the fund which contribution was to be credited to the individual worker's account and earn interest. Contributions of the fund had to be invested to promote development in Zambia; and administrative expenses were to be met out of investment income.¹⁸

The Government agreed with the recommendations that were made and therefore, enacted the Zambia National Provident Fund (ZNPF) in 1965. During its operational years, the ZNPF experienced a number of short comings. It was unable to provide adequate retirement benefits to its members as it had no insurance element to protect members. It also faced high administrative costs. Expenditure was much higher as compared to returns from investments. As it was observed by one commentator, 'measured as a share of investment income, administrative expenses reached a peak of 254 percent in 1992.¹⁹ Consequently, the government decided to reform the social security system. The National Pension Scheme Act²⁰ which came into effect in 2000 was therefore enacted to remove the weaknesses of the ZNPF.

18 Republic of Zambia Annual Report of Zambia National Provident Fund, Quoted in Janice S. Munsaka, "The law governing Social security Schemes in Zambia" (LLM thesis, UNZA, 1987) 29

19 Jean V Gruat, Social security schemes in Africa. Current trends and problems. (International Labour Review, Vol 129, NO. 4 1990). 40

20 Chapter 256 of the Laws of Zambia

IV

Nature of Social Security Schemes and Benefits in Zambia

The National Pension Scheme is the basic Pension Scheme applicable to employees in Zambia. It serves as a compulsory scheme for all regularly employed persons in the private and public sector. The NAPSA Act under Section 11 provides for membership of the scheme. The Second Schedule to the Act further excludes certain categories of employees from coverage:

- (a) an employed person whose monthly earnings are less than K15.00, such employees are excluded as the amounts of contributions one would have to make would be too little to even meet the costs of collection. The amount of earnings provided by the law does not reflect the real situation on the ground as no employer pays employees such amount of salaries in Zambia. What the provision achieves is to make the pension saving compulsory for all wage earners in the economy.
- (b) the spouse of the employer; the spouse of the employer is excluded as one is assumed to be a member of the family and thus derive benefit from the spouse
- (c) a member of the family of the employer who ordinarily resides with the employer; such a one is considered to derive benefits from the employer, it is also possible for the employer to engage in loose arrangements with relatives as a way of assisting those relatives who are unable to find employment.
- (d) an employee of an international organisation who is not a citizen of Zambia; usually such people work on contract and thus it becomes difficult for them to meet the required threshold of contributions as stipulated in section 18 of the NAPSA Act.
- (e) an employee of a foreign government who is accorded diplomatic or equivalent status and who is not a citizen of Zambia, such officers are assumed to have their own arrangements in their own countries.

- (f) a member of the armed forces; and, members of the armed forces are excluded as these are covered under the Public Pension Scheme Act.
- (g) a public officer appointed before this Act comes into force and who is on pensionable employment under the Public Service Pensions Fund or the Local Authorities Superannuation Fund.
²¹ Public Officers who were contributing to the Public Service Pension Fund or the Local Authorities Superannuation Fund before the enactment of the NAPSA Act did not migrate to join the National Pension Scheme Fund unless those who joined the public service after the Act came into force. The only exception provided were the members of the Defence Force. Members of the Defence Forces who joined after the NAPSA Act came into force continue to contribute to the Public Service Pension Fund.

The National Pension Scheme provides for three kinds of benefits. These are:

(a) Old age Pension

The contingency covered is survival beyond a prescribed age, initially it was 55 years but with the amendment on the retirement age, it now means survival is now beyond the age of 60 with the exception of members of the Defence Force, the Zambia Correctional Service and Police Officers below the rank of Chief Inspector in the Police Force and Chief officer III in the Correctional Service whose prescribed age is still at 55 years. In accordance with section 18 of the National Pension Scheme Act, Chapter 256 of the Laws of Zambia, one should attain the pensionable age and must have made not less than 180 monthly contributions in order to receive old age pension. All this means a person should have had a total of 15 years of Service.

