

A photograph of two miners in a tunnel. The miner on the left is wearing a white hard hat with a headlamp, a light blue polo shirt, red shorts with white stripes, and silver boots. He is using a pickaxe on a rock wall. The miner on the right is wearing a white hard hat, a grey t-shirt, and grey pants with a yellow tool bag. He is also using a pickaxe. The rock wall is cracked and uneven. The floor is made of concrete steps.

# THE LABOUR MOVEMENT IN ZAMBIA

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## Introduction

The history of trade unionism in Zambia dates back to the time of the start of mining on the Copperbelt after huge deposits of copper were discovered in the region in the 1920s. The establishment of the copper mines was followed by collective action and organisation by African workers.

The first major strike by African workers occurred in 1935 and it demonstrated that African miners were already conscious of a common interest and could organise united resistance against employers. The strike by the African miners in 1935 prompted the European mine workers to form their own union to protect their own interests from the threat posed by the African mine workers. The Northern Rhodesia (European) Mineworkers' Union (NRMU) was therefore formed in 1936. In 1940, the European miners through the NRMU won a wage increase as a result of the increase in the cost of living caused by the Second World War. The African miners who were more deprived were not given anything.

This led to the second African mine workers strike in 1940 which was brutally suppressed. By 1948 there were unions at each of the four major mines on the Copperbelt, which in 1949 merged to form the Northern Rhodesia African Mineworkers Union (NRAMWU). National unions were also formed on the railways and among government, building and timber and garment workers. This led to the formation of the Northern Rhodesia Trade Union Congress (NRTUC) in 1951.

In 1960, the NRTUC split and the Reformed Trade Union Congress (RTUC) was formed, with only the NRAMWU and the Mines African Staff Association (MASA) remaining in the NRTUC. In 1960, the RTUC resolved to support UNIP as 'the most progressive party' but the two organisations remained separate. In 1961, the NRTUC and the RTUC merged to form the United Trade Union Congress (UTUC). However, the tensions and threats of splits in the UTUC remained and although UNIP tried to bring unity to the labour movement, the disunity remained. As a result of this, it was a weak trade union movement which entered the independence period in Zambia.

This prompted the UNIP government to amend the labour law and create the Zambia Congress of Trade Unions (ZCTU) in 1965 and the UTUC was disbanded. The ZCTU tried to unite the trade unions in the country and helped by the Industrial Relations Act (IRA) of 1971, nearly succeeded. Economic problems in the country led the labour movement to lose confidence in the 'socialist' government of Kaunda and UNIP.

In 1990/1991 the labour movement supported the Movement for Multiparty Democracy (MMD) in the struggle to re-introduce plural politics in Zambia. When the MMD came to power it put in place labour laws that weakened the trade unions. However, as a result of the support it gave to the MMD, the labour movement could not fight it. It was therefore argued that the movement became weak from 1991 because

it had sold out to the MMD. In contrast, however, it could be argued that the labour movement did not become weak overnight. It had had problems from its inception in the 1940s. This was despite the fact that the movement had the potential to become a very powerful body, a potent force in Zambian politics that could provide checks and balances. This was especially so because of the fact that the movement came from a background in which, as shown above, African mineworkers defied the colonial system and called its bluff by staging significant strikes in 1935 and 1940 before they were even organised in trade unions. The potential to become very strong was not exploited, however, and the movement lurched from crisis to crisis. When the MMD began to implement its economic policies, the problems of the labour movement mounted in the 1990s and the 2000s.

This work is important because of the fact that in spite of the importance of the workers and the labour movement in the political, economic and social life of Zambia since independence in 1964, there has not been anything substantial written on them by historians. There have been a number of works done by historians and other scholars on the pre-independence period, especially on the miners, but there has been little on the labour movement as a whole in the period after 1964. There has been even less literature coming from the labour movement itself. Friedrich Ebert Stiftung (FES) opened a window through which current literature on the labour movement could be generated.

In March 2011, the Friedrich Ebert Stiftung Zambia office convened a two-day colloquium of labour officials, academics, friends and supporters of the Zambian labour movement at Mulungushi University in Kabwe to discuss and reach some kind of consensus about the future of the labour movement in Zambia.

Act No. 8 of 2008 amended the Industrial and Labour Relations Act (ILRA) and led to a further weakening of the trade unions.

There was obviously a crisis in the labour movement, which needed to be dealt with. The stakeholders were aware of this and saw the need to pose and reflect on the crisis to carefully analyse and discuss the state of affairs in the trade unions to chart the way forward. It was in this regard that the colloquium was convened with three main objectives, which were to:

- (a) Identify factors which might be responsible for the existing state of affairs in the relations between the government and the trade unions and between trade unions;
- (b) Creatively tap on the available experience and expertise within the trade union movement and use it to revitalise organisational energies and in turn make it realise its potential as an important player in the Zambian society; and
- (c) Process forms of co-operation among unions and elaborate on the possibility of advisory councils that could be established.

As can be discerned from the review of the four papers presented at the colloquium, each one of them was stimulating and provided a basis for good discussion of the issues affecting the labour movement in Zambia.

# Crisis and successes of the Labour Movement in Zambia: A historical perspective

By Friday E. Mulenga

*Do you recall? Do you recall the days when the earth would shake? When the nation would buzz with excitement, when the trade unions would call one of those crucial meetings to plot counter measures against adverse Government decisions? Do you remember the days of unionism as a counter-force to one-partyism? How the political system paled at the voice of the workers? You must. For it is all memory. The workers' national body, the ZCTU was the most potent force in Zambian politics. A vibrant union led by Frederick Chiluba and his lieutenant Newstead Zimba provided the ideal checks and balances to the system. Come the Third Republic: Mr Chiluba is president of Zambia. Mr Zimba a minister. The hierarchy of the union moved into governance. Behind they left the reins to the Fackson Shamenda team, a group that is so piously attached to government and the worker has hardly felt their presence. The most vulnerable species of the multi-party era has been, unfortunately, the working class.<sup>1</sup>*

## Introduction

**W**e found it appropriate to open this paper with the quotation above because it is like a lament for a dying dinosaur. The Zambian labour movement was one of the largest, one of the best organised and one of the strongest, one of the dinosaurs of trade unionism in Africa until 1991. In this regard, if it was dying, its dying could not pass unnoticed. The quotation above also provides a very good summary of what we intend to do in this paper, which is to examine the crisis in the Zambian labour movement and the successes the labour movement has scored over the years.

We define a 'crisis' as a time of great danger, difficulty or confusion when problems must be solved or important decisions must be made. Sometimes a 'crisis' could refer to a period when a problem, a bad situation or an illness was at its worst point, that is, it was critical.

The paper is divided into sections which discuss various issues such as: the genesis of the Zambian labour movement; the formation of the African Trade Union Congress (TUC) the forerunner to ZCTU; the labour movement in the First and Second Republics; the labour movement in the Third Republic; the challenges faced by the labour movement over the years; the crisis in the labour movement; the labour movement's response to changes in the labour market after 1991; and the successes of the labour movement over the years. There is an introduction, a conclusion and references.

In this study, we have used the word 'crisis' to mean that the labour movement was facing a time of great danger, when it could become irrelevant, if it did not stir itself and made positive moves towards making itself relevant again to the workers and society. The word 'crisis' was also used to mean that the labour movement was facing a time of difficulty because it had problems which needed to be solved. It was also facing a 'crisis' because it was in a state of confusion, with so many trade unions, so many civil society organisations, so many Church groups and so many political parties, all of which were competing with the labour movement for the same 'constituency' – the workers – which before democratisation had been its preserve. However, in our view, the biggest 'crisis' which the labour movement faced was its failure to respond adequately to the changed political, economic and social environment in the country brought about by liberalisation. The paper also examines the successes scored by the labour movement. For a movement which emerged before or at the same time as the nationalist movement, there are a number of successes it has scored as will be elaborated.

Victor Feather, a former British trade unionist, declared in 1963 that:

*Where trade unions have been established, and that is about almost everywhere, they have come to stay. Where they are not yet in existence, they will be. Where trade unions have been set up, but are not yet succeeding, they will succeed. Trade unions grow in hot climates and cold climates, in the east and the west, in the wet and in the dry. They can talk in any language and in any kind of development. Literacy is an advantage, but is not essential.*

<sup>1</sup> "Besieged Workers Cry for Militant Leaders", by Special Correspondent, Sunday Times of Zambia, 4th September 1994.

Victor Feather's views on trade unions would, in today's circumstances be considered overly optimistic, but at the time he was writing, trade unions were considered to be so important and so tough that they could be established anywhere and survive even the toughest conditions. That view contrasted with the views of modern writers on labour who doubted whether trade unions would survive for long in the twenty-first century. This was because trade unions almost everywhere faced totally new challenges that they were hardly equipped to face. Although trade unionism continued to have a strong appeal as an instrument and symbol in the search for industrial and economic democracy, there was sufficient reason to ask whether trade unions would survive into the twenty-first century.

**T**his was because in large parts of the world, particularly in Asia and Africa but also in South and Central America, the question whether or not unions would still survive in the twenty-first century could no longer be answered confidently in the affirmative. The trade union movement in the countries in Asia, Africa, South and Central America was hardly equipped for the totally new challenges posed by such issues as structural adjustment packages, the exclusion of labour from national politics, the informalization and feminization of work industries, flexibility in labour relations and the casualization of work.

In addition, the earlier strength of the trade unions based on a long-standing record of achievement through collective bargaining, struggles for democracy and campaigns for international solidarity no longer existed.

### **The Genesis of the Zambian Labour Movement**

African trade unionism in Zambia was born in about 1947 with the help of William Comrie, a British Trade Union Labour Officer, who was nicknamed the "obstetrician" of African trade unionism in Zambia and who was helped by Labour Officers from the Northern Rhodesian Government's Labour Department, who were nicknamed the "midwives". The African Shop Assistants Trade Union, formed in 1946 with 1,300 members, was the first African trade union, followed by the African Mineworkers' Trade Union (AMU) in 1949 with 19,000 members and Lawrence Katilungu as its leader. AMU was an amalgamation of four African unions formed in 1947 or 1948 at Nkana, Nchanga, Roan and Mufulira mines. The other African trade unions then in existence were the African Drivers' Trade Union with 1,700 members and the African General Workers' Trade Union with a membership of approximately 2,000.

Before 1947, African workers had tried in various ways to organise themselves into industrial or employee associations. The attempts showed clearly that there developed among them a proletarian consciousness that needed trade unions. However, the attitude of the Northern Rhodesian Government (NRG) to trade union rights for African workers remained negative and hostile because it did not think African workers needed trade unions.

The colonial authorities instead perpetuated a structure of labour relations based upon ethnic principles of representation by promoting the system of Tribal Elders first adopted in the early 1930s, and by adding to it Boss Boys and Works Committees during the Second World War. The mistaken view that African workers were not ready for trade union organisation remained the official policy until after the Second World War, although Cooper argued that the 1935 African mineworkers' strike in Northern Rhodesia forced a rethink in colonial labour policy.

One of the factors that made the colonial government ultimately change its policy on the issue of African trade unions in Northern Rhodesia was a local crisis which came about as a result of the African workers' radical reaction to the sharpening of antagonism between capital and labour. The Tribal Elders system, the Boss Boys Committees and other substitutes for genuine collective bargaining by African mineworkers were discredited in the 1940s, while at the same time the African workers increased their demands to have their own organisations to win better wages and improved working conditions, not only in the mining industry but in other areas of employment as well.

On the Copperbelt and in Broken Hill (now Kabwe), workers formed a nucleus of protest against some of the features of colonial rule. Like the African Independent Churches, African workers posed unfamiliar problems to the colonial government. They destroyed the colonialist's neat concept of Africans as simple peasants, who owed allegiance to the chiefs and were encapsulated within an age-old set of rural authority. The African miners on the Copperbelt twice called the bluff of colonial authority. In 1935, they staged a strike against unfair taxes.

In 1940, there was a strike over wages with thirteen African miners killed. Apart from the famous 1935 and 1940 African mineworkers strikes on the Copperbelt, on which a sizeable amount of academic studies have been done, there were also other strikes by African workers at the Zambezi Saw Mills in 1943, by African workers on the Rhodesia Railways in 1945, and strikes in 1945 and 1948 by African workers at Broken Hill (Kabwe) Mine.

The strikes were a clear manifestation of the growing worker consciousness among the African workers and their need to be organised into trade unions. The 1940 African mineworkers' strike on the Copperbelt brought a realization

to the European mineworkers through their Northern Rhodesia Mineworkers' Union (NRMWU), which was formed in 1936, that African worker consciousness had been awakened, and it was a force to reckon with. In this regard, the European mineworkers sought to use this African worker consciousness to their own benefit by making African workers an appendage of the European workers. The African mineworkers rejected the proposal that the four African unions that had been formed at the four mines on the Copperbelt should form African branches of the European Union because they wanted to belong to their own African unions. This was understandable in a situation in which labour was early divided and organised along racial lines as in Southern Rhodesia (Zimbabwe) and South Africa.

The African workers on the Rhodesia Railways (RR) also showed their own consciousness as workers and went on strike in 1945. This strike by African workers also convinced Roy Welensky, who was then leading the European Railway Workers' Union in Northern Rhodesia and other Europeans with foresight that the Africans were capable of organising themselves industrially. Welensky, who helped found the Federation of Rhodesia and Nyasaland and later became its Prime Minister, 1956-1963, and a substantial white community in Northern Rhodesia, saw the African trade unions, not as a vehicle to be used for the improvement of the African workers' lives per se, but as a vehicle to be used for the continued domination of the Africans by the Europeans. Welensky and a substantial portion of the white community were really worried about the fact that the Africans had the potential to organise themselves against their employers. They decided that the energy of the African workers, therefore, had to be harnessed and guided lest it fell into the wrong hands and was used against the interests of the Europeans. Behind this line of thinking was the assumption that it was normally easier to control people who were organised in a trade union than it was to control a non-union mob. Later, after African countries gained independence in the 1960s, there were similar attempts by African governments to take over labour movements and channel their energies towards serving the interests of the ruling classes rather than those of the workers. Some attempts were successful, while others were not, for example in Zambia where a strong labour movement had emerged.

The Labour Commissioner, C.E. Cousins, noted in his 1949 labour report that the basis of a sound and healthy development in industrial relations had been laid and, providing reason and understanding were shown by all concerned, there was every reason to hope that future problems would be settled by peaceful negotiation. In 1949, the Trade Unions and Trades Disputes Ordinance was enacted and in 1957 it was amended to provide for the compulsory registration of all trade unions.

**And when President Kaunda and former Governor Evelyn Hone stood before the hoisting of the independence flag on 24th October 1964, the great and exciting history of the trade union movement lay prostrate and powerless to make a significant impact upon the life of independent Zambia.**

### **The Northern Rhodesia (African) Trade Union Congress (TUC)**

The Northern Rhodesia Trade Union Congress (TUC) was formed in 1951, but split into two groups in 1959. Katilungu foiled the attempt to oust him from the leadership of the TUC by expelling all the unions which were in arrears with their affiliation and annual fees. This left only the three mineworkers' organisations, the AMU, the Mines African Staff Association (MASA) and the Mine African Police Association (MAPA) in the TUC. The expelled unions then formed a rival congress, the Reformed Trade Union Congress (RTUC) in February 1960. The RTUC assumed a militant posture and identified itself with UNIP. It launched a vigorous campaign to remove Katilungu from the TUC and this objective was achieved in December 1960, when the doyen of African trade unionism was dismissed from the AMU presidency, the pedestal of his power. The TUC and the RTUC merged in January 1961 to form the United Trade Union Congress (UTUC). The formation of the UTUC did not end the deep divisions which existed between and among the labour leaders.

In January 1963, some unions broke away from the UTUC and formed their own Congress, the Zambia Trade Union Congress (ZTUC). This break-up of the national trade union centre in the country for the second time in three years was seen as a heavy blow by many people who wanted to see a united trade union movement in the country. In fact, UNIP saw the disunity in the labour movement as a challenge to its own attempt to take over political power in the country. In February and April 1963, UNIP, through its National Treasurer and Minister of African Agriculture, Simon Mwansa Kapwepwe, tried to unite the factions in the labour movement but his efforts were in vain.

In July 1964, Kapwepwe managed to bring unity in the labour movement by persuading the main protagonists to leave the movement for government positions. In this way, he brought a united but depleted labour movement into independent Zambia. Matthew Mwendapole, a veteran trade unionist lamented:

And when President Kaunda and former Governor Evelyn Hone stood before the hoisting of the independence flag on 24th October 1964, the great and exciting history of the trade union movement lay prostrate and powerless to make a significant impact upon the life of independent Zambia.

