

Trade Unionism and State Laws in Independent Zimbabwe: Is Legislation Promotive or Inhibitive

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Received: 06.04.2019

Accepted: 14.04.2019

Published: 22.04.2019

Abstract: Historically, governments have always found 'lawful' ways to regulate the power of trade unions. The institutionalisation of the Industrial Conciliation Act propagated in 1934 and successively amended in 1960, and labour legislations that were enacted at independence in 1980 and 1981, and later on amalgamated into the comprehensive Labour Relations Act of 1985, all serve as clear demonstration of such measures. The earliest steps to establish and regulate a labour market were the founding of Provincial Labour Bureaux in 1895 and the Rhodesia Native Labour Bureau (RNLB) of 1903. These institutions were labour procurement agencies whose roles were supported by legislations

Keywords: Unionism, state laws, legislation, promotive, inhibitive.

INTRODUCTION

The most substantial piece of legislation which the Zimbabwean government deliberated and approved during the first five years of independence was the Labour Relations Act of 1985. This was an all-inclusive code of regulations relating to employment, recruitment, collective bargaining, settlement of disputes, registration and certification of trade unions, and employers' organisations. The Labour Relations Act integrated some of the provisions previously enclosed in the Industrial Conciliation Act 1934 and most aspects of post-independence legislation relating to minimum wages, conditions of employment and terms of dismissal.

Analysis of the Labour Relations Act

The following analysis of the Labour Relations Act takes a broad spectrum of social, economic and political background to the legislation. Pre-independence Zimbabwe was a capitalist society of a white-settler variety with all its appearances of sullen racism, fervent anti-socialism and rudimentary fascism. It was, however, capitalist insofar as the dominant economic system was a capitalist one reinforced mainly by imperial capital which had pro-created an economy which concurrently consisted of a moderately well-

developed infrastructure of transport networks, mining, farming and manufacturing, and a backward, underdeveloped sector of largely peasant commodity producers. The foreign domination of capitalist settler economy raised fears of its collapse in the event of a mass white exodus, like in the case of Mozambique and Angola. This provided the foundation for the post-independence dogma of reconciliation which became a catchphrase in government economic and political strategy. Sachikonye has it that the dogma became a justification for 'realism' and 'pragmatism' in economic planning [1]. The inherited capitalist edifices strengthened and entrenched the historical and contemporary reality of the Zimbabwean social transformation. It was, therefore, 'conventional wisdom' not to excessively temper with the scheme and structures of production and their parallel social and political relations. The balance of class forces tilted towards capitalist interests and once the initial fears about wholesale nationalism and socialization receded in 1981, the various coalitions of these interests regrouped. Throughout the same period, the labour question exercised not only the mind of government but that of capital as well.

At the close of the colonial period, socialist ideologies were top of the agenda in social, economic

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DOI: 10.36344/ccijemms.2019.v01i02.002

and political transition. Therefore, the Labour Relations Act was instituted in good faith of a socialist dogma as the former Labour Minister, Shava, remarked in 1985, “from the point of view of the ZANU PF government, the Act is a pillar for our socialist thrust and commitment, because it certainly lies at the core of the Party’s political principles”. It is a reaffirmation of the Party’s unshaken belief and conviction in the superiority of socialism over capitalism [2]. However, similarly consistent was the remorseful stance of the government toward ‘inherited’ capitalist structures. It was remarked in the Senate debate that the Bill was neither a political manifesto nor an investment code; and while it laid the foundation of a new system of labour relations it did not disturb the basic economic structures of the country (Senate Hansard Vol.9, No. 37, 1433). While the government regarded the Act as an instrument for restructuring the relations of the means of production. The Act, consequently sought to promote, advance and protect workers’ and employers’ interests in order to create a balance in “management-labour” relations. Unquestionably there were groaning tensions between the capitalist and socialist protagonists. The objectives of the Labour Relations Act were wide in range and its objects were specified as follows:

- To declare and define the fundamental rights of workers;
- To define unfair labour practices;
- To regulate conditions of employment and other related matters;
- To provide for the formation, registration, certification and functions of trade unions, employment councils and employment boards;
- To regulate the negotiation, scope and enforcement of collective bargaining agreements;
- To provide for the establishment of the Labour Relations Board and the Labour Relations Tribunal;
- To regulate and control employment agencies; and
- To repeal the Industrial Conciliation Act (Chapter 267), the Minimum Wages Act and the Employment Act.