(b) Invalidity Pension

The contingency covered is the inability to engage in any gainful activity where such inability is likely to be permanent. In order to

²¹ Ibid

be entitled to invalidity pension, a person should suffer permanent invalidity and be under pensionable age. Further, either the provisions of Section 18 of the NAPSA Act should be satisfied, that is, the attainment of pensionable age and not having made less than 180 monthly contributions or that the member should have at least 60 monthly contributions of which 12 or more were paid in the period of 36 months immediately preceding the date the invalidity begun.²² A board of medical officers is usually constituted to determine the nature and extents of claims of invalidity.

(c) Survivor's Benefits

The contingency covered is the loss of support suffered by the loss of a breadwinner. According to Section 29²³, survivors' benefit is paid to a member of the family or a dependent if at the time of the death the deceased was in receipt of a retirement pension or an invalidity pension. Survivor's benefit would be paid where the deceased would have been entitled to an invalidity pension for permanent invalidity at the time of death or that the deceased qualified to receive old age pension pursuant to the provisions of Section 18 of the NAPSA Act and the deceased had actually made a claim for such Pension.

The Public Service Pension (PSP) Act establishes the Public Service Pensions Fund Board (PSPFB) which is responsible for the matters of all public service employees contributing to the Public Service Pension Fund (PSPF). However, its membership base was lost in February, 2000 by virtue of the enactment of the NAPSA. All Public Service employees who were engaged after the enactment of the NAPSA Act are now members of NAPSA with the exception of Members of the Defence Forces and Police. The PSP Act like the NAPSA Act provides for retirement benefits. Section 33²⁴ of the PSP Act provides for the age of retirement, currently at 60 years in accordance with Statutory Instrument (SI) No. 24 of 2015.

²² Ibid Section 23

²³ Ibid

²⁴ Chapter 260 of the Laws of Zambia

Survivor's benefits are provided for under Part IX of the PSP Act. The benefits are for spouses and children of deceased pensioners, meaning in case of death of a Pensioner his or her dependents as defined in the PSP Act are entitled to a survivor's benefit. This helps to cushion such dependents from income shocks that might arise due to the death of the bread winner. This prevents destitution which is one of the many things social security aims to prevent. The other benefit covered by the PSP Act is invalidity benefit. In order to receive invalidity, benefit a person should be retired on medical grounds. This requires medical evidence to the satisfaction of the appropriate authority that one is by reason of infirmity of mind or body unable to discharge the duties of his office and that such infirmity is likely to be permanent.²⁵ The amount of invalidity benefit paid is dependent on whether the infirmity is attributable to the employer or due to the employee's own default. Those whose infirmity arises in the course of employment are paid compensation for the infirmity

The Local Authorities Superannuation Fund (LASF) was enacted to make provision for the establishment of Superannuation Fund. It covers employees of local authorities, Zambia Electricity Supply Corporation Limited (ZESCO), National Housing Authority and employees of water utility companies created before 1st February, 2000. However, employees who were employed after the enactment of the NAPSA Act contribute to NAPSA. This is a development that has affected the membership base of the LASF. Like the two schemes discussed above, the LASF provides for retirement benefits. Section 25²⁶ provides for retirement benefit upon one attaining the mandatory retirement age of 60 years. Section 27²⁷ further provides for invalidity benefit paid depending on whether the ill health or infirmity of mind is attributable to the employee or not. This is similar to what is provided for under the PSPF Act. With regard to survivor's benefit, Section 35²⁸ is instructive on how dependents of a deceased bread winner will

25 Chapter 260 of the Laws of Zambia Section 40

26 Local Authorities Superannuation Act, Chapter 284 of the Laws of Zambia.

27 Local Authorities Superannuation Act, Chapter 284 of the Laws of Zambia.

28 Local Authorities Superannuation Act

be paid, the calculation of the benefits is dependent on the deceased length of service.

However, LASF has been adversely affected by the declining membership as it has more pensioners than active contributing members as a result of being closed to new entrants. Arising from the enactment of the National Pension Scheme Authority which is a compulsory scheme that covers regularly employed persons in the private, parastatal sectors and all employees who joined the Public Service and Local Authorities on or after 1st February, 2000 employers that were registering with LASF are all now required to register with NAPSA thus making the future of LASF uncertain.

