



**UNIVERSITY  
OF  
LUSAKA**

**SCHOOL OF POSTGRADUATE STUDIES**

**ASSESSING THE LEGAL FRAMEWORK AND INSTITUTIONAL  
IMPEDIMENTS IN PROTECTING THE RIGHTS OF STREET  
CHILDREN IN ZAMBIA: A STUDY OF LUSAKA URBAN**

**BY**

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**A dissertation submitted in partial fulfilment of the requirement for the  
Master of Laws degree of the University of Lusaka**

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## DECLARATION

I **Mulenga Oswald** student No. LLM 6541020, hereby declare that this dissertation entitled: *Assessing the Legal Frame work and Institutional Impediments in Protecting the Rights of Street Children: A Case Study of Lusaka Urban*, is an original work presented towards the award of Master's Degree in International Human Rights Law at the University of Lusaka, under the supervision of **Dr. Charles Mbita**.

I further declare that it is the work of my own ingenuity and that due acknowledgement has been made where people's work has been used or cited. The contents of this dissertation are entirely my own findings. I therefore, bear the absolute responsibility for the contents, errors, defects and any omission herein.

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*(Student)*

This Dissertation has been submitted for examination with my approval

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Date

*(Supervisor)*

## **DEDICATIONS**

This study is dedicated to the street children who devote their precious time on streets and expend their cold nights in tunnels, market places, bus stations, shop corridors and those who scavenge the garbage heaps in public places to find a little something to eat without any legal framework to protect their Human Rights, particularly the Children's Rights.

Special dedication to the renowned Human Rights Lawyers in Zambia who seek the protection of First, Second and Third generation rights enshrined in the Bill of Rights for the protection of fundamental rights and freedoms of individuals. These are the provisions also provided for in the African Charter on Human and People's Rights to which Zambia is a party

Dedications to the street children some who are dead as victims while others continue to have their constitutional protective provisions contravened sometimes publicly without any recourse to any curative adjudication from the courts to redress the mischiefs.

To Zuba, the first street boy who opened my eyes to the plight and life of a street child. It is the verdict of this study that one vulnerable child, one street child is just one too many to watch!

My special and heartfelt to my late mum Juliana Mulenga, untie Victoria and the entire Mulenga family for their fondest love and inspirations.

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## **STATUTES USED**

The Affiliation and Maintenance Child Act, No. 55 of 1995

The 1996 Constitution of the Republic of Zambia

The 2010 Draft Constitution of the Republic of Zambia

The Criminal Procedural Code

The Penal Code Amendment Act, No. 15 of 2005

The Adoption Act, Cap 54 of the Laws of Zambia

Juvenile Act, Cap 53 of the Laws of Zambia

The Legitimacy Act, Cap 52 of the Laws of Zambia

The Affiliation and Maintenance of Children Act, Cap 64

The Education Act, Cap 54 of the Laws of Zambia

The New Education Act, No. 23 of 2011

The Liquor Licensing Act, No. 20 of 2011

The Anti-Gender Violence Act, No. 1 of 2011

The Marriage Act, Cap 50 of the Laws of Zambia

The Intestate Succession Act, Cap 59 of the Laws of Zambia

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

The National Child Policy

The National Youth Policy

The Penal Code

## **LIST OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

African Charter on the Welfare and Rights of the Child (ACWRC)

The Convention on the Rights of Children (CRC)

The Convention on the Elimination of all Discrimination against Women (CEDAW)

The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The Universal Declaration of Human Rights (UDHR)

Against Transnational Organized Crimes to Prevent, Suppress and Punish Trafficking in persons,  
Especially Women and Children

International Labour Convention No. 138 1978

Labour Convention No. 182 of 1999

African Youth Charter (AYC)

The Paris Principles of 2007

The Geneva Convention IV (GC IV)

## CASES USED

Edith Nawakwi v Attorney General (1991) HP/1724.

Feliya Kachasu v. Attorney General (1967) ZR P. 145.

Heyde and Heyde (1866) LR1&D130, 133

Jennipher Chilinde Langamu v Brian Langamu 1999/ HN/206

Rex v. Chinjamba (1949) NRLR 384.

Sarah Longwe v Intercontinental Hotel 1991 /HP/765

Sheila Matafwali v Anthony Kambafwile 200/HN/135

Soc. & Eco. Action Rights Ctr. v. Nigeria, /44, 46-47, ACHPR/COMM/A044/1 (2002)

R v Paddington (1966), QB 380

A V. United Kingdom (No. 25599), 1998-IV Eur. Ct. H.R. /22

## ABBREVIATIONS

<b>ACHPR:</b>	African Charter on Human and People's Rights
<b>ACRWC:</b>	African Charter on the Rights and Welfare of the Child
<b>AIDS:</b>	Acquired Immune Deficiency Syndrome
<b>CEDAW:</b>	Convention on the Elimination of all forms of Discrimination Against Women
<b>CRC:</b>	Convention on the Rights of the Child
<b>DPP:</b>	Director for Public Prosecutions
<b>EFA:</b>	Education For All
<b>ESCR:</b>	Economic Social and Cultural Rights
<b>GVB:</b>	Gender Based Violence
<b>HRAC:</b>	Human Rights and African Charter
<b>HIV:</b>	Human Immune Virus
<b>ICCPR:</b>	International Convention on Civil and Political Rights
<b>ICESCR:</b>	International Convention on Economic, Social and Cultural Rights
<b>ILO:</b>	International Labour Organization
<b>JCTR:</b>	Jesuit Center for Theological Reflection
<b>NCP:</b>	National Child Policy
<b>NGO:</b>	Non-Governmental Organization
<b>OVC:</b>	Orphans and Vulnerable Children
<b>OHCHR:</b>	Office of the High Commissioner for Human Rights
<b>SADC:</b>	Southern African Development Community
<b>SIDA:</b>	Swedish International Development Agency
<b>UNICEF:</b>	United Nations International Children's Fund
<b>UN:</b>	United Nations
<b>UDHR:</b>	Universal Declaration of Human Rights
<b>UNHR:</b>	United Nations Human Rights
<b>UNZA:</b>	University of Zambia



## LIST OF TABLES

<b>Table 1:</b> Showing when street children are on the streets.....	69
<b>Table 2:</b> Reasons for being on the streets.....	70
<b>Table 3:</b> Showing activities done by street children on the street.....	71

## LIST OF FIGURES

- Figure 1:** Showing the percentage of orphans who are also street children by Age Group.....72
- Figure 2:** Shows the correlation that exists between the legal and institutional impoundments in the protection of street children’s rights and the causes of street children. ....74

## ABSTRACT

This dissertation focused on assessing the legal a frame work and institutional efficacy in a bid to protect the rights of street children as enshrined in the Universal Declaration for Human Rights of 1948 and the African Charter of Human and Peoples Rights of 1981 to which Zambia is a signatory. For the purpose of this research, the institutions referred to are the law enforcements agents, Healthy Institutions, Educational Institutions, the judiciary, Family, the social welfare institutions, Government and the Non-Governmental Institutions. Despite having these institutions, the street children phenomenon and children's rights violation are on the increase seeking a more robust legal frame work to eradicate the vice. The study reveals that to curb this iniquity there is need to adopt an institutionalized integrated purposeful legal approach. The objective of this research was to audit and assess the laws which are child protection related. Inter alia, the major challenge discovered is the *lacuna* and discrepancy between effective law regime and the ineffective enforcement regime of the same.

In its approach, the research was qualitative and quantitative in nature as it was through desk research in which secondary data sources such as various legislations, legal commentaries and other publications including unpublished works related to the subject have been consulted. Primary sources such as interviews and focus group discussions were also employed.

Change to the street children phenomenon was posited but can only be tackled attending to the macro and micro factors. While Macro factors are the external and uncontrolled factors such as economic, demographics, legal, political and social conditions, technological changes and natural forces, micro factors are small internal forces such as the public, family, institutions and other stake holders. It was also discovered during the research that there is a co-relationship between the macro-micro factors and the bio-ecological factors in the manner they impact on the development of a child. Notwithstanding the rapid erosion of family structures the number of street children is being exacerbated in an effort to find safety to the street. In this pursuit the family was given its protective and rightful place in the growth of a child. It was also revealed that the abuse of street children's rights is caused by correlated factors some of which are causative yet imbedded in weak laws.

# Contents

DECLARATION .....	i
DEDICATIONS.....	ii
ACKNOWLEDGEMENT .....	iii
STATUTES.....	iv
LIST OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS REFERED TO .....	v
TABLE OF CASES .....	vi
ABREVIATIONS .....	vii
LIST OF TABLES .....	viii
LIST OF FIGURES .....	ix
ABSTRACT.....	x
CHAPTER ONE .....	1
INTRODUCTION TO THE STUDY .....	1
1.0 Introduction.....	1
1.1. Background to the study .....	2
1.2. Statement of Problem.....	3
1.3. Objectives of the study.....	4
1.4. Research Questions .....	5
1.5. Significance of the research .....	5
1.6. Theoretical framework.....	6
1.7. Conceptualizing Street Children .....	9
1.8. Literature review .....	10
1.9 Methodology .....	16
1.9.1 Procedure.....	17
1.9.2 Samples and data collection .....	17
1.9.3 Confidentiality .....	19
1.9.4 Ethical considerations .....	19
1.9.5 Instrumentation .....	19
1.9.6 Selected sites for data collection.....	20
1.9.7 Scope of the study.....	20
1.9.8 Chapter lay out .....	20
1.9.9 Conclusion .....	21

CHAPTER TWO .....	22
AUDITING CHILD PROTECTION RELATED LEGISLATION .....	22
2.0 Introduction.....	22
2.1 International legal framework for protecting children’s rights .....	22
2.2 The UN Convention on the Rights of the Child.....	23
2.2.1 <i>Right to Life</i> .....	24
2.2.2 <i>Right to Health</i> .....	25
2.2.3 <i>Right to Education</i> .....	25
2.2.4 <i>Right to an adequate standard of Living</i> .....	26
2.2.5 <i>Rights to Protection</i> .....	26
2.2.6 <i>Right to Participation, Play and Recreation</i> .....	26
2.2.7 <i>Special Child Labor Related Rights</i> .....	26
2.2.8 <i>Birth Registration</i> .....	27
2.2.9 <i>The Right to a Name</i> .....	27
2.3.0 <i>Other instruments on the right of the child to a name</i> .....	27
2.3.1 <i>Two Optional Protocols to the UN CRC and the General Principles</i> .....	28
2.3.2 <i>The Geneva Convention IV</i> .....	28
2.3.3 <i>The Paris Principles</i> .....	29
2.3.4 <i>The Optional Protocol on the sale of children, child prostitution and child pornography</i> .....	29
2.3.5 <i>Other international instruments that provide for the protection of the rights of children</i> .....	30
2.3.6 <i>International Labor Convection No. 138 (1973)</i> .....	30
2.3.6 <i>The International Labour Organization Convention 138</i> .....	30
2.3.7 <i>Labor Convention No. 182 (1999)</i> .....	30
2.3.8 <i>Against Transnational Organized Crimes to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children</i> .....	31
2.4.0 <i>The African Charter on the Rights and Welfare of the Child of 1990</i> .....	32
2.4.1 <i>The African Youth Charter</i> .....	33
2.5.0 <i>Children’s rights in the Zambian Constitution</i> .....	33
2.5.1 <i>Adoption Act, Cap 54 of the laws of Zambia</i> .....	35
2.5.2 <i>Juvenile Act Cap 53 of the Laws of Zambia</i> .....	35
2.5.3 <i>Legitimacy Act, Cap 52 of the Laws of Zambia</i> .....	36
2.5.4 <i>Affiliation and Maintenance of Children Act, Cap 64 of the Laws of Zambia</i> .....	36
2.5.5 <i>Education Act, Cap 54 of the Laws of Zambia</i> .....	36
2.5.6 <i>New Education Act, No. 23 of 2011</i> .....	38
2.5.7 <i>Liquor Licensing Act No. 20 of 2011 of the Laws of Zambia</i> .....	38

2.5.12	<i>National Child Policy</i> .....	40
2.5.13	<i>The Penal Code of the laws of Zambia (Amendment) Act 15 of 2005</i> .....	41
2.6.0	<i>Conclusion</i> .....	42
CHAPTER THREE .....		43
EFFICACY OF CURRENT ZAMBIAN LAWS TO PROTECT STREET CHILDREN.....		43
3.0	Introduction.....	43
3.1	The Constitution of Zambia .....	43
3.2	Assessing Marriage Act, Cap 50 of the Laws of Zambia .....	44
3.3	Civil marriage .....	44
3.4	Customary marriage.....	45
3.5	Limitations of the marriage Act.....	46
2.5.8	<i>The Anti-Gender Violence Act No. 1, 2011</i> .....	38
2.5.9	<i>Marriage Act, Cap 50 of the Laws of Zambia</i> .....	39
2.5.10	<i>Intestate Succession Act, Cap 59 of the Laws of Zambia</i> .....	39
2.5.11	<i>Employment of Young Persons and Children Act, Cap 274 of the Laws of Zambia</i> .....	40
3.6	Assessing the legal framework dealing with Birth Registration .....	46
3.8	Laws on access to education .....	47
3.8	Conclusion .....	48
CHAPTER FOUR.....		49
LEGAL AND INSTITUTIONAL IMPEDIMENTS IN ACCESSING PROTECTION FROM CHILDREN’S RIGHTS ABUSE .....		49
4.0	Introduction.....	49
4.1	Conflict in customary, national and international law .....	49
4.2	Courts with Jurisdiction over Human Rights.....	52
4.3	Some Constitutional impediment: Nolle Prosequi derogation power Art. 56 (3).....	54
4.5	State as an impediment in protecting the rights of street children .....	55
4.6	Conclusion .....	56
CHAPTER FIVE .....		57
MECHANISMS NEEDED FOR A ROBUST LEGAL FRAMEWORK TO PROTECT STREET CHILDREN’S RIGHTS .....		57
5.0	Introduction.....	57
5.1	An inclusive legal approach to street Children Phenomenon .....	57
5.2	Social exclusion theory applied to street children in Lusaka-Zambia .....	58
5.3	Contextualizing Bio-ecological theory to street children in Lusaka-Zambia .....	59
5.4	Applying a Human Rights Based Approach .....	61
5.5	Reinforcing family net structures through legislation.....	62

5.6	Legislating for Women and children .....	63
5.9	Conclusion .....	64
	CHAPTER SIX.....	65
	PRESENTATION OF FINDINGS AND DISCUSSIONS .....	65
6.0	Introduction.....	65
6.1	Participants observations during discussions and interviews.....	65
6.2	Interviews, discussions and emerging themes .....	66
6.3	Family structures.....	66
6.4	Weak laws.....	66
6.8.5	Activities street children are engaged in .....	69
6.8.6	Impediments.....	74
6.8.6.1	Legal Impediments.....	74
6.8.6.2	Institutional Impediments .....	74
6.8.6.3	Customary law marriages .....	74
6.8.6.4	Factors that forced children to go to the streets .....	76
6.8.6.5	Micro-causes.....	77
6.8.6.6	Macro-causes .....	78
	CHAPTER SEVEN .....	79
	CONCLUSIONS AND RECOMMENDATION.....	79
7.0	Introduction.....	79
7.1	Conclusions.....	79
7.2	Recommendations.....	83
7.3	Conclusion .....	84
	BIBLIOGRAPHY .....	85
	BOOKS .....	85
	JOURNALS/ ARTICLES .....	87
	ENCYCLOPEDIA.....	88
	NEWS AND OTHER ARTICLES .....	88
	UNPUBLISHED MATERIAL .....	88
	INTERNETE.....	89
	APPENDIX ONE.....	91
	INTERVIEWS .....	91
	APPENDIX TWO.....	92
	GUIDING QUESTION FOR INTERVIEWS WITH PARTICIPANTS.....	92

# CHAPTER ONE

## INTRODUCTION TO THE STUDY

### 1.0 Introduction

The Street Children phenomenon compels states to look at the inherent value of Street Children as individuals, self-determined, and full-right bearing human beings.<sup>1</sup> This entails specific legal protection legislation and education for them to develop their inherent potential so that street children undergo a healthy transition into adulthood and become productive members of society. There are Child related Protection instruments in place which the study will partially audit to provide the legal mechanism for child protection, the most notable ones being; the United Nation's Convention on the Rights of the Child and the African Charter on the Rights of the Child besides the domestic ones. Nonetheless, perception of the adult world of these children is slightly different. Mostly they are perceived as children out of place, seen as others, a danger to society in conflict with law and simply to put it blatantly, they are seen as a public nuisance to be avoided at all cost.

In spite of all this, the justice system which this research assesses is apparently weak when it comes to Human Rights protection specifically regarding street children, after all, the Zambian Constitution of 1996 does not come out clearly to define who a child is. For in instance Art. 24,<sup>2</sup> the word 'young person' is being referred to while in Article 4 a definition of 'young person' is given to mean any person under the age of fifteen years but the Convention on the Rights of Children (CRC) defines a child to mean any person below the age of eighteen years.<sup>3</sup> For purposes of this study, the CRC definition will be used.

As a matter of methodology chapter one will also treat various issues concerning the methodology used in samples and data collection. Issues of confidentiality and ethical considerations which are paramount to this study are presented here. The research will use a combination of qualitative, quantitative, interviews and group discussions methods.

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<sup>1</sup> John, *The new international law: protection of the rights of Individuals rather than States*, 32 am, U.L Rev. 1, at 16-17.

<sup>2</sup> Article 24 of the Constitution of Zambia

<sup>3</sup> Article 1 of the Convention on the Right of the Child 1966



## 1.1. Background to the study

Zambia being a member of the international community with well spelt out standards on Human Rights, is required as a state party to put specific emphasis on certain human rights issues such as ‘child protection’. There are several domestic laws which protect children from all forms of neglect, abuse, maltreatment, and exploitation in private and public places in order to maintain the said international standards. The same laws determine the responsibilities of parents, families, society and the State in children’s upbringing, care and protection. Certain acts on the part of the parents or the state amount to acts of omissions while some amount to neglect, abuse, maltreatment and exploitation.<sup>4</sup> When we talk of neglect it would imply the intentional or involuntary non-exercising of duties and responsibilities to adequately care for and supervise a child and to provide for the child’s basic physical, mental, emotional and social protection needs.

In most cases what is missing is provision of effective legal framework and strenuous advocacy to provide protection for the child victims, including medical, psychological, and other legal assistance, rehabilitation and reintegration measures and means of intervention and compensation. In order to give effect to such laws, all members of society are called upon to participate in the protection of Street Children. Child protection should be a primary objective in all governmental, legislative, judicial and administrative proceedings. The private sector should as well be encouraged by the same laws to advance the protection of Street Children by developing rules of corporate social responsibility and codes of conducts. Consequently, all efforts aimed at protecting street children should bear in mind the growing importance of new technologies and social media available for this purpose. The State should ensure allocation of funds in its budget for child protection and adequate implementation of laws that are of child protection in nature.

The Constitution of Zambia is the Supreme law of the land which provides rights and guarantees freedoms to every citizen in the Bill of Rights.<sup>5</sup> The same Bill of Rights guarantees to everyone, including Street Children, the right to life and freedom from discrimination on grounds of sex, social status, color, creed and status.<sup>6</sup> This research wants to analyze and expose the pertinent

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<sup>4</sup> UNICEF Consortium of Street Children, (2006), 9.

<sup>5</sup> Article 11 of the Constitution of Zambia

<sup>6</sup> Article 11

issues affecting the rights of Street Children. They are a source of concern for the protection of the rights of children and street children in particular. For example, the definition of discrimination is constitutionally sanctioned in the area of penal law relating to adoption, marriage, and divorce devolution of property on death which are all matters of great concern to the child. In this case, the best interest of the child principle is not taken to be of paramount importance in all these instances.

Several issues bring forward the wider question of the rights of the child and the need to bring legislation into harmony with two basic conventions, that is Convention on the Rights of the Child (CRC) and Convention on the Elimination of Discrimination Against Women (CEDAW), a careful analysis of (No. 39) draws attention to the many ways in which Zambian legislation and policies diverge from the requirements of the CRC. Attempts to make Zambia's legislation harmonize better with the two treaties have run into the doldrums.<sup>7</sup> The time is ripe for the re-activation of this work, with a well-designed and realistic timetable of action. This is the background against which the researcher approaches the topic on street children and legal framework for the protection of their rights.

## **1.2. Statement of Problem**

The phenomenon of Street Children is a growing concern considered to be one of the current and most urgent issues, a grey area in the study of Human Rights Law facing both developed and developing nations.

Efforts to adequately respond to this phenomenon are frustrated due to the existing gaps and weaknesses in our legal and Institutional justice systems in the Country. This study will therefore, assess the existing legal frameworks in order to propose more robust and meaningful legal structures for the protection of rights of Street Children in today's world.

There are a number of major factors that are believed to cause or exacerbate the problem of street children. In this line efforts are to be put towards improving the welfare of street children through addressing some disparities in social, economic political powers that lead to children opting for street life. Thus, this study on the protection of rights of street children is an attempt to

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<sup>7</sup> C. Mumba and A. Sampa. M.J.Kelly, *A Situational Analysis of Orphans and Vulnerable Children in Zambia*, Lusaka, (1999), 52.

respond to the phenomenon considering their right to Education, Food, health services and housing.

The international community through the United Nations agreed and signed the Convention on the Rights of the Child (CRC) in 1990. Zambia ratified it on 6<sup>th</sup> December 1991. The Convention covers civil, economic, social cultural and political rights. It is quite clear that Africa is the only region at regional level to come up with an instrument for the protection of the child through the African Charter on the Rights and Welfare of the Child (ACRWC), while at national level we have within our legal framework the not so effective, Youth and Child Protection Policy to safeguard the rights of the child. Through these instruments children's rights could be better protected and provide access to Education, Food, health services and housing besides other basic necessities of life.

