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**VULNERABILITY AND THE EMPLOYEE:
HOW TO RESTORE DIGNITY TO
EMPLOYMENT IN ZAMBIA?**

by

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VULNERABILITY AND THE EMPLOYEE: HOW TO RESTORE DIGNITY TO EMPLOYMENT IN ZAMBIA?

INTRODUCTION

Widespread poverty in Zambia has bred a dangerous environment where workers are willing to tolerate severe abuse from employers in fear of losing what little *ndalama* they bring home at each month end. The unjust treatment of employees in Zambia is widespread in its prevalence and diverse in its appearance. There are domestic workers across the country earning just K50,000 per month for 12 to 18 hour days, 6 or 7 days a week. There is a mine in the Copperbelt with just 70 permanent, unionised employees and 1800 “casual workers” on short-term contracts with limited benefits.

There are children working long hours crushing stones just to help pay for food at home. There are employees regularly injured and killed in preventable tragedies that result from employer neglect. There are 71 former employees of the Ndola Precious Metals Plant who have yet to receive their terminal benefits since retrenchment in 2001.

Poverty wages, long hours, delayed salaries, unpaid terminal benefits, retrenchments, child labour, worker strikes, intimidation, etc. How can we restore dignity to employment in Zambia?

This JCTR *Policy Brief* is an exploration of the *vulnerability* of the employee in Zambia today, in terms of wages, conditions of service and social security. Through the story of one “casual employee” in Lusaka, a number of labour issues are brought to the table for discussion. Through examination of the Zambian Labour Laws, an explanation of how employees are left vulnerable becomes clear. And through application of the Church’s Social Teaching (CST) on work, a challenging *alternative* vision of employment in Zambia begins to emerge:

What about a free-market society in which prudent labour laws and internalised Christian values motivate actions that uplift rather than deny the *dignity* of the Zambian employee? A people-centred capitalism that promotes the *common good* of the people rather than a self-centred capitalism that destroys peace, social security and environment through creation of great disparity between rich and poor? A country in which all employers and employees work enthusiastically in cooperation to create a better Zambia for today and tomorrow?

EMPLOYEE VULNERABILITY IN ZAMBIA (CASE STUDY)

Mary (not her real name) is a recent grade-12 graduate who has been working since the beginning of 2005 as a cashier for a multinational company in Lusaka. She initially signed a six-month contract of employment, which has recently been renewed for another six months. Her basic pay is K1950 per hour and the normal schedule for all of the cashiers is three 8-hour shifts per week. No allowances are provided for either travel or lunch. When she works all three shifts, her weekly payslip shows total earnings of K46,800 and a take-home pay of K41,400. There is a K5,400 deduction taken out for income tax.

Travelling by bus to work costs Mary K1,900 one-way or K3,800 roundtrip. Also, she finds working as a cashier very tiring and spends approximately K6,000 each workday to buy lunch. There are no employee discounts. Therefore, in order to travel to work and be productive for the 3 shifts in a week she spends almost K30,000, which leaves only about K12,000 as weekly take-home pay. Mary is thankful to be living with her sister who helps her out meeting basic needs, and she feels bad for her co-workers raising children with the same small wage. Even though she earns very little money, she is happy to be getting work experience and would never raise her complaints with management in fear of losing her job.

During the recent wage negotiations between the union and management of this multinational company, workers went on an “illegal” strike that closed down all locations across Zambia for a few

days. Even though Mary is not part of the union, she and the other part-time workers joined in the strike action to show their frustration with conditions of service. Speaking with one of the members of the bargaining team, Mary found out that the permanent employees were earning only about K400,000 per month for six 8-hour shifts worked in a week. They were demanding an increment worth K500,000 in terms of basic pay and allowances, but the management was not willing to offer more than K150,000. For the 60% of employees hired on a part-time basis just like Mary, the only hope is that management will increase their hourly wage in proportion to the increment given to unionised workers. Mary wishes that she also had a union to negotiate on her behalf for better conditions of employment, including travel and lunch allowances, more permanent contracts, provision for terminal benefits, paid leave days and holidays, possibility of promotion, etc.