The Workers Compensation Act,²⁹ is a broader piece of legislation on compensation of workers for disabilities and diseases contracted during the course of employment. The objective of the Act as can clearly be deduced from its preamble is to provide compensation to workers for employment injury and also survivor's benefits to dependants of workers who die as a result of injury that occurs during the course of employment. It provides for protection to workers and/or their dependants against loss of income attributed to injury that causes disablement or death of a bread winner as a result of injury arising in the course of employment.

Section 51 of the Act³⁰ is clear as to when one can claim the right to compensation under the Act. It must be clearly established that one was a worker and that the accident or disease that led to disablement or death of the worker arose out of and in the course of employment. The Act stipulates how survivor's benefits or compensation will be paid where a worker dies as a result of the accident or disease. The scheme makes it mandatory for all employers to register their employees.

In terms of coverage for other contingencies provided for by the ILO, such as, maternity and sickness benefits, the Employment Act,³¹

29 Act No. 10 of 1999 of the Laws of Zambia

30 Act No. 10 of 1999 of the Laws of Zambia

31 Chapter 264 of the Laws of Zambia

in Section 15(A) 1, provides for 12 weeks paid maternity leave for female employees after at least two years of continuous service from the date of engagement or since the last maternity leave. Arguably, the two-year qualification period limits the entitlement of women who are permanently employed. With regard to sickness benefits, the Employment Act provides that, an employee who is temporarily incapacitated as a result of illness or an accident is entitled to paid sick leave for a maximum of 26 working days in any period of 12 months. Medical care is also provided for by employers through medical schemes arranged with the participation of employees.

V

Analysis of Zambia's Social Security Legislation

An analysis of the social security legislation in Zambia shows that the benefits that are provided by the NAPSA Act are not different from those provided under the PSPF and LASF. What distinguishes the schemes are the classes of people covered. However, the Workers Compensation Fund Control Board (WCFCB) introduces only one new head of vulnerability not dealt with by NAPSA which is employment injury. It has been explained that of the three branches that a ratifying State is mandated to comply with, one should include either; unemployment, old age, invalidity, employment injury or survivor's benefits. From the survey of benefits obtainable under Zambian legislation, it is clear that Zambia has complied with four out of the nine contingencies and four out of the five most important contingencies to which a ratifying State that accepts at least three of the nine enumerated branches should. Zambia's score of four out of five is progressive and encouraging at meeting international standards considering that Zambia is categorised as a developing nation.

With regard to the ILO scales, Zambia has avoided to provide protection against unemployment benefits as provided in industrialised countries where unemployment benefits are paid monthly to a person who is out of employment up to the time one is in gainful employment. It has been argued that some benefits paid

upon termination of employment is some form of unemployment benefits in Zambia. Unemployment is one of the greatest social risks facing people who depend for their livelihood on the sale of their labour. Protection against the risk of unemployment is provided not only by payment of benefits but also by measures of employment protection such as protection against dismissal.³² According to the ILO, unemployment benefits provide workers with the breathing space they need in order to find suitable work which makes full use of their talents and potential.³³ However, this is expensive and only afforded by certain economies. In Zambia, one does not have the luxury to sit home and wait till they get a job that makes full use of their talents and potential as it is not easy to find employment. Unemployment benefits are not paid in Zambia as payment of such benefits may drain financial resources of the country.