### **The Labour Movement in the First and Second Republics 1964-1991**

‘Prostrate and powerless to make an impact upon the life of independent Zambia’ was the state in which the labour movement entered independent Zambia. It was a position which worried the Zambian government in 1964. It was worried that foreign elements might control the divided labour movement and use the unions to fight the government any time the UNIP-controlled Parliament legislated anything against the interests of the foreign elements in Zambia. This led to the enactment of the Trade Unions and Trade Disputes Ordinance in 1965 with a view to strengthening the trade union movement and helping all unions to conduct their affairs freely. The then Minister of Labour and Mines, Justin Chimba, a former trade unionist, stated among other things that the Bill would protect the trade union movement from disruptive outside influence by prohibiting affiliation with foreign agencies and the receipt of outside material assistance from any non-Zambian organisation without his approval. In accordance with Zambia’s adopted policy, the principle of “one union, one industry” was introduced into the law and the ZCTU was formed in 1965 on this basis. The Industrial Relations Act of 1971 replaced the Trade Unions and Trade Disputes Ordinance.

**U**nder the One-Party State the labour movement developed rapidly as it enjoyed the generous provisions of the Industrial Relations Act of 1971 that replaced colonial labour legislation. Among other provisions in the Act were the establishment of the ZCTU as the only national trade union centre under the law, and the compulsory affiliation of all registered trade unions in Zambia to the ZCTU. In addition, under the same law, trade unionism was entrenched under the “one union in one industry” policy.

In 1990, the ZCTU decided to oppose the ruling UNIP and support the opposition MMD. This was crucial for the MMD because the ZCTU was the only organisation with a national structure

and material resources to fight an election campaign and it put these considerable assets at the disposal of the MMD. The ‘material resources’ have to be quantified if we are to believe ZCTU had them. The evidence available does not support the assertion that ZCTU had especially financial resources, but had the human resources. Nevertheless, the UNIP leadership saw the ZCTU as a formidable enemy politically and so was unhappy about the labour movement supporting calls for a return to multi-party politics that it tried to weaken the movement by having the check-off system cancelled, and it also tried to divide it. UNIP barons had a special hatred for Chiluba and in an apparently vain attempt to weaken his power-base, Kaunda urged the 1990 UNIP National Council to repeal the 1971 Industrial Relations Act that compelled trade unions to affiliate to the ZCTU. Kaunda argued that if the government was to be contested by multiple parties, it followed that an individual trade union should have the right to secede from the ZCTU. In a divide and rule style, the state had apparently persuaded at least four unions affiliated to the ZCTU to leave the organisation.

The top UNIP leadership saw Chiluba as a real political enemy to fear and it made numerous attempts over the years to weaken and divide the labour movement by bringing him and his general secretary Newstead Zimba into the UNIP Central Committee. When both men refused to work for UNIP, the party tried to divide them from their members, by trying to show they were pursuing interests different from those of the workers they led. It was stated in 1988 that the police Special Branch infiltrated NUBEGW of which Chiluba was chairman. The police persuaded the NUBEGW executive to suspend Chiluba. The idea was to disqualify him from standing for election as a ZCTU official, which was open only to those who held a post in an affiliated union. When ZCTU nullified Chiluba’s suspension and charged some NUBEGW officials with conspiracy to remove Chiluba from office unconstitutionally and suspended them, the NUBEGW officials, took the matter to court. While the Kitwe High Court ruled in favour of ZCTU, the Supreme Court overturned the ruling in favour of the NUBEGW officials. Chiluba’s position was only saved by the ZNUT and ZUFIAW that gave him senior positions in the unions. When he was re-elected chairman of ZCTU in October 1990, he delivered a moving speech in which he said among other things that he was only saved because God sent angels to redeem him through ZUFIAW.

Chiluba’s position raised interesting questions about the precise relationship between trade unionists and politicians in post-independence Zambia and between trade union leaders and the workers they represented. Kaunda saw Chiluba as such a formidable opponent that in another attempt to weaken him, he accused ZCTU of being close to the CIA and several unnamed Western countries. He also accused Friedrich Brunke, head of the Friedrich Ebert Foundation in Lusaka (the Foundation was close to the Social Democratic Party) of funding ZCTU and told

him to leave the country.

The MMD, with the support of the labour movement and other progressive elements in Zambian society, defeated UNIP and Kaunda in the elections of October 1991 and formed government.

### **The Labour Movement in the Third Republic**

After Chiluba and the MMD came to power, the labour movement showed public support for Chiluba and the new MMD Government by holding 'victory marches' in Lusaka and other parts of the country. This was because the workers looked to the Government with 'great expectations' of good remuneration for their labour, and 'respect for professionalism'. However, after about two years the labour movement realised that it had claimed a false victory. If the people had achieved political democracy, the workers had not yet achieved 'economic democracy', or 'democracy of the pocket', by winning better salaries and wages and better conditions of service. In 1994, it was observed that:

**T**rade unionism is facing another crisis. Not since the spectre of one-party politics threatened to whittle the power of the unions has the (labour) movement looked defeat in the face. The difference this time is that its demise is largely as a result of a harsh economic environment which has reduced membership drastically. The coming of the Third Republic will be remembered for the fall of its strongest proponent – the trade unions.

At the end of 1995, the ZCTU leader was a broken-hearted man. He conceded that the labour movement was entering 1996 with a broken heart because 1995 did nothing to reduce the decline of the workers' purchasing power. The MMD had forgotten its promises to the workers that it had put in its own 1991 campaign manifesto on labour.

Before 1991 unions such as Mineworkers' Union of Zambia (MUZ), National Union of Building, Engineering and General Workers (NUBEGW), Civil Servants' Union of Zambia (CSUZ), Zambia National Union of Teachers (Z Nut), Zambia United Local Authorities Workers' Union (ZULAWU) and Zambia Union of Financial Institutions and Allied Workers (ZUFIAW) were among the key trade unions and, through the ZCTU, spoke with a strong voice. Since 1992 it became difficult to identify key trade unions in Zambia because they were now fragmented and apart from ZCTU there was now another trade union centre, the Federation of Free Trade Unions (FFTUZ). Even in the mining industry where MUZ dominated for a long time, there was now another union, the National Union of Mine and Allied Workers (NUMAW), which was formed in 2004. Some of the unions were almost extinct because the industries which employed their members scaled down on operations and employed fewer workers than before, while other industries closed down altogether.

### **Challenges faced by the labour movement over the years**

The labour movement had over the years faced challenges which at times tended to undermine its strength. Some of the challenges had existed for a long time while others had existed from about 1992 after Zambia made the transition from a one-party state to a multi-party state. The first challenge was the weak financial position of ZCTU, which sometimes negatively affected its relationship with some of its financially stronger affiliates, as happened in 1973, when MUZ threatened to strangle ZCTU financially by withdrawing its contribution over the wrangle involving a MUZ general secretary. Some trade unions were usually in financial problems.

The second challenge was the lack of political direction. In 1960 and 1990, after rendering support to political parties, the labour movement did not know where to go next or what to do. It simply waited for the political parties to show good will. The good will did not come. In 2000, when the trade unions became disappointed with the performance of the MMD Government and wanted to urge their members to vote against the MMD in the elections in 2001, the ZCTU refused to support this stance, arguing that while leaders of individual trade unions might speak on behalf of their own unions, the ZCTU must not become politically involved. ZCTU pointed out that in 1990-91 it became involved in politics only to help restore democracy and not because it was partisan. This stance agreed with the position taken earlier in 1988 by the ZCTU, which disputed statements by scholars and observers that the labour movement had become an unofficial opposition to UNIP. The ZCTU argued that all that the labour movement wanted was to ensure that it reserved the right to speak out against policies that were not in the interest of the workers.

The ZCTU was reluctant to throw itself into the political arena in order to ensure that neither the MMD government nor any other party was given an excuse to interfere in its internal affairs. This reluctance was understandable and had precedence from Katilungu's behaviour in the 1950s when he resisted appeals from political parties to use the unions for political strikes. Some younger trade union leaders challenged ZCTU's position, urging the labour movement to take a stance on politics. It was further argued that the labour movement could not stay away completely from politics because the decisions made by politicians affected the labour leaders and the members of their unions. The ZCTU argued that it was difficult for it to decide which political party to support because the same people were rotating from one party to another. However, the ZCTU gave individual trade unions the freedom to choose a political party to support.



Another challenge to the strength of the labour movement was the disunity in the movement since 1960. The UNIP Government tried to address the disunity through the Trade Union and Trade Disputes Ordinance (Amendment) Act of 1964; the formation of the ZCTU; the Industrial Relations Act of 1971; and enshrining in the law the policy of “one union, one industry”. The disunity in the labour movement did not end. In 1974, MUZ threatened to pull out of ZCTU after its leader and all MUZ officials that contested ZCTU elections lost. MUZ only remained in ZCTU because the law did not support such a split.

The labour movement in Zambia was for a long time organized on the basis of “one union, one industry” as enshrined in the law by the 1971 Industrial Relations Act. This helped the labour movement to be strong as even in 1990, trade union density stood at about 56%, one of the highest in Africa. The 1971 Industrial Relations Act was replaced by the 1990 Industrial Relations Act that abolished the “one union, one industry” policy. Although the 1990 Act contravened ILO Conventions and was greatly resented by the labour movement, the MMD Government did not revoke it as it had promised to do. Instead it replaced the 1990 Act with the 1993 Industrial and Labour Relations Act (ILRA) that not only removed the “one union, one industry” policy but also allowed the creation of trade union mother bodies other than ZCTU. The amendment had an immediate impact in that splinter unions emerged such as Primary Education Teachers’ Union of Zambia (PETUZ) and Secondary School Teachers’ Union of Zambia (SESTUZ) that broke away from ZNUT. The Bankers’ Union of Zambia (BUZ) also broke away from ZUFIAW.

The major split occurred in 1994, after the MUZ leader lost elections for the position of president of ZCTU. MUZ pulled out of the ZCTU because in the new democratic environment, the law about affiliation to ZCTU was changed. MUZ was followed by four other unions, ZUFIAW, ZNUT, NUBEGW and NUCIW that also pulled out of ZCTU to form the FFTUZ in 1994, although it was only registered as the second trade union federation in 1998 after the law permitting the formation of a rival federation was changed in 1997. This was because in 1996, the MMD Government ratified the ILO Convention No. 87 of 1948, which made it inevitable that the relevant provisions of the labour law would have to be amended to conform to international labour standards. The Industrial and Labour Relations (Amendment) Act of 1997 sought to align the law with the provisions of Convention No. 87 of 1948. The Amendment paved the way for the formation of more trade unions, including union federations. As a direct

result of this liberalisation of the law on freedom of association, there emerged small unions that faced problems of lack of resources, poor organisation and instability.

However, by 1998, all but one of the five breakaway unions had returned to ZCTU. Only ZUFIAW remained outside ZCTU and ultimately became the nucleus of FFTUZ. In 1992 it had more than 10,000 members but in 2001 the membership had declined to 6,300. In 2001, ZUFIAW was joined in FFTUZ by four other unions, including two splinter unions in the teaching profession to bring its membership to about 32,000. Some sources put the ZUFIAW membership in 2001 at only 5,000.

The emergence of several splinter unions after 1992, a factor that showed the disunity in the labour movement, was linked to political and economic liberalisation and liberalisation of trade union activities. ZCTU pointed out that the proliferation of unions in one industry would weaken the labour

**‘Since 1991, the existence of several political parties, few of which were strong, had been a further factor contributing to undermining the strength of the labour movement’**

movement because employers would play unions against each other and it would break the solidarity that the labour movement had had over the years. It was interesting that the ZCTU could talk about solidarity in the labour movement when scholars and many other people had recognised the fact that to a large extent the disunity and the emergence of splinter unions were processes associated with internal divisions within the ZCTU that became apparent in 1994 and culminated in a split in the trade union movement. However, the ZCTU’s assertion could be understood in the context that while the older unions had favoured political pluralism, they did not want to see this multiplicity extended to industrial organisation because they believed that a legislated “one union, one industry” policy was the best guarantee for a strong labour movement. There were other labour leaders who believed that competition would strengthen the labour movement by enhancing democracy and accountability. The debate over this policy gave the older unions a bad name, as they appeared to be undemocratic.

The influence of interest groups such as trade unions declined as a result of political and economic liberalisation. The circumstances around the reduced political influence of the interest groups, however, were unique to each sector. In the case of the labour movement, it was argued that Chiluba used his trade

union background to undermine it, a point many people and labour experts agreed with.

The attitude of MMD government towards workers came out clearly in 1993, when it took the unprecedented move of an employer declaring a dispute with its employees when the three public service unions, CSUZ, NUPSW and ZNUT rejected a 50 per cent salary increment offered to them. The ZCTU pointed out that this was the first time in the history of industrial relations that Government as an employer had declared a dispute. It expressed worry that in view of economic liberalisation and privatisation programme, Government was setting a bad example to would-be investors. Secretary to the Cabinet argued that Government was acting within the law.

Another factor we could add that undermined the strength of the labour movement was the existence of several political parties in the country. At the same time that the African trade unions were being formed, other African organisations were also emerging in Zambia. The Federation of African Welfare Societies was formed in 1946 and in 1948 became the Northern Rhodesia African Congress (NRAC) and in 1951, the Northern Rhodesia African National Congress (NRANC). The fact that trade unions emerged before or at the same time as political parties were emerging was not an advantage to trade unions because the formation of political parties in the colonial period confused the industrial relations scene, leading to conflicts and cleavages, as was the case in Zambia because politicians tended to get themselves involved in industrial relations issues. In this regard, trade unions found they were not alone in the field of protest management, and their work was pre-empted, especially by the political parties that were organised in every village and in every neighbourhood and made all grievances their province. It was only after 1964 that trade unions began to try and spread into the rural areas, but the unions had no capacity to compete with political parties. The labour movement was also not organised at the village level the way UNIP was.

Since 1991, the existence of several political parties, few of which were strong, had been a further factor contributing to undermining the strength of the labour movement. The absence of a strong opposition had meant that the labour movement could not threaten the MMD with defection in order to gain leverage with the government. As had already been pointed out, Chiluba had the advantage of knowing the strengths and weaknesses of the movement. He knew how far and in what ways he could push it. This gave him more space than Kaunda in which to pursue economic reform. In 1998, the labour movement was divided over whether to support or not to support MMD's economic policies. This led to controversy when the incumbent ZCTU leader, who was perceived to be supported by Chiluba, defeated his challenger, who was perceived not to be supported by Chiluba in the elections for the ZCTU presidency.

Another challenge the labour movement faced was the weak leadership in some trade unions, especially at branch level, a factor that contributed to rank-and-file members going on unconstitutional strikes that caused huge economic losses to the country.

**T**he labour movement leadership that took over from the Chiluba-led leadership in 1991 was condemned and accused of being weak and compromised for allowing the MMD government to implement anti-workers and anti-peasants economic policies such as the Structural Adjustment Programme (SAP). It was argued that in the whole of its history, the labour movement in Zambia had in 1995 been rendered impotent and less meaningful in terms of its usefulness to the social and economic needs of its members. This was because the labour leaders had compromised themselves politically, firstly, by turning the labour movement into an extension of a government whose philosophy and policy were not consistent with the aspirations of the workers; secondly, by accepting a legal framework that derogated from the ethos of freedom of association and placed too much direct and discretionary powers in government officials to control the labour movement. This relationship between the ZCTU leadership and the MMD was indeed a challenge. The legitimacy of the unions was also undermined as far as rank-and-file members were concerned, as instead of fighting for better conditions of service, union leaders were now negotiating redundancy packages. The ZCTU was aware that Zambian workers had developed an anti-trade union attitude because unions were failing to protect them in the new environment.

IMF policies also provided a challenge as they further weakened labour leaders as they affected collective bargaining in the country. The ZCTU felt that the unions were limited in their bargaining ability because of their inability to address concerns of the IMF. As a result of this, when the workers made demands, Government said the IMF would not allow them to give the workers what they wanted. It was for this reason that the IMF forced the Zambian Government to renege on a wage agreement it had reached with the Unions at the start of 2003 and approved by Parliament. In addition to not employing more teachers, the Government was also implementing a public sector wage freeze for 2004 and a rise in income tax in order to cut the budget deficit. This generated large-scale opposition. One labour leader vowed:

*“We will hold mass demonstrations to force Parliament to reduce Pay As You Earn (PAYE) and withdraw the imposed unlawful wage freeze. For 40 years workers had been tightening belts. We are fed up. Our only option now is to take them (government) on and one of us will have to surrender. Certainly it will not be workers.”*

On 18th February 2004, Zambian workers held national protests at the Parliament grounds in Lusaka against PAYE and the wage freeze. The ZCTU claimed that 90% of workers in the public sector had joined the strike. Both the ZCTU and the FFTUZ leaders addressed the workers at Parliament grounds and warned that the workers would stage an indefinite work stoppage if Parliament approved the 2004 budget. The FFTUZ leader further stated that the workers would lead a ‘Georgia style’ revolution to remove the stubborn government. She had earlier argued that the hastily implemented privatisation programme had left a bitter and agonising taste in the mouths of Zambians because the anticipated outcomes had not been attained, resulting in widespread suffering, poverty and deprivation. PAYE was not reduced and the wage freeze was not lifted. This raised questions about the effectiveness of labour leaders fighting against a Government determined to implement IMF/World Bank policies even if they hurt the workers.

