

**ANALYZING THE DIRECTION OF LABOUR LAW
REFORM IN ZAMBIA: IN VIEW OF THE
CONTROVERSY SURROUNDING THE INDUSTRIAL
AND LABOUR RELATIONS (AMENDMENT) BILL No.8
OF 2008**

BY

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TITLE

**ANALYZING THE DIRECTION OF LABOUR LAW
REFORM IN ZAMBIA: IN VIEW OF THE CONTROVERSY
SURROUNDING THE INDUSTRIAL AND LABOUR
RELATIONS (AMENDMENT) BILL No. 8 OF 2008**

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**AN OBLIGATORY ESSAY SUBMITTED TO THE FACULTY
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**I recommend that the Directed Research prepared under my Supervision by Rex
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Entitled:

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BILL No. 8 OF 2008**

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Mr. F. Mudenda

Date

DECLARATION

I, **REX ZAMBWE** hereby declare that the contents of this Directed Research Paper are entirely based on my own findings and that I have not in any manner used any person's work without acknowledging the same to be so.

I bear the absolute responsibility for errors, defects or any omissions therein.

STUDENTS NAME... **REX ZAMBWE**.....

SIGNATURE... .....

DATE... **13 - 02 - 09**.....

DEDICATION

I dedicate this work to my parents, Rimmy Mwenda Zambwe and Maria Chibwe Chibesa, for their support, encouragement, belief, care and love. Despite the odds you have taught me to always stand tall.

ABSTRACT

It is evident that the importance of an effective, permanent machinery of law reform has not been realized in many of our African countries. On a daily basis we are confronted with stupendous challenges for law reform and development to underpin our quest for stability and national unity, challenges which must be responded to with supreme wisdom. Rules and regulations in society are not static but dynamic and this gives rise to law reform so as to suit the prevailing circumstances of that period.

A look at law reform in Africa presents one with an interesting view of how this 'reform' is effected and the considerations that are taken into account by the various stakeholders as regards review in a particular area of the law. Zambia is not an exception to this common tendency where the efficacy of law reform in a country is questioned and a specific area in this instance is the labour market. Against this background the main objective of this research is an analysis of the direction of labour law reform in Zambia with specific pertinence to the controversial upheavals raised by the Industrial and Labour Relations (Amendment) Bill No.8 of 2008. This Bill was assented to on the 24th of September 2008 and is now the Amendment Act No.8 of 2008. At the inception of this research the Bill had just been presented to Parliament and the entire process in Parliament was followed by the author until the Bill was assented to. This piece of legislation is the primary model of the research.

Firstly, the paper traces a brief historical background on the development of labour relations and the attendant labour law reforms in Zambia (post-Independence to date); secondly, the state of the current employment law and the prevailing labour trends within the Zambian labour market is discussed; the research then turns to a closer look into the legal and political controversy surrounding the proposed Industrial and Labour Relations Amendment Bill as it underwent the process in Parliament and the attendant implications after it was assented to by the President on the 24th of September 2008. At this instance an examination of some of the 'controversial' provisions in the Amendment Act and an objective commentary will also be given.

In order to have more comprehensive findings, a short case study on Kenya and the recorded improvements in critical areas such as the labour and employment sector is carried out. The results of this case study are used as a comparison to show the state and direction of labour law reform in Zambia. With the use of the sum results of the preceding discussions, the next component points out the eminent and consequential pitfalls that are brought about by lack of a pragmatic 'labour law reform' mechanism.

After highlighting these consequential pitfalls some recommendations are rendered within the ambit of concluding remarks. The said recommendations include:- less interference by the government in legislative outcomes; inclusiveness in the process and higher stakeholder input; and effective implementation of labour policies to mention a few.

ACKNOWLEDGEMENTS

The journey has been long. There have been ups and downs. There were obstacles and barriers. I was not going to complete this work if it was not for the support and input of many people.

The book of 1 Peter 5:7 reads as follows: “*Cast all your anxiety on him because he cares for you.*” My Heavenly Father I thank you for my life and all that you have given me. My Lord Jesus Christ, thank you for walking beside me. Your love and care for me cannot be quantified and despite my iniquities you love me more each day.

My entire stay at the University of Zambia has been a learning experience from the first day. A number of people have been very influential and supportive especially in the area of academics.

I would firstly like to thank my supervisor, Mr. F. Mudenda for providing expert guidance and supervising this work. Contrary to my expectations, you were very patient and understanding. Your valuable corrections have shaped my work and I appreciate the time you spent with my ‘research group’ at the expense of your busy schedule. From you I have learnt that hard work and responsibility are very cardinal in one’s life. Thank you very much sir.