MEASURING THE DEPTH OF EMPLOYEE VULNERABILITY

Employees face varying degrees of vulnerability depending upon the duration, content and negotiation-process of a given contract, but one of the most vulnerable types of employees in Zambia today is the “casual worker.” The story of Mary the cashier illustrates how the “casualisation of labour” leaves an employee insecure in terms of job security, wages, fringe benefits, terminal benefits, retirement, the freedom to negotiate, etc. One could also argue that the informal sector employee and the self-employed are even more vulnerable than any formal sector employee, even the casual employee, especially in terms of job security and retirement.

But thinking of employee vulnerability simply in terms of social security, the reality is that very few Zambian employees currently work with the confidence that the basic needs of the family will be met upon retirement, after the termination of the present contract, even until the current month-end! A thorough assessment of the Zambian Labour Laws exposes some of the reasons why Zambian employees struggle to consistently and adequately provide for their families.

➤ Employee Categories

The primary law guiding conditions of employment in Zambia is The Employment Act (CAP. 268), which outlines the various types of legal contracts and the obligations of both employees and employers under these contracts. The Employment Act outlines three main categories of employees, and in this *Policy Brief*, for purposes of clarity, these three categories of employees are given the names the “temporary employee,” the “permanent employee” and the “casual employee.” A “temporary employee” is a worker on a contract with duration less than six months (legally called an “oral contract”), a “permanent employee” is a worker on a contract with duration longer than six months (legally called a “written contract”), and a “casual employee” is a worker who is engaged for a period less than six months and who is paid at the end of each day. The wages, allowances, terminal benefits, etc., legally guaranteed to each type of employee are very different, with the permanent employee guaranteed the best conditions of service and the casual employee the worst.

Prior to the privatisation that began in the early 1990s, the prevailing policy of the government (the sole employer) was to hire an employee first for a six-month probationary period (as a temporary employee) and then on a permanent basis (as a permanent employee) until an employee retired either upon reaching 25 years of service or an age of 55. Nowadays, each individual employer has its own policy on hiring labour, and an employee might be hired on a part-time or a full-time basis (36 to 48 hours per week), on a 1-year, 5-year or open-ended contract, on a contract stipulating a salary or an hourly wage, on a formal or informal basis, etc. In other words, at the very heart of the Zambian Labour Laws is an out-of-date Employment Act that recognizes all the present employees as either working for the government or for a parastatal company. Therefore, the Employment Act fails to offer clear legal guidance to employment in all of its modern forms, and this ambiguity about employer obligations remains one of the principal causes of worker vulnerability.

Returning to the life of Mary the cashier, we see how an employer is able to interpret the outdated Employment Act in a favourable manner to minimise investment in labour. Mary is a part-time employee who has worked for nearly a year but who has signed two subsequent contracts of 6-month duration. Though she has worked for a period greater than six months, it appears she is not a permanent employee because of the short-term contracts. It also appears that she is not a temporary

employee because she has completed her six-month probationary period with the company and has now signed a second contract identical to the first in terms of duration, pay, benefits, etc.

Can Mary be considered a casual employee? In conflict with The Employment Act, she has been engaged in the same position for a period greater than six months. But if you look only at her current contract, it is possible that she is casual. Again in disagreement with the definition of casual employee, she is paid on a weekly rather than a daily basis. From a legal perspective, it is difficult to determine whether or not Mary is a legal casual worker. But by simply examining her conditions of employment, it is clear that Mary is treated like a casual employee. Though the legal casual employee fills a very important gap in society (often doing piecework), it is the abuse of this type of employee that has become referred to negatively as the “casualisation” of labour.

Casualisation can be understood as the re-hiring of one casual worker or multiple casual workers on contracts less than six months to fill a position that is permanent in nature. The multinational company has employed Mary on multiple 6-month contracts to fill the permanent position of cashier. The work demands a more permanent type of employee, but Mary’s employer has opted to hire many part-time, casual employees to minimise the amount of remuneration paid to the labour force and to maximise profits. This practice exploits a loophole in the labour laws, for The Employment Act fails to explicitly make it illegal to hire casual workers to fill permanent positions. Because of this ambiguity, it is unclear whether or not Mary’s employer is breaking any law. But as illuminated throughout the rest of this JCTR *Policy Brief*, her employer is undoubtedly serving a great injustice to Mary and nearly 1,000 other Zambian employees.