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**T**he relations between the labour movement and the Government had always been shaky because Governments in Africa, whether colonial or post-colonial, used their monopoly of power to deal with labour leaders, sometimes ruthlessly.

In 1994, it was pointed out that the impoverished Zambian workers were crying out for militant trade union leaders because the ZCTU leadership was weak. It was further pointed out that trade unions were no longer a potent weapon because in the Third Republic they had become weaker than they were in the Second Republic as a result of aligning themselves to the MMD.

We could also point out that the strength of the unions was undermined by the fact that strong labour leaders were always co-opted into the political and government system. The earlier labour leaders were accused of willingly abandoning the labour movement for government jobs and eroding the confidence of rank and file members in labour leaders. In this regard, from 1974, radical trade unionists that placed emphasis on the economic interests of the workers and the need of the labour movement to be auto-

***‘I don’t like the Structural Adjustment Programme but I kiss it and will continue doing so. In this respect I can declare that I don’t care losing the coming presidential elections if people hate me because of the programme.’***

*Former President Frederick Chiluba*

mous ascended the leadership of the labour movement led by Chiluba.

In 1991, however, Chiluba and other labour leaders also abandoned the labour movement for political jobs. And it raised the question whether or not the labour leaders genuinely fought for the economic interests of their members or they used their positions to get political positions for themselves.

Another challenge the labour movement faced was its lack of effective bargainers. Some people argued that while the labour movement was fighting for its very life it lacked an educated leadership that had an intellectual capability as might be provided by university and college graduates, as was the case in trade unions in Europe, Asia, Latin America and even some African countries. This was the result of combined efforts of the UNIP government, the employers and, unwittingly, the trade unions themselves that effectively and solidly ensured that the well-trained and educated workers from college or university would never be given a chance to lead most of Zambia’s unions. This was because well trained and educated workers were to be placed in management positions and prevented from belonging to trade unions where they could provide leadership.

Finally, another challenge to the strength of the labour movement was the dwindling numbers of trade union membership as a result of a shrinking industrial base, retrenchments and redundancies that started well before the MMD era. In 1980, the Department of Labour observed that the employment situation had been deteriorating since 1975, when the copper price on the world market collapsed. In 1990, President Kaunda called for a “quick” solution as the decline was creating an explosive unemployment crisis. He said employment had declined from 381,490 in 1980 to 365,190 in 1984, a decline of 4.3% and by 1988 it had dropped to 360,720 and in 1989, to 359,620. Kaunda said the decline should not be allowed to continue for it was a time bomb. The declining employment levels meant that the labour movement was losing members and was becoming weaker.

The period from 1992 became particularly challenging for the labour movement because fundamental economic and political restructuring policies focusing particularly on privatisation, trade liberalisation and agricultural liberalisation were

Table 1: Formal Employment and Labour Force Trends

	1992	1993	1994	1995	1996	1997	1998	1999
<b>Total Labour Force (Millions)</b>	3.3	3.5	3.7	3.8	3.99	4.4	4.41	4.6
<b>Formal Sector (Thousands)</b>	546	526	496	485	479	475	467	478
<b>Formal Sector as % of Total Labour Force</b>	17	16	15	13	12	11	10.5	10.4

Source: ZCTU 2001, citing various CSO sources 1992-1999

Year	Public	Mining & Manufacturing	Agriculture	Other	Total
1990	159,000	142,000	80,000	162,000	543,000
1991	162,000	140,000	78,000	164,000	544,000
1992	171,000	136,000	82,000	158,000	546,000
1993	168,000	126,000	83,000	143,000	520,000
1994	174,000	108,000	79,000	136,000	497,000
1995	173,000	108,000	69,000	135,000	484,000
1996	176,000	95,000	68,000	140,000	479,000
1997	170,000	92,000	59,000	155,000	475,000
1998	174,000	86,000	59,000	157,000	467,000
1999	184,000	85,000	60,000	148,000	477,000
2000	185,000	83,000	50,000	158,000	476,000

Table 2: Paid Employment in Zambia 1990-2000

Source: Lishala C. Situmbeko & Jack Jones Zulu, "Zambia: Condemned to Debt – How the IMF and World Bank have undermined development",

World Development Movement, April 2004, p. 27.

implemented. They were meant to promote growth and development by reforming a non-competitive stage-managed economy and integrating it into the competitive global economy. On the other hand, the period witnessed global changes in business, trade and information and communication technologies. Globalization led to intensified trade reforms designed to integrate the Zambian economy into global markets, but the policies had fundamental effects on employment and labour relations policies and practices.

The MMD Government began the privatisation programme in Zambia in 1992 with the enactment of the Privatisation Act No. 21 and the creation of the Zambia Privatisation Agency (ZPA) that targeted 280 parastatals for privatisation and by the end of 2001, 257 companies had been privatised. There were also public service reforms that led to the reduction of the civil service from about 139,000 in 1997 to approximately 101,000 in April 2000, a decrease of more than 27%. Chiluba, in spite of his trade union background, strongly supported SAP and in August 1994, underlined the inevitability of the SAP when he said:

I don't like the Structural Adjustment Programme but I kiss it and will continue doing so. In this respect I can declare that I don't care losing the coming presidential elections if people hate me because of the programme. Even when I lose, I will go a

happy man because I have so far managed to change people's minds from perpetual borrowing to fend for themselves.

As Table 1 shows, the impact of SAP on the labour market and unionisation was devastating. Zambia's labour force continued to record high growth against a backdrop of the economy's inability to create employment particularly in the formal sector. In 1997, out of the total labour force estimated at 4.4 million, only 11% were employed in the formal sector. The remaining 89% of the labour force were either unemployed or employed in the informal sector. It was estimated that formal employment was declining at an annual average of 2%. (See Table 2) The contribution of the formal sector to employment continued to decline mainly due to declining economic activity as a result of retrenchments, closures and liquidations of companies as a consequence of SAP. Even the privatisation programme embarked upon by the government did not create the much-needed jobs. Experience showed that jobs were usually lost in the process of privatisation.

The trend of declining employment as a result of the MMD Government's economic policies continued and the labour movement leadership described 2005 as a disastrous year in terms of job creation. Although some jobs were created in

2005, most of them were casual jobs. A former trade unionist who had become an opposition MP warned that there would be a gun-free coup in Zambia due to unemployment. As Table 2 shows, trade and agricultural liberalisation were disastrous for Zambia's mining, manufacturing and agricultural sectors as employment declined in all these sectors.

**T**he implementation of the SAPs and the liberalisation of trade union activity had fundamentally undermined the labour movement's power. Various sources put total union membership at under 250,000 in 2001. On the basis of wage employment records, a realistic estimate put union density at about 50%. While that was comparatively high in the Southern African sub-region, the Zambian trade union movement had suffered an enormous decline in membership, particularly during the 1990s. During a 5-year period, 1990-1995, ZCTU membership declined from 355,197 to 290,847 since the start of economic liberalization, mainly due to privatization and industrial restructuring that had led to the shrinking of the industrial base and public service reforms that led to job losses. The decline was also due to the liberalization of the labour law that led to unions breaking away from ZCTU. The changed labour law also impacted on union recognition by employers for bargaining purposes. While in the past the law made it more or less mandatory for an employer to recognize trade unions, that was no longer the case.

Employers also resisted union organization, especially new investors who preferred "union-free" workplaces. The effects of globalization on employment and labour relations meant the world of work was changing fast. The concept of a job for life was becoming outdated everywhere in the world. Many employers developed various strategies to frustrate union organization, for example, by informalization, casualization and feminization of employment. They used threats of lay-offs and redundancies for those who wanted unionization and these had tended to discourage workers from joining unions. The unions attributed employers' resistance to unionization in part to the absence of any effort to

inform new investors of the country's industrial relations tradition. The ZCTU was aware of the reasons it had lost a large part of its membership and that it needed to strengthen its membership base. In order to achieve this, in 1996 it amended its constitution to accommodate informal sector workers as associate members.

The factors above that combined to undermine the strength of the labour movement led to its being marginalised and its playing little role in economic policy making during the period of democratisation. This was in spite of the fact that Zambia and South Africa were two of the most important cases in Africa in which labour played a major role in a successful transition to democracy. The Chiluba government was relatively unconstrained by labour and pursued a harsh neo-liberal adjustment programme that even threatened democracy. By contrast, the South African labour movement achieved substantial – though uneven – outcomes from its engagement in policy-making. Through its collective power, labour achieved an institutionalised voice in decision-making that forced government and business to negotiate some fundamental economic policies, including privatisation, labour law and employment standards. It was pointed out that that was true when Nelson Mandela was president. During the Thabo Mbeki presidency, relations between the labour movement and the government were full of strong tensions.

### **The Crisis in the Labour Movement in Zambia**

In recent times in Zambia, a summary of the history of the labour movement and what it had achieved over the years was provided through a number of views expressed on it mainly through the media. The views are important, first, for the fact that they show that there are many Zambians who are concerned about the state of the labour movement and its important history. Secondly, the views are important because they provide a clue to the crisis in the labour movement.

It was stated firstly that the labour movement was in the same position it was in the period prior to independence. It was weak, disorganised and lacked ability to champion the cause of the workers. A weak labour movement would have a devastating impact on the country's governance system. In an economy such as Zambia's, which was characterised by very weak state institutions, the propensity for employers

to exploit their workers was great. The workers needed a strong labour movement to protect them from exploitation. Secondly, government interference in the affairs of the labour movement had weakened it by taking away the vibrancy and unity which had existed in the trade union movement. Thirdly, it was stated that the labour movement was toothless because many union leaders were not in their positions to represent the workers' interests but their own.

Fourthly, it was stated that the solidarity which had existed in the labour movement had ended and the unions were not in agreement as the labour movement was going through a rough patch. Since the unions were no longer united, they were being manipulated, intimidated and threatened. More seriously, the labour movement had lost its identity which had been eroded from the time of the return to multi-party politics in October 1991.

Fifthly, it was stated that the labour movement was dead. This was because poverty among some labour leaders had led to their lacking integrity making them vulnerable to manipulation by politicians. It was pointed out that although there was poverty in the past, the leaders then had integrity and refused to be compromised.

The common theme running through the views expressed above is that the labour movement in Zambia became weak after the MMD came to power and had remained in a weak state even in 2011. The question was whether or not that situation was what constituted a crisis.

In 1960, the UTUC chose to support UNIP as the most progressive political force in the country rather than the ANC, which had existed before UNIP, but which was seen as a moderate force, if not a reactionary force, as far as the liberation struggle was concerned. The offer of the support by the labour movement to UNIP was not negotiated. In the understanding of the UNIP, the offer of support meant that the labour movement had asked to be a junior partner in the liberation struggle. The UTUC found itself in a position in which it could not effectively resist UNIP, but fortunately for the labour movement, individual trade unions, for example, AMU, which later became MUZ, could resist being swallowed up by UNIP. The labour movement had asked for positions in the UNIP government, but was not given the number it had requested because UNIP did not think it had done much in the liberation struggle.

In 1990, the ZCTU chose to abandon UNIP and

'But one problem the labour movement in Zambia has faced is that there have been labour leaders whose only interest when they served in the ZCTU executive was to wait and hope they would be appointed to government positions'

render support to the MMD as the most progressive political force in the country, which would bring about positive change which would benefit the workers. Unfortunately for the ZCTU and the labour movement as a whole, the support offered the MMD was not negotiated and the MMD was not a political party but a movement for change.

In this regard, its character was such that it was made up of a collection of different elements in the Zambian society. Some of those elements were politicians who had fallen out with Kaunda after serving him as cabinet ministers and as Members of the Central Committee (MCC) of UNIP. Others were the business elite whose businesses had been frustrated by the one-party system trying to establish a kind of socialism based on the philosophy of Humanism. There were also frustrated educated elites and professionals whose career paths were blocked because they did not belong to UNIP. Remember it used to be said that it paid to belong to UNIP.

**H**owever, the most unfortunate situation for the labour movement and the workers was that most of the top leadership in the labour movement 'defected' to the MMD. The word 'defected' is being used deliberately here. In the West, strong labour leaders did not usually abandon their labour movement positions for political office the way some labour leaders in Zambia and in other African countries tended to do. Labour movements in the West formed close alliances with political parties and contributed to their budgets and sponsored candidates to parliaments to speak for workers. In Zambia and in many other African countries, this was not done. Instead the parties in power intimidated labour leaders and cowed them into supporting them

whether or not their policies were good for the workers.

With the re-introduction of multi-party democracy, Zambia underwent political, economic, and social change. Economic change led to the implementation of a structural adjustment programme (SAP) with a vigour never before seen anywhere else in Africa. In 1993, the World Bank representative in Zambia even complained that the government was implementing adjustment programmes too quickly without a thought or care about social effects on the people. He also pointed out that the defence budget was too high, as it was twice that of health and education combined. Ben Mwila, the Minister of Defence then, was so offended with that criticism that he threatened to deport the World Bank representative from Zambia. The poverty levels, which were bad before 1991, became worse after 1992, with thousands of workers thrown out of jobs through retrenchments, closure of companies or just change in technology or production methods.

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≡ In such a situation, the labour movement needed an experienced leadership to negotiate the terms of liberalisation. That was what the labour movement in South Africa did. As a result of that the workers managed to have good terms in the liberalisation of the economy. In order for the labour movement in Zambia to have done what the South African labour movement did, Chiluba, Zimba, Sampa and all those labour leaders who 'defected' to the MMD should have stayed in the labour movement even as it supported the MMD so that from a strong position they would have negotiated with the MMD government good terms for the workers. But one problem the labour movement in Zambia has faced is that there have been labour leaders whose only interest when they served in the ZCTU executive was to wait and hope they would be appointed to government positions.

It has been noted that one thing which made Chiluba and the team which took over the ZCTU leadership in 1974 'attractive' was that they appeared not to be interested in government positions, only in fighting for good salaries and wages

and conditions of work for the workers. The leaders who had gone before them saw themselves as part of the nationalist movement leadership first and labour leaders second. In this regard they were more likely to abandon the labour movement and the workers' cause very easily to serve as national political leaders. In 1991, Chiluba and others in the labour movement who were considered true blooded labour leaders showed that they had also just been waiting for an opportunity to present itself for them to take over the political leadership and use power to their gratification and for the benefit of the workers.

The labour movement needed to have gone into a political partnership with the MMD as an equal partner with its own interests to serve. But to do this, the labour movement needed to have an educated cadre in its leadership (for example, well trained lawyers and economic and financial experts) that would not only understand the implications of the political change, but also the economic and financial intricacies involved in the change. The labour movement also needed to have huge financial resources to use to fund the MMD's election campaign as labour movements in Europe and America

***The lesson from the marriage of convenience between the labour movement and the MMD contracted in 1990 should be that a united labour movement should not allow itself to become an appendage of any political party***

do. This would have given the labour movement a good bargaining chip in the implementation of policies.

The ZCTU found itself stuck in a bad marriage with the MMD because the terms of the partnership were not properly negotiated. In this regard, even when the MMD government's economic policies were badly hurting the workers, the ZCTU clung on to it, seeing it as a part of itself. Whether the MMD saw itself as part of the ZCTU is very doubtful. The labour movement did not even want to hear of a party calling itself a 'labour party' because as far as it was concerned, the MMD was the labour party. But the MMD was never a labour party, founded with the purpose of serving the workers' interests. It was a movement which was quickly taken over

by businessmen, and the labour movement was soon heard calling the people in government a 'bunch of bloody crooks' out to use political power to enrich themselves.

The labour movement found itself afraid of 'defecting' from the MMD to an opposition party for fear that it might be crushed. Perhaps the opposition parties had not made it easy because many of them had not looked like winners. Supporting them would be like jumping from a frying pan into the fire. However, if the labour movement was to decide to ditch the MMD and support an opposition political party as the UTUC supported UNIP in 1960 instead of the ANC and as the ZCTU abandoned UNIP and supported the MMD in 1990, the whole political terrain would change as it did in October 1991. The lesson from the marriage of convenience between the labour movement and the MMD contracted in 1990 should be that a united labour movement should not allow itself to become an appendage of any political party. Instead it should speak with one voice and make its stand clear on political, economic and social issues in the country. If the national political leadership is not treating the workers with dignity, the labour movement should, as one, sponsor a group which would treat the workers with dignity. Such a position required strong leaders, not those who allowed themselves to be patronised by politicians and had one eye on a political job.

The crisis surrounding the labour movement in Zambia was not that it became divided after 1994 with so many splinter unions emerging and another trade union centre emerging alongside the ZCTU as a result of SAP. The divisions in the labour movement have always been there, caused by various factors. Sometimes the ZCTU was at loggerheads with its affiliates, but in the end the labour movement stood as one and spoke with one voice on many important issues. The SAP and all it entailed merely presented challenges to which the labour movement needed to respond.