In this study the most noticeable impediment in the protection of the rights of street children range from weak laws, poor policies on the welfare of street children, lack of public sensitization to institutional fragmentation in terms of planning and International treaty implementation into programs to protect the Children.

### **1.3. Objectives of the study**

The objectives pursued in this research include the following:

1. To carry an audit of child related legislation as a legal framework for the protection of Street Children
2. To assess the efficacy of the Zambian legal system in protecting street Children
3. To identify, examine legal and institutional impediments in providing protection for street children
4. To explore and determine legal mechanisms for better protection of street children

#### **1.4. Research Questions**

The research sought the following questions:

1. What are the child related legislations that make the legal framework for the protection of Street Children at International, regional and National level?
2. How effective is the legal system in Zambia in providing protection for street children?
3. What are the legal and institutional impediments in protecting Street Children?
4. What mechanisms are needed in order to provide a more robust legal framework to protect Street Children in Zambia?

#### **1.5. Significance of the research**

Writing this research will benefit the academic world particularly the University of Lusaka School of Law and beyond. The dissertation will provide an organized researched body of knowledge on the Street Children living and working on the streets and focus on having the street children in the ‘child right agenda during policy making’.

This research will carry out an audit and analyze selected Child related legislations within the legal framework currently existing in Zambia and add value to the body of knowledge of many other researchers who have researched on the subject to awaken the legislative wing of government and other stack holders to have clear provisions in protecting rights of street children.

Through our work we intend to stimulate an active children’s rights advocacy at different levels starting from policy making to program and strategic implementation. Besides, Street Children Phenomenon is a timely topic for an academic research. It seems there is little research being done about street children particularly in developing countries. Therefore, this research will consequently act as a stepping stone for more specialized research on the subject matter in order to contribute to Human Rights studies with emphasis on the plight of Street Children.

## 1.6. Theoretical framework

Theories in a research of a phenomenon such as the Street Children are used to help design research questions, guide the selection of relevant data, interpret data, and propose explanations of causes or influences. According to Caswell,<sup>8</sup> the use of a theory in a research serves as a window or a lens through which to look at complicated problems and social issues, for finding answers to the research questions and providing broad explanations. In this case, the theories can be used in a research work as an explanatory framework. Normally theories are drawn from social sciences and humanities to guide the research process and illuminate the findings. Theories provide complex and comprehensive conceptual understandings of things that cannot be pinned down, how societies work, how organizations operate and why people interact in certain ways.

The researcher in this study intends to work with the Social Exclusion Theory as a theoretical framework and its related theory known as cohesive theory as terms to replace the general concepts of poverty, deprivation, and disadvantaged to determine legal mechanisms for the protection of rights of the street children. The theory is relevant to the study because it deals with the visible social divisions and inequalities that are real in society.

This theory is applicable to this study because it does not limit the causes for social exclusion to deprivation of basic needs only. The exclusion of any particular group is not reduced or attributed to poverty alone as the exclusion happens even in the absence of poverty. The gap in the standard of living between rural and urban is exacerbated by cultural norms, gender, age, and health status, low access to information and technology among other factors for the exclusion. It is clear from the list that social exclusion theory primarily deals with a wider *continuum* of human rights issues and violations. This is the reason why the legal framework for the protection of such rights is a necessity. The marginalized usually have little control over their lives and resources at their disposal. Often times their rights to own property, right to life, right to a clean environment, housing and health and other human rights are unprotected.

The theory is rather inclusive and objective in its approach to the phenomenon as it looks at the processes of disadvantage within the exclusion processes in the case of street children which can

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<sup>8</sup> J.A. Caswell, *Research Design, Qualitative, Quantitative and Mixed Methods Approaches*, 3<sup>rd</sup> edit., (200), 6.

occur across a social hierarchy. In this way the theory will help the researcher to assess various factors such as the social legal systems, institutional impediments to justice system, hurdles to access justice and policy making. In order to make up for the many inadequacies in their lives, street children are seen as a problem and a threat to society as on daily basis find themselves battling marginalization and stigma in the City streets, bus stations and City Market places.

The focus of this work will be on how social exclusion phenomenon exposes the vulnerable to more exploitation, homelessness and leave them defenseless. The theory is preferred to social cohesion and social inclusion theories according to the researcher in that it aims to include the discriminated group regardless of age, economic status, geographical location and social status.

In Bronfenbrenner's Bio-ecological theory of human development<sup>9</sup> he cites pertinent dynamic interrelationships that exist between street children and the social environment within which they live. He suggests that the environment in which the child lives is made up of five interdependent layers or systems with significant influence on the development of children, namely; *microsystem*, *mesosystem*, *exosystem*, *macrosystem* and finally the *chronosystem*. These layers are at the same time interdependent and intertwined.

The reason for incorporating this theory in assessing the legal framework in the protection of street children's rights is that besides the other mentioned theories this one demonstrates the relationship between the child and the environment. The bio-ecosystem theory also helps to explain the relationship between the observed behavior and the environment. The research then through this theory will grapple to grasp and describe the child in relation to the street. It is part of the endeavors in this study to determine, assess and audit some of these laws. The theory will also help us to understand and change public perception of street children, the adult world are disgusted at the street child's behavior without understanding the environment they came from and the environment they are currently living in;<sup>10</sup> children are products of their environment; when you see difficult selfish, or obnoxious the point is that children are not born selfish, they are not born angry, they are not born disrespectful nor violent rather all this behavior is acquired from the environment.

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<sup>9</sup> B. Urie & Morris, P. A. *The Bio ecological Model of Human Development*: In W. Damon & R. M. Lerner (Eds.), *Handbook of Child Psychology* New York: John Wiley & Sons, 2006, (Vol. 1, pp. 793-828), 20.

In the environment, the first layer is called the *microsystem*; this is a pattern of minute activities, so intertwined experienced by the developing person within a given environment. This is evidenced as children have in the day to day experience be it in the playground, school or any other social encounter this layer includes interactions children have with their immediate surroundings.<sup>11</sup>

The *mesosystem* forms the second layer which provides the connection between the structures of the child's microsystem. It includes interrelations among two or more settings in which the developing person actively participates coordinating and relating the connections for interpretation to give meaning to the learned behavior.

*Exosystem* as the third layer in the environment refers to one or more settings that do not involve directly the developing person as an active participant, but in which events occur that affect, or are affected by what happens in the social settings containing the developing person. This is a social setting layer which affects the child indirectly as they interact with some structures in their microsystem. Children are not directly involved in the social settings but the process affects their development. Here we can cite places like market place, bus stations, and influence from bars within the environment, Churches within the locality, garbage places, Railway stations which can either enrich or impoverish the growth of the child.

The *macrosystem* layer is more influential consisting of government, policies, laws and customs of one's culture, sub culture or social class, ideologies, values and belief systems. It is worth noting that the support this system offers to the child's needs affects the support they receive at inner levels of environment. Therefore, it is in this layer system where empowerment opportunities, skills training and life course options are found.<sup>12</sup>

Finally the fifth system which serves the model for development is the *chronosystem* which involves the socio-historical conditions, transitions and changes in the individuals and their environment across time. It mirrors the dynamic environmental transitions, encompassing entries, exists milestones and turning point over time in the life of the child. In short, it takes into account the historical back ground of the developing young person.

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<sup>11</sup> L. E. Berk, *Child Development (7th Ed)*. (2006), 22.

<sup>12</sup> L.E. Berk, (2006), 53.

From Bronfenbrenner's Bio-ecosystem theory we can draw some conclusions. Firstly, that human development model posits the development of the children to be neither controlled by the environmental conditions nor endangered by their inner dispositions. Secondly, whether on the street or domiciled, children are products and producers of their environments. Finally, we can say both children and the environment friendly or hush are so intertwined that they create a synergy network of interdependent effect manifested and experienced by the larger community in which children interact with others.

### **1.7. Conceptualizing Street Children**

An attempt at finding an all-encompassing definition and typology for the term 'street children' has proved futile and at times misleading due to the nuances it brings out and discrepancies in the concept. Partly this is due to the social-economic dynamics at play within the street child phenomenon and lack of a concise criteria for determining this category.

According to the United Nations, a street child is any boy or girl for whom the street has become his or her habitual abode or source of livelihood, and who is inadequately protected, supervised or directed by responsible adults.<sup>13</sup>

Street children is a generic term that denotes young people with a special relationship to the street. The term street children is mainly used in Africa and South America while in Europe, North America and Australia the term homeless children, runaways, throwaways and push-outs are commonly used. According to UNICEF, there are three types of street children:

Children who reside in the street, these are children who have run away from their families and live alone in the street. Children who work in the street are Children who spend most of their time in the street, but who regularly go back to their homes. Thirdly, Children from street families are those Children who live with their families in the street.<sup>14</sup>

The report of the Independent Commission on International Humanitarian Issues defines street children as follows: a child or street youth is any underage person for whom the street has become his or her usual place of residence, and his person cannot find adequate protection.

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<sup>13</sup> M. W. Lusk, *The Street children of Rio de Janeiro. International social work*, (1992),35, 293-305

<sup>14</sup> UNICEF, *Protection and Promotion of the Rights of Children working and / or living on the street*, (2006), 7.



Others define street children as children who always or sometimes work and reside in the street, without being taken care of by their families, or who spend long periods of the day in the streets.

This has divided street children among three categories: children in the street; children of the street; and abandoned children. For example, children in the street perform some economic activities but, at the end of the day, they sleep in their homes and contribute part of their income to cover their family's expenses. These children feel a sense of belonging to a family. Some of them may go to school. These children are in contrast to children of the street, who actually reside in the streets, or abandoned children, who have no contact with their families. Some people use terms like homeless children, beggars and other terms as synonyms for street children. Even the term street children itself, has met with controversy. Some people perceive the concept of street children as negative, arguing that it gives a stereotyped picture of children.

### **1.8. Literature review**

Scholars like Creswell elaborating what literature review is, he acknowledges that literature review helps the researcher to determine whether the topic is worth studying while providing significant insight into ways in which the researcher can limit the scope to a much needed area of inquiry. Relevant literature is a demanding but essential task.<sup>15</sup>

The purpose of our literature review is to provide the necessary background information on the street children phenomenon so as help to focus the research, while providing information on the types and scopes of interventions that aim to address the problems of the children. The review will also shape the study in making distinction from other works previously done. This work will be different because it will first make a partial audit of child related legislation, emphasize a more vigorous street children's rights advocacy and finally assess the efficacy of the legal framework for street children protection in Zambia.

A review of literature on Zambian street children reveals that most of the studies carried out in Lusaka City seem to implicate street children in various acts of deviance. Street children's involvement in begging, prostitution, drug abuse and theft is widely documented. Their

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<sup>15</sup> Caswell, 23.

exploitation and coercion into deviant activities by older children, gang members or adult.<sup>16</sup> The longer they remain in streets, the greater the possibility that they will be drawn into the web of illegal activities. When legitimate means of supporting themselves become unavailable, illegitimate activities provide a means of support, adult criminals is also a reality.

Considering some Zambian writers who have written on the subject. The idea of street children also embraces the concept of lack of capacity of the excluded group to act on their own behalf. Street children are in the category of ‘children in need’. The needs range from basic needs to social protection needs. In his book Sakala,<sup>17</sup> ‘The Role of the Judiciary in the Enforcement of Human Rights in Zambia’ observes that access to justice to protect human rights in most African countries is still a rare commodity including Zambia. He says this due to numerous constraints and institutional impediments among other factors. Besides, one may ask why street children’s rights should be protected when human rights are universally applied to everyone and everywhere including street children. Some of the reasons advanced for the extra protection of street children’s rights are that for them to grow like other children their growth depends on parents and other adults of the general public who do not have lawful custody on them largely may be influenced by policies of the government.<sup>18</sup> Therefore, special care should be accorded to street children so that they can grow and reach their full potential. Among other reasons, street children are more vulnerable than other members of the community as they cannot claim their rights and the protection of their rights depend on almost no one else but the national institutions.

A review on the Situational Analysis of Orphans and Vulnerable Children (OVC) in Zambia of 1999 reveals that the vital missing link in the Orphans and Vulnerable Children struggle in Zambia is the development and enforcement of appropriate policies and the on-going efforts of a strong children’s advocacy organization. It is critical that Zambia develops and enforces laws that enforce the rights of the child. Policies and enforcement are needed in a variety of areas ranging from ensuring the protection of human rights of children, strengthening inheritance issues and dealing with issues of physical and sexual abuse.<sup>19</sup> There are some existing Zambian laws that are outdated in need of review and amendment. Equally, important is the education of

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<sup>16</sup> UNICEF, *Rapid Assessment of Street Children in Lusaka*, Project Concern, (2002), 8.

<sup>17</sup> S. B. Jullius, *The Role of the Judiciary in the Enforcement of Human Rights in Zambia*, (2013), 150.

<sup>18</sup> B. Blcakman, *Intervening in the Lives of Street Children: A Case from Zambia*, Lusaka, (2001), 18.

<sup>19</sup> A. Sampa et al., *Orphans and Vulnerable Children: A Situation Analysis*, Lusaka, USAID, UNICEF, SIDA, (1999), 41.

the general population regarding legal issues concerning children. This researcher argues that there is need for a strong advocacy mechanism in Zambia, which will fight for the rights of children and keep children's issues top on the agenda of government and general population.

Article 10 (3) of the International Covenant on Economic, Social and Cultural Right-ICESCR<sup>20</sup>, also article 24 of the International Covenant on Civil and Political Rights-ICCPR<sup>21</sup> both provide that children and young persons be protected from economic and social exploitation and that any act which is harmful to their morals or health or dangerous to life or likely to hamper their normal development be punishable by law. Child labor is also prohibited. It is further emphasized under the option protocol to the convention on the rights of the child on the sale of the children, children prostitution and child pornography as crimes.<sup>22</sup>

This literature review appreciates the work of Godfridah Nyambe Akupela from UNZA school of Law who in her obligatory essay titled 'The CRC and the Marginalized Child'<sup>23</sup> has analyzed at great length the Child related legislations in Zambia however, this study will differ in approach as it looks at the protection framework. According to her she makes a distinction between street children, from children on the streets and children working on the streets. However, this research argues that the underlying idea is that they all have a direct relationship to the street and all lack legal protection of their rights.

In Zambia, there is mention of some inadequacies both in the Convention on the Rights of the Child found in some of its articles like article 1 in terms of giving a definition for a child. The article vaguely says a child means every human being below the age of 18 years unless the law applicable to the child, majority is attained earlier.<sup>24</sup> This research notices that it is a short fall which gives leniency to member states to lessen the ages to serve purposeless ambitions such as the use of child soldier and the child labor benefits. Godfridah Nyambe Akupela also makes an observation about children's rights when she says they are rights which are human but different in that they cannot be claimed by an adult such as the right to parental guidance and others. In mentioning the shortfalls found also in the Zambian laws, it is evident that she indirectly

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<sup>20</sup> Article 10 (3) of the International Covenant on Economic, Social and Cultural Right-ICESCR

<sup>21</sup> Article 24 of the International Covenant on Civil and Political Rights-ICCPR

<sup>22</sup> Article 10 (3) of the International Covenant on Economic, Social and Cultural Right-ICESCR

<sup>23</sup> G.N. Akupela, *The CRC and the Marginalized Child*, Lusaka, UNZA, (2008), 5.

<sup>24</sup> A.W. Chanda, *Gaps in the law and policy in the implementation of the Convention on the Rights of a Child. Zambia law journal Child in Zambia*, (1999), 45.

proposes for a better legal framework to protect the rights of children especially with regards to the most vulnerable children such as street children and orphans in society.

In comparison to the other writers, this study focuses specifically on the legal framework and proposes ways to protect the rights of street children by assessing both legal and institutional impediments. Others have spoken about children in general nonetheless, this researcher takes street children as a homogeneous group of needy children with Human Rights who equally have full human dignity requiring legal protection from society. These are the subjects of the proposed social exclusion theory in our work.

For people like Duffy, <sup>25</sup>social exclusion appears to come from a relational dimension or social relation. He further reveals more factors for social exclusion which also apply to the Lusaka City street children phenomenon as deprivation, isolation, marginalization, stigmatization, vulnerability including weak laws and an independent judicial systems.

Others suggest that social exclusion focuses mostly on issues to do with rights. Normally the marginalized groups have little control over their lives and are at the receiving end of society. Their chances to make significant social contributions are diminished and the situation creates a vicious circle, since their lack of positive and supportive relationships means they are prevented from participating in social life which leads into further isolation. Street children due to lack of proper legal protection suffer on three dimensions namely; poverty or economic dislocation, disempowerment or social dislocation and psychological dislocation.

It is undisputable through various human rights treaties that Children's rights are part of human rights that require equal legal framework for protection and are depended on the effective protection of other human rights. From our literature review it is clear that street children are full human beings with human dignity like every other human being with rights which flow from their human nature by virtue of having their dignity respected. Children's rights like other Human rights are claims which every individual has, or should have, upon the society in which he or she lives. To call them human rights it means that they are universal: they are the due of every human being in every human society. They do not differ with geography or history, culture

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<sup>25</sup> Duffy, Social Exclusion Theory, cited in Public's Perception of the Phenomenon of Street Children: A Qualitative Study of Students and Shopkeepers in Accra, Ghana, (2011), 11.

or ideology, political or economic systems, or stage of development. They do not depend on gender or race, class, age or State.

Street children in this case fall under a specific group of vulnerable children who are equally entitled to the full enjoyment and protection of their rights by the State who implicitly expressed this intention through signing various human rights instruments even without domestication.

According to the Convention on the Rights of the Child (CRC) in its general principles, the articles are interrelated in that they are considered and looked at together, except that the committee elevated Article 2, freedom from discrimination, Article 3 the Child's best interest, Article 6 the right to life and Article 12 respect for the child's view to the status of general principles.<sup>26</sup> We can however, see that in theory none of these Articles is more important than any other, nonetheless, Article 3 the child's best interest which requires commitment underpins all the other provisions.

Looking at Article 2, freedom from discrimination, for instance guides the Covenant in that it emphasizes the fact that the rights enshrined in the CRC are to be accorded to every child regardless of color, sex, nationality and in our interest age and location.

Besides, Article 3 provides the principles of the best interest of the child; for the sole purpose of making sure that in all actions concerning children, either undertaken by public institutions, courts of law, administrative bodies, or legislative bodies, the best interest of the child will be of basic. All other articles become more effective read in the light of Article 3.

Apart from the CRC, the other important instrument is the regional African Charter for the Rights and Welfare of the Child ACRWC, which provides for the right of the Child among these included are the African Charter, the International Convention on Economic Social and Cultural Rights ICESCR. We wish to mention that the ICESCR is relevant to this subject because children's rights are predominantly economic, social and cultural rights in nature. Children are the most vulnerable to political and economic changes at the State and community level as they cannot react to and interact with these changes in the same way as the adults do. Children's ability to copy with the surrounding environment is limited compared to that of the adult

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<sup>26</sup> Articles (2), (3), (6) and (12) of the Convention on the Rights of the Child

community. In our literature review it is discovered that children's suffering is actually increasing globally due to ongoing political and economic conflicts.

They are normally found in groups, in family like groupings with their own specific culture, values and structures. These groups have special relations with the Police that serve in a particular place they stay such as in the bus stations, railway stations, shop corridors, markets and so forth. They even have their adult brokers who help them to sort out problems when they get in conflict with the law through the Police. According to the World Health Organization there are approximately one million to one million five hundred street children all over the world.<sup>27</sup>

The African Charter being a regional treaty and it is worth mentioning that it is the first and only regional treaty on the rights of the child. It was adopted in the twenty sixth ordinary session of the Assembly of Heads of States and Governments of African Unity, in Addis Ababa, Ethiopia on 11<sup>th</sup> July 1990. However it entered into force on November 29<sup>th</sup> 1999. Zambia is signatory to the African Charter.<sup>28</sup>

It can be seen from the African Charter in its approach that it is not as comprehensive as the CRC but it is not that different from it either. Like the CRC the Charter too has principles of non-discrimination, best interest of the child, survival and development. Although the African Charter is in tandem with the CRC it however, relates more to the African Child.

In the 1996 Zambian Constitution there is provision for young persons who include children, protection from all forms of exploitation, neglect or any form of in human treatment. Article 24 specifically seeks to protect young persons from occupations and employment that are prejudicial to their health or education or which are hazardous to their physical, mental or moral development, with exception of employment, for a wage, under certain conditions.

Article 14 (1) and 15 of the Zambian Constitution protects persons from slavery and servitude, torture or inhuman and degrading punishment.<sup>29</sup> These provisions do not specifically relate to or mention street children but they nonetheless articulate children's rights as part of their human rights. The current Constitution does not articulate children's rights adequately, particularly those outlined in the CRC and the African Charter. In it are also found such rights as right to

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<sup>27</sup> M.W. Lusk, 100

<sup>28</sup> African Charter on the Rights and Welfare of the Child, (1999).

<sup>29</sup> Articles (14) and (15) from the Constitution of Zambia

survival and development, the right to a name and nationality and the right not to be subjected to torture.

It is noticeable that the draft Constitution of 2010 does not include the economic, social and cultural rights under the Bill of Rights. The Constitution is silent for example on the right to education which is a fundamental right, yet the right to education is essential to the economic, social and cultural development of a child and without a good educational background, it might be difficult to fight poverty and other forms of discrimination on the basis of class.