The social security legislation in Zambia remains exclusionary in its application, covering only workers in formal employment. The extension of social security coverage is still a subject of great concern to the Government of Zambia. The majority of the working population is in the informal sector and not covered by any form of social security. According to the Labour Force Survey (LFS),³⁴ in the year 2014, there were 5,859,225 employed persons of which 944,256 persons were working in the formal sector representing 16.1 percent while 4,914,969 persons were in the informal sector representing 83.9 percent. The 2017 LFS showed an increase in the population of formally employed persons to 32.2 of the total employed population. However, this still leaves a majority of the population outside the ambit of social security legislation. It has been argued that, although social security in many developing countries caters primarily for those in formal employment and not those in urban informal sector, it is believed that social security coverage will expand as economic development creates jobs and transfers labour from subsistence to

32 International Labour Conference, Social security: Issues, Challenges and prospects, report VI (ILO, Geneva, June, 2001) 25

33 Ibid

34 Central Statistics Office Labour Force survey of 2014

the modern sector of the economy.³⁵ This prospect raises hope for the social security system in Zambia which covers predominantly only those people in formal sector employment.

Although Zambia signed the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the ICESCR)³⁶, social security has not yet been given the recognition of a human right to which everyone could be entitled. It is important to note that the UDHR does not contain any legally binding provisions. The ICESCR however, places obligations on State parties that ratify it to take steps to achieve progressively the full realisation of Socio, Economic and Cultural rights.³⁷ Further, the Social Protection Floors Recommendation³⁸ calls for a guarantee of basic income security for all persons as part of national social protection floors which should allow life in dignity and calls for access to essential health care.

Zambia has made strides in providing social security for its citizens, for instance, the enactment of the National Health Insurance Act³⁹ which sparked debate across the country. The Act seeks to provide universal coverage of access to essential health care albeit on a social insurance basis. Those in the informal sector are also expected to make contributions. The Act provides that, “a citizen or established resident who is above 18 years shall be registered as a member of the Scheme in the prescribed manner and form.”⁴⁰ It is therefore important for the Government to ensure administrative feasibility of collecting contributions from those in the informal sector before the Act is operationalised.

From the contingencies covered by the Zambian legislation, it is clear that Zambia meets the conditions set out by the ILO convention 102 which state that a ratifying State should at least accept three branches of which one branch should be from unemployment, old age,

³⁵ James Midgley and Martin B Tracy, *An International Exploration*, (London: Auburn House, 1996) 1

³⁶ The International Covenant on Economic, Social and Cultural Rights, 1966.

³⁷ The International Covenant on Economic, Social and Cultural Rights, 1966, Article 2.1

³⁸ Social Protection Floors Recommendation No. 202 of 2012

³⁹ National Health Insurance Act No. 2 of 2018.

⁴⁰ *Ibid* Section 13(1).

invalidity, employment injury or survivor's pension. As highlighted from the provisions of the four social security schemes in Zambia, four contingencies are covered, namely; Retirement/old age benefits, invalidity benefits, survivor's benefits and employment injury which is covered by the Workers Compensation Act. The four contingencies covered are all among those recommended by the Convention to be satisfied by a ratifying State.

Despite the fact that the benefits covered under the social security schemes are among those recommended by the Convention, it is important for the country to consider ratifying Convention 102 as this will send a clear message of the commitment that the country has in ensuring that it upholds international standards set with regard to social security. It is important to note that international standards are suitable mechanisms for improving national conditions and constitutes an essential framework for implementing change.

Convention 102 has had an impact on a number of regional human rights and social security instruments; it has been a model for the adoption of regional social security instruments such as the Southern African Development Community (SADC) Code which has been inspired by the nine branches of social security laid down in the Convention. Further, Government policy documents of many African countries contain references to Convention 102.⁴¹ Zambia has not ratified Convention 102. However, the contingencies covered by the NAPSA Act and other pieces discussed are among those envisaged by the ILO Convention which members States should endeavour to provide protection for. This shows that, ratification may not be the only solution to enacting legislation that is in line with international standards. However, due to the effects that come with ratification of international instruments on member States, it is important to ratify Convention 102. It is clear from the covered contingencies by the NAPSA Act and the other legislation on social security in Zambia that, the legislation is somewhat inspired by Convention 102.