My siblings Ron, Ray, Rimmy Jr. and Jessy. I love you more than you can imagine. You have in me the best big brother in the world. Being the leader of the pack has not been easy for me. Nevertheless, through your support and belief I have been able to set an example as a first born. You can do more and all the best as we build our family empire.

Mwima Mercy Kabaso thank you for everything dear. Am highly indebted to you for bringing me back on track when I was falling apart. You are a breath of fresh air, my best friend and my Michelle Obama.

To the members of the Kings Bench- Bwalya, Joshua, Wallace, Bruce and Musopelo. You have been more than friends and you have seen me through thick and thin. With the advent of ups and downs; changes and adjustments we still stayed together. Your collective intellectual abilities have really shaped my vision and goals in life. The tests, assignments, noise, jokes, bragging and temptations have made me enjoy being a member of the legendary Kings Bench. Sky is the limit gentlemen. YES WE CAN! Musopelo I have always resisted your criticisms but look at what they have made me- a better person.

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Mr.Arshad A. Dudhia and all the employees at Musa Dudhia & Co. I am grateful for your patience, care and support during my internship programmes. Through your guidance I can build myself into a respected and well groomed Lawyer. Martha Nalubamba, Abigail Lungowe Chimuka and Mwila Chibiliti M.D., the Almighty will reward you for your kindness; you have been an excellent workmates and role models.

To my friends and fans on campus and those I have been unable to mention by name, continue setting high standards in all you do. Lets' make Zambia a better country and may God richly bless you.

Statutes

The Constitution of Zambia, Chapter 1 of the Laws of Zambia

The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

The Employment Act, Chapter 268 of the Laws of Zambia

The Minimum Wages and Conditions of Employment Act, Chapter 276 of the Laws of Zambia

The Employment of Young Persons and Children Act, Chapter 271 of the Laws of Zambia

The Factories Act

The Amendment Act No. 8 of 2008

Various Kenyan Labour Laws

Glossary of Acronyms

CEEC	-	Citizens' Economic Empowerment Programme
COTU	-	Central Organization of Trade Unions
EATUC	-	East African Union Congress
FFTUZ	-	Federation of Free Trade Unions of Zambia
FNDP	-	Fifth National Development Plan
GDP	-	Gross Domestic Product
ILO	-	International Labour Organisation
KAWC	-	Kenya Africa Workers Congress
KFL	-	Kenya Federation of Labour
KFRTU	-	Kenyan Federation of Registered Trade Unions
MMD	-	Movement for Multi-Party Democracy
SAPs	-	Structural Adjustment Programmes
TCLC	-	Tripartite Consultative Labour Council
UNIP	-	United National Independence Party
ZCTU	-	Zambia Congress of Trade Unions
ZDA	-	Zambia Development Agency
ZFE	-	Zambia Federation of Employers

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CHAPTER ONE

1.0 HISTORICAL BACKGROUND ON THE DEVELOPMENT OF LABOUR RELATIONS AND THE ATTENDANT LABOUR LAW REFORMS IN ZAMBIA (POST-INDEPENDENCE TO DATE).

1.1 Introduction

It is evident that the importance of an effective, permanent machinery of law reform has not been realized in many of our African countries. On a daily basis we are confronted with stupendous challenges for law reform and development to underpin our quest for stability and national unity, challenges which must be responded to with supreme wisdom¹. Rules and regulations in society are not static but dynamic and this gives rise to law reform so as to suit the prevailing circumstances of that period. A look at law reform in Africa presents one with an interesting view of how this 'reform' is effected and the considerations that are taken into account by the various stakeholders as regards review in a particular area of the law. Zambia is not an exception to this common tendency where the efficacy of law reform in a country is questioned and a specific area in this instance is the labour market. It is prudent to note that the employment and labour policies in Zambia are intended to evolve in response to the needs of economic development and social justice.

With reference to labour policies mentioned above, the objective is two-fold, that is, firstly, maintaining industrial harmony and promoting labour welfare ; and secondly, protecting the rights of workers². There has therefore been a need to review certain pieces of employment and labour legislation which include the Employment Act; Industrial and Labour Relations Act; Employment

¹K. Bentsi- Enchill, *The Lawyer's Calling in Africa.*(ZLJ Volumes 3: Number 1, 1971)

² Fifth National Development Plan 2006-2010, Chapter 23 on Employment and Labour, pages 172-76, Government Printers, Lusaka.

of Young Persons and Children Act; Factories Act; and the Statutory Instruments on minimum wages and conditions of service in order to align them with regional and international standards³. It is this direction and efficacy of labour law reform in Zambia that we shall seek to analyze with particular pertinence to the controversy surrounding the Industrial and Labour Relations Amendment Bill⁴. The 'Bill' will be our primary model in achieving the objective of this research.