## **1.9 Methodology**

A review through the desk research method on the studies in Living Conditions Monitoring Survey of 1996 was done. The research looked at the 2010 Census on Population and Housing, the Zambia Demographic Health Survey of 2013 and the Food and Household Nutrition Information System of 1997 and then 2012.<sup>30</sup> This was ensued by the fact that the numbers of street children are growing in Lusaka urban. However, there is no sufficient qualitative data reporting on the issue. It informed the study that street children like orphans are directly connected to the head of the household issues. It shows the steady increase in numbers and the social characteristics of households in which these children come from. The selected methods helped the study to pursue the objectives and gain an insight into the phenomenon of street children seeking a vigorous legal framework for their rights' protection. A qualitative approach was more predominant considering that the phenomenon was discussed through the use of focus group discussion, in depth-interview and participant observation. As can be seen from evidence, studies in street children protection is still a grey area of study in human rights law by indigenant Zambian researchers and academicians and the scarcity of material on the subject written by Zambians says it all.

The qualitative enquiry focuses on describing, understanding, exploring, and interpreting to understand social situations and how the informants in a social setting perceive the world around them. The value of qualitative research is based on an assumption that there is no one concrete measurable truth, but a multitude of social dimensions that emerge from complex social interactions. Thus to look at this multiplicity, the self as a researcher is so cardinal in

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<sup>30</sup> A Situation Analysis, Zambia (2000), 21

observing and asking the right questions and interacting with research participants. In this line the study will also use the case study method to enrich the findings collected through other methods mentioned.

### ***1.9.1 Procedure***

Knowing the study is phenomenological in its nature, in order to comprehend it fully the procedure divided samples into, Street children, professionals and other stake holders. The researcher collected all data procedurally starting with the in-depth interviews with individuals, then group discussions and finally the participant observation in designated target places within Lusaka City. From the desk research most of the information about street children is scanty and based on estimates. For instance according to the situation analysis of orphans and vulnerable children in Zambia the 1998 Zambia Human Development Report<sup>31</sup> estimated that 75,000 of children who were orphaned in Lusaka were street children with well over two-thirds of the children between the ages of 6-14 years old and the majority is boys. That alone meant that boys are more daring and risk takers compared to girls who are more resilient and endure suffering much more than boys. The report further estimated that 40% of street children have lost both parents therefore interpreting data it shows that street children alone represent 14% of the orphan population in the entire country.

### ***1.9.2 Samples and data collection***

The purposeful and sampling criterion was used to select the street children to be interviewed within Lusaka. The researcher picked on the City of Hope in Makeni a home for girls at risk for the following practical reasons; firstly the girls fitted the purposeful and sampling criterion on the site who were once on the streets now undergoing rehabilitation by putting them in a full time boarding school facility. Secondly, City of Hope presented a good sample of participants since the school represents all categories of children.

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<sup>31</sup> USAID/UNICEF/SIDA Study Fund Project, (1999), 13



When conducting a focus group discussion, Kruger<sup>32</sup> recommends that whichever number is selected, allowance should be made for ten to twenty five percent of participants not turning up, and the research therefore targeted 65 girls from City of Hope. However, on the actual day a sample of 50 girls participated in a group discussion and interview conducted in English and three other local languages including Kiswahili with an advantage that the researcher could communicate fluently in Nyanja, Bemba, Chichewa or Kiswahili since some children were of Congo D.R. decent. This helped to put the participants at ease and express themselves freely. The interview took place on 5<sup>th</sup> December. All interviews and group discussions took place during the day. Before the day for interviews, street children were given an orientation by a social welfare personnel staying with them on the exercise.

Using the purposive sampling technique the researcher also conducted an in-depth interview with three other staff members within the City of Hope since they are in close contact with the street children. Included in this criterion was a youth *pedagogue* in the school education from a nearby private University, a social worker and a child psychologist for children at risk. The research considered this sampling procedure quite appropriate and consistent with focus group interviewing and individual interviewing.

There are diverse views regarding the optimum group size for focus groups. Mostly the group samples are representative of the characteristics of the participants in the main study related to the phenomenon under the study.<sup>33</sup> According to Kruger and Morgan it is suggested that three to six different focus groups are adequate to reach data saturation or theoretical saturation.<sup>34</sup> In this regard, another place which the researcher identified where street children meet was the Main Post Office within town center, Soweto market, Inter-Cities bus terminal and the University of Lusaka Campus. Here the researcher managed to interact with a group of ten street children all boys based on the criterion of appearance, age, gender and the common activities they do such as washing cars and selling small merchandise within the premises. The researcher then took interest to make an observation on the street children on Cairo Road of Lusaka using the criteria

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<sup>32</sup>[http://research.apc.org/images/2/2f/A\\_Qualitative\\_Framework\\_for\\_Collecting\\_and\\_Analyzing\\_Data\\_in\\_F](http://research.apc.org/images/2/2f/A_Qualitative_Framework_for_Collecting_and_Analyzing_Data_in_F)(last visited 22.12.15 at 21:00hrs)

<sup>33</sup> Michael Bloor, Focus Group in Social Research, 110.

<sup>34</sup> [https://en.wikipedia.org/wiki/Barbara\\_Kruger](https://en.wikipedia.org/wiki/Barbara_Kruger) (last visited 22.12.15 at 22: 30hrs)

such as appearance, language, age, assessing the activities they are engaged in such as begging, scavenging, leading the blind, and gambling.

### ***1.9.3 Confidentiality***

The researcher ensured confidentiality by using fictitious initials and professional titles leaving out real names of participants. The staff and other officials were interviewed separately in their offices or other private places to avoid unnecessary interruptions during the interview exercise. Discussions were done in three groups, the main one at the City of Hope premises, in town and at Lusaka University premises with some law students.

### ***1.9.4 Ethical considerations***

For ethical purposes, the researcher got a letter from the University of Lusaka stating that material to be obtained would solely be used for academic purposes. Confidentiality was equally assured. The researcher attained this by leading the participants at City of Hope to the common hall introduced by the social welfare personnel and the person in charge of the boarding. The staff explained the intention to discuss and interview them as a human rights student conducting a research on the protection of rights of street children. For more proof the researcher jokingly produced the school Identity Card bearing the student number and the name of the university. For ethical reasons participants were explained that none of the participants was forced to take part in the exercise if they were not willing.

### ***1.9.5 Instrumentation***

This study predominantly relied on the semi-structured interview instrumentation. The aim of the interview is to capture from the informants perceptions on how being interviewed they judge and described their world through their crafted language otherwise known as street language and special terminologies. This technique also helped the researcher to encode the strata and various complexities in individual perceptions and judgments. Thus Holstein and Gubrium<sup>35</sup> define interviewing as delving into the social world, as well as being collaborative, interactional

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<sup>35</sup> <http://sociology.missouri.edu/faculty/gubrium.shtml>( last visited on 02.01.16 at 08:00hrs)

and meaning making. Interviewing provides a way of generating empirical data about the social world by asking people to talk about their lives using their own language.

### ***1.9.6 Selected sites for data collection***

Before embarking on the study the researcher had decided to use only the City of Hope (a home for the girls at risk) for discussion and interviews but the researcher found himself including other sites such as the post office, Inter Cities and Soweto bus stations out of necessity to comparatively come up with various data collection. The purposeful approach compelled the researcher to widen the data sites which would enrich the findings in the final analysis thus even one of the University of Lusaka students was included.

### ***1.9.7 Scope of the study***

The research will limit its scope to assessing the legal framework and institutional impediments in protecting the Rights of Street Children. Although the findings equally apply to street children in other places, the focus of this research is on Lusaka urban as a case study.

### ***1.9.8 Chapter lay out***

This work will comprise of seven chapters with Chapter one being an introductory part of the study while chapter two will contain an audit of Child Related Legislation in the Protection of Street Children at International, Regional and National Level. In chapter three the study will attend to the efficacy of the Legal System currently existing in Zambia in providing protection for street children considering that Zambia is a dualistic State, the chapter will discuss the strength and weaknesses in both customary Laws and Civil laws. Chapter four will discuss the legal and institutional impediments in protecting Street Children. Chapter five will present mechanisms needed in order to provide a more robust legal framework to protect Street Children in Zambia. In chapter six the researcher will expose and present the findings. Chapter seven will contain Conclusions and recommendations for future researchers, stock holders and government, policy makers and program implementers. Finally the study places the indexes at the very end of chapter seven as a matter of methodology.

### ***1.9.9 Conclusion***

Chapter one has given a general introduction, the back ground to the street children phenomenon, stating clearly the problem this study indents to tackle, namely; assessing the legal framework and institutional impediments in protecting the rights of street children: A case study of Lusaka urban. The objectives and the research questions to be pursued equally have been clearly stated. Stating the methodology, the chapter also presents the theoretical framework to be used which as a lens will help the researcher to have a glimpse of the situation.

Through its literature review process, the study acknowledges the Constitution of Zambia which is the Supreme law of the land and the need to have clear provisions entrenched in the Bill of Rights that ensure adequate protection of children's rights so as to avoid the exploitation of children. This will encourage citizens, who including the children; to take recourse in the courts of law should their rights be infringed. The literature reviewed shows various works on the topic although none of the works dealt with the legal frame work and impediments in street children protection. This marks the point of departure and the distinguishing element between this research and other works.

## CHAPTER TWO

### AUDITING CHILD PROTECTION RELATED LEGISLATION

#### 2.0 Introduction

The protection of street children's rights and adequate care can only be provided in an environment which promotes and protects all rights, especially the right not to be separated from parents, the right to privacy, the right to be protected from violence, the right to special protection and assistance by the State through a firm legal framework.<sup>36</sup> This would require a robust legal system to be in place. This chapter will look at some of the child related legislations that are currently in place for this purpose. Using Carol Bellamy's words,

History will judge us harshly if we refuse to use our knowledge, our resources and our will to ensure that each new member of the human family arrives into a world that honors and protects the invaluable, irreplaceable years of childhood.<sup>37</sup>

#### 2.1 International legal framework for protecting children's rights

In early 20<sup>th</sup> Century, moves began to promote the idea of children's rights as distinct from those of adults and as requiring explicit recognition. The Polish educationist Janusz Korczak wrote of the children in his book *How to Love a Child*.<sup>38</sup> In 1917, following the Russian Revolution, the Moscow Branch of the organization Proletkult produced a declaration of the children's rights. However, the most first effective attempt to promote children's rights was the Declaration of the Rights of the child, drafted by Eglantyne Jebb<sup>39</sup> in 1923 and adopted by the League of Nations in 1924. This was accepted by the United Nations on its formation and updated in 1959, then it was improved and replaced with the current and more extensive UN convention on the Rights of the

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<sup>36</sup> UNICEF, Child Protection, (2004)

<sup>37</sup> C. Bellamy, Executive Director of UNICEF, Inter-Parliamentarian Union, (2004)

<sup>38</sup> J. Korczak, *How to Love a Child*, (1919)

<sup>39</sup> <http://herstoria.com/%3Fp%3D663>(last visited on 02.01.16 at 15:00hrs)

Child (CRC) in 1989.<sup>40</sup> According to Eglantine Jebb, he believed that rights of a child should be especially protected and enforced, thus drafting the stipulations for child's rights. A child among other rights must be in apposition to earn a livelihood, and must be protected against every form of exploitation and the child must be brought up in the consciousness that its talents must be devoted to the service of its fellow me.

Human rights instruments that of the United Nations, such as the Universal Declaration of Human Rights of 1948 recognized more generally the human right to be free from violence, abuse and exploitation.<sup>41</sup> These rights applied to everyone, including street children and were developed further in such instruments as the International Convention on Civil and Political Rights of 1966, ICCPR.<sup>42</sup>

## **2.2 The UN Convention on the Rights of the Child**

The Convention on the Rights of the Child is considered as the core foundation of the international legal framework for the protection of all children.<sup>43</sup> It is a legal binding international instrument to incorporate the full range of human rights; civil, cultural, economic, political and social.<sup>44</sup> Article 2, states that “States Parties shall respect and ensure the rights set in the present Convention to each child within their jurisdiction without discrimination of any kind”. A similar provision can be found in Article 3 of the African Charter on the Rights and Welfare of the Child.<sup>45</sup>

The 1989 Convention on the Rights of the Child (CRC) constitutes the main international instrument for the promotion and protection of the rights of the child. It applies to all children in all kinds of situations street children inclusive. The CRC, is the treaty that gives an international legal definition of a child under Article 1 when it states, “a child means every human being

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<sup>40</sup> [http://en.wikipedia.org/children's rights movement](http://en.wikipedia.org/children's%20rights%20movement) (last visited on 05.10.15 at 21: 15 hrs.)

<sup>41</sup> UNICEF & Consortium of Street Children, 1 Nov. (2010)

<sup>42</sup> J. Karabanow, *Being Young and Homeless. Understanding how Youth enter and exit street life*, New York, Peter Lang Publishing, (2004), 24.

<sup>43</sup> C.N Himonga, *Historical background of the law of the persons*: in R.Blainpain (ed.) *International encyclopedia of laws in Zambia*, Kluwer International, (2000), 28.

<sup>44</sup> *The National Program of Action for Children in Zambia*, (1994), 15

<sup>45</sup> General Assembly Resolution 44/25: *Convention on the Rights of the Child*, UN document A/RES/44/25, 20 November (1989)

below the age of eighteen years unless the law applicable to the child, majority is attained earlier.”<sup>46</sup>

The recognition of the child as a human rights holder is reflected in Article 5, for example, the provision states that children are entitled to exercise their rights in accordance with their “evolving capacities”.<sup>47</sup> Furthermore, according to Article 12, “ States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

The following are some of the rights provided for in the CRC;

### **2.2.1 *Right to Life***

This is a right inherent to every human being regardless of his or her gender or age. Article 6.1 of the CRC stipulates that “States Parties should recognize that every child has the inherent right to life.”<sup>48</sup> While Article 6.2 states that “States Parties shall ensure to the maximum extent possible the survival and development of the child.”<sup>49</sup> This Article entails refraining from jeopardizing the life and development of children or from submitting them to physical or moral threats. The Consortium for Street Children reports that many states kill or expose street children to experience Police torture instead of providing their protection. This contravenes Article 19.2 of the CRC, which states in its first paragraph that,

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.<sup>50</sup>

Notwithstanding Article 9.2 which adds that,

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<sup>46</sup> Article 1 of the Convention on the Right of the Child

<sup>47</sup> General Assembly, *Report of the Committee on the Rights of the Child*, UN document A/55/41, 8 May (2000)

<sup>48</sup> Article 6.1 of CRC

<sup>49</sup> Article 6.2 of CRC

<sup>50</sup> Article 19.2 of CRC

Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for the other forms of prevention and for the identification, reporting, referral, investigation, treatment and follow up of instances of child maltreatment described therefore, and as appropriate for judicial involvement.<sup>51</sup>

### **2.2.2 *Right to Health***

Article 24.1 of the CRC requires that States Parties recognize the right of the child to the highest possible standard of health and to facilities for treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.<sup>52</sup> It is worth noticing that street children sleep and stay in unhealthy streets, abandoned houses, cemeteries, water drainages, tunnels, and market garbage heaps and bus stations.

### **2.2.3 *Right to Education***

Article 28 of the CRC stipulates that, States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, care services.<sup>53</sup> It provides free compulsory primary education, encourages the creation of different forms of secondary schools, vocation education and make them accessible to every child and provide financial assistance when needed. It also urges States Parties to reduce school drop-out rates. Education helps develop the child's character therefore, Article 29.1 sets forth that, States Parties agree that education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.<sup>54</sup>

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<sup>51</sup> Article 9.2 of the CRC

<sup>52</sup> Article 24.1 of the CRC

<sup>53</sup> Article 28 of the CRC

<sup>54</sup> Article 29.1 of the CRC



#### **2.2.4 *Right to an adequate standard of Living***

Article 27 of the CRC provides for the right of a child to an adequate living standard. Paragraph one of this Article explicitly acknowledges that, States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.<sup>55</sup> In many countries around the world street children are exploited by working long hours in difficult conditions for low pay.

#### **2.2.5 *Rights to Protection***

Article 34 provides for the protection of the children from all forms of sexual exploitation and sexual abuse and Article 37 specifies legal protection in the case of arrest, while Article 40 stipulates the provision of appropriate and humanitarian conditions of detention that protects the child's dignity.<sup>56</sup>

#### **2.2.6 *Right to Participation, Play and Recreation***

This right is provided for under Article 31 of the CRC when it stipulates that, States Parties recognize the right of the child and to participate freely in cultural life and the art including all rights to play and recreate with their peers.<sup>57</sup>

#### **2.2.7 *Special Child Labor Related Rights***

Under Article 32,

States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.<sup>58</sup>

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<sup>55</sup> Article 27 of the CRC

<sup>56</sup> Article 34, 37 and 40 of the CRC

<sup>57</sup> Article 31 of the CRC

<sup>58</sup> Article 32 of the CRC

### **2.2.8 Birth Registration**

Article 7 of the CRC provides that “every child shall be registered immediately after birth”.<sup>59</sup> It is the duty of the State to register the birth of every child has been recognized for more than a quarter a century. Birth registration is essential to protect the child’s right to identity and legal personality, as well as other rights. It also helps against trafficking and abduction, and are often required for access to school and sometimes other basic services such as health. It indicates the place and date of birth, the name and sex of the child and the nationality of the parents.

### **2.2.9 The Right to a Name**

The right of a child to a name is recognized by Article 7 of the Convention when it states that,

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for his or her parents.<sup>60</sup>

Traditions concerning names vary considerably from one culture to another. In most cultures, a person has at least two names. In many if not most cultures, one of the names a person bears indicates the identity of the person’s father or mother, names equally speak of the status of a person in the community.

### **2.3.0 Other instruments on the right of the child to a name**

The UN Convention on the Status of the Stateless Person (1954), the American Convention on Human Rights and African Charter particularly Article 6.1 of the African Charter all spell-out States’ obligations in this regard, stating that, every person has the right to nationality of the State in whose territory he or she was born, if she or he does not have the right to any other nationality.<sup>61</sup> The Convention on the reduction of Statelessness recognizes this basic rule and in addition provides that States should grant their nationality to every child whose father or mother is a national and who would otherwise be stateless.

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<sup>59</sup> Article 7 of the CRC

<sup>60</sup> Article 7.

<sup>61</sup> Article 6.1 of HRAC

### ***2.3.1 Two Optional Protocols to the UN CRC and the General Principles***

In 2000, the United Nations General Assembly adopted two Optional Protocols to the UN Convention on the Rights of the Child to increase the protection of children from involvement in armed conflicts and from sexual exploitation. Consequently Zambia signed the CRC on 30<sup>th</sup> September, 1990 and ratified it on 6<sup>th</sup> December 1991 with no reservations.

The protocols are guided by the principles with new provisions relating to children, for example, with regard to rights to participation, non-discrimination and the principle that in all decisions concerning the child, the child's best interest comes first. It also created for the first time an international body responsible for overseeing respect for the rights of the child and the committee on the Rights of the Child.<sup>62</sup> The Optional Protocol to the Convention, prohibits the recruitment of those under 18 into armed forces as Child Soldiers.<sup>63</sup>

### ***2.3.2 The Geneva Convention IV***

After the Second World War, Geneva Convention IV was the first international instrument which explicitly provided for the protection of children during armed conflict. Under Article 24, States Parties to a conflict should,

Take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of war, are not left to their own resources and should facilitate the reception of such children in a neutral country for the duration of the conflict. Furthermore, children younger than 12 should be identified by the wearing of identity discs.<sup>64</sup>

A similar Article can be found in Article 50 regarding children in occupied territories, with the explicit prohibition of changing the child's personal status or enlisting them in organizations of the occupying powers. Article 82 says, during internment, families particular parents and children shall stay in the same place, and "expectant and nursing mothers and children under fifteen years of age, shall be given additional food." However, reading Articles (117-126) there

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<sup>62</sup> Consortium for Street Children

<sup>63</sup> Paris Principles, The International Legal Framework for the Protection of Children in armed conflict, (2007)

<sup>64</sup> Article 24 of the Geneva Convention IV

are not any child specific provisions in the Articles on the implementation of penal laws in occupied territories or in chapter IX, on penal and disciplinary sanctions.

It must be mentioned that provisions for the protection of children in Geneva Convention IV are only applicable under Humanitarian Law during war.

### ***2.3.3 The Paris Principles***

The Paris Principles is an important document for the protection of children in armed conflict. Chapter 1, the introduction, can be considered as an elaboration on international humanitarian law. Chapter 6, is on the prevention of unlawful recruitment or use of children, and Chapter 7, is on the release and reintegration of child soldiers and children who have been otherwise involved in armed conflict. The document was adopted at a conference in Paris in 2007, and as of September 2010 it had been endorsed by 95 states.<sup>65</sup>

This legislation establishes 18 years as the minimum age for compulsory recruitment and requires states to do everything they can to prevent individuals under 18 years from taking part in hostilities.<sup>66</sup>

### ***2.3.4 The Optional Protocol on the sale of children, child prostitution and child pornography***

This piece of instrument draws special attention to the criminalization of these serious violations of children's rights and emphasizes the importance of fostering increased public awareness and international cooperation in efforts to combat them.<sup>67</sup>

In war torn zones, most street children are as a result of conflict and are forced into child soldiers by circumstance.

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<sup>65</sup> Government of France and UNICEF, "Principles and Guidelines on Children Associated with Armed Forces or Armed Groups for child protection framework," Paris, 5-6February (2007)

<sup>66</sup> <http://www.unicef.org> ( Last visited on 14. 10.15 at 20.00hrs)

<sup>67</sup> [Wwww.unicef.org](http://www.unicef.org)

### ***2.3.5 Other international instruments that provide for the protection of the rights of children***

The Geneva Convention on the International Humanitarian Law, 1949, and their Additional Protocol 1977.<sup>68</sup>

### ***2.3.6 International Labor Convection No. 138 (1973)***

Specifically states that in general, a person under age of 18 years may not be employed in jobs that are dangerous to their health or development.<sup>69</sup>

### ***2.3.6 The International Labour Organization Convention 138***

The Convention focuses on the Minimum Age for Employment Admission. The Convention obliges states parties to pursue a national policy to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest mental and physical development of children.