The crisis in the labour movement arose out of its failure to respond adequately or appropriately to the re-introduction of multi-party politics and the economic policies the MMD put in place. There was even an irony to the situation. The 'defection' of Chiluba and others from the labour movement to take up political positions in government left a big gap in the leadership of the labour movement because it was sudden. With all due respect to the leadership which took over from the Chiluba group,

the gap created by their 'defection' was too big to be filled in so suddenly.

### **Successes of the labour movement in Zambia**

The labour movement with all the problems it has faced through the years has still scored many successes. We will highlight only a few major ones here.

The first success of the labour movement is that it was formed during the colonial period, when African workers were not expected to have trade unions. The consciousness exhibited by African workers during the colonial period which led them to form trade unions showed that they were capable of standing up for themselves as workers to fight for their rights even in a hostile environment. The question now is whether the consciousness by workers had been lost. The second success scored by the labour movement was that it successfully fought to maintain its autonomy and in this regard resisted attempts by UNIP to make it a wing of the party like the Youth and Women's Leagues. The third success is that from the unintended outcome of the IRA of 1971, the labour movement in Zambia became one of the strongest in Africa. From this position of strength the labour movement opposed the Decentralisation Bill of 1980 and the banning of labour leaders from addressing Labour Day rallies.

The fourth success is that the labour movement has contributed to the governance of the country by contributing men and women who have served in various positions, including in cabinet and the diplomatic service. This has, of course had a negative impact on the labour movement in that at various times it has led to the robbing of the labour movement of experienced leaders. The fifth success is that the labour movement helped to fight for the re-introduction of multi-party democracy in the period 1989 to 1991. Finally, the fact that the trade unions still existed, some of them in a weakened state, in the harsh economic and, sometimes political, environment in Zambia, was success in itself.

### **Conclusion**

The aim of this paper was to examine the crisis in the Zambian labour movement and the successes the movement has scored over



the years. We briefly looked at how the labour movement emerged during the colonial period, and then how it developed and matured during the First and Second Republics between 1964 and 1991, showing how it became one of the strongest labour movements in Africa. We then looked at the labour movement during the Third Republic and the challenges that democratisation brought in terms of the economic policies pursued by the MMD government, which the labour movement had helped to bring about.

We discussed the challenges which the labour movement faced over the years, which tended to undermine its strength. The first was the financial weakness of most trade unions, including the ZCTU, which made it rely on affiliates for funding through subscriptions. The reliance on funding from subscriptions of affiliates, especially the MUZ, made the mother body vulnerable. The lack of political direction was another challenge. It led the labour movement to merely support political parties without spelling out clearly what it expected to have from that support. The disunity in the labour movement, which led to splits in the mother body in 1959 and 1994 and later to the mushrooming of splinter unions, has been another challenge.

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**T**he existence of several political parties in the country also contributed to the weakening of the labour movement. The absence of a strong opposition party meant that the labour movement could not threaten the MMD with defection to gain leverage with the government. When Chiluba became president of Zambia after leading the labour movement for seventeen years, he used his knowledge of the movement to push through economic policies which hurt the workers but which Kaunda had found difficult to push through because of opposition from the Chiluba-led labour movement. In this regard, as has been argued by several writers, the fact of Chiluba being president of Zambia became a big challenge for the labour movement as he contributed to weakening the movement which had given him so much.

Some trade unions had over the years suffered from having weak leadership, especially at branch level. This meant that members of such unions with weak leadership did not receive

good guidance and sometimes engaged in activities which tended to undermine trade union strength, such as wildcat strikes. The leadership which took over the labour movement after Chiluba and the others moved into government was seen to have weakened itself and the labour movement by identifying itself too closely with the MMD, for which it had a 'soft spot'. The MMD leadership took advantage of this friendship to implement policies which hurt the workers. The IMF and World Bank policies which the MMD government implemented with a lot of determination further undermined the position of labour leaders as they affected collective bargaining in the country. It became common for the Ministry of Finance to decide the percentages of salaries and wages to be awarded to workers outside the collective bargaining unit. This meant that the labour leaders were no longer gaining much for their members in terms of improved salaries and wages and conditions of service. This led to dissatisfaction which boiled over in 2004, when the labour movement, with the help of some Civil Society Organisations (CSOs) staged a national demonstration on 18th February against high taxes and a wage freeze for public service workers.

The strength of the labour movement had always been undermined by the fact that its strong leaders – and maybe its better leaders too – had always been co-opted into government. This was common with labour leaders who were closely associated with the nationalist struggle. When Chiluba and others took over in 1974, they were seen as a new type of labour leaders who had no ties to the nationalist struggle and so would fight for the workers all the time. It was disappointing, therefore, when Chiluba and the others defected from the labour movement to take up government positions. The gap left in the leadership of the labour movement meant that it was moving into a new era with a leadership that was almost new to tackle labour issues in a fast changing world of work. The lack of an educated leadership which could bargain effectively also affected the strength of the labour movement.

The word 'educated' could be understood to mean different things by different people and so perhaps it is inappropriate here. However, it is used to refer to a situation where trade unions needed well trained professionals in specialised fields to handle various aspects of trade union work. In the past, the government and other employers, with the co-operation of the labour movement, agreed to leave out workers

with college and university qualifications from becoming members of trade unions. This automatically robbed unions of well qualified members. Finally, the dwindling numbers of trade union membership as a result of economic measures pursued by the MMD government also led to the undermining of the strength of the labour movement. We provided figures in this paper to elaborate this aspect.

We have shown that the factors above combined to undermine the strength of the labour movement and led to its being marginalised and being unable to play a major role in economic policy-making during the period of democratisation as the South African labour movement was able to do. However, these challenges did not constitute the crisis because in our view, the crisis lay elsewhere.

We defined 'crisis' as a time of great danger, difficulty or confusion when problems must be solved or important decisions must be made. In this regard, we concluded that the biggest 'crisis' which the labour movement was faced with was its failure to respond adequately to the changed political, economic and social environment in the country brought about by liberalisation.

The paper also examined the successes scored by the labour movement. For a movement which emerged before the nationalist movement emerged, there were a number of successes it had scored. With all the problems the labour movement faced through the years it still scored many successes. The first success of the labour movement was its being established during the colonial period when African workers were not expected to have trade unions to represent them as workers. The second success was that it successfully fought to maintain its autonomy and in this regard resisted attempts by UNIP to make it as a wing of the party like the Youth and Women's Leagues. The third success was that it became one of the strongest labour movements in Africa. The fourth success was that it contributed to the governance of the country by contributing men and women who served in various positions, including in cabinet and the diplomatic service. The fifth success was that it helped to fight for the re-introduction of multi-party democracy in the period 1989 to 1991. Finally, the fact that the labour movement and trade unions still exist, even if some of the trade unions were in a weakened state in the harsh economic and sometimes political, environment in Zambia, was success in itself.

So is there any hope of unity in the labour move-

ment? The answer must be yes. It used to be said that an injury to one worker was an injury to all workers. Based on this spirit of unit, there is every reason to believe that the labour movement could re-unite and re-discover its strength to stand as one and speak as one. After all, it is still true that there is strength in numbers.

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# P olitical Challenges facing the Zambian Labour Movement ahead of the 2011 General Elections

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## Background

**H**istorically, African trade unions have been active in broad popular struggles for independence and national liberation. Trade unions have been central in resistance to authoritarian and dictatorial rule (Kraus, 2007).

This has required the building of wider social and political alliances, both with like-minded groups in civil society and with political parties whose programs reflect the concerns and interests of workers. In other words, throughout the long history of their existence trade unions have aligned themselves to groups and movements that share their values and concerns. As a result this enabled trade unions to reach out to a larger population than those directly involved in formal employment, thus greatly enhancing their legitimacy. It is this broad organizational reach of the trade unions and their representative function of a broad section over a wider issues of development, equity and social justice that qualifies the trade unions to be referred to collectively as the 'labour movement.'

The political role played by trade unions in Africa can be traced back to pre-independence times. In

Zambia, like in most of African countries, trade unions formed the nucleus of nationalist parties and were instrumental in challenging colonial and authoritarian rule. In particular, trade unions formed alliances with nationalist parties and other progressive organisations to fight for workers' and human rights and later fought alongside nationalists for national independence. In particular, unions fought battles with employers and government through strike actions, demonstrations demanding decent wages, and improved working conditions. But after independence, efforts were made to integrate unions into ruling party structures and turn them into 'transmission belts' of government policies. Strategies to integrate trade unions into ruling party structures were intensified under conditions of one-party state. However, unions are known to have resisted these efforts and often fought to maintain their autonomy against all odds (Bates, 1974; Mihyo, 1997).

Due to the absence of formal political opposition during the one party state and considering trade unions democratic character, unions were the only organised force to challenge authoritarian tendencies and precipitous economic decline (Lungu, 1986). In many African countries, trade unions played an important role in championing the cause of democratization and became one of the leading forces for political change. Having achieved democratization, trade unions faced a number of dilemmas. First, they were confronted with the dilemma of being part of government by virtue of having being an ally to the new ruling party. Thus they were often constrained to criticise the party they helped bring to power, sometimes even when the policies pursued were perceived detrimental to workers' interests. Second, the formation of political parties and emergence of a vibrant civil society diminished trade union's political role and influence. Third, a weak party system and the absence of a party specifically promoting workers' interests made it difficult for unions to develop a political platform to articulate workers' interests (Webster, 2007). Lastly, unions faced the dilemma of whether or not to participate in politics by publicly supporting a political party. The choice to do so was fraught with enormous risks that included alienation from the general membership to harassment from the State.

Because of laws that prohibit the organisation of sectional interests and a kind of distaste for socialism, parties that openly promote workers' interests have been few. Those that have appeared have not had close cooperation with the labour movement. Further, relationship between trade unions and politicians has often been characterised by mistrust and suspicion. Political parties, especially those in opposition, have shied away from openly articulating workers'

demands for fear of being arrested for inciting workers to rise against the government. UNIP suffered this fate in 1993 when the party was linked with the 'Zero Option' – an alleged plot to encourage nation-wide strikes to bring down the MMD government. This paper makes a modest contribution to the debate on the relationship between trade unions and political processes in general. Specifically, the paper discusses the political challenges facing the Zambian labour movement ahead of the 2011 general elections.

The paper is organized into six sections. Following the introduction, section two considers the issue of trade unions as political organizations. Section three gives an overview of the nature of trade union-relations in Zambia since 1964. Section four discusses the current political context. Section five analyses the political challenges facing the labour movement. The last section is the concluding section, which also presents policy options open to the labour movement and ponders the future of the labour movement in the context of a liberalized political and economic environment. Trade Unions as political organizations

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**M**any times, trade unions have been confronted with the question of whether or not to participate in politics. Politicians have even gone as far as to suggest that trade unions are being used by foreign interests to destabilize the political system. To the extent that trade unions are involved in a conflictual relationship with employers and the state, they can be said to be political organizations. To be sure, there is always an in-built conflict between trade unions and employers on one hand and trade unions and the state on the other. Matters of collective bargaining and negotiation take place within an atmosphere of unequal power relations and trade unions' capacity to wrestle benefits for their members is dependent on their influence and ability to leverage the employer. In conditions of mass unemployment and highly deregulated labour market, trade unions' capacity and influence tend to be low and aligning with political forces becomes an option. <sup>4</sup>

But even where trade unions' influence is great, government as the largest employer tends to be on the side of employers, thus resulting in a conflict with trade unions. The state as employer and regulator has tended to run into conflict with trade unions and workers as it has a different view of development and public order. Strike action, for example, is considered criminal and disruptive and against the public good. Apart from engaging employers and the state, trade unions are also accountable to their members. Thus they are often confronted by the need to do a balancing act, between being compliant to labour laws and realizing benefits for their

members. Union leaders are often accused of betraying their immediate constituency either by supporting the policies of their party or government in order to ensure privileged access to political power for itself (Beckmann and Sachikonye, 2010: 2). As union leaders are elected, their failure to deliver on their promises may result in being removed from power. In order to safeguard their positions, sometimes union officials have forged alliances with the party in power, which has justified political interference in union affairs. We will return to this later. Since independence, there has been a perception that trade unions should necessarily play a developmental role rather than representational one as there is a belief that trade unions in Africa only represent a tiny fraction of the labour force (Damachi and Fashoyin, 1986). Thus some commentators have argued that trade unions tend to pursue narrow sectional interests of their members, who may even be less than ten per cent the total labour force and sometimes less than half the total formal sector employees. Government has often called on trade unions to be responsible and desist from strike action and excessive wage demands.

But it should be recognized that these pressures from government on unions to subordinate themselves and to act as 'transmission belts' for government policies were resisted by unions both under the Kaunda and Chiluba regimes. This was despite Chiluba having come from the ranks of the trade unions. For example, trade unions were particularly unhappy with the pace of implementing structural adjustment, in particular the manner of privatisation and its attendant effects on the workers (Craig 2000). In terms of the relationship between the MMD and trade unions, there was a perception that labour was marginalized and played little or no role in determining public policy.

After a short honey-moon period (1992-1994) labour exploded and took on the MMD by publicly criticising MMD policies and dissociating itself from the party it helped found. This was particularly so because of the deterioration in workers' living standards, erosion of workers' real wages and a perceived corruption in government. Further, members were no longer convinced the decision to support the MMD had been wise as the benefits for that support were not forthcoming. Apart from being political organizations, trade unions also have played overtly political roles.

They are not only credited with forging alliances with nationalist parties to end colonialism, but were often the motive force behind pro-democracy movements in Africa. As one commentator has observed: 'At every turn African trade unions find themselves deeply involved in politics – a fact as true today as it was under colonial rule' (Davies, 1966: 11-12). Because of their organizational capacities, their hold over the workers and their record of being able to bring down government, efforts have been made to repress, control or coopt trade union leaders, in

almost all African countries. It can be observed that 'virtually all African governments are uncomfortable with strong, radical, independent trade unions. Such organizations violate their determination...to dominate civil society and threaten to function as independent power base for ambitious politicians (Freund, 1988: 106-107).

The labour movement is politically contested, both by those who identify themselves as labour and those that seek to ensure modes of control and regulation based on their own strategies. Indeed, what constitutes the national and workers' interest has been highly contested. For unions, the interests of workers necessarily constitute the national interest, as the majority of the population can be considered as workers. Whereas the state, narrowly defines workers' wage demands as sectional and going against the attainment of the macroeconomic stability and national development.

The debate around policy options has been central to the labour movements' engagement in political processes. It can be argued that trade unions directly engage in politics by intervening in political processes and institutions that regulate and control labour relations, such as labour relations, labour courts and other labour-related bodies. Government, employers and trade unions have often differed in their views on issues that affect workers welfare.

The contestation over the rules of the game and aspects of employment are themselves highly political as they require power, influence and capacity to leverage the other. The unions hold the potential threat to withhold labour, demonstrate and cause major disruption to production and service provision. At the heart of union's engagement in political processes is the desire to influence government policy to the benefit of the workers. Thus unions engage politically by lobbying government and political parties in order to influence the interests of their members.

**T**he experience of Zambian trade unions is not unique in Africa. This has happened in most labour-supported governments that have come to power. In South Africa, Namibia and Zimbabwe, this problem was evident. In South Africa, for example, there is an on-going debate regarding the relationship between the Congress of South African Trade Unions (COSATU) and the African National Congress (ANC). While the alliance recognized the need to redress inherited inequalities by invoking the Freedom Charter, which calls for a kind of social democratic state, the ANC implemented economic liberalization policies that did not please COSATU. However, COSATU has been faced with the dilemma of either staying in the alliance and fight to influence things from within or leave to either found its own party or support a party that would promote workers' interests (Simutanyi, 2008).

### **Trade Union-State Relations in Zambia**

Zambia's trade union movement has a long history dating back to pre-independence days. It was the forerunner of the nationalist movement and played a significant part in the independence struggle. Firmly based in the Copperbelt, it has a proud history of struggle against economic exploitation and political and social injustice. While unions supported UNIP, it fought efforts at being incorporated into UNIP structures by being turned into an appendage of the political establishment (Rakner, 1992).

The turning point came in 1972 when former president Kenneth Kaunda declared a one-party state. The Zambia Congress of Trade Unions (ZCTU) resisted attempts by UNIP to control it and then to transform it into a wing (mass organisation) of the party (Mihyo, 1995). Despite the benefits that came from the Industrial Relations Act of 1971, which among others introduced the principle of 'One Industry, One Union' and compulsory check-off system, the ZCTU was to develop into an unofficial opposition or the de facto political opposition under the one-party state (Gertzel, 1989). With the deterioration of the economy after 1974, the labour movement played a leading role in opposing economic policies of structural adjustment in the late 1970s and the 1980s. They opposed over-bureaucratization, unproductive public spending on the UNIP bureaucracy and the impact of structural adjustment on their membership. These struggles were often met with harassment and even arrests. Strikes were banned for specific sectors classified 'essential services' and union leaders were sometimes detained under the Preservation of Public Security Act. In this regard the 1980 detention of senior labour leaders who led opposition to the Local Administration Act 1980 is instructive (Simutanyi, 1996). Government detained senior labour leaders and accused them of having organised strikes by mineworkers who were opposed to the integration of mine areas into the new proposed council structure. They were specifically accused of trying to overthrow the government, but were later released by courts of law.