➤ **Take-Home Pay**

At the end of each week Mary is paid a wage of K1950 per hour of work. As a casual employee, she and the other cashiers are legally guaranteed nothing more than their wage, and legally this wage could be as low as 1 Ngwee per day! The Zambian Labour Laws do provide for a minimum wage through The Minimum Wages and Conditions of Employment Act (CAP. 276). But, along with government employees, members of trade unions and domestic workers, the casual employee is excluded from all the key provisions of CAP. 276 listed under Statutory Instrument (SI) No. 2 for the General Worker and SI No. 3 for the Shopkeeper. Such provisions include a legal minimum wage between K400/hour and K200,000 per month, 1 & ½ pay for overtime, double pay for Holidays and Sundays, monthly allowances of K20,000 for lunch and K30,000 for transport, funeral benefits, and after reaching 55 years of age and 10 years of service, a retirement benefit of 3 months basic pay per year of service or pension from a private pension scheme.

The minimum wage as established in SI 2 & 3 should legally be adjusted every two years, but the last adjustment made by the Ministry of Labour and Social Security was in 2002. As it stands now, the legal minimum wage is both outdated and insufficient to provide a just wage for the Zambian employee. Instead of establishing a just wage that empowers all Zambian employees to meet the needs at home, the Minimum Wages and Conditions of Employment Act establishes a hierarchy of minimum wages tied to the occupation of an employee.

For example, the prevailing law guides an employer to pay all general workers (i.e., cleaner, handyman, guard, etc.) K400 per hour (about K76,800 per month), K135,000 per month for all receptionists, K95,000 per month for all package wrappers, K150,000 per month for all assistant bicycle assemblers, K165,000 per month for all bicycle assemblers, and so on. Yes, an employer should be given the freedom to pay according to the skill and training of each employee, but should a minimum wage also attempt to define the minimum amount of money each employee is worth? Do the skills / training of a package wrapper warrant a minimum wage that is about K20,000 more than that of a guard?

Regardless of the answers to these questions, the truth is that the current minimum wage in Zambia falls far below the cost of basic needs in the country. According to the JCTR *Basic Needs Basket* for October 2005, a family of six living in Lusaka needs K1,348,860 per month to afford essential food and non-food items, with a nutritious diet alone costing K509,060 per month. With the cost of a 25Kg bag of mealie-meal standing at nearly K40,000, what kind of life can a guard provide for his or her

family earning only K76,000 in a month! Also, with the cost of bus fare totalling at minimum K3,400 roundtrip in Lusaka, how can an employee reach work after spending the K30,000 transport allowance in the first 10 days of a month? The Central Statistical Office (CSO) uses its own Basic Needs Basket to estimate poverty levels in the country, with any household earning less than the cost of basic food items considered extremely poor. In other words the minimum wage is not only a poverty wage, it is an extreme poverty wage!

At the same time, employers (including the government) continually argue that wages are kept low because these organisations simply cannot afford to pay more towards labour. But many of these same organisations pay exorbitant wages to top management and allow these same officials to spend prolific amounts of money on travels, allowances, vehicles, etc. Of course some small or nascent (new) employers simply cannot afford to pay wages that allow all employees to afford the cost of basic needs, but for many others this notion that there is no money for the average labourer remains a myth. Whereas uncreative managers often attempt to increase profits by minimising investment in labour, exceptional managers increase profits by increasing the productivity and morale of the workforce, by organising overall operations more efficiently and by reducing upon superfluous sources of expenditure.

Returning to the situation of Mary, her employer is able to pay her even less than the minimum wage because she is considered a casual worker. Her employer is not legally required to pay her K30,000 per month for transport allowance or K20,000 per month for lunch allowance. Also, as a casual employee she cannot qualify for the PAYE Tax Exemption Rate on income earned under K280,000 and must pay income tax on every single Kwacha earned. Mary pays approximately 10% income tax on her meagre weekly wage of K41,000, in line with the ZRA “Tax Table for Daily Paid Casual Workers.”