1.2 Statement of the Problem

Law reform is an essential ingredient in any legal system. Depending on the particular law in question its review affects our lives in one way or another. As mentioned earlier, labour legislation is usually reviewed in order to align it to the local situation and also to regional and international standards. In order to respond to various changes in the labour market, the Government, through the Ministry of Labour and Social Security, has developed a national employment and labour market policy. One of the focal areas intended to be implemented under the FNDP⁵ is the *revision and formulation of employment and labour policies and legislation*. Recently, there was political and economic controversy raised by the Industrial and Labour Relations Amendment Bill with a notable Trade Union leader warning of chaos if the current Industrial and Labour Relations Act⁶ was amended⁷ in accordance with the provisions in the proposed Bill.

³ We should note that Zambia has since ratified the core ILO conventions that seek to uphold the fundamental rights of workers at places of work.

⁴ Industrial and Relations (Amendment) Bill No.8 of 2008

⁵ Fifth National Development Plan 2006-2010, Chapter 23 on Employment and Labour, pages 172-76, Government Printers, Lusaka

⁶ Chapter 269 of the Laws of Zambia

⁷ Joyce Nonde (FFTUZ President) in The Post Newspaper dated Tuesday May 20, 2008 warned of the chaos that would ensue if the current Industrial Act is amended on the basis of the proposed bill which is before parliament.

There were numerous articles and debates on the Amendment Bill by the labour movement, the Government and the citizenry in general. A considerable number of people in the labour movement were in opposition and not comfortable with some of the proposed clauses in the Amendment Bill. Government had a contrary view. In the Zambia Daily Mail of 7th May 2008, a press statement by the Minister of Labour and Social Security, Hon. Ronald C. Mukuma, MP on the ‘amendment of the Labour laws’ challenged those advocating for the withdrawal of the Bill from Parliament to tell the Nation the clauses in the Industrial and Labour Relations Bill which if enacted would affect workers’ rights. In a press statement in The Post dated 8th May, the Minister further stated that, *‘the labour reforms should not be politicized for the sake of championing individual interests which were now at stake’*. The labour movement responded passionately in opposition to Government’s position stating that, *inter alia*, the proposed Bill was in conflict with the International Labour Organization (ILO) conventions and the Republican Constitution; it was aimed at weakening Trade Unions; it was targeted at certain individuals and that it would widen an employers’ termination powers.⁸ The Minister in response to some of these reactions indicated that *‘the Bill was still at first stage and if there were stakeholders with issues to be raised, they could submit to the Parliamentary Committee on Economic Affairs and Labour and argue their points’*.

It is clear that there was ‘serious controversy’ surrounding the proposed Amendment Bill hence the option to use it as a primary model to analyze and question the direction of labour law reform in Zambia. Is Zambia as a developing country moving in the right direction insofar as ‘labour law reform’ is concerned? Why should there be numerous debates and controversy on the review of a piece of legislation? What are the legal and political implications of labour law reform in the

⁸ Joyce Nonde (FFTUZ President) in The Post Newspaper dated Tuesday May 20, 2008 and a press statement by Joe Kamutumwa (General Secretary-The Agricultural Technical and Professional Staff Union of Zambia) dated 8th May, 2008

country? Why is it that other developing countries on the continent are recording economic progress through the development of and use of reasonably healthy labour markets? What are some of the eminent and consequential dangers that are brought about by lack of pragmatic 'labour law reform' mechanism?

These are some of the problems that this research is intended to answer.

1.3 Rationale and Objectives of the Research

Labour administration in Zambia is governed by various pieces of labour legislation, which provide the legal framework necessary to regulate the labour market in its operations. These labour laws make sound provisions but must be enforced in order to get the desired results. As regards labour policies the objective is two-fold, that is, firstly, maintaining industrial harmony and promoting labour welfare ; and secondly, protecting the rights of workers⁹. There has therefore been a need to review certain pieces of employment and labour legislation which include the Employment Act; Industrial and Labour Relations Act; Employment of Young Persons and Children Act; Factories Act; and the Statutory Instruments on minimum wages and conditions of service in order to align them with regional and international standards¹⁰. In the recent past, a number of labour laws have been reviewed with the basic idea of incorporating the new policies of government into the law. The review of other labour laws is an ongoing process. In addition, new pieces of legislation may be enacted to facilitate the implementation of the National Employment and Labour Market Policy.¹¹

⁹ Fifth National Development Plan 2006-2010, Chapter 23 on Employment and Labour, pages 172-76, Government Printers, Lusaka

¹⁰ We should note that Zambia has since ratified the core ILO conventions that seek to uphold the fundamental rights of workers at places of work.