As the economic situation deteriorated further in the 1980s, trade unions' opposition became bolder and louder. The food riots of December 1986 and rolling strikes of 1987 showed that the Government was no longer in control and its credibility and legitimacy was at its lowest ebb. In December 1989, the ZCTU General Council resolved that they would advocate for a return to a multiparty system given the fact that socialism was being abandoned in Eastern Europe. This forced the UNIP government to convene a national convention to consider whether or not the country should revert to a multiparty system. At the national convention, the ZCTU

specifically made the bold demand for the re-introduction of a multiparty system of government. Other events, such as the doubling in the price of mealie-meal in June 1990, food riots and an attempted coup all combined to persuade UNIP to agree to the introduction of a multiparty system. The labour movement was to play an important role in the founding and mobilization of support for the Movement for Multiparty Democracy (MMD) (Rakner, 2003; Ihonvbere, 1996). The MMD came to power in November 1991 with at least six former trade unionists occupying important positions in Government. But within a year, trade unions' optimism turned into frustration as the new MMD government, led by a former chairman-general of the ZCTU, implemented radical economic and labour reforms that saw a decline in trade union membership, fragmentation in the union movement and job insecurity due to retrenchments. What was the trade union movement to do, to remain within the alliance or to denounce the party they helped to come to power?

#### **Current political context**

Before we examine the challenges facing the Zambian labour movement, it is important to consider the current political context. Twenty years since the labour movement helped steer the MMD to power, the political context has fundamentally changed. Whereas in the pre-1991 period trade unions had political visibility and provided a voice on policy options under a one-party state, that is no longer the case. The multiparty political dispensation has brought in its wake thousands of civil society organizations and political parties all competing for power and influence. The political influence of the labour movement has all but dwindled and what remains are personal ties with those in power.

Trade union leaders now have very little access to those in power and even when they do their proposals are often ignored. The dismantling of the massive parastatal sector that employed over 100,000 employees brought with it huge job losses and loss of both union membership and income. Liberalisation has also brought with it union fragmentation and division, which has compounded trade union's organizational capacities. Under conditions of fragmentation, it is easy to use divide and rule tactics. Job insecurity, given mass unemployment, has also militated against militant trade union actions, such as strikes. Where they take place they are short and ineffective. Private sector unions are mostly vulnerable to dismissal, layoffs and other sanctions.

**T**his may explain why public sector unions appear more organized and more visible than their private sector counterparts. The current political situation is characterized by a highly competitive party system. Since 2001, no political party dominated the party system. Zambia has moved from a one-party system to a highly competitive party system, in which the ruling MMD has electoral control of only four of Zambia's nine provinces and slightly over 50 percent of parliamentary votes. The Copperbelt and Lusaka Provinces, which account for close to 60 percent of formal sector employees and about 40 percent of unionized labour force are controlled by the opposition.

The loss of the labour constituency to the opposition has led to political over-sensitivity on the part of the ruling party. Undoubtedly, this has had implications for the attitude of government towards the labour movement. Thus the statements of labour leaders are watched carefully to read into them political nuances. It has also led to defensive postures on the part of labour leaders, who fear being perceived as being too close to the opposition.

**There has been reluctance by trade unions to endorse a political party citing reasons of political neutrality and non-partisanship. This is despite the fact that trade unions supported political parties, including bringing parties such as UNIP and MMD to power**

The other important aspect of the current political situation is a polarization of the political debate around an opposition-government nexus. Despite being a multiparty political system, the political debate revolves around who supports and who is opposed to the ruling party. Because the ruling party controls patronage resources and can use coercion and other strategies to bring those perceived disloyal into line, many labour leaders have tended to play safe.

Those who have chosen to display independence have been victimized. The insecurity of the government with the loss of the Copperbelt has seen an increased government interference in unions' internal matters. A few years ago, government tried to prevent Joyce Nonde-Simukoko from being elected ZUFIAW general secretary on the pretext that she was not qualified to be elected to that position as she had left her employment. Recently, Rayford Mbulu suffered the same fate when he was dismissed as MUZ president on the instructions of Minister of Labour and Social Security, Austin Liato, who himself came from the ranks of the trade unions and lost his employment and had his union de-registered

simply because he dared to go against the dictates of the government at the time. It is ironical that the decision to dismiss Mbulu came from a former trade union leader. But it is also a well-known fact that there has been selective application of labour legislation. While some trade union leaders were made to relinquish their positions or disqualified from contesting, many others in similar positions have not been affected. This kind of double-standard in the application of the labour law places trade unions under extreme pressure to please the establishment.

### Challenges facing the Zambian labour movement

What are the challenges facing the labour movement as the country goes towards the elections? Given the political context outlined above, the labour movement is confronted with serious challenges. The broad challenge facing the labour movement is whether it is able to intervene politically to influence the direction of public policy. How should the labour movement influence the direction of public policy in favour of workers in an environment in which it is expected to express conformity and partisanship? How can the labour movement intervene effectively on behalf of their members and workers in general? Can the labour movement exert its influence on government as an independent pressure group? It would appear to me that the labour movement is challenged to decide between autonomy and political engagement.

There is clearly tension between the options of autonomy and political engagement. Demands for autonomy and independence in a polarized political environment are considered another way of supporting the opposition without clearly saying so. It is even arguable whether a policy position taken by the labour movement can be considered non-partisan. Any position taken by the labour movement, even one in the interest of the workers, will be partisan. This is because the position taken by the labour movement will either support or be in conflict with government. The choice of political engagement is the most problematic for the labour movement and yet the most important. Eddie Webster (2007) identifies four options available to the trade unions. These are: (1) forging a close alliance with a ruling party; (2) promotion of a political party linked to the labour movement; (3) maintaining an uneasy alliance with the governing party, even where there are no tangible benefits for the workers; and (4) Unions disengagement from party politics altogether by pursuing a policy of non-association with political parties. Each of these options has its advantages and disadvantages, and we do not have time and space to discuss them here.

The literature identifies a different range of relations between trade unions and political parties (Cohen 1974). These relationships include, integration, partnership and opposition. But these relationships are themselves in a constant of flux. The experience

in many countries is that of integration or control. Both the party in government and opposition parties that work with trade unions try to subordinate them to party discipline and policy.

However, the interests of trade unions do not always coincide with that of political parties which generates tensions. Trade union members tend to be overly suspicious of union leaders who are closely aligned to government or the ruling party. Questions have been asked regarding the position of trade unions in situations where the party they support, as was the case in Zambia with MMD, pursues policies that are considered detrimental to workers' interests. Does the union disengage from the alliance, seek a better deal, more influence or champion its own course? When the trade unions have not been clear with what role they wish to play within the alliance, but have not left either, their position has been ambiguous and has often been perceived as playing an opposition role. But to leave the alliance may carry with it a number of disadvantages which include losing favour from the government in power and sometimes suffering reprisals. However, trade union leaders will have to balance the benefits of supporting the party in government and members' interests. Trade unions' relation with opposition parties is also premised on an assumption that there are parties that share similar policy platforms with that of the labour movement. It is easier in countries where there are political parties specially formed to champion workers interests. In Zambia, political parties take a mass party form, meaning that parties represent a multiplicity of interests. In such party forms, how can trade unions influence party policy in its favour? Further, how can political parties reach out to trade unions and put union and workers' interests on their policy agenda? Would such relationship between trade unions and opposition political parties be tolerated in a political environment that is so hostile to any forms of competing centres of power? Would it be in the long-term interest of a political party to declare its support for a particular political party, when it is not known whether such a party will ever come to power?

There has been reluctance by trade unions to endorse a political party citing reasons of political neutrality and non-partisanship. This is despite the fact that trade unions supported political parties, including bringing parties such as UNIP and MMD to power.

What are the fears by trade unions to come out in the open to support a political party? Is it the fear of the membership which is varied in political affiliation or the fear of antagonizing the party in government? At a CPD/FES workshop



held 2007 participants seemed divided whether or not trade unions should publicly support a political party? Many were of the view that by supporting a political party, a trade union compromised its autonomy and independence and violated the rights of members to belong to political parties of their choice.

### **Concluding remarks: Future of the labour movement**

This Colloquium takes place at a very important time. It takes place at a time when the Zambian labour movement is at crossroads and its political relevance is being called into question. Twenty years on since the labour movement helped bring the MMD to power, there is need for deep reflection on where the labour movement is and how the new political dispensation has affected trade unions and workers. Being an election year, workers will look to their leaders for guidance on what type of strategic choices they will need to make ahead of the polls. Trade unions should know what they want and remain focused on their primary responsibility of representing and promoting workers' interests. On workers' interests trade unions should be partisan, which by extension should imply that they should forge alliances with all progressive political organizations that have a commitment to workers' interests. As I see it the role of trade unions in the political process will be influenced by different factors. These may include: how they are perceived by different observers; the way they act in society, expectations of their members and how they perceive themselves.

It should be acknowledged that the political relevance of the labour movement will to a large extent be influenced by the changed political and economic environment. It should be recognized that trade unions no longer have the monopoly of organisation and cannot play a political role given the existence of political parties. However, they cannot achieve most of their demands purely by economic or industrial means, they will need to channel some of their demands into political platforms and forge closer links with political parties. Indeed, while trade unions may seek to influence public policy either in government or political parties, they can only do so by finding practical ways of developing stronger links with political parties and CSOs. Building of strategic alliances should be based not only on principle, but also on a shared policy platform. I am aware of trade unions attempts at influencing political party platforms, but these efforts have so far been ad hoc and short-term.

**T**rade unions should consider political parties as important strategic partners in the pursuit for power and improved conditions for their members. They should not be considered as competitors but allies. It is important that trade unions themselves are internally democratic and canvass their members when making policy choices. There is no doubt that trade unions' representational role could find expression and be even more enhanced if linked to political action and other social movements. The 2011 elections will be particularly significant as the party the labour movement helped come to power will face its biggest political test. Where does the labour movement stand on the future political direction of Zambia?

There two stark choices before the labour movement; to align with a political party that will promote workers' interest regardless of whether it is in opposition or government or not to support any political party, but rather to lobby and campaign on a pro-worker agenda. The labour movement also has the option of sponsoring trade union candidates across the country to ensure that labour issues will be articulate. What strategy the labour movement will take will greatly depend on a strategic assessment of its relative strength and influence within the political process.

It is my hope that this colloquium will provide a platform to begin the conversation on the policy options available to the labour movement and how the it can recapture its lost ground. The future for the labour movement is bright and it has the capacity to confront current adversities.

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# Economic Challenges Facing the Labour Movement in a Liberal Environment in Zambia

By Grayson Koyi

## Introduction

Over the last 30 years, the International Monetary Fund (IMF) and the World Bank have encouraged developing countries to undertake economic liberalisation, with the intended outcome of greater economic stability, growth and ultimately poverty alleviation. Within this context, Zambia has had a fair share of the dose of economic liberalisation, particularly since 1991 when the Movement for Multi-party Democracy (MMD) Government won elections on a neo-liberal platform and thus adopted Structural Adjustment Programmes (SAPs). Economic liberalisation has not been without costs, however. Economic stability and growth have been achieved at great cost to the majority of the Zambian people and labour has paid the highest price.

This paper posits that the originating process of the economic challenges afflicting the labour movement in Zambia can be traced to the economic liberalisation measures of the 1990s and 2000s that have altogether combined to produce labour market processes and outcomes

inimical to the broad interests of organised labour. As the former Secretary General of the International Food Workers Union (IUF), Dan Galin, noted, “economic liberalisation has turned into a nightmare for us [workers]” (1994:107).

Admittedly, the era of economic liberalisation in Zambia has been associated with job losses, growing unemployment, high taxes, ‘informalisation’ of work, low wages, the working poor, ‘casualisation’ of work, job insecurities, inequality and workplace – a whole black catalogue of distressful labour market phenomena that have constantly challenged the role of organised labour in a liberal environment. These labour market processes and outcomes have altogether combined to push the labour movement onto the ropes, leading some commentators to posit that the labour movement in Zambia has taken too heavy an economic punch and is hanging on to the ropes to beat the count!

Others more pessimistic have described the labour movement in Zambia as dead. However, the position of labour on the ropes must generate concern. Without doubt there are those who have celebrated the slide of union membership, the associated loss of union income and influence. Nonetheless, scholars within and outside the academia have often emphasised the contribution that unions make to economic, political and industrial life. For instance, three Australian researchers have contended that unions are a significant vehicle for the achievement of social justice, an essential attribute of a free society and a vital element to the power of major corporate employers (Shaw, Walton, & Walton, 1991:102).

Writing in the mid-1980s Emeritus Professor of Economics and Industrial Relations, Jack Barbash asked, “Do we really want labour on the ropes?” (1985). He inquired into the repercussion of the decline of unionism for American democracy; he wondered whether the benign aspects of Human Resource Management (HRM) would continue in the absence of unionism’s countervailing power; and pondered on the possibility of an eventual union backlash prompted by more favourable labour market conditions. He warned that government and employer attempts to undermine and destroy unions might appear to contain short-term benefits, but the strategy risked aggravating class conflict over the longer term.

If tackling social injustice and promoting a

Table 1: Poverty Status in Zambia (2006)

Location	Total Poor (%)	Extremely Poor (%)	Non-Poor (%)
All Zambia	64	51	36
Rural	80	67	20
Urban	34	20	66

Source: LCMS (2006)

free society are collective goods, then the declining trend of trade unions in Zambia must be a shared concern. The purpose of this paper is to reflect on the economic challenges facing the Zambian labour movement in a liberalised environment in order to contribute to the growing debate on the role of the labour movement in Zambia. The paper discusses the economic challenges facing the labour movement in Zambia by highlighting the impact of economic influences on trade unions since the adoption of economic liberalisation of the 1990s. By so doing, it is hoped that this will help towards identifying sustainable strategies for the Zambian labour movement.

The paper is organised as follows. Section two broadly highlights the socio-economic context of Zambia within which labour struggles are situated. It flags off issues symptomatic of the malignancy of the economic challenge confronting labour. Section three calls focus to the labour market in Zambia in the context of economic liberalisation and teases out underlying forces that have altogether combined leading to declining union membership, income and influence. The fourth section draws some concluding remarks and highlights possible strategies for the way forward.

## 2.0 Current Socio-Economic Context of Labour Struggles in Zambia

Looking at the current socio-economic context, the labour movement in Zambia finds itself in a national economy with an estimated total population of about 13 million, of which the labour force constitutes about 5 million (CSO, 2010:10). Further, available statistics suggest that, of the total labour force, about 70% are in the agricultural sector, 23% in the industry sector and 7% in the service sector. Interestingly, much of agricultural employment is considered informal and, therefore, outside the catchment area of trade unions. Nonetheless, the Zambian population is relatively young with about 66% of the population estimated to be below the age of 25 years (NELMP, 2004:37). The national poverty incidence

stands at 64% of the total population, while the same for rural areas is 80% (LCMS, 2006:110). Table 1 illustrates the poverty status of Zambia as reported by the 2006 Living Conditions Monitoring Survey.

As seen from the table, the rural population is predominantly poor with the overall poverty level at 80% as compared to their urban counterparts at 34%. Incidence of extreme poverty is also high in rural areas; about two thirds of the poor are extremely poor, whilst less than one third is extremely poor in urban areas. Furthermore, the non-poor persons in rural areas are just about one third of the urban non-poor persons, 20% and 66% respectively. But how is poverty challenging the labour movement? Incidentally, the labour movement has to grapple with high levels of poverty within and outside their ranks. Within their ranks, they have to deal with 'poverty wages' at the bargaining table and outside of it there is a general decline in standards of living and growing income inequality that must appeal to the trade union conscience for a more just and fair society.