It becomes evident that the labour laws establish minimum conditions of employment that fail to protect any Zambian employee, with the casual employee left the most vulnerable. Through casualisation and poverty wages, employers ultimately pass the burden of providing social security to workers onto families, the government, the church, charitable agencies and society at large.

➤ **Terminal Benefits (Gratuity, Redundancy, Retirement, NAPSA)**

Currently there is great confusion and disagreement within the labour market concerning the obligations an employer must meet upon the termination of employment for a worker. What provisions concerning terminal benefits should be included in each and every contract? The majority of disputes heard by labour officers today relate to non-payment of terminal benefits by an employer. The government itself as a key employer in Zambia has been one of the greatest culprits in terms of not paying retirement benefits, etc. Who is legally guaranteed a terminal benefit?

To answer this question, we turn again to The Minimum Wages and Conditions of Employment Act (CAP. 276). In addition to establishing a minimum wage for various types of employees (i.e. shopkeeper, driver, typist, bicycle assembler, etc.), it contains a controversial provision that a person who retires after 10 years of service must be paid at minimum 3 months basic pay (at the time of retirement) per year of employment or a pension from a private pension scheme. The failure of the Zambia National Provident Fund to adequately provide for the social security of retirees serves as an example of the importance that each employer also be required to contribute something towards their employees' future well being. But should an employer be obligated to set aside something for each and every employee, even the non-vulnerable?

What about a managing director earning over K50 million per month and contributing to a private pension scheme? Should an employer be mandated to pay extremely large terminal benefits to the top wage-earners even if it means maintaining poor salaries for the average employee or minimising the size of the labour force? Historically, the Minimum Wages and Conditions of Employment Act was never meant to apply to a “non-vulnerable” employee such as a managing director. But it is now the common understanding in the country that at the end of a period of employment, each and every employee is legally guaranteed some sort of terminal benefit. This is only a misconception.

According to current provisions under the labour laws, an employer is only obligated to pay a terminal benefit if an employee is 1) made redundant or 2) qualifies for retirement. These two provisions set better guidelines for a government or parastatal employee hired on a permanent contract as opposed to a private sector employee hired on a contract of fixed duration.

One, to qualify for redundancy requires being terminated from employment before the end of a contract. In the prevailing situation where private employers often hire employees on contracts of 6 months to 5 years, an employee is not considered redundant if he or she is simply not rehired with an employer at the end of a contract.

In other words, the current industry practice of offering “gratuity,” or a terminal benefit to coincide with the end of a contract, is not legally required of employers. For highly skilled workers filling “specialised positions” in a competitive business environment, it is almost a foregone conclusion that contracts will provide for tempting gratuities. But for the average worker filling a “non-specialised position,” such as Mary the cashier, it is likely that the contract offered by an employer will contain no provision for gratuity. If Mary is not offered a third 6-month contract by her employer, she will find herself out of a job with not a single Kwacha to sustain her until she finds a new job.

Two, to qualify for retirement requires working for one employer for a period greater than 10 years and reaching the age of 55. Again, with the high turnover of employees and with the emergence of short-term contracts of 6 months to 5 years, it is unlikely that many employees will ever qualify for the full retirement benefit of 3 months pay per year of service. In conclusion, the current laws actually *encourage* an employer to resort to casualisation or to hire on short-term contracts, in order to reduce the likelihood of paying redundancy and to completely avoid paying any retirement benefits.

What about the introduction of the National Pension Scheme Authority (NAPSA) in the year 2000? According to the NAPSA Act of 1996, all taxpaying employers are required to withhold 5% from each employee’s payslip and contribute an additional 5% to NAPSA. Upon reaching retirement at the age 55, a NAPSA contributor receives a monthly pension that is calculated from the total amount of contributions made during the working life.