⁴¹ Setting Social Security Standards in a Global Society: An analysis of present state and practice and of future options for global social security standard setting in the International Labour Organization. (International Labour Office- Geneva, 2008) 16

It is important to note that, ratification of convention 102 would not prejudice the country in any way but would actually send a clear message of commitment by the Government to the citizens on the willingness of the Government to develop social security. The Convention takes cognizance of the fact that countries have different levels of economic development and thus contains flexible clauses allowing developing countries to progressively attain coverage and contingencies covered in accordance to what their available resources allow at a particular time. The Convention sets out a framework for a gradual, integrated social security policy that can be adapted and fine-tuned.⁴²

It is imperative to note that international standards are appropriate mechanisms for improving national conditions. It has been stated that, international standards help member States in the review, design and implementation of social security policies.⁴³ Thus, if Zambia is to ratify Convention 102, this would assist in the formulation of a National social security policy. Currently, Zambia does not have a national social security policy to deal with the specific issue of social security. Instead, the country relies on the broad National Social Protection Policy. It is important for the country to come up with a National Social Security Policy which will specifically deal with the issue of social security and social security systems that will address the needs of the people.

The ILO convention encourages Members States to come up with non-contributory schemes. Such schemes are aimed at providing social assistance to those in need. The means test is used to select those whose needs are greatest and is meant to reduce leakages in the system. However, no means test is foolproof, so some people who are not eligible nevertheless succeed in obtaining benefits, particularly

⁴² Bernd Von Maydell and Rachid Filali Mknassi, "Relevance of International social security standards in the South –Eastern Mediterranean Countries," in *Social security: A factor of social cohesion* .(proceedings Euro–Mediterranean conference 27 and 28 May, 2004) 60

⁴³ Albrecht Otting, "A framework for social security", Volume 132, (1993) No. 2. *International labour review*, 163

in countries where there is a thriving informal economy.⁴⁴ Zambia has a thriving informal economy and efforts have been made by the Government in providing for the most vulnerable members of society through the Social Cash Transfers (SCT) and the Public Welfare Assistance Schemes (PWAS). However, due to lack of legislation to regulate the provision of social assistance, there is a perception of bias as the system is subject to administrative discretion, opening the way to favouritism, clientism and discrimination.⁴⁵

Zambia has made tremendous efforts in assisting vulnerable members of society through the provision of social assistance under the Ministry of Community Development and Child Health. In contrast with social security, social assistance is generally funded from the revenue of the State rather than individual contribution. Its aim is to ensure that a minimum standard of living is achieved by all citizens with the determining factor to entitlement being an individual's indigence. The Government attaches so much importance to the provision of social protection. This can be evidenced by the increased allocation for social protection by 85 percent culminating in the sum of K2.7 billion to cushion the vulnerable groups.⁴⁶

In Zambia, unlike other countries that have enshrined the social and economic rights in the constitution and have legislation that regulate social assistance schemes, there is no law regulating social assistance. Thus, the identification of the needy that require social assistance is more at the discretion of the providers of social assistance. Therefore, in order for the system to be more efficient, reliable, fair and achieve its objectives, there is need for legislation to govern the operation of the system in terms of providing guidelines on identification of the needy as social security contributes to social cohesion. The proposed Social Protection Bill of 2017 has outlined how things could be done to bring social cohesion within the ambit of the law.

⁴⁴ Social Security: A new Consensus. (Geneva: ILO, 2001) 66

⁴⁵ *ibid*

⁴⁶ 2017 Budget speech

V

The Importance of Social Security

The ILO in responding to pressures to promote respect for labour standards adopted a soft law instrument in 1998, the Declaration on fundamental principles and rights at work.⁴⁷ The declaration universalised the reach of core labour standards namely; freedom of association, freedom from forced labour, child labour and non-discrimination in employment. The core labour standards apply to all Member States of the ILO whether or not they have ratified the key conventions dealing with those matters.⁴⁸ However, although social security is not one of the core rights enunciated in the 1998 Declaration, it is one of the important issues that needs to be given attention due to its effect on a country's economic development.