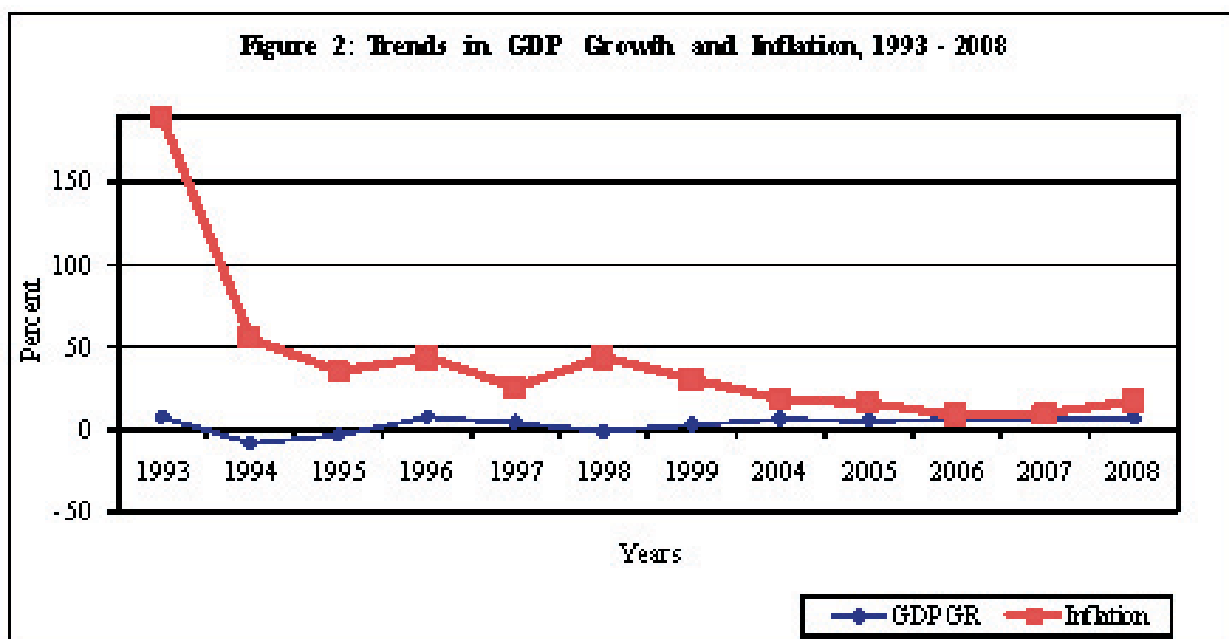
On the macroeconomic front, Zambia has started to witness some relatively sustained positive economic growth (Economic Report, 2009:5). The economy has grown positively between 2000 and 2009, in contrast to the fluctuating growth pattern that characterized the 1990's. However, this growth is partially negated by a population growth rate of about 2.9% per annum, resulting in only a marginal growth in per capita terms between 2000 and 2009 (Economic Report, 2009:10). Prospects for growth are still modest as the economy is projected to grow at an annual average of 6.1% over the period 2011 to 2015 (SNDP, 2011). Table 2 below summarizes Zambia economic performance in the period 2000 and 2009.

Table 2: Zambia's Key Macroeconomic Indicators, 2000- 2009

	2004	2005	2006	2007	2008	2009
GDP (current US\$ Bn)	5.4	7.1	10.7	11.5	14.7	12.2
Real GDP growth rate (%)	5.5	5.3	6.2	6.2	5.7	6.3
Inflation rate, annual (%)	17.5	15.9	8.2	8.9	16.6	9.9
GDP per capital (US\$)	490	627	907	949	1,174	952

Source: CSO (2010); Budget Address, 2011.

Figure 2 below captures recent trends in GDP growth and inflation for Zambia.



Source: Author

As seen from Table 2 and Figure 2, the economy has assumed an upward trend in economic growth since about 2000 and a declining trend in overall inflation. However, despite this recovery in the rates of economic growth, the economy has failed to neither generate employment nor substantially reduce poverty.

For instance, while the rate of economic growth has increased steadily from about 3.6% in 2000 to 7% in 2010, the rate of unemployment has unfortunately also risen over the same period, from 12.9% in 2000 to a current reported rate of 16% (LFS 2007:21). It would, therefore, appear that the recent favourable economic

performance in Zambia has not led to any reduction in unemployment levels. On the contrary, unemployment rates have increased during the period of relatively impressive economic growth, thereby raising troubling questions about the pattern of Zambia's economic growth.

Table 3 below captures the trend in the growth of the Zambian labour force and formal sector employment in the period 1995 to 2005, pointing to a rise in the labour force without a commensurate increase in formal sector employment opportunities.

Table 3: Growth of Labour Force and Formal Employment, 1995- 2005

Year	1995	1996	1997	1998	1999	2000	2005
<b>Labour Force (mln)</b>	3.7	3.8	3.9	4.4	4.6	4.7	4.9
<b>Formal Employment</b>	484,967	479,400	475,100	467,444	477,508	487,340	495,784

Source: CSO, *Quarterly Employment and Earnings Inquiry and the Monthly Digest of Statistics, Various issues*

Evidently, only 12 percent of the 4.9 million persons in the active labour force are formally employed, with the other 88 percent employed informally. With the contraction of the formal sector, it seems the informal economy is increasingly becoming the only sure source of employment in Zambia. The challenge for the labour movement is that, hitherto, they can only unionise those in formal employment with the bulk of the workforce in informal employment largely left without a collective voice.

### 3.0 The Labour Market, Neo-Liberal Pressures and Trade Unions

Building on the socio-economic context established in the previous section, this section looks at how exactly labour has been challenged from processes and outcomes of liberalisation and what forces lie behind all this. This exposition will help labour relate to some of the causative factors for its current precarious economic position and thus think through what needs to be done in moving forward to restore lost momentum.

#### 3.1 Labour market outcomes

Indeed, in discussing economic challenges facing labour in a liberal environment, one observes that the 1990s and 2000s saw an unprecedented onslaught the labour market and on the component aspects of the traditional industrial relations, and thus a weakening in the collective strength of the labour movement. One major aspect of economic liberalisation has been to de-regulate the labour market in Zambia. Consequently:

The proportion of employees in trade unions has fallen as thousands of jobs have disappeared from the union’s heartland-the formal sector. During the period of the 1990s, for instance, over 90,000 jobs from the formal sector disappeared as the economy shed off jobs in huge numbers.

■ Industry-wide wage-setting approaches and collective agreements have diminished in importance and in some cases almost disappeared. Enterprise-based bargaining has assumed common place. Thus, the very tenets of unity, solidarity and cooperation that have stood labour in better stead are being openly challenged, undermined and sacrificed on the alter of liberalisation.

■ Employers have become freer from official regulation of wages and thus are more able to offer the terms and conditions they believe best suited them. Instances of sub-contracting and labour hire, for instance in the mines does attest to this phenomenon.

■ Management prerogative in decision-making has grown. Management strategies are thus placing greater emphasis on devolution of responsibility to operating levels, on dealing with individual employees and with flexible utilisation of labour. Casualisation of work has therefore ensued. Besides, there has since been an increasing stress on individuals and with the precepts of Strategic Human Resource Management, in which the questions of policy in the field of employment flow from business priorities rather than being a motor force in their own right.

Taken together this represents a formidable list that has continued to present a challenge to the labour movement in Zambia. Three principal sources of neo-liberal pressure that are altogether acting leading to these labour market outcomes can be identified:

1. Corporate Strategy
2. The Legislative framework
3. Economic influences

It is the change in each of these areas and the interaction between them that have been shaping the nature and functioning of the labour market

in Zambia since the era of Structural Adjustment Programmes (SAPs). The result is a subtle series of shifts, rather than 'big bang' changes from one model to another. Indeed, at present, the labour market in Zambia is clearly in a state of transition: one in which the final destination of change is still open to question. The common theme is greater variety in arrangements and a greater choice in approach towards employee relations, wage determination and employment contracts. Unfortunately, the labour movement has not yet positioned itself to come up with strategic and sustainable responses to counteract all this.

### 3.2 Corporate Strategy

However, in terms of corporate strategy, one sees in the Zambian labour market what might be called the internalization of wage setting – a decisive move towards decentralization of bargaining within corporations. The roots of this shift lie to a large extent in developments in neo-liberal corporate strategy and its approach to human resource management. The trend has produced a redefinition of relations with trade unions. Interestingly in the Zambian context, it has not manifested itself in any significant push to exclude trade unions where they had been previously recognized. Instance of de-recognition have been rare. Much more frequent have been moves to:

- Reduce the range of subjects and decisions covered by joint determination; for instance, there has been a tendency for employers in Zambia to offer what they call a 'total package' as a way of avoiding negotiations on a number of conditions of service. The Medium Term Reform Strategy in the civil service, for instances, purports to gross up all non-flexible allowances into the salary.

- Reverse the trend towards unionisation of more senior employees. In the public service for instance, a number of civil service cadres referred to as executive officers are considered to be in management when they do not even make management decisions.

- Ensure that trade unions did not enjoy a

monopoly over communication with the workforce

- Concentrate attention on relations with in-house employee representatives rather than 'external union officials'

- Impose restrictive negotiation parameters. For instance, public service negotiations are being increasingly governed by parameters and cabinet circulars laid down by the Ministry of Finance and cabinet office, respectively, within which the parties must bargain. This has tended to undermine the true spirit of collective bargaining.

This redefinition (and reduction) in the relationship with trade unions has had significant implications for decision-making and the exercise of authority within the workplace. Looking ahead, there is no reason to expect that neo-liberal corporate strategy will change in its impact on the labour market in Zambia. If anything, one might expect an intensification of the central drivers for industrial change, leading to:

- A growing emphasis on flexibility of production methods

- An increasing search for ways of reducing the time involved in developing new products and bringing them to the market.

- A continuing drive to devolve bottom-line profit responsibility to lower and lower units of operation

- A recognition that speed of response and ability to change direction is the key to survival

- Flexible use of labour across traditional demarcation lines

- Growth through diversification and merger leading to corporate profiles that cover a multiplicity of industrial sectors and which reinforce devolution of decisions and performance measurement to subsidiary businesses.

The key question; therefore, is what range of industrial relations arrangements would be compatible with this thrust of corporate strategy: what, in other words would be the area of optimum choice for the labour movement. Finding a solution to this enigma

is another challenge facing the labour movement. Looking beyond this, however, the actual choices about the future pattern of industrial relations was to be, crucially, affected by the legislative framework and by the economic influences.

### **3.3 Changed Legislative framework**

Thus, throughout the 1990s a great deal of political heat-and occasionally light was generated about the legal underpinning of Zambia's labour market. Until the 1990s, however, such change as took place was limited in importance. The key shift of the 1990s was the replacement of a legislative regime that mirrored the 'pluralist' position by one that was highly unitarist - the hallmark of which was the redrawing of allowable and illegitimate industrial relations practices in four important areas.

1. Reducing the Statutory immunities of trade union organisation and collective bargaining
2. Increasing the legal rights of members against their unions
3. Attacking the legislative basis of trade union organisation and collective bargaining
4. Reducing the statutory rights of individual employees

The key changes included:

- Revision by way of liberalisation, the provision on formation or establishment of trade unions including the formation of federations of trade unions and employers organisation.
- Revision of provision concerning recognition and collective agreement with view to facilitate bargaining at enterprise level
- Removal of statutory obligation for the employer to provide housing to its employees
- Removal of the early retirement facility in respect of Civil Servants

The list of changes recorded above represented an unprecedented re-writing of the Industrial Relations Rule book. It was, moreover, a re-writing that was entirely consistent with developments in liberal corporate strategy described in the previous section. It was a perfect echo of the thrust towards internalisation of Industrial Relations regulations and

its alignments with business unit organisation. The biggest challenge arising from the revision of the industrial legal regime, however, has come from the unions themselves. With splinter groups transforming into autonomous independent unions, there has not been a united voice on the workers' side. The source of this problem, it seems, is internal to the unions, but it has created serious instability and confusion in labour relations in Zambia.

### **3.4 Economic influences**

More visibly, however, has been the influence of economic forces: first, they have helped determine the structure of the labour market: i.e. what proportion of the workforce would belong to trade unions, how widespread would be collective bargaining, what would be the 'mark up' on wages from union bargaining. Secondly, within the area of the economy in which the employment relationship was jointly regulated in some form, economic pressures determined the style and content of that regulation. Thus, economic liberalisation that has characterised economic management since the 1990s cut a jagged line through the pattern of employment and wage determination. Industries and sectors characterised by high levels of union membership and heavy industrial relations machinery saw the loss of thousands of jobs. For instance, it is estimated that about 77,000 workers were displaced between 1993 and 1996. A technical committee established at the end of 1996 to administer a modular training programme jointly run by Future Search, Zambia Federation of Employers and Industrial Training Centre observed that between 1996 and 1998, the total number of workers displaced rose to 90,000 (Technical Committee, 1977:1). Statistics for the period after 2000 are not very consistent.

Turning to the impact of economic influences on the style and content of wage determination, one can identify three sources of pressure at work: The product market, the labour market itself and the macro-economic regime.

The key product market has made itself felt in two main ways: through the pre-eminence of quality as a determinant of competitive advantage and the corresponding emphasis on performance – and therefore on differentiation between individuals in terms and conditions of



employment and, secondly, through the ever-increasing pressure for more flexible methods of production and utilization of labour.

Taken together these factors cut across attempts of organizations to customize and insulate their wage setting behavior. The small cogwheel of a specific shortage meshed with progressively bigger cogs and kept driving up wages of top management across the economy at the expense of those of unionized workers. The individual firm did not find it cost-effective to invest in major human resource development programmes and often fell back on 'poaching' skilled labour and thereby importing an occupational structure at odds with its home-grown variant and increasing relying on casual work, leading to the growing incidence of 'casualisation' in Zambia.

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**M**ore widely, the labour market was faced with a potentially rather unstable mix: In effect, employers' drive towards fragmenting the labour market by internalising union management relations and destroying cross industry structures and mechanisms that no longer fitted their business strategy requirements. Yet due to deficiencies in the labour market they still faced what economists call 'externalities' – costs and issues which they could not resolve by themselves – for example skill levels and wage inflation pressures.

In the pre-liberal era, the response to this unstable mix would have been a shift in macro economic policy; most probably some form of incomes policy sought to reduce the temperature of externalities facing all employing organisations. The advent of the neo-liberal economic agenda, however, changed all that. The near universal declaration of the political impossibility of incomes policy therefore has meant that Zambia faces the prospect of a fragmented and localized wage setting approach and bargaining system which rubs abrasively against a macro economic regime that takes a stern and unforgiving stance towards aggregate outcomes produced by that system and offers no cushioning or support.

#### **4.0 Summation, Conclusion and Recommendations**

In summation, the paper has argued that a lot of challenges have come to bear on trade unions in Zambia. The liberalisation of the economy coupled with privatisation has resulted in a substantial decline in trade union membership, income and influence. This has weakened the unions' strength and financial capacity since much of trade unions' income comes from membership subscriptions. Consequently, the lack of sufficient resources has limited or reduced the number of services that trade unions can provide to the general membership. In the same vein, very few unions have been in a position to attract and retain well-qualified personnel, who can assist in the formulation of viable responses to policy issues. The political authority is usually overloaded with a lot of work and thus doesn't find time to draft union positions and policies. Therefore, very few unions have policies and policy positions. The birth of splinter unions has also weakened trade union solidarity as they sometimes make conflicting demands or statements.

Most fundamentally, the challenges that the trade union movement in Zambia is faced with as a result of economic liberalisation, can generally be outlined as follows:

- Rising levels of unemployment, poverty and inequality as a result of restructuring and retrenchments in privatised companies;
- 'Informalisation' of work and the growing trend in informal employment that remains outside the trade union catchment area
- Deregulation of labour laws as one of the means of attracting investment, which has resulted in job insecurity;
- Casualisation of labour and contract employment so as to avoid the costs of long-term employment by new investors;
- Rising incidences of violations of workers' rights and anti trade union attitude among new investors;
- Rising incidences of divisions and splinter unions due to mistrust and growing levels of suspicion;
- Declining real wages as a result of inflationary and rising interest rates pressures;
- Limited financial resources and technical capacity in trade unions to tackle the challenges of the new industrial set up;

The conclusion the paper reaches is that trade

unions in Zambia are wounded and lying down as a wounded buffalo but as a seasoned hunter will caution, “a wounded buffalo is potentially more dangerous when it charges at the enemy.” Admittedly, trade unions have taken heavy blows due to economic influences of a neo-liberal making but there is a redeeming note that not all is lost because the cause of labour is a noble one and shall live forever. A candid examination of labour’s own shortcomings, however, will need to precede any efforts at restoring the lost momentum. Against this background, the study makes the following recommendations:

1. The need for a more coordinated approach to collective bargaining

2. Building the research and analytical capacity of union through economic literacy programmes such as training for capacity building in basic economics and policy analysis and also forging collaborative efforts with universities and research institutes.

3. Broadening the membership service base to ensure that membership means the union takes care of important things in the life of a member, such as health insurance, mortgage facilitation and negotiated discounts on international travel, hotel and holidays costs etc. Secondly, the unions must bargain over issues such as job designs, career planning, and training. Thus, they need to engage not only in issues of wages and conditions of services but also support members in getting stimulating and challenging jobs in a safe and healthy environment. To do this effectively they need to make consultation with members a more regular feature to understand the changing needs and priorities of members.

4. The unions must re-organise to give more internal political clout. On one hand this entails making grass roots organising and recruitment an integral feature of union activity, activating existing members while reaching out mainly to the unorganised workers in informal employment.

**O**n the other hand, such re-organisation may entail efforts at merging and amalgamating. Altogether, this re-organisation strategy will ensure that the trade union can address the problem of declining collective influence. In order to do this successfully, however, the unions will need capacity building for sharpened skills in areas of recruitment, organising

and advocacy strategies.