### ***2.3.7 Labor Convention No. 182 (1999)***

This Convention provides for the prohibition and immediate Action for the Elimination of the Worst Forms of Child Labor. This Convention obliges the states to take immediate and effective measures to ensure the prohibition and elimination of the worst forms of child labour which include:

**2.3.7.1** All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.

**2.3.7.2** The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.

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<sup>68</sup> Office of the High Commissioner for Human Rights, Aviva, 2 Nov. (2011)

<sup>69</sup> United Nations, Human Rights, Office of the High Commissioner, (2011), 9.

**2.3.7.3** The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties.

**2.3.7.4** Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

### ***2.3.8 Against Transnational Organized Crimes to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children***

This is a child protection legislation to create an international child protection legal framework provided under the Convention on the Elimination of All Forms of Discrimination Against Women and the other one is the International Covenant on Civil and Political Rights. Others are International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities. The Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially women and Children to the UN Convention on Transnational Organization Crime.

All Children irrespective of their economic status, race, color, sex, language, religion, national, ethnic or social origin, property, disability. Birth or any other status have the same rights and are entitled to the same protection by the State. Even if the Conventions don't make specific mention of Street Children all the provisions are applicable to them.<sup>70</sup>

The Committee on the Rights of the Child, the body of experts in charge of monitoring the implementation of the Convention, regularly raises the issue of children in street situations in its dialogue with the State parties, and refers specifically to their situation in several of its general comments, in particular No. 13 (2011)<sup>71</sup> on the rights of the child to freedom from all forms of violence, No. 12 (2009), on the right of the child to be heard and No. 10 (2007) on children's rights in juvenile justice. All other treaties have equally referred to the situation of children, both girls and boys living and working in the street, and have made recommendations in this regard.

There also several non-binding instruments which set standards on juvenile justice, the Benjin Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the

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<sup>70</sup> S. Parmer et al. (edit.), *Children and Transnational Justice: Truth-Telling, Accountability and Reconciliation*, UNICEF, (2010)

<sup>71</sup> <http://resourcecenter.savethechildre.se/start/countries/niger/legal-framework> (last visited, 11. 10.15 at 16:00 am).

Havana Rules. The recently adopted Guidelines for the alternative Care of Children are intended to enhance the implementation of the Convention on the Rights of the Child and other international instruments regarding the protection and well-being of children deprived of parental care.<sup>72</sup>

#### **2.4.0 *The African Charter on the Rights and Welfare of the Child of 1990***

This instrument is also referred to as the African Children's Charter, it is a very comprehensive catalogue of the rights of the child, many of them similar to those of the United Nations Convention on the Rights of the child (CRC). Article 31 stipulates the responsibilities of the child towards the family and society. Under Article 43, States Parties are required to submit to the Committee reports on the measures they have adopted which give effect to the provisions of the Children's Charter and on the progress made in the enjoyment of the children's rights.

The African Children's Charter is grounded by the following four principles: (a) Non-discrimination of children (Article 3 of the Charter); (b) The best interest of the child (Article 4(1) of the Charter); (c) The right to survival, protection and development of each child (Article 5 of the Charter); and (d) The right to participation (Article 4(2) of the Charter).<sup>73</sup>

Zambia among other 50 African states agreed and signed the African Charter on the Rights and Welfare of the Child. The charter defined a child as any person under the age of 18 years. 25 countries signed and ratified while 24 only signed and 5 countries neither signed nor ratified. In its preamble the African Charter on the Rights and Welfare of the Child recognizes that the child due to the needs of his or her physical and mental development requires particular care with regard to health, physical, mental, moral and social development and requires legal framework for protection in the condition of freedom, dignity and security.<sup>74</sup> The treaty commits the country to protect children against the various forms of social, economic, cultural and political abuse and exploitation. State parties are obliged to undertake the necessary steps and adopt such legislative and other measures to give effect to the provisions of this charter which prohibits all sexual exploitation of a child when it states that,

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<sup>72</sup> <http://www.aviva.com> (last visited on 15. 10.15 at 10:00 am).

<sup>73</sup> African Charter on the Welfare and Rights of the Child.

<sup>74</sup> African Charter on the Rights and Welfare of the Child-Preamble.

State parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent; the inducement, coercion or encouragement of a child to engage in any sexual activity. The use of children in prostitution or other sexual practices. The use of children in pornographic activities, performances and material.<sup>75</sup>

This study takes particular interest in the provisions in Articles 20 and Article 4 on parental responsibilities where it states that parents or persons responsible for the child shall have the primary responsibility of the upbringing and development of the child and shall have the duty to ensure the best interest of the child are their best concern at all times.<sup>76</sup>

#### ***2.4.1 The African Youth Charter***

The African Youth Charter Makes child and youth protection legal framework in its preamble when it defines youth or young person as every person between the age of 15 and 35 years, and minors as any person aged between 15 to 17 years but subject to each country's laws.<sup>77</sup> Part one of the African Youth Charter contains rights and duties of states and obliges Governments to provide legislation and legal framework for child protection. The instrument covers all rights as enshrined in the United Nations Convention on the Rights of the Child (CRC) covering all rights from Social, Economic, Cultural and Political Rights. This was adopted during the Seventh Ordinary session of the Assembly, held in Banjul, the Gambia on 2<sup>nd</sup> July 2006.

#### ***2.5.0 Children's rights in the Zambian Constitution***

The Zambian Constitution is the supreme law of the land and provides and guarantees for its citizenry in the Bill of Rights.<sup>78</sup> Article 23 (1) of the Constitution provides that “no law shall make any provision that is discriminatory either of itself or in effect” whilst Article 23 (2) further provides that “no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of any public officer or any public authority.”

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<sup>75</sup> African Charter.

<sup>76</sup> African Charter, Articles 20 and 4.

<sup>77</sup> African Youth Charter, Banjul, (2006)

<sup>78</sup> Article 12, of the Constitution of Zambia.



<sup>79</sup>The Bill of Rights provides rights and freedoms to everybody. It establishes the right to life, gender equality, and recognizes the right of children to identity, nationality, education and legal protection. The Constitution protects persons, including street children, from slavery and servitude, torture, inhuman or degrading punishment and guarantees young person from all forms of exploitation, neglect, trafficking or cruelty. <sup>80</sup> Article 24 (1), (2), (3) and (4) specifically seeks to protect young persons from occupations and employment that are prejudicial to their health or education or which are hazardous to their physical, mental or moral development, with exception of employment for a wage under certain conditions. <sup>81</sup>

Articles 14 (1) and 15, though they do not specifically refer to children but do include children in protecting persons from slavery and servitude, torture or inhuman and degrading punishment. <sup>82</sup>

Interestingly to note is the fact that the 1996 Zambian Constitution in its provisions does not include the economic, social and cultural rights under the Bill of Rights. These are contained instead under Part Nine of the Constitution which deals with the Directive Principles of State Policy and Duties of the Citizen and are not justiciable hence, they cannot be enforced by any court of law. Articles 110 (2), 111 and 112 (d), (e) and (f) are of special interest to our discussion. <sup>83</sup> This is the part dealing with the enactment of laws and this study seeks to establish the legal framework for the protection of children.

Worth noticing in the new Constitution is the definition of a ‘young person’ and provides that a young person means a person under the age of fifteen years. It is hard to establish the mischief the Constitution Review Commission was trying to cure by the inclusion of such a definition in the constitution as it may be construed that anybody above the age of fifteen is an adult. This study observes that such an inclusion falls short of the international standards as provided for in the CRC and common law position with reference to 18 years as the age for the child. <sup>84</sup>

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<sup>79</sup> Articles 23 (1) and 23 (2) of the Constitution of Zambia.

<sup>80</sup> Article 20, of the Constitution of Zambia.

<sup>81</sup> Employment of young persons and Children’s Act, Chapter 274 of the Laws of Zambia.

<sup>82</sup> Articles 14 (1) and 15 of the Constitution of Zambia.

<sup>83</sup> Articles 110 (2), 111 and 112 of the Constitution of Zambia.

<sup>84</sup> Article 1 of the Convention on the Rights of the Child; Article 2 of the African Charter on the Rights and Welfare of the Child.

### ***2.5.1 Adoption Act, Cap 54 of the laws of Zambia***

Under this law in Article 2 it is interpreted that the word infant means a person who has not attained the age of twenty one years,<sup>85</sup> but does not include a person who is or has been married. It regulates the making of arrangements by adoption Societies and other persons in connection with the adoption of children and consent of parents or guardians of the child. The Act also empowers the Commissioner of juvenile welfare to supervise adopted children. If legal procedures have not been followed some adopted children end up as street children while others are subjected to human trafficking and child abuse. Section 4 of this Act makes restrictions to adults who are eligible to adopt an infant on the ground of age of the adoptive parents, number of people who can adopt an infant and discourages male applicants alone to adopt female children.<sup>86</sup>

### ***2.5.2 Juvenile Act Cap 53 of the Laws of Zambia***

This is another legislation that provides protection for children's rights. The Juvenile Act provides for the custody and protection of juveniles in need of care, and provides for the correction of juvenile delinquents. The Act also makes mention of approved schools and reformatories.<sup>87</sup> A good juvenile justice system should be in line with the international standards such as the Benjin Rules<sup>88</sup>, the United Nations Rules for the protection of juveniles deprived of their liberty as contained in the Havana Rules and the United Nations Guidelines for the Prevention of juveniles Delinquency as provided for under the Riyadh Guidelines<sup>89</sup> in order to protect children like street children who are often in conflict with the law. Although these guidelines are not binding they do provide a legal framework for dealing with children. Article 73 of the juvenile Act stipulates how to deal with juvenile offenders.

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<sup>85</sup> The preamble of the Adoption Act, Chapter 54 of the Laws of Zambia.

<sup>86</sup> Section 4 (1) (a) of the Adoption Act of the Laws of Zambia.

<sup>87</sup> Preamble of the Juveniles Act, Chapter 53 of the Laws of Zambia.

<sup>88</sup> Adopted by the United Nations in 1985

<sup>89</sup> Adopted by the United Nations in 1990.

### **2.5.3 Legitimacy Act, Cap 52 of the Laws of Zambia**

Legitimacy Act operates within the legal framework of the Zambian law when it deals with the status of a child at birth. The researcher notices that this piece of legislation is discriminatory in nature as it does not seek the best interest of the child as provided for in Arts. 2,3,4,6 and 12 of the CRC General Principles.<sup>90</sup> If a child is born in wedlock by parents who are legally married to each other he or she is considered by law as a legitimate child and is illegitimate if born out of wed lock. Also, Article 55 contains an elaborate catalogue of children's rights, including equality of all children before the law, whether born in or outside wedlock.<sup>91</sup> This piece of legislation has a huge impact on a good number of children roaming the streets and spending nights in tunnels. Some of them are deemed illegitimate and thus thrown out of their family homes. The law gives all entitlements to a child born within wed lock thus, the effective enforcement of this law can protect the rights of many street children.<sup>92</sup>

### **2.5.4 Affiliation and Maintenance of Children Act, Cap 64 of the Laws of Zambia**

This Act has been impliedly repealed in its application to maintenance and custody proceedings by the Matrimonial Causes Act No. 20 of 2007.<sup>93</sup>

### **2.5.5 Education Act, Cap 54 of the Laws of Zambia**

This is the legal framework in harmony with UN Convention on the Rights of the Child specifically Articles, 28, 29, 30 and 31 on Education, leisure and cultural activities.<sup>94</sup> The aim of the Act is to domesticate the CRC provisions in the Convention on the Right to Education. In Article 14,<sup>95</sup> the Act firmly asserts a person's right to early childhood care, development and education and the right to basic and high school education. While section 15 expressly provides for the child's right to free basic education. It is quite exonerating to note that the 2010 Draft Constitution also provides for the child's right to free basic education in Articles 55 (5) and (c).<sup>96</sup>

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<sup>90</sup> B.M Chuulu and K.S Ngan'du et al. Inheritance in Zambia: Law and Practice, (1994), 32.

<sup>91</sup> Legitimacy Act, Cap 52 of the laws of Zambia.

<sup>92</sup> Legitimate Act Cap 52 of the laws of Zambia.

<sup>93</sup> Matrimonial Causes Act No. 20 of the laws of Zambia.

<sup>94</sup> The UN Convention on the Rights of the Child.

<sup>95</sup> The Education Act, Cap 54 of the Laws of Zambia.

<sup>96</sup> The Draft Constitution Review Bill of Zambia.

Related to that is Article 62 (1) (f) which seeks to assure to every person the right to education. In keeping with Article 28 of the CRC, compulsory school attendance in Zambia has been provided for in section 17 of the Education Act.<sup>97</sup> Under this law parents have been mandated to enroll every child that has attained school-going age at an education institution and ensure the child's attendance.

Nonetheless, most of these laws have been vaguely articulated without much commitment in the Constitution so as to avoid an imposition of a positive duty on the part of the Government to provide for them.

Borrowing from the African Child Forum; "Laws are the foundation of social policy and central to the promotion and defense of child rights and welfare".<sup>98</sup>

In this regard all laws to be enacted on the rights of children in Zambia should help achieve the policy goals, objectives and strategies various international instruments. The provisions relating to street children's rights however, maybe found in a broad range of legislation and these legislations are fragmented, contractor and poorly implemented. There is also evidence of some children being thrown out school sometimes for wrong reasons and legal challenges for children to access justice to claim their rights hence some of them resorting to street life.

The best example is in the case of *Feliya Kachasu vs. Attorney General*<sup>99</sup>, in this case a grade seven pupil of Buyantashi Primary School in Mufulira aged eleven, a member of the Watch tower Church was suspended from school pursuant to regulation 31 (1) (d) of the Education Act for refusing to sing the National Anthem based on her religious belief. Through her father Mr. Felix Kachasu she challenged the constitutionality of this regulation and that it infringed on her freedom of conscience as guaranteed by the Constitution. In this case the court was in effect sanctioning her sending away from school based on the reasons given by the school authorities.

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<sup>97</sup> Education Act, Section 17 of the laws of Zambia

<sup>98</sup> Realizing Rights for Children: Harmonization of Laws of Children, Eastern and Southern Africa, African Child Forum Report, 2007. P.1.

<sup>99</sup> *Feliya Kachasu vs. Attorney General* (1967) ZR P. 145.

### **2.5.6 *New Education Act, No. 23 of 2011***

The new Act seeks to provide for child's right to free basic education and then the new law prohibits the contraction of any form of marriage by a learner who is a child. The Act now obligates the Minister to ensure equal access to quality education to all learners including poor and vulnerable children such as street children. It as well prohibits the imposition of corporal punishment or degrading or inhuman treatment on a learner.<sup>100</sup>

### **2.5.7 *Liquor Licensing Act No. 20 of 2011 of the Laws of Zambia***

Another more recent piece of legislation with specific provisions for child protection is the Liquor Act No. 20 of 2011.<sup>101</sup> Under this Act Section 35 provides in part, that a licensee shall not employ a child in licensed premises. Section 36 prohibits the sale or delivery of intoxicating liquor to a child. Further it is prohibited to knowingly allow a child to consume intoxicating liquor in any bar or allow any child to enter or remain in a bar. The rationale behind this law is that very often children below 18 years illegally employed in bars and other drinking place are exposed to alcohol and often abused by adults.

### **2.5.8 *The Anti-Gender Violence Act No. 1, 2011***

The Anti-Gender Based Violence Law (2011),<sup>102</sup> unlike other countries in the region who have specific Anti-Domestic Violence laws, was signed by the Zambian President Rupiah Banda in April 2011 marking a major step forward in the fight against gender based violence (GVB) in Zambia. One of the most comprehensive laws on GVB in SADC, the Act gives hope to many women and children who have been subjected to GVB without adequate recourse. It offers a comprehensive legal framework for protection and means for victims and survivors of GVB as well as prosecution of perpetrators.

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<sup>100</sup> New education Act No. 23 of 2011 of the laws of Zambia

<sup>101</sup> Liquor Licensing Act No. 20 of 2011 of the laws of Zambia

<sup>102</sup> <http://www.genderlinks.org.za/article/zambia-anti-gender-based-violence-act-passed-2011-10-07>(last visited 26.10.15 at 21:40hrs)

### **2.5.9 Marriage Act, Cap 50 of the Laws of Zambia**

This legislation seeks to address and regulate the age below which marriage should not be contracted. Under Article 33 (1) the Act considers a marriage between persons either of whom is under the age of sixteen years shall be void without the consent of their parents or guardians. The law is in the best interest of the child principle also in the African Charter Article 4. The Act is in harmony with the CRC's Family Environment and Alternative Care Articles 5, 9-11, 18 (paras. 1 and 2), 19-21, 25, 27 (pars. 4) and 39.<sup>103</sup>

### **2.5.10 Intestate Succession Act, Cap 59 of the Laws of Zambia**

The intestate Succession Act was enacted and came into effect on 19 May 1989. The main objective of this Act was to reform the law of succession into a unified one that would cater for all Zambians. Prior to the enactment of this law, matters of succession were organized on the basis of patrilineal, matrilineal and bilateral systems of succession, the chief characteristics of which were the exclusion of the spouse and the remaining children from inheriting the property. Act also sought to include spouses and children among the beneficiaries to the intestate estate. Exclusion theory here applies as we can easily identify some of the elements of exclusion deeply imbedded in the norms and customs of society.

In its preamble the Intestate Succession Act is; an Act to provide a uniform intestate succession law that will be applicable throughout the country; to make adequate financial and often provisions for the estate of persons dying not having made a will and to provide for matters connected with any incidentals to forgoing.<sup>104</sup> Law applies takes into account the traditional concept of family which by and large extends beyond the nuclear family. Section 2 of the Act however, restricts application to only members of community to whom customary law would have applied if the Act had not been passed.

The law was applied in the case of *Jennifer Chilinde Langamu vs. Brian Langamu*,<sup>105</sup> In this case the court took three years , from 1999 to 2002, to decide in a case in which the administrator, who happened to be the deceased's elder brother, sold the farm on which his late

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<sup>103</sup> Marriage Act, Cap 50 of the laws of Zambia

<sup>104</sup> Preamble of Intestate Succession Act, Cap 59 of the Laws of Zambia

<sup>105</sup> Jennifer Chilinde Langamu and Brian Langamu 1999/ HN/206

brother had allowed him to settle temporarily. The widow challenged the purported sale as the property had been registered in her late husband's name in trust for her three sons. At that time of passing judgment, which was in the widow's favor, the administrator had since died. The High Court had made an order in its ruling that the administrator should refund the money to the respondent who had bought the farm in good faith and for its value. The widow decided to abandon the case as there was no one to refund the money and she felt that she had spent too much time on the case and wished to carry on with her life. This researcher observes that in a situation like that of social exclusion in terms of law and custom, three sons could easily resort to street life for safety.

In another related case dealing with justice in intestate succession law in a *Sheila Matafwali and Anthony Kambafwile*,<sup>106</sup> in this case the administrator was again sued by the widow and requested to render an account of how he had administered his young brother's estate. Similarly, judgment was found in favor of the widow and the administrator was ordered to return property he had misappropriated, some of which he had taken to Malawi. Again this case commenced in the year 2000 and judgment was only passed in November 2002, almost three years later. Most of the items returned were shells of what they originally were, they had been broken and some were not working properly. The widow rejected the property as she said she did not want to keep junk in her house and would buy other items. This widow said it was enough satisfaction to her that she had taken the administrator to court and judgment went in her favor.

This Act in section 2 also provides for the appointment of an administrator whose role is to distribute the estate in accordance with the provisions of the act.

#### ***2.5.11 Employment of Young Persons and Children Act, Cap 274 of the Laws of Zambia***

The Act seeks to provide in line with the ILO Convention concerning Minimum Age for Admission to Employment and the ILO Convention concerning Prohibition and immediate Action for the Elimination of the Worst Forms of Child Labour.

#### ***2.5.12 National Child Policy***

The National Child Policy was a legal instrument reviewed to take account of the adoption of the CRC and emerging issues related to poverty, child labor, trafficking, HIV and AIDS and child

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<sup>106</sup> Sheila Matafwali and Anthony Kambafwile 200/HN/135

abuse. It aims to consolidate all existing and comprehensive statutes and provide a watch dog on child exploitation.

### ***2.5.13 The Penal Code of the laws of Zambia (Amendment) Act 15 of 2005***

Various sections of this Act provide legislations that focus on child protection. For instance, section 136 of the amendment Act,<sup>107</sup> provides that, any person who unlawfully takes a child out of the custody or protection of the child's father, mother or other person having lawful care or charge of the child and against the will of such father, mother or other persons commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding ten years. Under the same Act, section 137. A (1)<sup>108</sup> says a person who practices sexual harassment in a work place, institution of learning or elsewhere on a child commits a felony and is liable, upon conviction to imprisonment for a term of not less than three years and not exceeding fifteen years.

In section 138 (1)<sup>109</sup> any person who knows a child carnally commits a felony and is liable, upon conviction to a term of imprisonment of not less than fifteen years and maybe liable to imprisonment for life.

In section 143,<sup>110</sup> the amendment Act of 2005 states that any person who sells or traffics in a child or other person for any purpose or in any form commits an offence and is liable, upon conviction, to imprisonment for a term not less than twenty years and may be liable to life imprisonment.

Under section 157 (1)<sup>111</sup> of this law it is clear that any person who conducts or causes to be conducted a harmful cultural practice on a child commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and maybe liable to imprisonment for life. Part (2) Continues and clarifies, in this section "harmful cultural practice" include sexual cleansing, female genital mutilation or an initiation ceremony that results in injury, the

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<sup>107</sup> [http://www.chr.up.ac.za/undp/domestic/docs/legislation\\_10.pdf](http://www.chr.up.ac.za/undp/domestic/docs/legislation_10.pdf) ( last visited on 26. 10.15 at 16:00 hrs

<sup>108</sup> Section 137 A. (1) of the Penal Code of the Laws of Zambia, as an Amendment Act of 2005.