In the case of Mary, her employer is not making NAPSA contributions on her behalf. Though the legal requirement is that employers must make NAPSA contributions for all employees, the NAPSA Act fails to clarify whether or not a casual employee is considered an actual employee. Therefore, no money is currently being put away for Mary’s eventual retirement, and it is doubtful that Mary and her colleagues would be willing to sacrifice another few thousand Kwacha each month to contribute towards NAPSA. NAPSA has yet to prove itself as a viable pension scheme for the future, but it is superior to the former Zambian National Provident Fund in that all contributions are adjusted alongside inflation in the country.

➤ **Freedom of Negotiation**

The Industrial and Labour Relations Act (CAP. 269) guarantees the rights of employees and employers to form associations and the rights of employees to undertake collective bargaining to negotiate conditions of service. According to the Act, each and every employee (including the casual employee) is free to join a trade union to undertake collective bargaining on his or her behalf. But looking at the situation of Mary and her fellow casual employees, it seems very unlikely that they could organise into a union.

Because of the nature of their contracts, Mary and the other cashiers have no job security and remain extremely vulnerable to intimidation by management. The employer has the power to pay whatever it feels appropriate and the casual workers have no freedom to participate in the negotiation or express their concerns about some unjust conditions of employment. Filling a non-technical position in a country with high unemployment, Mary realises she is easily replaceable and feels unable to voice her concerns.

All permanent employees of the same company belong to a union that undergoes annual collective bargaining to negotiate for increments and improved conditions of service. When the recent

negotiations reached a deadlock, an arbitrator was brought in to settle the dispute. In the end, the union was unable to bargain for everything the employees wanted, but as a group they did achieve more than what they could have negotiated for as individuals.

The fact that many unionised employees remain employed under poor conditions of service does raise a few key questions: What if union leadership fails to act in the interest of an employee? What if a large employer is able to bully a weak union into accepting poor conditions of service? Shouldn't the laws establish the minimum acceptable standards for employment in the country, and the unions then negotiate for improvements from this fair baseline? How can we ensure that all employees have the freedom to unionise, especially those within small organisations or the informal sector?

➤ **Informal Employment**

The CSO estimates the total number of employees in Zambia at 700,000, but it is difficult to separate these employees into those who have an informal sector employer and those who are employed within the formal sector. But for comparison purposes, the number of employees who made NAPSA contributions in 2004 totalled between 300,000 and 350,000 people. This difference suggests that a majority of Zambian employees are finding work within the informal sector, which is the undocumented, non-taxpaying portion of the economy. Though the informal sector falls outside the direct scrutiny of government regulation, the Zambian Labour Laws do establish a standard to guide how any employee (formal or informal) ought to be treated. From a simple reflection on the struggles of common informal employees (i.e. maids, *Kantemba* employees, etc.), it is clear that the conditions of service of many informal employees are quite poor. What do the labour laws have to say about the informal sector?

Though most informal employees do not sign written contracts of service, these workers are still legally protected by many of the guidelines found in the labour laws concerning wages, benefits, the right to organise, etc. As previously mentioned, it is legal for a temporary employee (one employed less than six months) to work under an "oral contract" where the conditions of employment are agreed upon orally but never written down in a formal contract. Therefore, unless an informal employee is a casual worker (employed less than six months and paid daily) or a domestic worker, he or she still qualifies for the same legal provisions under The Employment Act and The Minimum Wages and Conditions of Employment Act as any formal sector employee, including 30 days notice before termination of service, redundancy pay if contract is terminated early, a minimum wage, transport and lunch allowances, etc. However, very few informal employees have the freedom in terms of job security to demand for these same legal guarantees.

In addition to casual workers and government workers, employees in domestic service are excluded from The Minimum Wages and Conditions of Employment Act. In other words, many maids, gardeners, cooks, etc. undergo legal abuse from their employers when paid poor wages, forced to work long hours, etc. It is unclear why domestic workers as informal employees are singled out from provision of a minimum wage and other minimum benefits. A possible explanation could be that many domestic workers receive non-wage benefits (i.e. housing, food, etc.) that make it difficult to quantify a standard minimum wage. Regardless of the rationale, exclusion of domestic workers from the law on minimum wages has invited employers to take advantage of these typically vulnerable employees.