Further to these new rights, there existed clauses to safeguard the workers’ rights to fair labour standards which related to minimum wages, maximum number of hours of work per day, occupational health and safety, and rights of workers to seek access to “any lawful proceedings that might be available to him/her to enable him/her lawfully to advance or protect his/her interests as an employee”. Trade unions and workers’ committees were deemed to have committed an unfair labour practice if they contravened their constitution; recommended ‘illegal’ strikes; or failed to give workers proper representation. Thus, the concept of unfair labour practice possessed novelty in that it sought to protect workers’ rights from encroachment by the

employers and from negligence by the representative workers’ organisations. Like in the Industrial Conciliation Act, striking rights were given with conditions. Progressive as the act could have been, government commitment was largely focused on regulating the powers of trade unions and to put in place close control initiatives. Fear-factor of trade union influence on the workforce pre-occupies the temperament of many governments; therefore, this explains the initiatives of the Zimbabwean government then. More so, it is a known fact that most, if not all, post-colonial Zimbabwean leaders were by-products of the trade union movement and therefore appreciated the depth of trade union movement.

The right to strike is commonly believed and tolerated to be a fundamental right of workers and any encroachment on it is regarded with suspicion but technically, strikes are viewed as disruptive operations which are promoters of economic and political chaos. Governments and employers by their very nature favour as many safeguards and restrictions as possible on strikes; the lengthier the procedures that had to be followed before it would be ‘lawful’ to strike the better for employers. The sectors in which strikes were prohibited were spread over vast sectors of the economy. Those sectors were euphemistically termed “essential services”. Thus strike activity was illegal in wide range of sectors, wider than that specified in the ICA (1960). Further, workers were required to give fourteen (14) days written notice of intent to resort to such action specifying the grounds for the intended strike to the party against whom the strike action was to be taken. Like in the Industrial Conciliation Act, the Labour Relations Act introduced ‘show cause’ and ‘disposal’ orders that had the effect of delaying strike action, allowing ‘cooling off’ period. In this new political dispensation, it was the Minister, not the Registrar who wielded extensive powers. Hence, in case of a strike, the Minister determined whether the intended action was ‘lawful’ or not. It must, therefore be pointed out that given its instruments; the Labour Relations Act in some sections was more or less a blueprint of the repressive Industrial Conciliation Act in regard to the trade union movement.

In as much as the government tightened the grip on unions, the labour movement always found its path to demonstrate their anger and frustration towards government’s economic and labour policies. As a reactionary measure to the forty-five (45%) increment given to Cabinet Ministers, Secretaries of ministries and other high-ranking officials. A four-week general strike in the public sector in August 1996 brought out nurses, teachers and other workers, all motivated by the desire for higher wages triggered by the perceived selfishness of government officers. Organised under the Public Services Association (PSA) – the key public sector union, nurses under Zimbabwe Nurses Association (ZINA) and teachers organised under Zimbabwe

Teachers' Association (ZIMTA), the strikes were joined by tertiary students protesting cuts in their grants. At the time, this was documented as the most wide-spread and costly labour unrest in the post-colonial period. Despite earlier threats to dismiss strikers, the government finally agreed to examine the workers' grievances in September 1996 [3].

However, ZINA was dissatisfied with the government's response. This sparked yet another two-month strike by nurses in conjunction with the doctors, the largest ever strike by health workers. Despite police attacks on crowds, threats of dismissal and an initial refusal of the government to negotiate, the health workers stood their ground and were joined by teachers. ZINA under the stewardship of Mrs C. Nondo, the then ZINA National President, declared that nurses were not going back to work until their demands were met. ZINA further demanded a dialogue with the State President in order to air out their grievances, which demand was granted in the early days of 1997.