<sup>109</sup> Section 138 (1) of the amendment Act.

<sup>110</sup> Section 143 of the amendment Act.

<sup>111</sup> Section 157(1), (2) of the amendment Act.



transmission of an infection or life threatening disease or loss of life to a child but does not include circumcision on a male child.

### **2.6.0 Conclusion**

Street children phenomenon is a growing problem in Zambia and world over but if left unchecked the numbers of un-protected children on the streets threaten to reach unprecedented levels if not dealt with within the framework of the law and specific policy making. In order to respond to the problem, this chapter has made a concise account of child related legislations at international level, regional and national level. However, the researcher perceives that although Zambia has various pieces of legislation to provide for a legal framework for children's rights protection, most of them still remain unclear and very fragmented. Each relevant piece of legislation seems to set age limits that are appropriate for its purposes. Some of the laws also carry clear discriminatory elements.

## CHAPTER THREE

### EFFICACY OF CURRENT ZAMBIAN LAWS TO PROTECT STREET CHILDREN

#### 3.0 Introduction

In terms of providing protection for street children and other vulnerable children, in 2013 Zambia was ranked 22 out of 52 in the index ranking of child protection in the African Report on Child Wellbeing, developed by the African Child Policy Forum.<sup>112</sup>

Although it is undisputed fact that there are various pieces of legislation in place that are child related, fragmentation and enforcement weaknesses of the same still remains the biggest challenge for the Government and all stakeholders.

#### 3.1 The Constitution of Zambia

The Constitution of Zambia does not expressly and directly guarantee children's rights, notwithstanding street children's rights who have not even a single provision. It does not define a child although it defines a young person, which leads to contradictions and less protection.<sup>113</sup>

The Constitution does not protect children especially female children from the harsh effects of cultural norms and practices that discriminate against them and make them susceptible to vices like child marriages.

For example, section 17 of the marriage Act,<sup>114</sup> goes against the provisions of CEDAW and the Protocol on the Rights of Women which recognize equal parenting rights of parents to a child. By granting unequal decision making authority over the life of a child to only one sex further hinders the effort of the country in combating the practices of child marriages through dialogue and compromise. A typical example was in the Zambian politician *Edith Nawakwi v Attorney*

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<sup>112</sup> Save the Children, National Child Protection System in Zambia, (2010), 80

<sup>113</sup> Panos Institute Southern Africa, Plan International and Human Right, Media Brief on Ending Child Marriages in Zambia, (2014), 24.

<sup>114</sup> Section 17 of the Marriage Act of the Laws of Zambia

*General Case of 1991.*<sup>115</sup> It is the case bordering on the consent of the mother which did not apply to the father when applying to add the child on his passport. The judge quashed the Passport Officer's decision calling it discriminatory and offensive citing Zambia's ratification of CEDAW.

### **3.2 Assessing Marriage Act, Cap 50 of the Laws of Zambia**

This law has a huge bearing in dealing and resolving family disputes and consequently affects the life and future of the children. Due to lack of access to effective justice systems in the country, especially in rural areas many children have been neglected and as a result a good number of them are increasingly turning into street children.

By definition, marriage is a union between two consenting adults of opposite sex, to the exclusion of all others.<sup>116</sup>

In the case *Hyde v Hyde*,<sup>117</sup> Lord Penzance, defined marriage when he said, I conceive marriage as understood in Christendom, may be defined as the voluntary union for life of one man and one woman to the exclusion of all others. According to Ndulo,<sup>118</sup> most of the statutory law of marriage is composed of received law, which in view of the colonial history, is in effect English law. The English marriage applies to Zambia by virtue of Section 11 of the High Court Act.<sup>119</sup> The Act was enacted to modify English law which was made applicable to the country to suit local conditions and also set up the administrative machinery necessary to administer marriage laws, such as the elimination of districts, the appointment of registrars of marriage and the detailing of marriage ceremony procedures. In Zambia there are principally two ways by which marriage can be contracted namely; civil and customary marriages.

### **3.3 Civil marriage**

A civil marriage is contracted in accordance with an Act of Parliament also known as statutory marriage because they emanate from statutes. In this marriage two people can contract a

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<sup>115</sup> Edith Nawakwi v Attorney General (1991) HP/1724. <http://www.saflii.org/zm/cases/ZMHC/1991>

<sup>116</sup> <http://www.zambialii.org/files/zm/legislation/act/2007/20/mca2007197.pdf> (last visited 27.10.15 at 22:00hrs)

<sup>117</sup> *Heyde and Heyde* (1866)LR1&D130,133

<sup>118</sup> M. Ndulo (edit.), *Law in Zambia*, Nairobi, (1984), 143.

<sup>119</sup> Marriage Act, Cap 50 of the laws of Zambia

marriage and have it solemnized by the registrar of marriages or a gazetted minister of religion. Under the Zambian civil law, a person aged 21 years is eligible for marriage. Therefore, child marriage in this research is any marriage carried out below the age of 18 years involving either one or both spouses as children, before the girl is physically, physiologically and psychologically ready to shoulder the responsibilities of marriage and child bearing.<sup>120</sup>

### 3.4 Customary marriage

Under customary law, a marriage is a union between people in accordance with their customary practices. Unlike in the case of civil marriage, many customs in Zambia do not limit the number of people who would be part of this union, but the practice is that the union comprises of one or more women.<sup>121</sup> The marriages contracted under Zambian laws and tradition are usually valid only after definite steps are taken. Nonetheless, according to the Zambian customary law, a child who attains puberty is old enough to be married.<sup>122</sup>

Zambia has signed two declarations regarding Children's Rights namely; the CRC and the African Charter on the Rights and Welfare of the Child, both instruments stating that a child is any person under the age of 18 years. However, defining who a child is in Zambian laws is still a challenge. The status of a child is a complex one in laws as one maybe a child for one purpose but an adult for another even if we know that childhood last until one reaches the general age of majority which is 18 years according to the Zambian Constitution. It is also evident that in some cases some children due to this ambiguity in laws assume adult rights, obligation and responsibilities before the age of 18 years. This is partly due to the specific pieces of legislations that have different definitions. For example; the Penal Code under Chapter 87 of the Laws of Zambia states that a 15 year old maybe liable for the crime of defilement.<sup>123</sup> It is clear from this piece of legislation that under this law the child is exposed to adult criminal prosecution before the general age of majority which is 18 years. In addition, the marriage Act states that the legal age for marriage in Zambia is 21 years of age, but allows for marriages below this age with

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<sup>120</sup> United Nations General Assembly Report, Child Marriage Study: Preventing and Eliminating Child Marriages. (2002)

<sup>121</sup> <http://www.zambialii.org/zm/judgment/supreme-court/2000/59> (last visited 27.10.15 at 22:00hrs)

<sup>122</sup> <sup>122</sup> L. Mushota 'International law, Women's Rights and the Courts: A Zambian Perspective' (2014), 98.

<sup>123</sup> Chapter 87 of the Penal Code of the Laws of Zambia

consent of an adult. Article 33 of the marriage Act,<sup>124</sup> states that, a marriage between persons, either of whom is under the age of 16 years, shall be void, with an exception permitted in the case where a judge of the High Court has given consent to the marriage.

Besides, in customary law, under which most child marriages take place, a child can be married when he or she reaches puberty stage.<sup>125</sup> Most girl street children are victims of early marriages therefore, in an effort to seek protection they left rural areas to City life fending for themselves on the streets. The general age thus permits predictable administration, but ignores individual differences. This author observes that in order to close up the gaps in law, it is important to note that not all children are homogenous, the law must therefore, allow some level of flexibility in protecting children's rights while striking a balance between law and order.

### **3.5 Limitations of the marriage Act**

Section 10 of the marriage Act,<sup>126</sup> stipulates that if someone younger than 21 years was married under customary law and the spouse died, such a person could be eligible for a civil marriage, regardless of the fact that they are still under the age of 21 years. This means, therefore, that a child can still be forced into another marriage. This creates a contradiction on the age of the consent between customary and civil law which renders the law ineffective and leaves gaps.

### **3.6 Assessing the legal framework dealing with Birth Registration**

In compliance with the CRC Article 7.1<sup>127</sup> and Article 6.2<sup>128</sup> of the African Charter, Chapter 51,<sup>129</sup> Section 5 of the Birth and Deaths Registration Act 1973 of the laws of Zambia states that the birth of every child born and the death of every person dying in Zambia after the commencement of this Act shall be registered in accordance with the provisions of this Act. This law makes birth registration mandatory. It provides a uniform law for the registration of all births and deaths in Zambia, without distinction of origin or descent. Despite this piece of legislation, Zambia's registration rate is nonetheless, among the lowest in the world. Less than 10% of

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<sup>124</sup> Article 33 of the Marriage Act of the Laws of Zambia

<sup>125</sup> Human Rights Watch Interview: Zambia (2000), 16

<sup>126</sup> Section 10 of the marriage Act of the laws of Zambia

<sup>127</sup> Article 7.1 of CRC

<sup>128</sup> Article 6.2 of African Charter

<sup>129</sup> Chapter 51 (5) of the birth and death Act of the laws of Zambia

Zambian children are registered at birth. According to UNICEF report of 2013, approximately 6% of rural births in the country were registered.<sup>130</sup>

Some of the contributing factors are such as not prioritizing national registration exercise by the government and subsequent lack of civic education on the importance of birth and registration, complex centralized and under resourced legislative and administrative procedures for birth and death registration within the government legal framework. Although the law is there it lacks systematization and this creates a barrier in an effort to provide protection for children's rights and their well-being. This author observes that in the absence of birth and death registration as provided by law, it is difficult for the government to plan and include child protection in its budget agenda and in the provision of other public goods and social services which street children and other children require for their human development both in urban and rural areas. Lack of effective laws in this case is a violation of the CRC instrument and its provisions. Lack of statistics makes it even more difficult for policy making and law enforcement. For instance making policies for street children placement uniting them with their families without registration is challenging and consequently government cannot plan adequately for the implementation of free education policy for children which is one of their fundamental rights. Registration would help government in planning and construction of how many schools according to children statistics available.

### **3.8 Laws on access to education**

The Convention on the Rights of the Child (CRC) provides that children have a right to free, compulsory basic education. In 2002, Zambia removed user fee for primary aged children, which helped reduce the cost of education. According to UNICEF, this has made a significant impact on enrolment rates. In recent years, Zambia has shown an ongoing commitment to improve its education system.<sup>131</sup> Zambia's Education Act, was amended in 2011 in order to provide for compulsory school attendance for children in basic education and instituted a ban on marrying a child attending school. In 2012, there was also a budget increase to the education sector, and

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<sup>130</sup> UNICEF report of 2013

<sup>131</sup>[http://resourcecentre.savethechildren.se/sites/default/files/documents/advancement\\_of\\_childrens\\_rights](http://resourcecentre.savethechildren.se/sites/default/files/documents/advancement_of_childrens_rights)(last visited 27.10.15 at 23:00hrs)

Zambia's new Draft Constitution <sup>132</sup>provides as well for every child's right to a free basic education.

Challenges however still remain in ensuring access to early learning and secondary education where services are either limited or inaccessible to the poorest children due to development contribution fees being asked from learners. Contrary to government policy, many teachers and school administrators require students to purchase uniforms or pay a fee before allowing them to attend classes, preventing some children from attending school.

Other than the cost, there are additional barriers that keep some children from attending school. For example, in rural areas, schools may be located far away from the child's home, this is cited as the main reason for why over a quarter of Zambian children do not go to school. In some cases, according to UNICEF, in some areas children may live closer to schools but there may be no enough learning space. There is currently a shortfall of 22,000 classroom spaces and much of the education infrastructure requires rehabilitation. In some instances there is also lack of appropriate sanitary facilities especially for the girl child, this too contributes to some not going to school.

In spite of all these efforts by the government, Zambia is among the many African countries that have failed to reach the target of allocating 26% of the total National Budget to the education sector or 6% of Gross National Product, as per the Education for All (EFA) goals.<sup>133</sup>

### **3.8 Conclusion**

There are a number of mechanisms relating to children's protection rights. Fundamentally, children enjoy all human rights, and thus all human rights mechanisms at international, regional and national levels must afford them protection. This chapter has analyzed the efficacy of the Zambian laws in providing child protection.

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<sup>132</sup> Articles 55 and 62 of the 2010 First Draft Constitution of Zambia

<sup>133</sup> <http://unesdoc.unesco.org/images/0023/002325/232565e.pdf> (last visited on 27,1015 at 16:15hrs)

## CHAPTER FOUR

### LEGAL AND INSTITUTIONAL IMPEDIMENTS IN ACCESSING PROTECTION FROM CHILDREN'S RIGHTS ABUSE

#### 4.0 Introduction

Whilst assessing though not all legal and institutional impediments, this chapter will discuss the scale, extent, nature, urgency and complexity of lack of street children's protection issues which are startling in Lusaka. Besides, it will look at numerous varied ways in which the government, civil society actors, communities and street children themselves can help prevent and respond to violence, abuse and exploitation being perpetrated in public places among others markets, bus stations and streets.

#### 4.1 Conflict in customary, national and international law

The Constitution of Zambia protects every action of customary personal law, as the area of law most affected by culture and which includes such things as marriages, gender roles in the home and community, divorce, child custody and maintenance, death and devolution of property. Customary marriage is ethnic specific. As such, it is very difficult to have uniform application in Zambia. For instance, in inter-tribal marriage disputes, a Bemba man from a matrilineal group who marries a Ngoni woman from patrilineal group, it will be very difficult to find a law suitable in the administration of the children's benefits or widow' or widower's benefit. This makes it difficult to change a lot of the bad cultural practices that exacerbate discrimination against women and children including child marriages. These practices cannot be deemed to be discriminatory against children, or indeed even between children of different sexes, if it can be shown that such practices are the norm under a particular culture.<sup>134</sup> Such practices escalate the vulnerability of children to opt for street life.

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<sup>134</sup>C. Nkhata, Media Brief on Ending Child Marriages in Zambia, Panos Institute, Southern Africa Lusaka Zambia (2014), 22.



Nonetheless, in order to safeguard the interest of the child, the committee on the Rights of the child states that, the CRC will prevail in situations where there is a conflict with domestic legislation or common practice and that local or customary law should be brought into compliance with the CRC.<sup>135</sup> Needless to say, at national level this has never been effected or not enforced into practice. This is particularly in relation to inheritance rights of women and children and in traditional practices regarding early marriages, abusive and exploitation behavior towards children.<sup>136</sup> After all, as evidenced, additional criminal procedural and evidentiary elements remain problematic. For instance, section 8 of the Criminal procedure Code stipulates that subordinate courts may promote reconciliation for assault and other offenses not amounting to a felony. Implicitly, this provides an avenue for many cases not being prosecuted involving violence against street children, as victims tend to favor reconciliation, due to imbalance in power relations and economic dependence.

Zambia has a dualistic legal system meaning that the country embraced Zambian Customary law and Common law. The implication of dualism on international law is that for any international instrument or convention to find its way into domestic law it must undergo the domestication process through an Act of parliament.<sup>137</sup> However, as he appreciates international law while in defense of customary law, Cobbah states that,

It is my contention that to correct injustices within different cultural systems of the world it is not necessary to turn all people into Westerners. Western liberalism with its prescription of human rights has had a worthwhile effect not only on Westerners but on many peoples of this world. It is, however, by no means the only rational way of living human life... Instead of imposing the Western philosophy of human rights on all cultures one's effort should be directed to searching out homeomorphism equivalents in different cultures. In other words, we should understand that

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<sup>135</sup> [http://www.child-soldiers.org/international\\_standards.php](http://www.child-soldiers.org/international_standards.php)(last visited on 6<sup>th</sup> Dec, 2015 at 14:00hrs)

<sup>136</sup> The Committee on the Rights of the Child General Comment No.5, General Measures on the CRC (Articles 4, 42 and 44 par. 6) Nov. 2003.

<sup>137</sup> <http://www.nyulawglobal.org/globalex/Zambia.html>(last visited 6<sup>th</sup> Dec,2015 at 14:30hrs)

homeomorphism is not the same as equivalence and strive to discover peculiar functional equivalence in different cultures.<sup>138</sup>

The researcher observes that human rights norms partly proceed on the basis that the protection of the family as a social unit should not be used to justify restrictions on the individual rights of family members. Here the context and the implications for vulnerable groups are always going to be important in the interpretation of rights. Therefore, the process of domestication sometimes leads to customary law contradicting national law and both Zambia's customary and national laws conflicting with the United Nations Convention on the Rights of the Child and the Children's Charter. The application of customary law and common laws in Zambia gives rise to a number of complications and difficulties. It is actually in itself an impediment to accessing human rights protection for street children and other vulnerable children. For example, despite legislation governing inheritance, discriminatory practices related to property dispossession are allowed to continue under customary law yet Zambia ratified the international instrument for the elimination of all forms of discrimination against women CEDAW.<sup>139</sup> Given the fact for example, that most marriages are contracted under customary law, the Constitutional exception provides in Article 23 (4) (c)<sup>140</sup> but excludes the gender equality principle in matters such as adoption, marriages, divorce, burial, devolution of property on death which are of particular importance. For example, in the case *Rex v. Chinjamba*,<sup>141</sup> the Supreme Court reiterated that, under customary law there is no minimum age for marriage, and thus there can be lawful carnal knowledge of a child which remains however, contrary to international human rights obligations. As can be seen, there is no harmonization between two law systems. While the government is to be commended for discouraging the practice of underage marriages, it should also seek to address this anomaly.

Chapter 87 of the laws of Zambia, under Section 157 of the Penal Code, proscribes harmful cultural practices on children. It states that any person who commits a harmful practice on children commits a felony and is liable to a minimum of 15 years imprisonment and a maximum

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<sup>138</sup> J. A.M. Cobbah, African Values and the Human Rights Debate: An African Perspective, 9 HUM.RTS.Q 309,328-29 (1987)

<sup>139</sup> <http://www.un.org/womenwatch/daw/cedaw/>(last visited 6<sup>th</sup> Dec, 2015 at 15:00hrs)

<sup>140</sup> Article 23 of the Laws of Zambia

<sup>141</sup> *Rex v. Chinjamba* (1949) NRLR 384.

of life imprisonment. This researcher argues that this provision can be used to challenge some of the retrogressive cultural practices under customary law.

Discriminatory practices related to marriage and family is still widespread and continues to create a hostile atmosphere against women and children. In the case *A. v. United Kingdom*,<sup>142</sup> the European Court of Human Rights explained that state parties must protect the human rights of their inhabitants from violation by others, including by private parties subject to the state's jurisdiction or authority. Similarly the African Commission on Human and People's Rights equally stated that,

Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights, both civil and political rights and social and economic generate a number of duties for a state that undertakes to adhere to a rights regime. The State is obliged to protect right holders against other subjects by legislation. The State must move its machinery to protect beneficiaries of the protected rights towards actual realization of the rights.<sup>143</sup>

While acknowledging the value and contributions from customary law to the Zambian human rights legal system, this author argues that the existence and practice of some retrogressive customary laws is an impediment to accessing the right to protection for the street children. As a result, women and children are left destitute resorting to living and working on the street after being removed from their marital home with no household goods.

## **4.2 Courts with Jurisdiction over Human Rights**

Human Rights in the Constitution of Zambia is provided for in the Bill of Rights under Part III entitled, Protection of the Fundamental Rights and Freedoms of the Individual.<sup>144</sup> Therefore, human rights are constitutional rights which if any person alleges that any protection under the Bill of Rights has been or is being or is likely to be contravened in relation to him, that person

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<sup>142</sup> *A V. United Kingdom* (No. 25599), 1998-IV Eur. Ct. H.R. /22

<sup>143</sup> *Soc. & Eco. Action Rights Ctr. V. Nigeria*, judgments Afr. Comm'n on Human & People's Rights /44,46-47, ACHPR/COMM/A044/1 (2002)

<sup>144</sup> Part III of the Zambian Constitution

may apply to the High Court for redress according to article 23.<sup>145</sup> Unfortunately, the current Bill of Rights does not include the ESCR which for the sake of the street children and other defenseless victims would have been made also justiciable rights in the court of law. In relation to child protection, by implication the Constitution limits the *locus standi*<sup>146</sup> since application is only to be done in relation to oneself.

Otherwise according to Lord Denning in *R v Paddington*<sup>147</sup> said,

The Court would not listen, of course to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interest are affected by what has been done.<sup>148</sup>

For instance, imagine that a concerned citizen wants to challenge a law. He must first show that he is experiencing harm as a result of the law. The draft Constitution here does well to suggest the extension of the *locus standi*, meaning that anyone will have a stand to sue on seeing the rights of another person contravened on behalf of that victim even without knowing that person. In this case, the abuse of street children's rights with an extended *locus standi* can attract public interest to seek judicial redress in the High Court, the court of first instance in human rights cases.<sup>149</sup> In the current scenario it is the High Court that is empowered to make such orders, issue such writs or give such directions as it may consider appropriate in order to enforce or secure the enforcement of any protective provision. Therefore, the High Court is the court of first instance in Human Rights litigations.

The same Constitution provides that if any proceedings before any Subordinate Court also known as Magistrate Courts, there arises a question as to the contravention or likely contravention of any protective provisions under the Bill of Rights, the Court must refer the matter to the High Court at the request of any party unless the Subordinate Court is of the opinion that the point raised is frivolous or vexations.<sup>150</sup>

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<sup>145</sup> Article 23 of the Constitution of Zambia

<sup>146</sup> <http://lex-warrier.in/2015/04/locus-standi/> (last visited 02.11.15 at 12:00hrs)

<sup>147</sup> *R v Paddington Valuation Officer. Ex Peachey Property Cooperation Ltd*(1966), QB 380

<sup>148</sup> <http://thelawyerschronicle.com/understanding-the-principle-of-locus-standi/> (last visited 26.10.15 at 23:10hrs)

<sup>149</sup> Submission by the Jesuit Centre for Theological Reflection to the Human Rights Committee of the National Constitutional Conference Inclusion of Economic, Social and Cultural Rights in the New Bill of Rights of the New Constitution, Lusaka, Zambia, 2009.