The right to social security is central in guaranteeing human dignity when certain contingencies covered by legislation befall an individual. Social security has been regarded as a human right by a number of countries, including South Africa and Kenya, who have had the right to social security enshrined in their Constitutions. A number of international and regional instruments have affirmed the right to social security. Social security has received pre-eminence and attention in the recent past due to the impact it has on society. It plays an important role in the prevention and alleviation of poverty thereby ensuring that a minimum standard of living is maintained. For instance, it exerts an important influence on society through the distribution of economic wealth and guarantees economic security as well as mitigating the adverse effects of social risks.

Victor George defined social security as the securing of an income to take the place of earnings when they are interrupted by

⁴⁷ ILO Declaration on fundamental principles and rights at work, International labour conference, 86th Session, Geneva, June, 1998 < <http://www.ilo.org/public/english/standards/decl/declaration/index.htm> > accessed 17/05/18

⁴⁸ Philli Alston, 'core labour standards' and the transformation of the international labour rights regime.' (2004) <<http://academic.oup.com/ejil/article/15/3/457/374136>> accessed 23/05/18

unemployment, sickness or accident, to provide against loss of support by the death of another person, and to meet exceptional expenditure, such as those concerned with birth, death and marriage.⁴⁹ Defined and understood this way, social security provides cash benefits to meet certain contingencies and thus contributes to the economy by raising labour productivity and creating social stability.

Social security is regarded as one of the social services that is deemed indispensable to stimulating national prosperity. According to the ILO, social security is an economic necessity. When well designed and linked to other policies, social security enhances productivity, employability and supports economic development.⁵⁰ However, despite its fundamental role and functions, social security is still far from being a reality for the vast majority of the world's population.⁵¹ The situation is not different in Zambia where legislation on social security covers only those in the formal sector, despite the importance of social security in enhancing economic development and reducing vulnerability on the part of the citizens.

Despite its importance, there is considerable controversy about the social and economic effects of social security, and some of the current debate is focused on its supposed negative effects. Social security is said to discourage people from working and saving, it reduces international competitiveness, employment creation and encourages people to withdraw from the labour market prematurely.⁵² These are some of the demoralising effects that opponents of social security allege. Some people opt to leave the labour market early, knowing that an early retirement package would be paid while others just look up to the retirement package than to engage in any productive activity. Despite these negatives, social security remains a bench mark for the social and economic development of any country.

⁴⁹ Victor N. George, *Social security: Beveridge and After*, (London: Routledge and Keegan, 1968) 5

⁵⁰ ILO Report (IV) (1) *Social Protection Floors for the social justice and a fair globalization* 101st session of the International Labour Conference. (Geneva: International Labour Office, 2012) 6

⁵¹ *ibid*

⁵² *Social security: A New Consensus*. (Geneva: ILO, 2001) 42

The provision of social security ensures stable labour relations and a healthy work force thereby fostering economic development.

VI

Conclusion

This article has highlighted the importance of social security in guaranteeing human dignity. It is clear from the preceding pages that the contingencies covered by the National Pension Scheme Act are in line with the International Labour Convention No. 102 which is the flagship of all ILO Conventions on social security. Despite not having ratified the Convention, Zambia has made strides in meeting the requirements of the Convention. The Convention offers States the possibility of ratification by accepting three of its nine branches as well as providing for a progressive attainment of all the set out objectives. It is therefore important that Zambia ratifies the Convention as this will show the commitment of the country to gradually meeting and upholding the standards set up by the Convention in terms of the contingencies covered and the percentage of the population. The Convention has flexible clauses that allow countries to gradually improve their social security systems in accordance with the economic development, and this is a feature that makes it attractive to most countries.

Further, Convention 102 recognises the difficulty that countries may have in implementing universal coverage of social security. It is for this reason that Convention 102 does not contain stringent clauses that impose strict adherence by ratifying States but has flexible clauses that take into account the different national situations. It is possible for ratifying States to take exemptions for a specified period of time. This is especially beneficial for developing countries like Zambia whose economies are still growing as it ensures progressive realisation of the right to social security and extension of coverage for achieving the universality envisaged in the Universal Declaration of Human Rights.