Because of the hidden nature of the informal sector, most informal employees are extremely vulnerable in terms of job security, conditions of service, even the ability to pay into a retirement scheme. Only those employees who work for a tax-paying employer can make contributions to NAPSA. In summary, as long as informal businesses operate outside the scrutiny of the law, uplifting the informal employee in Zambia depends more upon the goodwill of informal employers than the enactment of good labour laws.

THE CHURCH'S SOCIAL TEACHING

Whereas everyone expects that the Laws of Zambia should establish guidelines on employment, some might be surprised that the Christian faith also speaks to issues of employment. The JCTR,

guided by the Church's Social Teaching in our analysis and actions, notes that at the heart of the Christian tradition lies the challenging example set by Jesus: one of love, special attention to the downtrodden and simplicity of lifestyle. In addition to the teaching directly from the Bible, the CST includes writings of church leaders, such as pastors, bishops, etc., on how Christians should live as positive members of society.

One of the first notable CST documents comes from Pope Leo XIII, *On the Condition of Labour* (1891), which amidst the industrial revolution called for respect of the dignity and rights of the worker. And exactly ninety years later, the encyclical *On Human Work* (1981) by Pope John Paul II re-emphasised the dignity of the worker, particularly by stressing how labour must be given priority over capital.

The Second Vatican Council also gave a strong challenge to society concerning the conditions of service for workers: "Remuneration for work should guarantee people the opportunity to provide dignified livelihood for themselves and for their families, on the material, social, cultural and spiritual level, taking into account the role and the productivity of each worker, the state of the business, and the common good." (*Church in the Modern World*, 1965, #67)

In 1999, the leaders of the Catholic Church in Southern Africa gave a statement highlighting the deep respect of the Christian tradition for the work of women and men: "Through work, we cooperate with the creator in bringing to fulfilment the created world; we exercise our God-given abilities and talents as co-workers with God in the great task of transforming the material world. Work is not simply an onerous necessity...it is the manifestation of our creativity." (*Economic Justice in South Africa*, p. 21)

In a pastoral letter at the start of the Third Republic, the Catholic Bishops of Zambia stated very strongly: "The creation of adequate employment is a great challenge, as more and more of our people, especially the young, are becoming frustrated and hopeless in failing to find jobs. As new investments are sought in this country, these should be the kind which generate jobs. Fair wages call for constant adjustments, especially under the pressure of inflation. In particular, domestic workers need greater legal protection and a decent minimum wage." (*The Future Is Ours*, 1992, #32)

The understanding of the dignity of work within the CST has evolved alongside changes in society and economy over the past century, and the following are some of the key values that have emerged for the guidance of labour:

Guiding Values:

- ❖ **Human Dignity:** Created in the image of God, all humans are possessors of innate dignity that should be equally respected and uplifted.
 - A man or woman at work is never just a cog in the wheel, but someone created in God's image.
- ❖ **Sanctity of Work:** As dignified beings created with unique talents, a human fulfils his or her mission on earth by using these talents to transform the world in a positive way, or in other words, to work as a co-creator with God.
 - Realising the sacredness of work, employees should work with enthusiasm, creativity and love.
- ❖ **Promotion of Common Good:** While working to have a positive impact on the world, humans should recognise the equality of all humans created in the image of God and be sure that actions do not promote the good of the few over the majority.
 - While paying in relation to worker skill and productivity, employers should also avoid extreme disparity in the remuneration of employees.
- ❖ **Option for the Poor:** Recognising the vulnerability and voicelessness of the poor, special attention ought to be paid to how actions, structures, attitudes, etc., inhibit the poor from using their talents to transform the world positively.
 - Employers and labour laws should make special provision for the uplifting of all vulnerable employees, including those formally employed, informally employed, self-employed or unemployed.