<sup>150</sup> J.B.Sakala, 57

According to the JCTR submission to the Human Rights of the National Constitutional Conference Committee for the new Zambian Constitution, the Zambians who have their rights abused or not protected are those that cannot claim their rights on their own, such as the street children and other children in general that are harassed.<sup>151</sup> There is a need for concerned citizens and organizations who may not be affected themselves to have the right to bring the complaint before the courts of law on behalf of those who are affected. The current constitution lacks endorsement of full public interest litigation. In effect, this means that only a victim can legally petition the courts of law if her or his rights are infringed upon or denied.<sup>152</sup>

#### **4.3 Some Constitutional impediment: Nolle Prosequi derogation power Art. 56 (3)**

Although there is no sufficient evidence that such a case has happened with regards to any child related case in the courts of law, where the Director of Public Prosecution decided to declare the *Nolle Prosequi* it however, does not mean it cannot happen since this is a prerogative under Section 81 (1) of the Criminal Procedure Code Chapter 88 for the DPP. The Zambian Constitution Article 56 (3) states that,

The director of Public Prosecutions shall have power in any case when he considers it desirable so to do to discontinue at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.<sup>153</sup>

A *Nolle Prosequi*,<sup>154</sup> is a Latin phrase which literally means to be unwilling to prosecute or to be un willing to proceed with the prosecution.<sup>155</sup> It is provided that in any criminal case and at any stage before a verdict or judgment, the DPP may enter a *nolle prosqui* informing the court that he or she does not intend to continue with the proceedings. The accused is then discharged although such discharge is not an acquittal. This power is unchallengeable in any court and it is not subject to control by any court.

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<sup>151</sup> [http://www.jctr.org.zm/publications/998-nccescrpresentation09/file\(last](http://www.jctr.org.zm/publications/998-nccescrpresentation09/file(last) visited on 6<sup>th</sup> Dec, 2015 at 16:00hrs)

<sup>152</sup> [http://www.jctr.org.zm/publications/998-nccescrpresentation09/file\(last](http://www.jctr.org.zm/publications/998-nccescrpresentation09/file(last) visited 30.10.15 at 23:00hrs)

<sup>153</sup> Article 56 (3) of the Laws of Zambia

<sup>154</sup> [http://www.nolo.com/legal-encyclopedia/whats-the-difference-between-nolle-prosequi-dismissal-charges.ht\(last](http://www.nolo.com/legal-encyclopedia/whats-the-difference-between-nolle-prosequi-dismissal-charges.ht(last) visited 30.10.15 at 20:00hrs)

<sup>155</sup> [http://www.nolo.com/dictionary/nolle-prosequi-term.html\(last](http://www.nolo.com/dictionary/nolle-prosequi-term.html(last) visited 6<sup>th</sup> Dec,2015 at 16;10)

Depending on the interest in the case at hand, this principle can be both a legal and institutional impediment blocking access to justice in Human Rights violations. In cases of child abuse involving high ranking officials or state wings, justice can be hard to access and if the DPP so wishes he can just decide to enter a *nolle prosqui* unchallenged.

#### **4.5 State as an impediment in protecting the rights of street children**

Zambia like other English speaking states has a dualist system of laws; the judiciary cannot apply in its domestic adjudications any international human rights laws without passing through an Act of Parliament. This is not the case with the monist states such as the French and Portuguese speaking countries. For them any ratified treaty or charter which is fully published automatically allows domestic courts to apply its provisions as part of domestic laws.<sup>156</sup> Although the CRC and the African Charter have been ratified by Zambia, they have not been fully domesticated. Unless by implication otherwise it is difficult for the courts to make reference to such international instruments. Only in rare cases as it happened in the *Sarah Longwe v. Intercontinental Hotel Limited*.<sup>157</sup> In this case the Intercontinental Hotel having a reserved policy on Right of Admission, which prohibited unaccompanied women to enter certain parts of the hotel denied the unaccompanied Sarah Longwe entry to the Luangwa Bar part of the hotel. Consequently, she sued the hotel on the ground that she was discriminated against because she was a woman although she was fully protected by CEDAW an international instrument which Zambia had ratified without domestication. In his ruling, the learned Justice Musaumali held,

It is my considered view that ratification of such documents by a nation state without reservations is a clear testimony of the willingness of the State to be bound by the provisions of such a document. Since there is willingness, if an issue comes before court by which would not be covered by local legislation but would be covered by such international document, I would take judicial notice of that treaty or Convention in my resolution of the dispute.

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<sup>156</sup> M.Ndulo, (edit) Law in Zambia, (1984), 143.

<sup>157</sup> Sarah Longwe v Intercontinental Hotel 1991 /HP/765

Here we see that the learned judge used judicial discretion and made reference to CEDAW an international treaty which Zambia had ratified but did not domesticate stating that by implication through ratification Zambia had the intention to be bound by the provisions of the said treaty, therefore, he was at liberty as a judge to make reference to it in his adjudication. Partly, this researcher argues that having CRC and African Charter legal framework without domestication, the instruments do not serve the intended purpose making it hard for the protection rights bearers to claim their rights in any court of law to seek redress in times of infringement. The author also recognizes that the power to domesticate international Treaties is not within the jurisdiction of the judiciary but rather the state which is the duty bearer, therefore, the state stands as a clear impediment in the protection of the rights of street children and the general citizenry who are the rights holders.<sup>158</sup>

#### **4.6 Conclusion**

Through analyzing the legal and institutional impediment in accessing protection, this chapter discusses the parliament of Zambia and other stakeholders to consider seriously the protection of street children in their legislation. Chapter four has cautiously indicated that Parliament is the principal representative institution of the state. It is responsible for representing all sectors of society, articulating their interests into relevant policies and making sure that these policies are implemented effectively. Street children's rights to protection from violence, abuse and exploitation are not in any way limited or circumscribed as a result of their age. Children's limited capacity to protect themselves always means that considerations of age and capacity can only suggest stronger rights for protection and never weaker ones.

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<sup>158</sup> [http://www.advocate-for-children.org/advocacy/rights\\_based\\_approach/rights](http://www.advocate-for-children.org/advocacy/rights_based_approach/rights)(last visited 01.11.15 at 16:58hrs)

## CHAPTER FIVE

### MECHANISMS NEEDED FOR A ROBUST LEGAL FRAMEWORK TO PROTECT STREET CHILDREN'S RIGHTS

#### 5.0 Introduction

This chapter will present mechanisms needed to create a robust legal framework to adequately protect the street children. It will discuss different approaches that could be useful in order to curb the impunity.

#### 5.1 An inclusive legal approach to street Children Phenomenon

Through their leadership, legislators and other wings of the government can energize others work on street children protection to harmonize the process of social reintegration. Often, bringing diverse people with social influence into partnership, yields positive results. Such partnerships could involve trade unions, parent groups, social workers, religious organizations and children and young people themselves resulting into a legal synergy mechanism without any sign of child neglect and exclusion.

Child neglect has been cited among other factors as one of the reasons why children feel socially excluded and thus find themselves on the streets.<sup>159</sup> A UN study on street children of 2009 in Cairo and Alexandria Egypt showed 62% of street children citing child neglect as one of the direct causes for being on the streets. Another similar study was conducted in South Africa indicating an estimated 10,000 to 12,000 homeless and socially excluded children in South Africa who were victims of child neglect and ended up on the streets. Some other studies in different places show other factors of social disintegration and exclusion in forms such as, early marriages, poverty, overcrowding, abuse, family net disintegration, HIV/AIDS as causes for street children. In relation to this, the UN Child Economic Fund (UNICEF) said in the report,

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<sup>159</sup> G. Mubita, Interrogating the Efficacy of the Law on Neglecting to Provide Necessities for Children in Zambia; an analysis of section 169 of the Penal Code (Amendment Act No. 15 of 2005) a study carried out in Chipata, Zambia, A Dissertation submitted in Partial of Fulfilment for a Master Degree in Women's Law, (2012), 14.



UNICEF acknowledges the immensity of the suffering of the children of the world. The children of Zambia are no exception. Each day they suffer from the scourges of poverty and economic crises. They experience hunger and malnutrition. They carry a great burden of sickness and disease. Although they are the country's hope for the future, their present difficulty in meeting their basic needs for food, shelter, clean water, adequate sanitation, good education, and necessary health services does not prepare them well for that future.<sup>160</sup>

Society in different ways is either directly or indirectly affected by Street children ostracization from community main stream life. The silence surrounding the stigma and life of a street child needs to be broken by people in authority and people of influence in society. Many issues surrounding life on the street can be very socially exclusive, sensitive, hidden behind stigma, secrecy, shame and corruption is involved. These issues are taboo subjects, particularly where they relate to sex or to religion. This silence in itself is a barrier to progress on child protection. It is impossible to mobilize action on something people do not accept exists. By raising issues of street children protection in public and showing leadership through regulation, the scenario of social exclusion can change with time. Social reintegration would be the way forward in curbing the street children phenomenon through legislation.

## **5.2 Social exclusion theory applied to street children in Lusaka-Zambia**

Social exclusion is defined as structural, institutional or agentive process of repulsion or obstruction.<sup>161</sup> It is also equated with poverty in the sense of social disintegration measured mainly in four dimensions namely; impoverishment, labour market, exclusion, service exclusion and exclusion from social relations which is also capability or entitlement failure. The Indian study defined social exclusion as a denial of the basic welfare rights that provide citizens positive freedoms in education, health, water and sanitation and social security.<sup>162</sup> It could thus be concluded that, it is a non-recognition or disrespect for the citizenship rights on which livelihood and living standards depend without any regard for human dignity.

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<sup>160</sup>UNICEF study on Street Children. Office of the High Commissioner for Human Rights. (2010). Human Rights: Key to keeping the MDG Promise of 2015

<sup>161</sup> A.M. Fisher, Social Exclusion Destiny Working Paper, January, (2008), 1.

<sup>162</sup>[http:// www.academia.edu/9001](http://www.academia.edu/9001)(last visited 09.11.15 at 16:00hrs)

We need a legal framework that encourages the creation of social inclusion and deconstructs social exclusion structures. Zambian law has shortcomings and gaps in respect of children's rights. First of all, there are no children's rights specifically enshrined in the constitution, although minimally, children are entitled to the same rights guaranteed to all persons. Article 11(a) guarantees everyone the right to life, liberty and security of person. Article 11(c) protects young persons from exploitation, but no specific mention is made about street children and other groups of vulnerable children in need of protection. It is true that street children are children too. It is also true that not all children are street children. Therefore, street children form a specific group of children with unique characteristics; the country has child related laws, however street children have special needs which only specific laws can provide. The mentioned few laws are excluding in nature by guaranteeing the adult rights to children as exclusively children's rights can hardly be claimed by an adult to be enjoyed.

### **5.3 Contextualizing Bio-ecological theory to street children in Lusaka-Zambia**

This theory places a Lusaka street child in the context of hostile complex interrelationships with and within the social environment they live in. Very Oftenly, these environments are not child friendly as they portray hostility in various forms on a defenseless child. This creates a progressive mutual accommodation between an active, growing child and the dynamic properties of the immediate environment. Street children growing up in hostile environment adapt and learn to move, communicate, and interact with the world and develop a sense of personal and cultural identity which is very unique.<sup>163</sup>

Like in many African cultures, a child's roles in Zambia are determined in large part by age, gender, and status. Traditional household relationships revolve around customary rules of family etiquette that demand certain patterns of interactions and determine behavior patterns. The movement of an individual from infancy to youth, to adulthood, and old age influences the nature of these interactions in terms of providing for and drawing on family resources according to one's abilities and needs. Children are expected to meet certain requirements in African

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<sup>163</sup> [http://www.uua.org/documents/derman-sparkslouise/1206\\_233\\_identity\\_stages.pdf](http://www.uua.org/documents/derman-sparkslouise/1206_233_identity_stages.pdf)(last visited 09.11.15 at 17:00hrs)

society as they go through social training and socialization. Therefore, a good child friendly environment will provide a good ambiance for child development.<sup>164</sup>

It is evident on the streets of Lusaka that Street children look very hostile and frustrated because of the socialization process they go through on the streets. During normal child development, a child is expected to grow mentally and physically by observing adults and participating in activities that impart social values of society. At an accepted age children in families are taught to start contributing economically to the household's subsistence. They learn as early as four or five to care for their siblings and cleaning. At seven years they begin to engage in almost all adult chores although in a limited way.

Work is thus seen as age appropriate behavior for children. This is not merely related to the necessity of children's labour for domestic production, nor for teaching children the survival skills required to earn living as adults. It is a process of enculturation into their roles in the domestic economy and wider community.<sup>165</sup> In the case of street children and the interaction to their environment, all these stages seem to have eroded since sometimes they begin adult roles far too early for survival purposes. They also learn skills wrongly due to lack of adult supervision and guidance.

At the age of fourteen years depending on the tribe, for example a boy child among the Ushi people of Luapula Province of Zambia will have acquired the swimming and fishing skills which are essential for survival in the environment. Among the Lenje of Central Zambia and other pastoralists, the boy will have learnt how to take care of cattle. They are engaged in private farming, petty trading or casual work in the urban towns. This work is particularly imperative, as by this age the children are expected to provide for themselves those personal items that are seen as the responsibility of the individual, and buying items that are necessary for their progression into adulthood. Wundt's<sup>166</sup> 1921 formulated two psychologies; a physiological psychology focusing on experimental study of immediate experiences and a higher psychology that could not be studied using laboratory methods but through descriptive sciences such as ethnography and

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<sup>164</sup> <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2270351/>(last visited 09.11.15. at 17:10 hrs)

<sup>165</sup> <http://www.unige.ch/fapse/SSE/teachers/dasen/Nsamenang2006.pdf>(last visited 09.11.15 at 17:30hrs)

<sup>166</sup> <http://www.ogradywellbeing.com/wp-content/uploads/2011/12/HelpYourChildSleepAlone2.pdf>(last visited 09.11.15 at 18:00hrs)

linguistics.<sup>167</sup> In both works Wundt emphasized the need for discipline in child development. Children ought to be trained holistically, physically, mentally and spiritually to develop fully and maximize their potential.

Article 27 of the African Charter on Human and People's Rights states that every individual has a duty towards family, society and the state.<sup>168</sup> Article 29 (1) further provides that every person has the duty to preserve the harmonious development of the family and to work for the cohesion and respect of the family.<sup>169</sup> Community members are also expected to report incidents of child marriages and ensure that the law is enforced against perpetrators. The Zambian Government report's to CEDAW recognizes that family is regarded as a very important institution ideal for child development and that the state has put laws and policies in place to safeguard it.

#### **5.4 Applying a Human Rights Based Approach**

In order to realize fully the Social and Political rights as well as the Economic, Social, Cultural Rights which provide for street children's rights, a human rights based approach is a required. Hence, it is important to consider efforts made in this line and still being made by government and different actors in the country through its institutions such as the social welfare, police, and the judiciary to name but a few. In cases of abuse of rights of street children, the principles of non-discrimination, participation, accountability and transparency are to be employed. Cases of violence, and infringement of rights would have to be reported to relevant authority regardless of who is involved without discrimination. Street children ought to be considered as fellow actors, by protecting street children with street children through participation. Accountability of resources earmarked for street children protection programs and expended only for the intended purpose. Government expenditures for this purpose must be efficient and effective by practicing regressive measures through cutting down on unnecessary programs not related to the protection of Economic, Social and Cultural rights.<sup>170</sup> Transparency in planning and carrying out programs for street children's protection would have to be made available to the beneficiaries and the

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<sup>167</sup> A. Pences & B. Nsameng, A Case For Early Child development in Sub-Saharan Africa, (2008), 12

<sup>168</sup> Article 27 of the Africa Charter on Human and People's Rights

<sup>169</sup> Article 29(1) of the ACHPR

<sup>170</sup> C. Lumina, an independent expert report to the UN General Assembly during the twenty-fifth session, 2014

public through involvement of the media. The media would have to be trained on how to get interested to report on street children's rights and lobby for advocacy through social media.

Creating strong partnership between state and families is important. It places reporting and dealing with issues of child maltreatment within the legal framework. These services are to be provided by legal personalities readily available in schools and other public places where street children are found. It is a Government responsibility to make all children's rights justiciable by securing both ratification and accession to the Convention on the Rights of the Child and other legal instruments coupled with development and implementation of corresponding national legislation and programs.

### **5.5 Reinforcing family net structures through legislation**

A report on *Breaking The Net: Family Structure and Street Children in Zambia* said,

The number of street children in Zambia doubled over the 1990s. National studies conducted in 1991 and 2004 estimated the number of street children in Zambia to be approximately 35,000 and 75,000 respectively. This represents an increase from about 0.9% to 1.6% of Zambian children living on the street.<sup>171</sup>

This in essence showed a serious indictment in government's policy system and its mechanism in responding to the issue. While many street children come from poor families and families affected by HIV. Poverty and the impact of HIV per se do not lead to children take to the streets. Looking at both two sets of social exclusion and regressions; those at household level, assessing the probability of a family originating street children and those at the individual child level assessing the characteristics of a child within a street family that make him more likely to end up on the street. The following elements emerged: the health status of the male head of the household plays a fundamental role in determining the probability of the street children including the family net.<sup>172</sup> A higher number of husband's sisters and presence of maternal grandparents reduce the probability of originating street children. Finally, a younger composition of children in the household, a lower presence of orphans as well as a higher share

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<sup>171</sup> <http://gvnet.com/streetchildren/zambia.htm>, (last visited 27.07.15 at 20:00hrs)

<sup>172</sup> Tacon and Lungwangwa, *Zambian Ministry of sports, Youth and Child Development, Lusaka, (2004)*

of girls in the household are all associated with lower probability of the street children outcome. In addition, the role of the child within the family matters, nephews, stepchildren and household heads siblings are less likely to end up on the street compared to natural son and daughters thus indicating that when an extended family accepts nephews and stepchildren, it is because there is the intention to keep and protect them according to the Breaking the Net: Family Structure and Street Children study conducted in Ndola.<sup>173</sup>

Over all, these results confirm the importance of the extended family safety net as well as the key role of the female presence in the household in reducing the likelihood that children will end up on the street. In this case government policy intervention mechanisms can promote the role of women in the family and supporting extending family links. Legislating on programs targeting vulnerable women headed households through the social cash transfers is a good step in the right direction. Through law, government support given to these family net with the creation of mandatory soft loans with lower interest rates to enhance small and medium enterprises (SMES) help to keep these families at risk intact for the best interest of the children. Government in its legal framework to institute child negligence inspectors to curb the scourge of neglecting children left behind by one deceased member of the extended family.

## **5.6 Legislating for Women and children**

This is a kind of approach that is women centered considering the woman's lived experience in raising up a child. Truly it is almost impossible to talk about child suffering in isolation. Often times, women suffering has a huge bearing on the life of the children. A woman cares for her child from conception. Conversely, this does not end at birth, the care goes on until the child is grown up.<sup>174</sup> Thus taking care of the child is a huge and costly responsibility. Given enough legislation and financial supported regulated by law, single mothers can raise children alone as opposed to their male counter parts. Most street children come from single parents who are male. Most male parents would not stay single after death of their spouse for long, for the sake of the children, they would instead marry another woman for the sake of the children. While a single mother would stay long without a husband for the sake of the children. In child neglect, for example, married men may neglect children because of another woman; neglecting children in

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<sup>173</sup> <http://www.streetchildren.org.uk/reports%20child.doc>(last visited 09.11.15 at 22:00hrs)

<sup>174</sup> <http://www.law.harvard.edu/students/orgs/jlg/vol312/277-322.pdf>(last visited 13.12.15 at 14:00hrs)

itself is painful for the woman because seeing her children suffering is awful, the reality of another woman in her husband's life increases pain, a situation her husband finds pleasure in. A good number of families today have women as their bread winners therefore, the full implementation of international instruments such as CEDAW and the ACRWC that protect women is necessary in advocating for both the rights of women and children in Zambia. Nonetheless, this researcher acknowledges the existence of legislation which provide for children and women protection. For instance, the Matrimonial Causes Act (no. 20 of 2007) and the Affiliation and Maintenance of Children Act (Chapter 64 of the Laws of Zambia) which provide for the factors the courts must take into account when awarding maintenance and affiliation orders as well as custody or guardianship of children. In addition, The Juveniles Act, (Chapter 53 of the Laws of Zambia), Intestate Succession Act (Chapter 59 of the Laws of Zambia), Wills and Testate of Estate Act (Chapter 60 of the Laws of Zambia) and Adoption Act (Chapter 54 of the Laws of Zambia).

It is this necessary connection that forces women to make sacrifices for their neglected children, a connection that makes the children's pain their own. Data collected from women during the research shows that when the woman is pregnant, her biological life embraces their needs. Therefore, the experience of being human for women, differentially from men includes the counter-autonomous experience of emotional and psychological bond between mother and infant. Women are profoundly relational.

## **5.9 Conclusion**

It is clear from the discussions in this chapter that a strong legal frame work is put in place in order to better provide for protection for the rights of the street children in Lusaka. Although Zambia has some child related laws in place, this chapter has presented and argued out for some approaches that can enhance better legislation that is non-exclusive to curb child neglect and enact child care laws.