5. An integral component of sustainable trade union strategy must prioritise the integration of the young, well-educated and female workers in the leadership and decision-making structures and ensure that their issues have a firm place on the union’s agenda. This strategy will serve to capture the hearts and minds of the new look workforce that currently report low ratings of the benefit offered by belonging to the union. The strategy would ensure that the union is gender mainstreamed and that there is a judicious mix of a young and educated leadership and an experienced leadership with a more activist ideological underpinning. This strategy holds promise to assert the union with a natural presence in the future as it seeks to harness the dynamism of the young, the intellect of the educated and the passion of women workers that altogether constitute an overarching character of the changing public sector employee.

6. Lastly, the union will need to embark on sustained campaigns for quality employment and labour rights within the context of a decent work agenda. This will not only enable alliance building with new workers and the NGO community but link the local labour struggle with similar efforts at the global level.

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# Legal framework for the operation of Trade Unions in Zambia

By Dr Fanuel Sumaili

*Do not go about spreading slander among your people. Do not do anything that endangers your neighbour's life. I am the Lord. Do not hate your brother in your heart. Rebuke your neighbour frankly so that you will not share in his guilt. Do not seek revenge or bear a grudge against one of your people, but love your neighbour as yourself. I am the Lord. Leviticus 19: 16-18*

## Introduction

This paper attempts to sketch the legal framework, both international and domestic, which governs the operations of trade unions in the country. It reviews Zambia's domestic legislation, especially the Industrial and Labour Relations Act, CAP 269 of the Laws of Zambia, especially as it was amended by Act No.8 of 2008 and does so in relation to the international instruments which Zambia has ratified.

Specifically, it examines the Industrial and Labour Relations Act in relation to Convention number 87 concerning Freedom of Association and Protection of the right to Organise, and finds that the domestic law is not fully in compliance with the international instrument and suggests ways to make it compliant. Specifically, it suggests that the Department of the Labour Commissioner must be supported to invest in the recruitment and training of officers to help

expedite some of the processes which the Act expects the Department to perform.

The paper also examines the Tripartite Consultative Labour Council set up in section 79 of the Industrial and Labour Relations Act, CAP 269, and finds that it is absolutely key in ensuring social dialogue among the social partners but finds no mechanisms are available to it to ensure that all the parties move in tandem, especially in circumstances where one of the parties holds a strong contrary position on the suggested way forward or where the Government, as the lead partner, decides to impose its views on the other two partners.

## THE INTERNATIONAL LABOUR ORGANISATION AND THE TRADE UNIONS

The International Labour Organisation (ILO) is the United Nations Agency which is devoted to the enhancement of opportunities for women and men to obtain decent and productive work in conditions of equity, security and human dignity.<sup>1</sup> As the only "tripartite" United Nations Agency, it brings together representatives of governments, employers and workers to jointly shape policies and programmes. To this extent, it is committed to strengthening dialogue in handling work-related issues. The ILO is also the body responsible for drawing up and overseeing international labour standards. Working with its 181 member states – including Zambia – the ILO seeks to ensure that labour standards are respected in practice as well as principle.

From its very beginnings in 1919, as part of the Treaty of Versailles which ended the First World War, ILO has always held the view that universal and lasting peace, can be accomplished only if it is based on social justice.

This belief is buttressed by the Declaration of Philadelphia adopted in 1944 which held that labour is not a commodity and sets out basic human and economic rights under the principle that "poverty anywhere constitutes a danger to prosperity anywhere."

This emphasis on social justice is further articulated in the preamble to the ILO constitution, where a system of international labour standards which member states are obliged to implement are laid out. These standards come in the form

of Conventions and Recommendations.

Conventions are instruments which on ratification create legal obligations. Recommendations are not open to ratification, but give guidance as to policy, legislation and practice. Both kinds of instruments are adopted by the International Labour Conference under Article 19 of the Constitution.

**U**p and until 2009, Zambia had ratified 43 Conventions, including all the eight fundamental or core conventions, that is to say, convention number 29. "Forced Labour Convention 1930," ratified on 2nd December, 1964; Convention number 87: "Freedom of Association and protection of the right to organize Convention 1948" ratified on 2nd September, 1996; Convention number 98:

"The Right to organize and Collective Bargaining Convention, 1949" ratified on 2nd September, 1996; Convention number 100: "The Equal Remuneration Convention, 1951" ratified on 20th June 1972; Convention number 105: "Abolition of Forced Labour Convention 1957" ratified on 22nd February, 1965; Convention number 111: "Discrimination (Employment and Occupation) Convention, 1958," ratified on 23rd October, 1979; Convention number 138: "Minimum Age for admission to Employment Convention, 1973" ratified on 9th February, 1976; and Convention 182: "Worst Forms of Child Labour 1999" Convention ratified on 10th December, 2001.4

But for purposes of our discussion, which will deal with trade unions, the most applicable conventions are conventions 87 and 98 to which we now turn.

**ILO CONVENTION NUMBER 87; FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 19485**

This is the primary instrument which protects the freedom of association. It establishes standards for freedom of association and the right to organize. It defines, in the view of the International Labour Organisation, those principles which ought to be adhered to in order to enable both employers and workers to exercise their right to organize freely:

**Article 1**

Each member of the International labour organization for which this convention is in force undertakes to give effect to the following provisions.

**Article 2**

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorisation.

**Article 3**

1. Workers' and employer's organizations shall have the right to draw up their constitution and rules to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict the rights or impede the lawful exercise thereof.

**Article 4**

Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

**Article 5**

Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization. Federation or confederation shall have the right to affiliate with international organizations of workers and employers.

**Article 6**

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organizations.

**Article 9**

1. The extent to which the guarantees provided in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth paragraph 8 of Article 19 of the constitution of the International Labour Organisation the ratification of this Convention by any member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this convention.

**Article 11**

Each member of the International Labour organization for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise

freely the right to organize.

Article 2 makes clear that this convention guarantees to all employers and workers, including supervisors the right to freely establish and join organizations of their choosing, subject only to the rules of the organization. The only groups to which restrictions are permitted are the armed forces and police. For this category, member states are authorized to decide to what extent members of the armed forces and the police may exercise this right. This article explicitly prohibits the involvement of any external factor in the decision of the employers and workers to form or join an organization by saying "without previous authorization." They are not expected to seek authorization from a public body to set up or join an industrial body or association. In this way, the International Labour Organisation (ILO) has sought to make clear that the right to organize and join a trade union or association is absolute and ought to be respected by all, including the state. Article 4 expressly precludes government from interfering in the organizations' internal matters, including suspending or dissolving unions or associations by administrative authorities.

Article 3 authorises workers' and employers' organizations to draw up their own constitutions and rules and to elect their representatives freely. Further, it entitles them to organize their administration and activities and to formulate their programmes without any interference of public authorities. The Article also calls upon public authorities to refrain from any interference that would restrict unions and associations in exercising their right to organize. Indeed Article 8, while calling upon the unions and associations to respect the law of land, it also calls upon public authorities to ensure that the law of the land does not impair, or is not applied in a manner that impairs the guarantees provided for in this Convention.

**T**his Convention also guarantees workers and employers to establish and join federations and confederations and such organizations do have the right to affiliate with international organizations of workers and employers.

In terms of security arrangements, the only trade union security arrangements that are acceptable are those concluded through a free agreement between the worker's organization and employers. The law

must not impose them.<sup>6</sup>

### **ILO CONVENTION NUMBER 98: THE RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949**

This convention supplements the ILO Convention 87 above. It contains further safeguards in respect of the right to organize and makes provision for the development of the machinery of collective bargaining.

#### **Article 1**

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to:-

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership.

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

#### **Article 2**

1. Workers' and Employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article.

#### **Article 3**

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding articles.

#### **Article 4**

Measures appropriate to national conditions shall be taken where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between

employers and employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

**Article 5**

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

The Convention, as may be observed from the extracted Articles, is meant to protect workers, employers and trade unions or workers' organizations from any acts of interference from public authorities. In fact the Convention is primarily concerned with the protection of trade unions and their organizations against threats by employers and their organizations. Article 1 protects workers against anti-union discrimination in respect of their employment and prohibits any acts that may subject the worker to refuse to join a union or denounce his/her membership in a union before being considered for employment. It also protects the worker from being dismissed for engaging in union activities.

Article 2 guarantees protection of both workers' and employers' organizations from acts of interference in their establishment, functioning or administration. It further prohibits acts on the part of the employer or employers' organizations that would tend to compromise or bring the trade union under the domination of the employer or employers' organization.

Articles 3 and 4 are concerned with ensuring that the state puts in place a machinery and measures that would ensure the respect of the workers' right to organize and encourage the workers and their organizations on the one hand, and the employers and their organizations on the other, to freely regulate the terms and conditions of employment by means of collective agreements.

The fundamental principle that the workers have a right to form and join trade unions and that the unions have the right to operate freely and to pursue the interests of their members implicitly gives rise to the right to strike on the part of the workers. Although neither the constitution of the International Labour Organisation (ILO) nor any of its Conventions make any explicit reference to the right to strike, the ILO Committee on Freedom of Association (CFA) has held that the right of employees to strike is an essential element of the right of freedom of association and therefore, one of the essential elements of trade union rights. It has cited Articles, 3, 8 and 10 of Convention No. 87 as giving the legal basis for this principle.<sup>8</sup> Therefore, a general prohibition on the right to strike would be seen as a major restriction on the right of trade unions to further and defend the interests of their members and of their right to organize. Further, it would be seen as inconsistent for a Member State that has ratified Convention no. 87 and one that subscribes to the ideals expressed in the ILO Constitution to place such a restriction on trade unions.

However, ILO accepts that every Member State has the right to impose certain pre-conditions on the right to strike, although the assumption is that such pre-conditions must be reasonable and must not place onerous limitations on the right to strike.

**THE DOMESTIC LEGAL FRAMEWORK**

As the grund norm, the Constitution, Act number 1, of 1991, as amended by Act number 18 of 1996, is necessarily or major source of the legal basis for the existence of the trade unions. Part III and Article 2 (b) in particular, allows for the protection of the freedom of conscience, expression, assembly, movement and association as long as their exercise does not prejudice the rights and freedoms of others or the public interest. And perhaps more relevant to our discussion is Article 21 which protects the freedom of association, subject to a number of limitations. These limitations are:

(a) those reasonably required in the interests of defence, public safety, public order, public health, or public morality;

(b) those reasonably required for the purpose of protecting the rights or freedoms of other persons;

© those that impose restrictions upon public officers;

(d) those for the registration of political parties or

trade unions in a register established by or under law and imposing reasonable conditions relating to the procedure for entry on such register.

However, the substantive labour rights such as the right to fair labour practices and the right to bargaining collectively are not included in the constitution. The government's view is that since these rights are specifically dealt with in the Industrial Cap 269 of the laws of Zambia, and Labour Relations Act, it is inappropriate to have the same referred to in the Constitution.

### **REVIEW OF THE INDUSTRIAL AND LABOUR RELATIONS ACT CAP 269 OF THE LAWS OF ZAMBIA**

We now turn to a review of the primary applicable domestic law, the Industrial and Labour Relations Act. No doubt, there are many areas or sections of this law that may be of concern when viewed against the international instruments that Zambia is a party to, especially conventions 87 and 98. But in order to bring a focus to our discussion and to ensure brevity, we intend to highlight only nine sections, namely sections 2, 7, 9, 18, 21, 43, 65A, 79, and 107. We hope the discussion will confirm our conclusion that there is need for more social dialogue on the extant law.

**Section 2.** This section excludes five categories of employees in the country from being bound by the provisions of this Act, namely those employed in the Zambia Defence Force, the Zambia Police Service, the Zambia Prison Service, the Zambia Security Intelligence Service and Judges, Registrars of the Court, magistrates and Local Court Justices. Yet Article 2 of Convention 87 to which Zambia is a party says: "Workers and employers, without distinction, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization." The only exception recognized by this Convention is to be found in Article 9 (1) which says: - "The extent to which the guarantees provided for in this convention shall apply to the armed forces and the police shall be determined by national laws or regulations."

It is difficult therefore, to appreciate why, especially the prison service and the judiciary, cannot enjoy the protection of the freedom of association and the right to organize. Unless, of course, it is a result of a decision, of the Tripartite Consultative Labour Council.

Further section 2 (2) of the Industrial Labour Relations Act appears to fly directly in the teeth of Articles 2 and 9 of Convention 87. While the latter Articles protect the rights of Workers and Employers, without distinction to establish and join organizations of their own free will except for those in the Defence Forces and the Police, this Section allows the Minister the discretion to add to this list. Currently, he has added those in the judiciary, prison service and the intelligence service. But there is no reason why he cannot add a further ten or more categories of employees. In other words the Minister may, at his discretion, choose to exclude any category of employees from enjoying the rights granted by Convention 87 and thereby water down the effect of this Convention. This is a troubling prospect. It is troubling because although section 2 (2) says the "Minister may, after consultation with the tripartite labour council..." The Minister's legal requirement ends at merely "consulting." And in Africa, this has the ring-tone of the Big Brother dictating the course of events, especially when the law gives no guidance as to what ought to happen when the parties to the tripartite "consultation" disagree.

**Section 7:** This section sets out the requirement for every trade union to be registered and the consequences for non registration in the following manner:

7. (1) Every trade union shall be registered under this Act with the commissioner within six months from the date of formation.

(2) If the Commissioner refuses to register a trade-union, the Commissioner shall notify the trade union of such a refusal and the trade union shall be dissolved within six months from the date of the notification.

(3) Every trade union which is not registered or dissolved, as the case may be, within the period prescribed in sub-section (1) and (2), and every officer of such trade union, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding four penalty units for every



day that it remains unregistered or un dissolved, as the case may be, after the expiration of such period, and every such officer may in addition be prohibited from holding office in any other trade union for a period of one year.

It is not clear from a reading of section 7 (3) what offence a trade union officer ought to commit before he/she may be charged and subsequently barred from holding office in any trade union. As it stands, it is possible to read it as meaning that the mere fact of holding office in a union that is unregistered or undissolved would invite these consequences regardless of whether or not the officer was personally responsible for the failure (s) to register or dissolve the said union. We think that it is possible to re-word this section in such a way that the officers to be punished by barring them from holding office in any other trade union must be those whose conduct in the failure to register or dissolve the said union have been called into question and thereby calling in question their personal integrity and qualification for holding trade union office. Innocent people should not be punished simply because they find themselves holding office.

Section 9: This is a long section which sets out the legal requirements for registration as a trade union, the period within which the application and the constitution should be referred to the Commissioner and the various other requirements for registration.

**O**ur specific concern is raised by section 9 (3) which says: “The application and the constitution referred to in subsection (2) shall be submitted to the Commissioner within a period of six months from the date of application.” It is not clear why there should be such a long time lag (six months) between the filing of the application and the constitution, and the referral of these documents to the Commissioner. If the issue is that of manpower or expertise to evaluate the applications and the constitutions before the documents can be referred to the Commissioner, it is time that the Ministry itself seriously considers investing in the high level training of officers in order to expedite these processes. Indeed, it is not very long ago that the Commissioner was quoted in the print media that out of

about 79 districts in the country, the Ministry has a presence in only 44 of them and that is not to speak of highly qualified personnel.

The effect of such a long registration process is that it raises issues of compatibility with Article 2 of Convention 87. The setting of such a long process may be seen as interfering in the setting up of workers’ and employers’ organizations, who may themselves, want a speedy registration.

Section 18 (i) (g): This is the section which lays down the criteria for disqualification from election or appointment as officer of a trade union. Section (g) says: “No person shall be qualified for election or appointment as an officer of a trade union of he – is an officer of a trade union or trade union secretariat who is not employed outside the trade union or trade union secretariat.” This means that one employed by a trade union or one who is an officer of a trade union must also be on the register of another employer as employee. This is despite the fact that such an individual may be a full time employee or officer of the trade union. One would have thought that it is reasonable to surmise that where one is a full time employee or officer of the trade union, such an individual will appear on the pay roll of the union and would contribute to Pay As You Earn (PAYE) through the union. This means that his/her allegiance would be to the union and that if the union is satisfied with his/her integrity and or performance, the individual ought to qualify for election or appointment as an officer of the trade union. This is clearly an unnecessary restriction.

Further, this provision conflicts directly with Article 3 of Convention 87 in that the Article provides for the trade unions to elect their representatives in “full freedom” by stipulating as follows:

1. Workers’ and employers’ organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

It is clear from this Article that any provision such as 18 (1) (g) which requires all trade union officers to be actually employed in their respective professions or trades -- even when they may not be practicing their trades or professions-- because they are full-time employees of the unions is clearly contrary to the guarantees set in Convention 87.

Section 21: This is the section that deals with the Annual Reports of Accounts of a trade union. Although our concern is essentially in respect of subsections 5 and 6, we shall reproduce the entire section so as to provide a context for our discussion.

21. (1) As soon as practicable, but not later than twelve months after the expiry of each financial year of the trade unions, the Executive Officer of every trade union shall submit to the Commissioner a report concerning the financial affairs of the trade union during that financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the trade union and there shall be appended to it:-

- (a) an annual balance sheet.
- (b) an audited statement of revenue and expenditure; and

© such other information as the Commissioner may require.