POLICY RECOMMENDATIONS

The Government of the Republic of Zambia ought to:

- 1) Harmonise within all labour laws, including those on income tax and NAPSA, definitions of “employee” and “casual employee” and clarify which legal provisions are guaranteed to distinct categories of employees, including casual employees, temporary employees, permanent salaried employees, permanent employees paid hourly wages, employees on fixed contracts, employees paid for work done and not for time of work (i.e., pieceworkers, consultants, etc.), government employees, unionised employees and informal sector employees.
- 2) Educate employers, employees, employer groups, employee groups and the public at large on the obligations of employers and rights / duties of each employee category in regard to wages and conditions of employment.
- 3) End the “casualisation” of labour in Zambia, by closing the loophole in The Employment Act (CAP. 268) that allows the re-hiring of a casual worker or multiple casual workers on short-term contracts to fill a position that is continuous in nature.
- 4) Revise the Minimum Wages and Conditions of Employment Act (CAP. 276) in such a manner that it sets the minimum acceptable standards for the treatment of *any employee* in Zambia, including employees in previously excluded groups (casual employees, domestic workers, government employees, unionised workers, etc.).
- 5) Modify the Minimum Wages and Conditions of Employment Act (CAP. 276) so that the legal minimum wage is linked to a *Poverty Datum Line* (PDL) set at the cost of basic needs for an average-sized family in Zambia, in the manner detailed below:
 - Establishment of *Poverty Datum Lines* in each district tied to the total cost of essential food and non-food items for an average sized family (through consultation of the CSO and JCTR Basic Needs Baskets)
 - Fixing of the Legal Minimum Wage to the *Poverty Datum Line* in each district of Zambia.
 - To be updated *annually* in line with rises in the cost of basic needs
 - To provide exemption for small and nascent (new) employers to pay employees in line with the cost of essential food items alone (*Extreme Poverty Datum Lines*).
- 6) Offer incentives such as greater access to bank facilities and loans, subsidies on utility bills, marketing opportunities, etc., to those businesses that cannot afford to pay the full minimum wage, especially those within the informal economy.
- 7) Establish a legal obligation for employers to pay gratuity benefits (at a minimum 2-months pay per year of service) to any employee whose employment is terminated (through either redundancy or through expiration of a contract) before legal retirement at age 55 or after 25 years of service.
- 8) Strive to make NAPSA a viable social security scheme for all workers in the long-term, by embracing the informal employee and the self-employed through special contribution schemes and by increasing the flexibility for contributors and survivors to collect accrued benefits before a contributor reaches the age of 55, while also maintaining the fund’s financial sustainability.
- 9) As NAPSA reaches 25 years of existence and if NAPSA proves its viability as a national pension scheme, remove the legal obligation of employers to pay retirement benefits (at minimum 3-months pay per year of service) to employees in Zambia.
- 10) Pay all outstanding terminal benefits owed to former employees of the GRZ and to retrenched employees of any privatised company.
- 11) Increase the wages of the lowest paid government employees to exceed the *Poverty Datum Lines* in each district (in line with legal minimum wage), while at the same time maintaining a wage bill of 8% of government expenditure.
- 12) Enshrine the rights of the worker within the Bill of Rights of the New Constitution, by approving Provision 66 (2) of the Draft Constitution that states: “a worker has the right to (a) fair remuneration, equal work for equal pay, and to work under satisfactory, safe and healthy conditions.”
- 13) Strengthen the capacity of the Ministry of Labour and Social Security to monitor employment across all districts of Zambia and ensure compliance with all provisions of the labour laws.

Encouraging the Common Good:

These 13 recommendations of the JCTR in regards to amending labour laws have been carefully constructed to promote the common good of Zambian employers and employees and the Zambian society at large. The majority of the labour laws were originally drawn up before independence or before the liberalisation of the Zambian economy, and the present Zambian context demands revised, harmonised laws to promote both the protection of the vulnerable employee and the growth of private sector employment. The JCTR proposes that the heart of the revised labour laws needs to be a clear, comprehensive and grounded Minimum Wages and Conditions of Employment Act (CAP. 276) that promotes the common good within individual places of employment.