## CHAPTER SIX

### PRESENTATION OF FINDINGS AND DISCUSSIONS

#### 6.0 Introduction

This chapter presents its research findings regarding assessing the existing legal framework and institutional impediments in providing protection for street children. It will discuss, analyze and interpret the findings considering the methods employed during data collection. The findings are in line with the study objectives namely, carrying out an audit of child related legislation as a legal framework. To identify, examine the existing legal framework and institutional impediments. Finally to explore and determine the legal mechanisms for better protection of street children. The focus group discussion and interviews present the extent of our assessment. During this research as we discussed the child related laws in the preceding chapters it became clear that the laws are there although one may question their efficacy and enforcement to curb the impunity in the abuse of street children's rights as expressed in the interviews by the street children themselves.

#### 6.1 Participants observations during discussions and interviews

Participants' observation is one of the key techniques used in ethnographic studies. According to Dewalt and Dewalt,<sup>175</sup> living and working with the people that one is trying to understand, provides a sense of the self and the other that is not easily put into words. Thus, Dewalt mentions five degrees of participation namely; non-participation, passive participation, moderate participation, active participation and complete participation. Over all, the participation of the informants was good since every member made contributions including the seven year old girl in the group. Whilst the researcher on his part took a moderate participation to allow for free contributions from street children. Nonetheless, observing the street children in market places, on Cairo road, Soweto and Inter City bus stations the researcher decided to use passive participation as a technique to help pay more attention to the un said features such as the

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<sup>175</sup> <http://www.osti.gov/servlets/purl/792086-PjT3OB/native/>(last visited 22.12.15 at 23:00hrs)



scruffy dressing, the eating habits, talking habits, movements and their reactions to the public especially as they negotiate with their customers while selling their merchandise. The observation made revealed that there are strata of social interactions that exist between street children and the general public. The distant observation equally revealed how vulnerable and unprotected the street children were on streets.

## **6.2 Interviews, discussions and emerging themes**

With various methods and approaches involved, over and above the study presents a very perspective-based outlook in that the samples involved were classified into three classes of informants namely, the street children, the officials and other professionals to inform the study from their perspective on their perception of the legal and institutional impediments in protecting street children. Thus, from the informants' perspective certain recurrent themes kept emerging in most group discussions and interviews. Here is a presentation of some of the themes from the findings.

## **6.3 Family structures**

During the focused group discussion the researcher picked up some common themes and concepts expressed by the street children such as, family. A 16 year old girl quickly lamented,

I have no family, they do not accept me and I do not recognize them because they wanted me to get married while I wanted to continue with school (DB)

## **6.4 Weak laws**

Another theme that emerged during the group discussion was weak laws. To my surprise participants clearly knew what their rights were. They literally mentioned all children rights. This informed the study that now that they were in School Street children were educated on human rights through Civic Education as a subject. However, when asked if the laws were efficient to curb street children's rights abuse a 17 year old former street child said,

The laws were there but weak. Some participants recalled how the reported cases of child abuse went unpunished and that unless cases were reported police would not arrest anyone committing violence on street children in public places and the unwarranted physical violence and verbal abuse they had to endure in public places. (BY)

At this moment it was observed that she became emotional almost losing her composure to near tears and even asking if it was possible to have a chart with the president to tell him the plight of street children. Then another participant a 15 year old added,

Maybe we should go to the parliament since the session is still on and ask them to debate the laws to protect the rights of street children. (MK)

During the focused group discussion the social worker cited customary laws as an example for weak laws when she retorted,

Take for example domestic violence and gender based violence. Normally when incidents are reported to the victim support unit, the advice is to resolve these matters domestically for fear of sending the perpetrator to prison. Besides, customary law demands that a woman keeps the secrets in her family. A woman is told to be strong and persevere any suffering inflicted upon her by the husband and to always remember that the husband is the only head of the family. (TS)

This response seems to suggest that under customary law the Zambian society is patriarchal in nature as men are the only heads of the family. Customary law seems to create lacunas with regards to those Zambian communities which are matrilineal by infringing on the right of women to be heads of their families within the matrilineal system. This demonstrates that dysfunctional laws can contribute to the abuse of human rights especially street children's rights due to their ineffectiveness as well as their ineffective reinforcement to meet international standards.

A casual question was asked to a law student whether there were gaps between the law and practice; in response he said,

The law does protect children from abuse and neglect by parents or guardians because there is a provision in the penal code. The law is adequate and there is no need to amend it further. The law helps protect children the challenge is with the enforcement. (MN)

To me that meant that even if effective laws were there, they were ineffectively enforced. This also informed me that the law was lacking in effect since police most of the times encourages counselling and reconciliation for victims of children's rights abuse.

Another human rights law student added that,

The law on child neglect offers protection to children theoretically, and practically it does not. The police for example will tell people to go and discuss with a view to resolve the matter back home using the local remedy. There isn't enough will to prosecute and there is evidence in abuse in the case of street children at Soweto market and other public places in Lusaka. The law is weak and exists only on paper. (LN)

This response enlightened the study that both law enforcers and lawyers consider effectively enforced child protections laws to be those where positive results were yielding. It was therefore, concluded that the existing law does not protect children's rights due to ineffective enforcement. While appreciating the very existence of the law it surprisingly does not adequately deal with the defaulters or punish them which means the law does not in any way act as a deterrent. This is supported by the lack of decided cases in the courts of law dealing with child neglect and children's rights abuse. Whereas it can be acknowledged that people who commit crimes will have to be punished, punishment should go beyond the retribution and punishment fits the crime philosophy.

The total number of participants from the interviews and focused group discussion added up to 100. When children were asked if they were on the streets during the day, at night, or both. The statistics showed by gender that 60 (60%) of boys were only during the day, 30 (30%) of boys were both day and night and 10 (10%) only at night. While 15 (15%) of girls were on the street day and night, 65 (65%) day only and 20 (20%) at night only.

**Table 1: Showing when street children are on the streets**

Time when on the street	Boys	Girls	Total
Day and night	12 (12%)	5 (5%)	17 (17%)
Day only	30 (30%)	28 (28%)	58 (58%)
Night only	10 (10%)	15 (15%)	25 (25%)
Total	52 (52%)	48(48%)	100 (100%)

**Source:** From interview data (Mulenga Oswald, 2015)

Going by statistics as shown in table 1. There were more boys on the streets than girls. Compared to the boys more girls were on the streets at nights only. Over all, there were more street children on the streets during the day than any other time. It was concluded that there are more activities being done on the streets by girls during the night than by the boys. Day activities only were dominated by the boys.

### **6.8.5 Activities street children are engaged in**

When asked what activities street children were engaged in, a 14 year old girl narrated;

We sniff stuff, sell bottles, and sell plastics, begging, selling drugs. Prostitution for girls is very common at night when they live streets. Even a 12 year old girl knows how to handle bigger men as a prostitute. Some are also taken in lodges and brothels by rich people. Stealing and sometimes leading the blind. Carrying luggage, washing cars, for people and other labour peace works sometimes even selling for other people things like water supplied even by some small business holders. (NT)

This appeared like a good number of children go to the streets having gone through the economic socialization at home or having the consciousness to achieve self-reliance. Therefore, street children work and socialize on the streets. It seems, as explained by Dordick<sup>176</sup> that streetism or

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<sup>176</sup> Dordick Research Group <https://enzymes.che.rpi.edu/index.php/publications>(last visited on 25.12.15 at 16:00hrs)

homelessness in general encourages a process in which personal relationships are mobilized among street children in trying to produce what the physical environment fails to provide for them. This also informed me that from the nature of the works done, street children have carved gender economic spaces for themselves. That is, some of the works are gender specific. The girls normally will sell groundnuts, fruits even if today they seem to cross over gender boundaries while the boys work as *Eagle-Eagles*,<sup>177</sup> washing cars, carrying heavy luggage, selling pirated music on CDs and DVDs. Some works are gender neutral like selling newspapers, water and plastic bags. It was also concluded about the dangers and hazards involved especially selling on the fast moving cars and how unprotected they are, by labour laws as they are susceptible to cheap labour force. Against this economic background it was concluded that begging for money or food seems to be an acceptable social behavior on the streets of Lusaka.

In an endeavor to understand the causes to be addressed to curb the street children phenomenon participants registered the reasons why they were on the streets. Generally poverty takes the central stage among the causes as can be seen in Fig. 2. Out of a 100 participants 35 of them account for homelessness 25 as having run away or chased from home. A total of 20 confirms the definition of street children who frequent the streets while they have homes and families to support, mostly they are single headed families. On the other hand the smallest figure shows no response to why they are on the streets.

**Table 2: Reasons for being on the streets**

<b>Reasons for being on the street</b>	<b>Frequency</b>	<b>Percentage</b>
To earn money to support the family	20	20%
Because they are orphans with no one	15	15%
Family abuse and other related issues	25	25%
Because of peer pressure	3	3%
Because they have no home	35	35%
No response	2	2%
Total	100	100%

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<sup>177</sup> *Eagle-eagle* is a coined word commonly used to refer to vendors on the street

**Source:** From interview data (Mulenga Oswald, 2015)

A social worker added that,

They do not only beg, but they would rather ask if you have some work to do for you and then you pay them. Some would work as cleaners in shops, market and bar they prefer to work for food than begging directly for money except when they are desperate. They spend their nights in open places like bus stations, markets, drainages and tunnels without any mosquito net. (SWP)

This shows that children in the street situation make use of their skills by doing multiple jobs to earn their living. Nonetheless, they lack protection from labour laws to help them market their services and get a just wage from their labour. The works they do in addition to their living conditions make them susceptible to numerous social and health problems. This further informed me about how exposed they are at night to mosquito bites and other health hazards and how they are unprotected by the law and social health policy as street children when they go to hospital to access treatment they are asked to pay like anyone else the user fee.

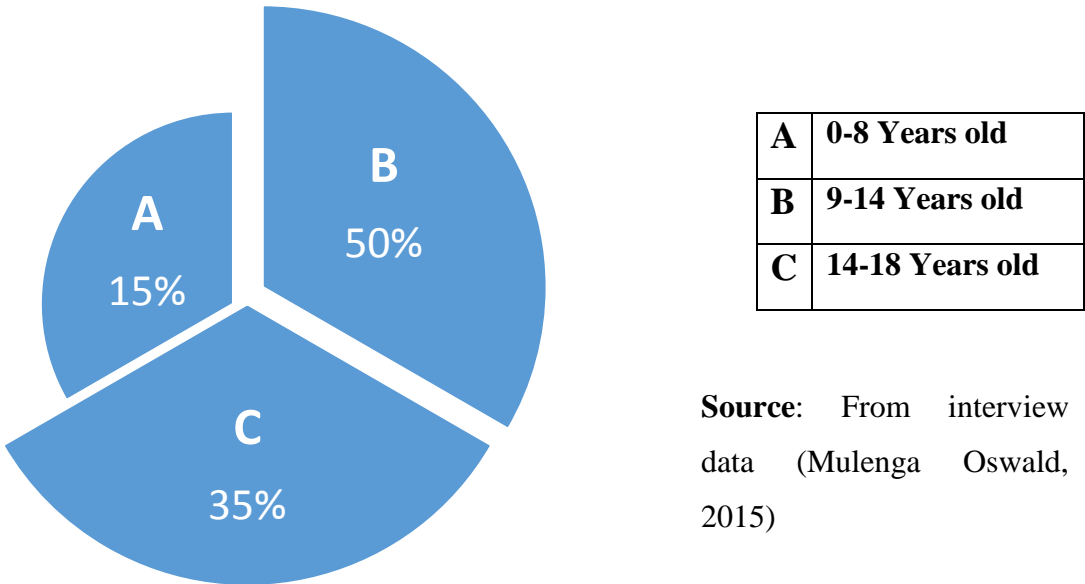
**Table 3: Showing activities done by street children on the street**

<b>Activities street children do while on the street</b>	<b>Done by boys Only by %</b>	<b>Done by girls Only by %</b>	<b>Done by both sexes By %</b>
Washing cars	30%	0%	0%
Selling CDs/ Videos	15%	0%	0%
Clothes	10%	%	0%
Food Items	20%	35%	45%
Newspapers	8%	4%	12%
Begging	12%	3%	15%
Assorted items	10%	8%	25%
<b>Total</b>	<b>100%</b>	<b>52%</b>	<b>97%</b>

**Source:** From interview data (Mulenga Oswald, 2015)

This shows that almost all boys on the street do one thing or the other. Only half the girls are involved in selling something on the streets the other half maybe domestic workers and 97% of street children do something to earn a living. 3% of street children depend on hand outs for a living.

**Figure 1:** Showing the percentage of orphans who are also street children by Age Group.

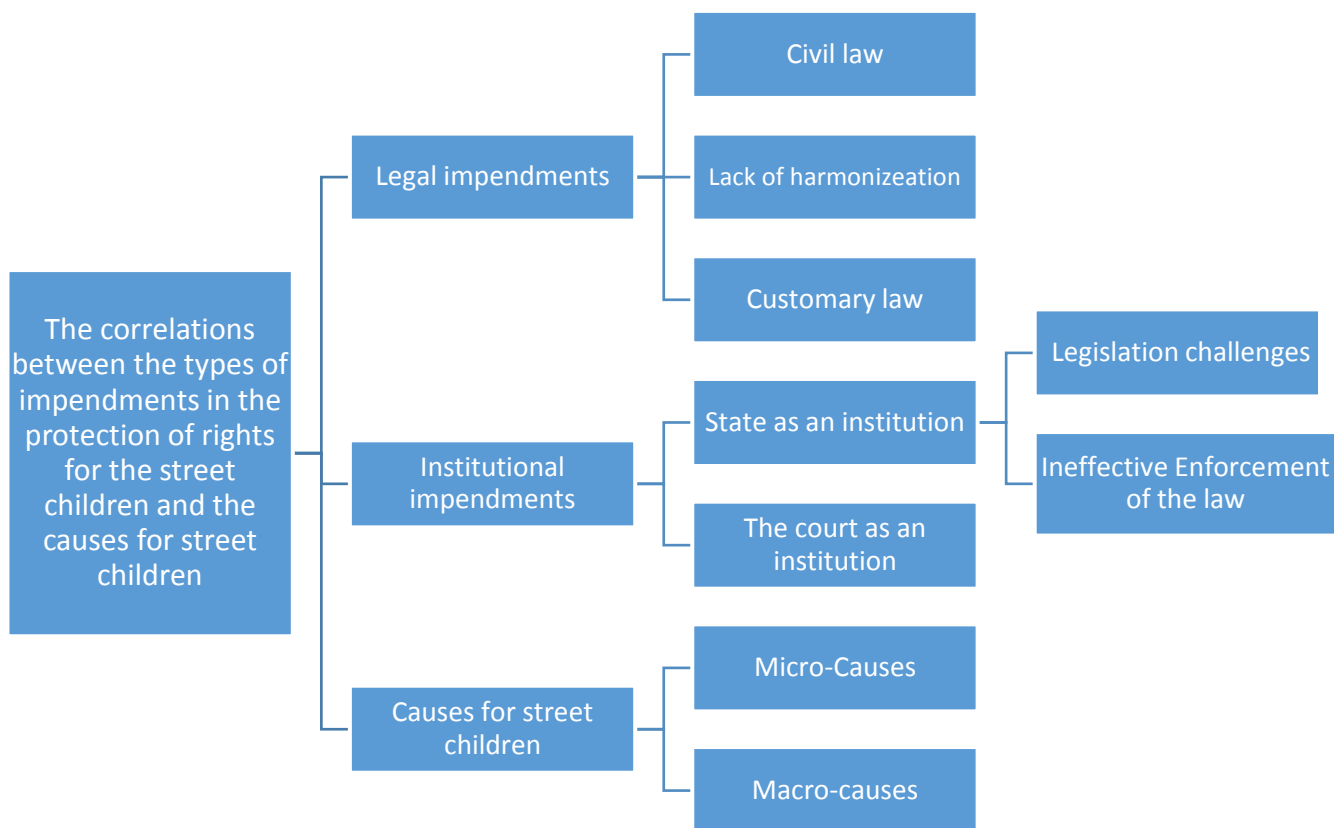


**Source:** From interview data (Mulenga Oswald, 2015)

This chart informs us that there are currently fewer orphaned street children who are on the streets between 0-8 years old partly due to high infant mortality rate among orphans. Whereas children from 9-14 years old account for 50%. Which means currently the majority street children are under 15 years old which certainly has future economic and social impact on society therefore, the need for all stakeholders to plan and legislate for their social welfare. It would imply government institutions of lower learning would have to plan for more learning spaces too. The 14-18 years old percentage seems relatively smaller to the one in the B category. This could partly be attributed to government, Churches and NGOs intervention programs to remove street children from streets into rehabilitation facilities for skills training. It is also worrisome to note that 85% of the majority street children are between 14 and 18 years old. It needs urgent legal

framework and policy intervention in that this is an important stage for a child’s development through formal education at school. In their case, they are on the streets.

**Figure 2:** Shows the correlation that exists between the legal and institutional impoundments in the protection of street children’s rights and the causes of street children.



**Source:** Data from findings (Mulenga Oswald, 2015)

The diagram in figure 2, shows that to attend to the street children phenomenon in providing a legal frame work for the protection of their rights depends on a number of interdependent and correlated factors. Which I demonstrate in the chart. A lesson was picked from the focused group discussion that the valuable factors that can contribute to the provision of the Social Economic and Cultural Rights can immensely support the protection of their rights. State machinery is well positioned to take measures to legislate and enforce the child related laws.



Following the correlation categorized, the two major causes of street children can be grouped mainly into micro and macro factors.

## **6.8.6 Impediments**

### **6.8.6.1 Legal Impediments**

Lack of harmonization between civil and customary law with respect to adhering to the international standards on child protection creates a legal barrier in accessing protection. Certain cultural practices among different tribes create another difficult in striking a balance between tradition and justice.

### **6.8.6.2 Institutional Impediments**

The first institution entrusted with the protection of human rights is the state and enforcement through its various state institutions. Lack of willingness on the part of the state to domesticate in full all child related international treaties creates a huddle in accessing protection for street children's rights. It is also nothing to write home about the fact that we have some child related laws which are in essence dysfunctional and cannot be effectively enforced. When the child psychologist was asked if the institutions are doing enough she commented that,

Quite alright the state is trying by implementing laws to prevent child abuse. Yes the law is there but still not fully practiced by the law enforcers and the citizens. The law must be explained to all citizens. (TM)

### **6.8.6.3 Customary law marriages**

Customary marriages is an impendent in the protection of the rights of street children and causing the increase in the numbers of the girl street children. Some customary marriages amount to defilement cases under the international law as provided in the international treaties of the civilized community. Under customary law a girl under age is married off provided she has attained puberty. Therefore, a man having sexual

intercourse with a girl below the age of sixteen years to whom he is married does so legally as long as such a girl is of age (puberty) and he is married to her according to custom. Under section 138 (1) of the penal code as amended, the section does not prohibit sexual intercourse with a minor if it is done under customary law. The section states as follows:

Any person who unlawfully and carnally knows any child commits a felony and is liable upon conviction to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life.<sup>178</sup>

It is complete defense for any person to engage into sexual intercourse with a girl below sixteen if they are legally married as was considered in *Rex V Chinjamba* case.<sup>179</sup> It was held by the high court that, it is not unlawful for a man to have carnal knowledge of a girl to whom he is lawfully married, despite the fact that the girl was under sixteen years old.

Asking about the early marriage cases and defilement cases among street children the official from the office of the social welfare explained the gaps in the law saying,

The question of the wrongfulness of the accused person depends on whether the purported marriage had been solemnized. If it was not, then as the girl was under the age of sixteen, the marriage and subsequent intercourse was wrongful. If it was solemnized, the intercourse would be lawful and the accused would have committed no crime. (SW)

This information helped the research to verify the null hypothesis that early marriages are rampant in the densely populated compounds of Lusaka. Also that Lusaka has one of the highest numbers of street children and defilement cases in Zambia. Young girls in poorer compounds are vulnerable since there no clearer and simpler laws to protect them from defilement and as a result marriage as a social institution itself can under customary law be an impediment in the protection of the rights of street children. As they are vulnerable on the streets too, any man can cheat them into a marriage regardless of their minority age as long as they solemnize without any consideration for the best interest of the child. The answer also informed the study that

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<sup>178</sup> Section 38(1) of the penal code of the laws of Zambia

<sup>179</sup> *Rex v. Chinjamba* (1949) NRLR 384.

when the age of the girl was younger with consent from the parents, marriage became lawful. Thus under this type of marriages, controls and consents to sex on behalf of the girl the family. Customary law marriages contribute greatly to the number of street children. Statutory law recognizes customary law as long as it is not repugnant to any other written law.

#### **6.8.6.4 Factors that forced children to go to the streets**

Another theme that came out during the group discussion was the factors that force children to go to the streets. To this the social worker personnel responded that,

There were several intertwined factors mostly connect to issues of poverty, vulnerability and need for security and freedom. Some street children she said, are also double orphans, they are victims of HIV/AIDS, while some make an economic choice themselves as a way of earning money. (SW)

This meant the extended family since most participants were not only street children but they were also orphans. Therefore, family system should be within the legal frame work. She then recognized the social cash transfer being done by the government as the program to support family structures within which to protect children. This statement posits that children with extended family members would not resort to fend for themselves on the streets. Besides, during my observation on the street boys on Cairo road using the criterion of appearance, the boys looked not well fed with poor hygiene and scruffy in spite of making money from the sale of their merchandise. On the contrary when I observed the 50 girls at City of Hope during group discussion, they looked healthy, with good hygiene, well fed, self-confident with a sense of security. A 16 year old girl even said it when she expressed gratitude to the City of Hope administration in their absence,

We thank them for giving us good food three times a day, a good house, we attend good school we can even speak English. They take us to hospital when we fall sick and they provide clothes for us. We now look like human beings. (FMA)

The opposite was the case observing the street boys on Cairo road and Soweto market, they looked dirty with poor hygiene. This informed me that they lacked guidance of an adult and protection. At home parents apart from love and warmth they give to their children, they also provide parental supervision. The comparison also shows that at home the family imparts in the children values of the society, public etiquette and good habits. It can also be interpreted that the daily life paths of children are largely delineated by adults, in this context by parents or adults in the family.