(3) The Commissioner shall, where the Commissioner has reasonable grounds to believe that the officers of a trade union have misused, misapplied or misappropriated the funds of the trade union or used funds for purposes contrary to the objectives of the constitution of the trade union, appoint an independent auditor to audit the books of account of the trade union.

(4) The auditor appointed under subsection (3):

- (a) shall conduct a preliminary investigation into the books of accounts of the trade union; and
- (b) may for purposes of auditing the books of account of a trade union, recommend to the Commissioner that the officers of the trade union be suspended.

(5) The Commissioner shall, where the auditor makes a recommendation under paragraph (b) of subsection (4).

(a) recommend the suspension of a trade union member or executive board, as the case may be, to the tripartite consultative labour council constituted under section seventy-nine.

(b) request the membership to nominate from amongst themselves the members to constitute an interim committee of the trade union; and,

© appoint from among the nominations submitted under paragraph (b) an interim committee to oversee the operation of the trade union.

(6) Where the report of an auditor appointed under subsection (3) establishes the officers of a trade union have misused, misapplied or misappropriated the funds or used the funds for purposes contrary to

the objectives of the constitution of the trade union, the Commissioner shall recommend the removal of a trade union member or dissolution of the Board, as the case may be, to the Tripartite Consultative labour Council constituted under section seventy-nine.

It is our view that the provisions relating to the power conferred on the Commissioner to suspend a trade union member or executive; the power conferred on the Commissioner to request the membership to nominate members to constitute an interim committee of the union; and the power conferred on the Commissioner to appoint from among the nominees an interim committee to oversee the operations of the trade union are in breach of Articles 3 and 4 of Convention 87. We say so because Article 4 says: “Workers and employers’ organizations shall not be liable to be dissolved or suspended by administrative authority.” The International Labour Organisation’s (ILO) view is that such organizations are formed as a result of members exercising their right to establish and to join organizations of their choosing under Convention 87 and as such any suspension, removal or dissolution must be a decision of members themselves, acting freely, or a result of a judicial decision.

The provisions of subsections 5 and 6 are particularly serious because they violate a fundamental principle of our judicial system, that of the principle of natural justice. One of the planks on which the principle of natural justice is founded is the audi alteram partem rule which, simply put, means “hear the other side.” This principle is so old and fundamental that it goes as far back as the first hearing in the human history that was held in the Garden of Eden. In *R V University of Cambridge (1723)* Judge Fortescue referred to it in the following terms:

I remember, to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. “Adam, says god, where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat?” And the same question was put to Eve.

Yet sections 5 and 6, in violation of this long standing principle of fair procedures, allows

the Commissioner on the recommendation of the Auditors, to suspend and reconstitute trade union committees. Neither the Auditors nor the Tripartite Consultative Labour Council have powers to perform judicial functions. It is, therefore, imperative that the judiciary ought to be allowed to determine whether or not a trade union officer has committed acts necessitating the suspension and, certainly, the removal of the said officer.

What the law needs to do, instead, is to more specifically lay down the criteria or provisions that will guide the judicial authorities to determine the culpability of the trade union officer. We must emphasise that persons serving in trade union offices ought to enjoy all the guarantees of normal judicial processes, including the dictum that “everyone is innocent until proven guilty.”

Section 43. This section lays down the criteria for disqualification from election or appointment as officer of an association. Here we are concerned particularly with subsection 43(1)(a) which reads as follows: (1) No person shall be qualified for election as an officer of an association if –

(a) he is a member of the executive, of an association the certificate of registration of which has been cancelled under this Act, fails to satisfy the Commissioner that he did not contribute to the circumstances leading to the cancellation.

We find this provision objectionable on similar grounds to the objections raised above. We think that by placing the burden of proof on the officer, it goes against a well established legal principle in this country that assumes that “everyone is innocent until proven guilty”. Many of us may still remember that only recently we were witnesses to a debate on the removal of the “abuse of office clause” from the Anti Corruption Act. We may also still remember that one of the principle arguments advanced by the proponents of the removal of that clause was that it was unconstitutional in that it placed the burden of proof on the public officer who was required to explain how he or she acquired the wealth under investigation when the constitution says “everyone is innocent until proven guilty.” We believe that this provision is also unconstitutional in that it assumes the officer

to be guilty instead of innocent. This is not Zambian law.

**F**urther, we think that matters of guilt or innocence ought to be heard and determined by a judicial officer instead of the Commissioner, whom, as we have pointed out earlier, is performing an administrative rather than a judicial function.

Section 65A. This is the section which deals with the termination of recognition agreements. It says:-

1. A party to a recognition agreement may apply the Commissioner for termination of the recognition agreement stating the reasons therefore.

2. The Commissioner shall, where the Commissioner receives an application under subsection (1), inform the other party to the recognition agreement in respect of which the application is made and set a date on which the application shall be heard.

3. The Commissioner may, where the Commissioner hears the parties pursuant to subsection (2):-

- (a) approve the termination of the agreement; or
- (b) reject the application and give the applicant the reasons therefore.

Our concern in respect to this section is that it gives the Commissioner, absolute discretion to terminate the recognition agreement. We think it would be more appropriate to allow the party aggrieved, after the hearing before the Commissioner, to have recourse to judicial process. The Commissioner should not be used as the final judicial arbiter. He is performing administrative rather than judicial functions and we think that this needs to be emphasized.

Section 76 (1) (4) (6) (8): This section deals with failure to reach settlement by conciliation. It reads as follows:

1. Where a conciliator or board of conciliation fails to settle a collective dispute either party to the collective dispute may:-

- (a) refer to it court;
- (b) conduct a ballot to settle the dispute by a strike or lock-out; or
- © refer it to arbitration and the provisions of the Arbitration Act shall apply accordingly.

4. The strike or lockout may, subject to section seventy-five, commence ten days following the decision to do so and shall continue for a period of fourteen days after which the dispute shall, if it remains

unresolved, be referred to court.

6. The Minister may, after consultation with the Tripartite Consultative Labour Council apply to the Court for a declaration that the continuance of the strike or lockout is not in the public interest.

8. Where the court issues a declaration in favour of the application, the strike or lockout shall cease and the dispute shall be deemed to have been referred to the court under paragraph (a) of subsection (1).

The highlighted provisions above raise a number of concerns as follows:

The legally imposed arbitration, such as that envisaged in 78 (1) ©, and at the instance of one party to the conflict, is clearly contrary to the principle of voluntary negotiation of collective agreements. Indeed, when arbitration is contemplated, it is the norm to have the parties first agree to have the matter referred to arbitration. If they cannot agree, a single party to the conflict ought not to be authorized to proceed to arbitration. We hold this view because arbitration is a voluntary alternative mode of dispute resolution and should not be legally imposed on the parties. However, the aggrieved party would still have the option of going to court.

Subsection 4 imposes automatic referral of the dispute to court if the dispute is not solved following a fourteen (14) day strike. What this means in practice is that the right of workers' organizations to organize as provided for in Article 3 of Convention 87 is seriously restricted. This is contrary to the principles of freedom of association. Further it restricts the maximum period of a strike action to 14 days, after which, if the dispute remains unresolved, it is automatically referred to court.

Subsections (6) and (8) impose further restrictions on the right of the trade unions to organize themselves and pursue their members' interests by allowing the court to discontinue a strike if it is not "in the public interest." Depending on how the phrase, "not in the public interest" is interpreted, it is possible to envisage a situation where all strike action would be seriously restricted or prohibited all together as they would be said to be "not in the public interest." As we have said earlier, the right to strike, is viewed by the International labour organization as a fundamental right.

Section 79. This section of the Act deals with the establishment of and the functions of the Tripartite Consultative Labour Council. The Tripartite Consultative Labour Council comprises the Minister and

such equal number of members representing the trade unions the employers and the government whose total membership should not be less than twenty-one. It is supposed to meet at least twice per year and is chaired by the Minister or, in his absence, by the Deputy Minister. Its decisions on any question, is by a majority of the members present and voting at the meeting and, in the event of an equality of votes the person presiding at the meeting exercises a casting vote in addition to his/her deliberative vote. According to section 83 its functions are "...to advise the Government on all issues relating to labour matters, manpower development and utilisation and any other matter referred to the Council by the Government." This is very broad mandate.

The Council is supposed to be the key tool in fostering social dialogue and cooperation between the government, employers' and workers' organizations and in bringing about social and economic progress. Dialogue within the council is supposed to promote consensus building and democratic involvement of those with vital stakes in the world of work. It is supposed to help government, employers' and workers' organizations "establish some labour relations, adapt labour laws to changing economic and social circumstances and improve labour administration."<sup>10</sup>

Yet the structure of the council, such as it is, comprising of the Minister, and equal numbers representing the employers and workers, who must meet at least twice per year, cannot be expected to perform the functions as stipulated in the Act or carry the heavy burden of "promoting social dialogue and helping the social partners to establish sound labour relations, adapting labour laws to changing economic and social circumstances and, improving labour administration." We say so because the Council is very poorly resourced. When they meet as a Council, they meet as "part-timers" from different offices or organizations with no full time secretariat to feed it with information or technical reports on the matters in issue. The Labour Commissioner, who serves as the Secretary, is himself, a full time employee of the Ministry, running a national department that is perhaps one of the most poorly resourced – going by the complaints in the media on the failure to observe, implement or enforce labour laws in the country. Further,

when they meet they are burdened by arbitration and enforcement issues as we observed when discussing sections 18 and 21.

**W**e think the Council is a very important forum which must be made more effective. For this to happen, it needs to be restructured so that it focuses on its statutory functions of advising “the government on all issues relating to labour matters, manpower development and utilization...” And of establishing sound labour relations, adapting labour laws to changing economic and social circumstances and improving labour administration. To do this the Council must focus on fostering social dialogue and cooperation between the government, employers and workers’ organizations. In other words, it should be a forum where the council is able to talk or parler on matters to do with labour. The issues of arbitration and enforcement must be left to the judiciary.

But the council would also need to be resourced with a small secretariat of full time people, qualified in labour market and conditions of employment, including the conditions of employment of vulnerable and unorganized workers – who currently appear to be out in the cold. These would generate research and reports on the various sectors which would inform the deliberations of the Council regarding appropriate conditions of employment and minimum wages for workers in the sectors. Overtime, this secretariat could be turned into an Employment Conditions Commission, similar to the one that exists in South Africa, that can serve as the research arm for all discussions relating to employment or labour matters in the country, through the Tripartite Consultative Labour Council.

Further, we hold the view that the decision-making mechanism, where every decision must be by a simple majority of the members present and voting, is not satisfactory. As we have stated earlier, we think this body ought to function as a “mini parliament” in the area of labour, and as such it will debate and take decisions on matters of varying gravity in the area of labour, regardless of whether these are for immediate implementation or for reference to a body, such as

parliament, in respect to legal reform. Our national constitution recognizes that parliament will take decisions on different kinds of subject matter, and that some decisions will be taken by a simple majority, others by two-thirds majority and others still, by three-quarters majority.

Similarly, we think that in the area of labour, certain principles need to be entrenched and should not be varied by a mere simple majority vote. Take for instance, the definition of “essential worker” or “essential service”. If it is left as loose as it is, it is possible to envision a situation where more and more industries may be considered essential and thereby putting those industries and their workers off limit in terms of enjoying the rights and protection provided by Convention 87.

Last but not least, let us make brief comments on Section 107 which bans strikes and lock-outs in those sectors which the Act has designated as essential services.

Subsection 10 says:

For purposes of this section, “essential service” means:-

- (a) any service relating to the generation, supply or distribution of electricity;
- (b) any hospital or medical service;
- © any service relating to the supply and distribution of water;
- (d) any sewerage service;
- (e) any fire brigade; or
- (f) any service for the maintenance of safe and sound conditions in a mine of:-
  - (i) underground working and drainage;
  - (ii) shafts and shaft installations; or
  - (ii) machinery and plant.

This is a very broad range of services and the definition of what constitutes an “essential service” is even more elastic as it does not only restrict itself to the issues of safety but to the “sound” conditions in the mines. The term “sound” is not defined, thereby opening it to interpretations that may be contentious.

Subsection (6) permits “a police officer to arrest without warrant any person whom he has reasonable grounds to believe is acting in contravention of this section, and any person who obstructs a police officer in the executive of his duties under this subsection shall be guilty of an offence.” We think that giving an individual police officer such wide powers – which have the effect of depriving the striking worker the freedom of association and the protection of the right to organize is unnecessary. A war-

rant for the arrest of such an individual ought to be a requirement. We should not, so easily, be willing to derogate from observing these fundamental rights, especially when they are recognized in our own domestic laws and the international instruments which the country has ratified.

### **Conclusion**

**T**his paper has attempted to show that Zambia has a number of laws, both domestic and international, that help to govern the activities of the trade unions in the country. It has shown that the country is a member in good standing with the International Labour Organisation (ILO), and to this end, it has ratified many international conventions including the entire eight fundamental or core Conventions relating to matters of labour.

It has also shown that in respect to the activities of the trade unions, the principle domestic legislation is the Industrial and Labour Relations Act but an examination of the specific sections and provisions of that Act shows that the domestic legislation is not “on all fours” with the relevant international instruments which Zambia has ratified. To the extent that the domestic legislation is in conflict with some key provisions of Convention 87, in particular, the operations and effectiveness of the trade unions in the country are restricted and weakened.

Internally, the paper suggests that the office of the Labour Commissioner is the hub of all the activities relating to labour issues in the country. As such, there is need to support it so that it has adequate personnel to deal with the process of registration of unions in the shortest possible period. The period of six months within which an application for registration of a trade union should be completed is very long. The Ministry needs to invest in the recruitment of staff and in their further training in order to be more effective.

The forum of the Tripartite Consultative Labour Council is the key organ for enhancing social dialogue. To this end it ought to be the centre for extensive consultations and social dialogue among all the relevant stakeholders. To do this their meetings may need to be more regular. The Council ought to function as a “Parliament” on labour matters and they should not necessarily have judicial powers such as determining which officers should be suspended or removed. This should be left to the Court. Indeed, it may even be time for us to begin to consider the

creation of an Employment Conditions Commission, very much in line with the one that exists in South Africa. This will make it possible for the ministry and the entire government machinery to make use of the expertise and materials that will be generated in the area of work by trained professionals. The Commission could be the “service arm” for the Tripartite Consultative Labour Council meetings.

### **End notes**

1. ILO, *The ILO at a Glance* (Geneva, International Labour office, 2007) Page 1.
2. I bid, Page 2.
3. ILO, *The Constitution of the International Labour Organisation and selected Texts.* (Geneva, International Labour Organisation, 2009 )
4. R. Blanpain (Gen. Ed.), *International Encyclopaedia of Laws (Zambia)*, (Kluwer law Internationa, 2009) Pages 27-30.
5. ILO, *International Labour Conventions and Recommendations: 1919 –1951*, (Geneva, International Labour Organisation, 1996) Page 527.
6. Mpfarisen Budeli, Evance Kalula and Chucks Okpaluba, *Freedom of Association and Trade Unionism in South Africa: from Apartheid to the Democratic Constitutional Order* (Cape Town: Institute of Development and Labour law, 2008) Page 61.
7. ILO, *International Labour Conventions and Recommendations: 1919 – 1951*, Page 639.
8. Mpfariseni Budeli, Evance Kalula and Chucks Okpaluba, Page 63
9. R. Blanpain. Page 22.
10. Government printer, *The Industrial and Labour Relations Act CAP 269 of the laws of Zambia as amended by Act No. 8 of 2008.*
11. John Alder, *Constitutional and Administrative Law*, (New York, Palgrave Macmillan, 2008) Page 407.

## Foreword

**F**riedrich-Ebert-Foundation has been a partner of the Zambian Trade Unions for more than 40 years. Many training programs have been conducted for the Zambia Congress of Trade Unions (ZCTU) and the membership unions in the country since then.

However, the role of the unions has changed in the course of time. After independence in 1964, Zambia had the strongest unions in the region which had achieved a lot for its membership. However, the privatization and liberalization policy which began about 20 years ago has weakened the Labor movement considerably. Amendments to the Industrial Relations and Labor Act have also contributed to the unions' current form.

At the beginning of 2011, political observers had predicted the "death of the trade unions" in Zambia.

Arising from this rather sad prediction, Friedrich-Ebert-Foundation, after consultation with its partners in the labor movement, organized a two-day colloquium at Mulungushi University in Kabwe under the theme "The future of the Labor movement in Zambia".

More than 50 current and former union leaders, members of the administration, researchers from universities and observers from international organizations participated in the discussions to find a way out of the crisis. As a document of common understanding, a Mulungushi Declaration was resolved by all participants.

Four input papers were presented during the colloquium, analyzing the unions from a legal, economic, social and political point of view. Due to the very positive responses we have received from our partners, we have decided to publish these papers in form of a small booklet so that the information can be used in the training of future trade union members.

In our opinion, this booklet gives a very good overview of the labor movement in Zambia over the years.

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