In terms of minimum wage, the JCTR proposes that the legal minimum wage for an employee should be tied to a *Poverty Datum Line*, which is the cost of essential food and non-food items for an averaged sized family in a specific area. According to the JCTR *Basic Needs Basket* for October 2005, the cost of essential food and non-food items for a family of six in Lusaka totalled K1,348,860. Therefore, employers in Lusaka would be required to pay a monthly minimum wage of over K1.3 million, with workers paid hourly wages and pieceworkers guaranteed an equivalent rate of pay.

The JCTR also recommends that an absolute minimum wage be set in Zambia, and that it be tied to an *Extreme Poverty Datum Line* set at the cost of essential food items for an average sized family in a particular area of Zambia. Looking again at the JCTR *Basic Needs Basket* for October, the cost of essential food items totalled K509,060 in Lusaka. Therefore, the absolute minimum wage in Lusaka would be at least K500,000 per month. This absolute minimum wage would apply only for those employers who financially could not afford to pay the full legal minimum wage. These small or nascent employers would be allowed to apply through the Ministry of Labour and Social Security for an exemption from the legal minimum wage, subject to approval through inspection of employer records. These employers who could not afford to pay the full minimum wage could also be a target group for offering government incentives, such as access to loans, banking services, subsidised utility bills, etc., to encourage the growth of these establishments. This would also serve as an entry-point for informal businesses to enter the formal economy in a gradual manner.

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

Second, the JCTR recommends that if NAPSA proves itself as a viable pension scheme in the long-term, employers should be excluded from a legal obligation to pay their employees retirement benefits of 3 months pay per year of service. For NAPSA to prove its viability, it needs to prove its financial sustainability while also increasing the flexibility of contribution and collection options. In terms of contributions, options must be afforded to members of the informal sector and to the self-employed.

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

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

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

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

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

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

HOW CAN I HELP RESTORE DIGNITY TO EMPLOYMENT?

Though prudent labour laws provide a foundation for uplifting the Zambian employee, a Zambian house free from worker vulnerability can only be constructed one block at a time, with no member of society evading responsibility. Restoring dignity to employment concerns each one of us and our countless personal choices: to be productive members of society, to work our hardest given the opportunity, to use our talents to transform the world positively, to pay wages that do justice rather than give charity, to respect rather than exploit labour laws, to challenge accepted abuse of vulnerable workers, to remedy the causes of child labour, to uplift the dignity of our brothers and sisters, to live motivated by love. It is the belief of the JCTR that the Zambian employee will only be free from injustice when employers are simultaneously motivated by prudent government regulation and a moral obligation to respect the basic human dignity of workers in their roles as co-creators with God.

Both the Zambian Government and the Christian Church in Zambia have a unique moral obligation to employ in a just manner and to set positive examples for the nation. The government, as steward of public resources and of the public good, has a moral obligation to distribute resources in a fair manner that benefits all Zambians rather than a few of the powerful. And the Church, as the embodiment of the social teaching of Jesus, has a moral obligation to uplift the spiritual health of all members and the physical well being of those it can, including all its employees. Also, in a country where informal employment outside of the law is more common than formal employment, the social teaching of the Christian Church reminds each one of us of our duty under the New Covenant to follow the example of Christ irregardless of the laws of humans. As Jesus set the deaf, the blind, the sick free from their afflictions, we too should strive to uplift each other and promote the common good through loving actions that recognise the dignity of all humans. What does employment look like if motivated by love?

As employers of maids, houseboys, pieceworkers, shopkeepers, assistants, traders, etc., love motivates payments that empower employees to meet basic needs or hours of service that allow employees to supplement their income elsewhere. Love motivates bonuses, advances, increments, advice, condolences, congratulations, praise, and thanksgiving. Love motivates gratuity that empowers an employee to move forward, start his or her own business, build a house, go back to school, better utilise his or her talents to better the world. Love motivates respecting the labour laws, reporting worker abuse, challenging friends who abuse others, refraining from corruption, operating clean businesses. Love puts friendship, family, community and nation before individual glory.

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For a more in-depth exploration of Zambia's Labour Laws concerning employment, please visit the JCTR offices or website www.jctr.org.zm to obtain the JCTR Position Paper titled "Restoring Dignity to Employment in Zambia: Legal and Moral Motivation to Promote the Common Good."