The youth pedagogist during the interview commenting on the same explained that,

Children learn through experience through their senses. Though corporal punishment is not recommended in schools, at home children are in different ways punished by their parents if they did not obey or if they broke the family rules. The next place of importance in which the child is expected to be is the class room. Adult work to fend for their families while children are meant to be in school. Street children spend time looking for food and hardly any chance to attend school. (YP)

To the researcher it meant that parents do not only give good nutrition to their children and take them to school. They also give them training and teaching through the use of punishment to meet the standards of society and survival skills according to their age and gender.

#### **6.8.6.5 Micro-causes**

Causes under this category are those experienced within the immediate environment of the child, and the family. These causes seem to have a direct effect on a child's decision to take to street life since they portray family dysfunctions.

Asking the street children why they were washing cars on the streets a 17 year boy responded,

I am married and I have 2 children who need my support. Even if am on the street as a *tamanga commonly known as eagle-eagle*, the reason is to find something to feed my family. My step father chased me from home when I was 10 and since then I have been providing for myself from the streets. Step father was also a drunkard and often fought with mum. I was chased from the house. (MY)

The narration implies that with the extended family system, chances that an 11 year old would take to the street to support himself are very small. The extended family would take care of the children who are younger without parents. Therefore, the corrosion of the extended family structures has a direct bearing on the numbers of street children. This also confirms the family dysfunctions and deficits as acknowledged also by Dordick.<sup>180</sup>

#### **6.8.6.6 Macro-causes**

Here we find the factors that are within the mainstream society including one's family. Mainly here the category involves weak laws in society such as dysfunctional labour laws, the dysfunctional child welfare laws and customary laws especially child fostering and early marriages. During the group discussion one small girl recalled,

My mother used to wake me up early in the morning to go to sale vegetables in the compounds and if I made a shortage I was made to sleep hungry after beating me. Then I ran away from home. (ST)

As a researcher, this explanation amounted to child labour and abuse of a child's rights.

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<sup>180</sup> Dordick Research Group <https://enzymes.che.rpi.edu/index.php/publications>(last visited on 25.12.15 at 16:00hrs)

## CHAPTER SEVEN

### CONCLUSIONS AND RECOMMENDATION

#### 7.0 Introduction

This chapter will present and treat the conclusions deriving from the findings during the research. The dissertation has brought to bear some factors that contribute in various ways to the failure in protecting the rights of street children. It will now grapple with conclusions from the findings in responding to the assessment of legal frame work and institutional impediments that hamper child protection at the same time making recommendations.

#### 7.1 Conclusions

One of the conclusions arrived at by the study is that in spite of the many existing effective laws that are children protection related in Zambian legal system, the lacuna is always in the ineffective enforcement mechanisms by the responsible government institutions and agencies. The dissertation obviously points to the fact that the number of successes achieved through the existing legal frame work do outweigh by far the weaknesses the legal frame work encounters in curbing the vice in protecting the rights of street children. It a fact that street children denied their rights are too many to watch robbed either of their education opportunities, access to decent shelter, denied food which is their right or indeed other rights including their dignity.

One other conclusion made by the study was the scarcity of literature on the protection of the rights of street children, this posits that there is certainly lack of systematic documented information which shows the full extent of the violations committed against street children's rights. It was revealed by the study that most of the studies that have been conducted on street children deal with other social aspects and not the attending to the legal frame work for the protection of their rights. The conducted researches on street children are either done by NGOs or foreign academia who are foreign based with hardly any or very little being done by local academia who are right on the ground here within Zambia. This is a matter of concern by the researcher! This alone causes the difference between practice and reality as it is explained. In

addition there is lack of street children synergy coordination in terms of networking between groups and the government in approaching the vice. As a result programs are planned by various groups in isolation with very little achievement being attained. There is need for legislation in this area so as to regulate the programs in order to benefit the targeted group. Most NGOs are doing advocacy in urban areas but working hand in hand with the government institutions children's rights advocacy could easily reach the rural areas where children are most vulnerable due to the customs and traditions practiced in the rural areas.

The study reveals with evidence the fast erosion of family strata. These changes in family structures have a huge bearing on the society at large. The study has demonstrated that family especially the traditional African extended family fibers are slowly but surely sinking deeper and deeper into nonexistence. Besides the gaps that were alluded to by the study in the customary traditional law marriage and family life style, the extended family structure no longer protects weaker and vulnerable members of society. Marriage or indeed family is a social institution upon which society depends most intimately. However, the satisfactory fulfilment of its purposes depends upon its inherent integration or in other words, upon its homogeneity and stability.<sup>181</sup> That's why marriage is not only a union between a man and a woman but a union of two families. To that effect, the research demonstrated how the legal frame work is essential in protecting the family structures thereby protecting the street children's rights.

The research also hinted in conclusion on the fact that the right place for supporting street children is not on the street or government institutions such as orphanages but rather in the family system. This dissertation is in the line with the African Charter on Human and People's Rights awards family protection by states. Article 18 also mentions that families are the natural units and basis for society and the African Union emphasizes, should therefore enjoy special protection by member states.

Among the many factors that cause or exacerbate the street children phenomenon the study identified two categories as micro-causes that is the causative factors experienced with the immediate environment of the child within the family circles. While macro-causes are those causative factors existing and experienced within the wider society. The micro-causes encompass family dysfunctions and parenting challenges. For example the weakened extended

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<sup>181</sup> E. Schmiedler, *An Introductory study of the family*, (1930), 3.

family unit and its child welfare system, ecological transitions such as death of parents, divorce, and unemployment of parents. Largely family financial poverty, parental irresponsibility and poor family choices and relations including family violence, and unbridled child bearing play a bigger role in creating the street children phenomenon. The study unraveled the correlation between the said causes and the weak laws or weak law enforcement systems as demonstrated in table 4. This also creates an interrelationship between the bio-ecological theory and the social exclusion theory.

It must be mentioned also that the study equally discovered that street children are mere victims of social exclusion. They totally have no control and power over the means of survival and no opportunities to meaningfully participate in decision making and qualitatively contribute to the larger society. Their sense of belonging as well as their sense of usefulness is diminished through infringing on their rights. To a larger extent they lack access to a meaningful livelihood and social services they are entitled to. Due to the violation of their right to education they are robbed of their bright future and power to determine their fate. While other children spend quality time at school, street children spend their quality time scavenging in the rubbles and begging on the streets. This was revealed at City Hope on seeing how the girls testified having being given good education and they were able to articulate their ideas confidently with a sense of human dignity. “I will be a lawyer when I finish school testified TSH.” Showing power to determine her destiny.

Another conclusion derived from the findings by the study pertains to the impediments. The study exhibited that the major hurdle in the protection and promotion of street children’s rights is the lack of harmonization between international children’s rights related instruments and statutory law on the other hand the customary law which cannot be applied equally in the whole nation. For example Zambia has 73 three tribes some are matrilineal others are patrilineal. When it comes to cases of inheritance or indeed intestate dealing with the devolution of property. Customary law is rendered null and void to apply evenly to all tribes since each part of the country practices different customs and traditions on marriage. However, it was noticed that a state part to any international instrument is obliged to keep in line with the international obligations accrued by virtue of subscribing to such an instrument whose demand is uncompromising when it comes to the human rights standards. Notwithstanding the fact that for



international instrument to be used by domestic courts requires domestication through an act of parliament. The reason being that Zambia is a dualistic state with three sources of law, namely the international law, statutory law or civil law and customary law. The study highlights lack of harmonization within law.

The dissertation further revealed the various activities that street children are involved in. It was shown with evidence that almost all boys on the street are involved in some income generating activity or so. Besides, certain works were discovered to be gender tailored such as car washing in which no girl takes part so far. On the other hand, a bigger population of girls are involved in selling food related items either of vegetable in nature or fruit which they carry whole day on the head. An estimation of 50% of girls are involved in selling different merchandise. Some activities were revealed according to the study to be cutting across gender border lines such as selling newspapers as agents of some newspaper house, selling drinks is equally for both boys and girls.

One conclusion derived from an interview with a child psychologist indicated that from the psychologist's perspective based approach, the measure to curb the street children rapid increase follows the logic from the identified causes that account for this phenomenon. The psychologist noticed that adjustments could be made to stop the street children phenomena within the micro and macro levels of social environment of the child. At the macro level children must be discouraged from going to the streets by helping them understand and embrace their family environment. They ought to be trained on how to cultivate the sense of belonging and family ownership. Another cardinal factor in the deconstruction-reconstruction exercise is the presence of role models within the family or within the vicinity. When violence looms in the family children take to the street for safety and freedom.

## 7.2 Recommendations

In view of the above findings and consequent conclusions, the research makes the following recommendations for what it deems appropriate development of a robust legal system in protecting the rights of street children.

1. The first recommendation is to legislate for the government to periodically engage, create *fora* to network and exchange data with other stake-holders involved in fighting the vice.
2. There is need to harmonize the International child related instruments, statutory law and customary law to wedge the existing gaps and lessen the confusion on certain children's rights protection related issues if the vice is to be addressed. Particularly the impending mix-up within the Zambian Constitution regarding the definition of a child.
3. Legislation for street children's rights should not just end with laws without a strong political will by having a regulated budgetary mechanism supported by a human rights based-approach principles of non-discrimination, participation, transparency and accountability.
4. To balance between the standards and the principles in policy making and implementation for street children.
5. To have a good legal framework to address the street children phenomenon by readjusting the macro and micro causal factors putting the interest of the child first.
6. Street children support to be placed within the family system as the ideal way rather than increasing the dropping centers and orphanages.
7. Government to place street children labour within the labour policy in order for the children to earn a decent pay for their goods and services they sell through their various activities.
8. Government and other stake holders to legislate for street children's right to access free health services from any health facility in the country.
9. In order to address the issue of impediments in protecting the rights of street children, government to sensitize society on street children's rights advocacy in urban and rural areas.
10. Due to scarcity of literature on the protection of street children, government should recognize efforts being made by different researchers on the subject being a grey area in international human rights law.

### **7.3 Conclusion**

This research entitled; Assessing the Legal Frame work and Institutional Impediments in protecting the Rights of Street Children: A Case Study of Lusaka Urban, has answered all research questions and addressed the set out objectives. Its findings have been informative tallied with conclusions and recommendations for future researchers.

## BIBLIOGRAPHY

### BOOKS

- Berk, E. L., (2006) *Child Development (7th Ed)*, Boston Pearson Education Inc.
- Boyden J.O., (1991) *Children of the City*, London & NJ.
- Brady.M. (2013) *Street Children can be Useful to Society*, Zambia, Lusaka.
- Bronfenbrenner, U., & Morris, P. A. (2010) *The Bio ecological Model of Human Development: In W. Damon & R. M. London*.
- Carsaro, A.W., (2011) *The Sociology of Childhood. 3<sup>rd</sup> Edt.* Thousand OAKS. California: Pine Forge Press.
- Creswell, J.W., (2003) *Research Design, Qualitative, Quantitative and Mixed Methods Approaches, (3<sup>rd</sup> Edt.)*, Sage Publications Ltd. London.
- Duffy, (1995) *Social Exclusion and Human Dignity in Europe*. Strasboorg.
- Elina. S.H., (2013) “*Growing big in the street*” Helsinki.
- Epstein, I., (1996) *Educating Street Children: Some Cross-cultural Perspective*, New York: Longman.
- Fisher. A.M., (2008) *Social Exclusion*, Destiny Working Paper, January.
- Himonga. C.N., (2000) *Historical background of the law of the persons: in R.Blainpain (ed.) International encyclopedia of laws in Zambia*, Kluwer International, New York.
- Innocent. S., (1992) *The Foreign Children of the Cities*, Amrita Chatterjee: India.
- Jason. S., (2001) *Liberatarian Theory and Children’s Rights, Easterbrooke Street*: London.
- Karabanow.J. (2004) *Being Young and Homeless. Understanding how Youth enter and exit street life*, New York, Peter Lang Publishing.
- Korczak .J. (1919) *How to Love a Child*, Warsaw.
- Lerner (Eds.), (2006) *Handbook of Child Psychology*, New York: John Wiley & Sons.
- Maggie B. (1993) *Street and Working Children*, New York.

Nart .J.C. et. (1997) *Behind Review of Early Childhood Policy and Programs in Sub-Saharan Africa*, Washington DC.

Ndulo .M. (edit.), (1984) *Law in Zambia, Nairobi*: East African Publishing House.

Pences .A. & Nsamenag. B., (2008) *A Case For Early Child development in Sub-Saharan Africa*, Bernard Van Leer Foundation UK.

Sakala. J.B. (2013) *The Role of the Judiciary in the Enforcement of Human Rights in Zambia*, image publishers, Mumbai India.

Schmiedler. E., (1930) *An Introductory study of the family*, London.

Stephens, S.( ed). (1995) *Children and the Politics of Culture*. Princeton University Press, London

## JOURNALS/ ARTICLES

Parmer S. et al. (edit.), *Children and Transnational Justice: Truth-Telling, Accountability and Reconciliation*, UNICEF, 2010

*Paris Principles, The International Legal Framework for the Protection of Children in armed conflict*, 2007

Chuulu .B.M. & K.S Ngan'du et al. *Inheritance in Zambia: Law and Practice*, WLSA, Lusaka, 1994

A Report by Child in Need Network (CHIN) and ECPAT, 2012.

*World Health Organization Street Children Substance use and Health Training Street Educators London*, 1994

*Realizing Rights for Children: Harmonization of Laws of Children, Eastern and Southern Africa, African Child Forum Report*, 2007

Panos Institute Southern Africa, Plan International and Human Right, *Media Brief on Ending Child Marriages in Zambia*, Lusaka, Zambia, 2014

Jane. S.L., *Street Child Africa 2013-1014 Donor Report in the Consortium of Street Children* 2014

Chipo Nkhata, *Media Brief on Ending Child Marriages in Zambia*, Panos Institute, Southern Africa Lusaka Zambia 2014

*The Committee on the Rights of the Child General Comment No.5, General Measures on the CRC (Articles 4, 42 and 44 par. 6) Nov. 2003.*

Government of France and UNICEF, "*Principles and Guidelines on Children Associated with Armed Forces or Armed Groups for child protection framework*," Paris, 5-6February 2007.

Josiah A.M Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 HUM.RTS.Q 309,328-29, 1987

Lumina. C. *An independent expert report to the UN General Assembly during the twenty-fifth session*, 2014

UNCEf study on Street Children. Office of the High Commissioner for Human Rights. 2010

*Human Rights: Key to keeping the MDG Promise of 2015*

*UNICEF Inter-Parliamentary Union NO.7, SRO-Kundig, Switzerland, 2004*

*UNICEF & Consortium of Street Children, 1 Nov. 2010*

*De Moura, L.S. (2012) The Social Construction of Street Children Configuration and Implications. British Journal of Social Work 32, 353-367*

*Save the Child Street and Working Children, A guide to Planning: London, 2010*

*Zambia: Children's Rights in the Universal Periodical Review Second Cycle, 2012*

## **ENCYCLOPEDIA**

Koller, H.S & Hutz S.C., *Street Children: Psychological Perspective. International Encyclopedia of the Social & Behavioral Sciences* 15157-15160, 2001

## **NEWS AND OTHER ARTICLES**

Zambia Daily Mail, Lusaka, December 19, 2013.

## **UNPUBLISHED MATERIAL**

Mubita. G., *Interrogating the Efficacy of the Law on Neglecting to Provide Necessities for Children in Zambia; an analysis of section 169 of the Penal Code (Amendment Act No. 15 of 2005) a study carried out in Chipata, Zambia, University of Zimbabwe, 2012*

Akupela G, N. *The CRC and the Maginalized Children, UNZA: 2008*

Mubita A. M *An Analysis of Child Related Legislation in Zambia, UNZA, 2011*

Mushota .L. *'International law, Women's Rights and the Courts: A Zambian Perspective'* 2014

## INTERNET

<http://resourcecenter.savethechildre.se/start/countries/niger/legal-framework> (last visited, 11.10.15 at 16:00 am)

<http://www.genderlinks.org.za/article/zambia-anti-gender-based-violence-act-passed-2011-10-07>(last visited

[http://www.chr.up.ac.za/undp/domestic/docs/legislation\\_10.pdf](http://www.chr.up.ac.za/undp/domestic/docs/legislation_10.pdf) (last visited on 26. 10.15 at 16:00 hrs

<http://www.salan.org/zcea-zambia-the-plight-of-a-neglected-child/> (Last visited 26.10.15 at 21:30hrs)

<http://www.salan.org/zcea-zambia-the-plight-of-a-neglected-child/> (last visited 26.10.15 at 21:40hrs)

<http://www.salan.org/zcea-zambia-the-plight-of-a-neglected-child/>

[http://www.saflii.org/za/legis/consol\\_act/ca2005104.pdf](http://www.saflii.org/za/legis/consol_act/ca2005104.pdf) (last visited 12:10.15 at 20:00hrs)

<http://www.duhaime.org/LegalResources/FamilyLaw/LawArticle-125/Child-Protection-Law-in-Canada.aspx> (last visited 28.10.15 at 19:00hrs)

<https://www.childwelfare.gov/pubpdfs/majorfedlegis.pdf> (last visited 27.10.15 at 19:00hrs)

<http://www.mw.one.un.org/malawi-passes-the-marriage-divorce-and-family-relations-bill-2015/>(last visited 11.11.15 at 22:00hrs)

<http://www.zambialii.org/files/zm/legislation/act/2007/20/mca2007197.pdf> (last visited 27.10.15 at 22; 00hrs)

<http://www.zambialii.org/zm/judgment/supreme-court/2000/59> (last visited 27.10.15 at 22:00hrs)

<http://www.refworld.org/pdfid/5448a89f1.pdf> (last visited 27.10.15 at 22:00hrs)

[http://www.unicef.org/about/annualreport/files/Zambia\\_Annual\\_Report\\_2014.pdf](http://www.unicef.org/about/annualreport/files/Zambia_Annual_Report_2014.pdf) (last visited 27.10.15 at 18:00hrs)

[http://www.ecpat.net/sites/default/files/Ex\\_Summary\\_ZAMBIA\\_FINAL.pdf](http://www.ecpat.net/sites/default/files/Ex_Summary_ZAMBIA_FINAL.pdf) (last visited 26.10.15 at 18:30hrs)

<http://www.dol.gov/ilab/reports/child-labor/zambia.htm> (last visited 27.10.15 at 16:00hrs)



[http://resourcecentre.savethechildren.se/sites/default/files/documents/advancement\\_of\\_childrens\\_rights](http://resourcecentre.savethechildren.se/sites/default/files/documents/advancement_of_childrens_rights)(last visited 27.10.15 at 23:00hrs)

<http://unesdoc.unesco.org/images/0023/002325/232565e.pdf> (last visited on 27, 10.15 at 16:15hrs)

[http://www.child-soldiers.org/international\\_standards.php](http://www.child-soldiers.org/international_standards.php)(last visited on 6<sup>th</sup> Dec, 2015 at 14:00hrs)

<http://www.nyulawglobal.org/globalex/Zambia.html>(last visited 6<sup>th</sup> Dec, 2015 at 14:30hrs)

<http://www.un.org/womenwatch/daw/cedaw/>(last visited 6<sup>th</sup> Dec, 2015 at 15:00hrs)

<http://lex-warrier.in/2015/04/locus-standi/>(last visited 02.11.15 at 12:00hrs)

<http://thelawyerschronicle.com/understanding-the-principle-of-locus-standi/> (last visited 26.10.15 at 23:10hrs)

<http://www.jctr.org.zm/publications/998-nccescrpresentation09/file>(last visited on 6<sup>th</sup> Dec, 2015 at 16:00hrs)

<http://www.jctr.org.zm/publications/998-nccescrpresentation09/file>(last visited 30.10.15 at 23:00hrs)

<http://www.nolo.com/legal-encyclopedia/whats-the-difference-between-nolle-prosequi-dismissal-charges.ht>(last visited 30.10.15 at 20:00hrs)

<http://www.nolo.com/dictionary/nolle-prosequi-term.html>(last visited 6<sup>th</sup> Dec, 2015 at 16; 10)

[http://www.advocate-for-children.org/advocacy/rights\\_based\\_approach/rights](http://www.advocate-for-children.org/advocacy/rights_based_approach/rights)(last visited 01.11.15 at 16:58hrs)

<http://www.academia.edu/9001>(last visited 09.11.15 at 16:00hrs)

[http://www.uua.org/documents/derman-sparkslouise/1206\\_233\\_identity\\_stages.pdf](http://www.uua.org/documents/derman-sparkslouise/1206_233_identity_stages.pdf)(last visited 09.11.15 at 17:00hrs)

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2270351/>(last visited 09.11.15. at 17:10 hrs)

## **APPENDIX ONE**

### **INTERVIEWS**

Interview with the personnel from the Social Welfare

Interview with the social worker

Interview with an educationist from the university from St. Bonaventure University

Interview with street children at City of Hope and Central Post Office in town

Interview with student of human rights law

Interview with a police officer

Interview with a child psychologist

Interview with a child administrator at City of Hope

## **APPENDIX TWO**

### **GUIDING QUESTION FOR INTERVIEWS WITH PARTICIPANTS**

1. What do you understand by human rights?
2. In your opinion why do children resort to street life?
3. Why do you think there is so much emphasis on the protection of rights of children?
4. Make a comment on government's effort to protect the rights of street children
5. What is public attitude towards street children?
6. In which ways are street children's rights violated?
7. Mention some things/ activities street children are involved in?
8. In which ways are street children's rights violated, are there laws to protect them?
9. What is your opinion on the Zambian laws effectiveness in protecting the rights of street children?
10. If you (they) earn money on the streets from whatever they do in question 7 what is it used for?