Trade Unions in the ESAP Period

The ESAP period has been widely documented as the harshest and cruelest time ever faced by the working-class in Zimbabwe. As such a more aggressive response came from the trade union movement whose members were amongst those most severely hit by ESAP. From the mid-1980s, tensions increased between the state and the trade union movement, the then two hundred and fifty thousand (250 000) members strong, Zimbabwe Congress of Trade Unions (ZCTU) became frustrated by government labour policies [1]. The pro-ZANU PF leadership of ZCTU was ousted in 1985 by the grouping associated with Morgan Tsvangirai, who had a critical stance towards government policies as regard to labour.

Sachikonye [1] says that economic liberalization created further tensions, with the unions viewing ESAP as reversing the few material gains of independence: job security, and subsidies on social services and wage foods [4]. However, ESAP was also concomitant with the phasing out of statutory minimum wages and the introduction of freer collective bargaining, which fortified unions and reinforced their position by winning considerable concessions from employers, although the Minister of Labour retained veto powers over wage agreements in the 'national interest'.

These Labour Laws continued to exclude public services workers from collective bargaining arrangements, but these restrictions did not prevent widespread industrial action and unionization mostly mobilized under PSA and ZIMTA in the late 1980s and throughout the 1990s. Raftopoulos [5] says that the combative and well-organized public sector unions represented about 200 000 workers [5]. Pressured by the membership, the unions, particularly from 1989,

regularly criticized the soaring prices of basic commodities and services, and often attempted boycotts and bread demonstrations. However, the impact of these challenges to neo-liberalism remained constrained by weak links between the unions and consumer pressure groups resulted in limited and weak interventions. The ZCTU unions also launched legal actions, such as successful challenge to Law and Order (maintenance) Act provisions against demonstrations after six unionists were detained following the 1992 demonstration against ESAP and amendments to the Labour Relations Act. On the same platform, the PSA and ZIMTA took the Public Service Commission to court over its unilateral decision to suspend payment of bonus (13th cheque) to public sector workers. Given the unions' increasingly autonomous and adversarial stance, the government began to harbour suspicion that the ZCTU was planning to combine its economic and political critique to form the basis of an opposition movement. Thus, the government began to take steps to regularize and undermine unions. In June 1992, John Nkomo, the then Labour Minister, described the Labour Centre as 'an organisation of illiterates', ominously stated that 'the ZCTU had become a political party and would be dealt with in the way ZANU-PF government dealt with political parties [6].

The Labour Relations Act was amended to undermine centralised bargaining in the National Employment Councils, removed the legal stipulations of one union per industry, and further delimited legal strike action. The government, instead of devoting its focus on the plight of workers who were adversely affected by ESAP, shifted attention to settle a political score with the ZCTU. In response to government's tough approach, the ZCTU refused to join Zimbabwe's delegation to the 1992 International Labour Organisation (ILO) meeting in Geneva, walked out of a meeting with the Minister of Labour, and organized countrywide demonstrations instead. The ZCTU was also pushing for a tripartite arrangement, which the government remained reluctant to consider. However, it remains questionable whether the unions had either the strength to force capital and the state to accept multi-partite modes of policy formulation, or the ability to operate effectively within such institutions. ESAP weakened unions at the same time as it increased the scope for manoeuvre, because economic restructuring had severe effects in employment in some sectors. The ability of unions to resist the continued attacks on their members' material conditions, let alone reshape the direction of macro-economic policy, was among other reasons undermined by the unfortunate weaknesses and ineffectiveness of the labour movement at that critical juncture.

CONCLUSION

The existence of a strong and recognised trade union is a requisite for the sustenance of industrial peace. Decisions taken through the process of collective

bargaining and negotiations between employer and unions are influential in this regard. Trade unions play an important role, are helpful and effective structures of communication between the workers and management. They provide advice and support, to ensure that the differences of opinion do not turn into major conflicts. The central functions of a trade union are to represent people at work and to seek healthy and safe working environment. Trade unions help in accelerated pace of economic development in many ways. They inculcate discipline among the workforce by enabling settlement of industrial disputes in a rational manner. Unions also help workers adjust to the new working conditions because workers coming from different backgrounds may become disorganized, unsatisfied and frustrated, and it is unions that help them in such adjustments. It is therefore incumbent upon governments to come up with laws and policies that promote and not inhibit trade unionism as trade unions play a very important role in the work place.

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