¹¹ **National Employment and Labour Market Policy**-this is a policy document by Government which is intended to facilitate the development of an efficient and effective labour market in order to enhance productivity in the economy.

It is against this background on the historical development of labour relations and the attendant labour law reforms that we shall achieve the objectives of this analysis. The focus of this Chapter is the historical background on the development of labour laws from Post –Independence era to date. With this we should be able to examine the state of the current law and prevailing labour trends within the Zambian labour market; analyze the salient proposed clauses and flaws of the *Amendment Bill*¹² and the consequent ‘controversy’ that it has raised. The effect of reviewing this piece of legislation on the labour market will be considered and this will be followed by a short case study on recent labour law reform in Kenya where ‘reform’ has been reasonably successful both in formulation and implementation and the findings will be related to the Zambian labour market and the all important aspect of economic development in relation to labour; the research shall also point out the eminent and consequential dangers that may be brought about by the lack of a more pragmatic ‘labour law reform’ mechanism in the country; provide a commentary on the Government’s role in law reform especially as regards our labour market; and provide future recommendations on the basis of the findings of the analysis of the direction of labour law reform in Zambia.

1.4 Research Methodology

An investigation into the objective of strengthening the regulatory and legislative framework for the employment and labour sector requires extensive research. The major method of data collection that was employed was desk research. This was supplemented by interviews with various personnel in the labour movement (i.e. FFTUZ, ZFE, ZCTU); the Kenyan Embassy for detailed information on labour law reform in Kenya and the Ministry of Labour and Social

¹² Industrial and Relations (Amendment) Bill No.8 of 2008

Security. The data for this research was sourced from books, Statutes, the Amendment Bill, the internet, journal articles, paper presentations, student obligatory essays, reports by mandated bodies and, in a few and necessary cases, newspaper articles.

Some of the works that were used to inform this study included:

1. Otto Kahn.F. “Labour and the Law” (London: Stevens & Sons, 1977)
2. Mtopa, A.M “Labour Laws of Zambia” (Lusaka: Kenneth Kaunda Foundation,1989)
3. Mwenda, W.S., Employment Law in Zambia. (Lusaka: UNZA Press, 2004)
4. National Employment and Labour Market Policy, Ministry of Labour and Social Security, (Lusaka: Government Printers, November, 2006)
5. Fifth National Development Plan 2006- 2010, Chapter 23 ‘Employment and Labour’ (Lusaka: Government Printers, 2006)
6. Sokoni, D.E. 2007. A Case Study of the Law and Labour Relations in Zambia. Obligatory Essay submitted to the School of Law in partial fulfilment of the award of Bachelor of Laws Degree, 2007.
7. Parliamentary debates on various dates.

Some of the Statutes there were referred to included:

1. The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia
2. The Amendment Act No.8 of 2008
3. The Employment Act, Chapter 268 of the Laws of Zambia
4. The Constitution of Zambia, Chapter 1 of the Laws of Zambia

1.5 Historical Background and Development of Labour Relations

The genesis of labour law and practice in most African nations can be traced to the 19th century when need arose for the colonial governments to pass legislation to ensure adequate supply of cheap labour to service the emerging enterprises in agriculture, industry and in the service sector¹³. Nevertheless, for purposes of our analysis we shall consider the historical background on the development of labour relations and labour law reforms in Zambia post-independence to date. On the 24th of October 1964, Zambia (then known as Northern Rhodesia) gained its independence from the British government. In any country the Government is usually aware of the importance of labour as a factor of production within the context of the economic transformation process. In Zambia it is evident that the law has been very instrumental in the development of labour relations in the labour market giving rise to various pieces of legislation and regulations which govern this important aspect of human activity. This transition has been subject to law reform which is intended to suit the prevailing circumstances owing to the fact that government through legislation regulates labour relations.

1.5.1 The Development of Labour Relations

Zambia has experienced various levels of socio-economic development recording most buoyant growth rates during the first decade of independence (1964-1974). This was primarily due to high copper production and prices that provided for them. Copper exports generated over 90 percent of the country's foreign exchange earnings. Post 1974 period saw the country recording declining trends in its economic performance as a result of a fall in copper prices and production coupled with increasing oil prices. Low economic performance has continued for some time leading to macro-economic problems such as high unemployment rates, high inflation rates, adverse balance

¹³ www.ilo.org (information obtained on the 5th of September 2008)

of trade and above all, huge foreign debt. This situation has resulted in increased levels of poverty in the country.¹⁴ Historically the development of labour relations and the attendant labour law reforms have been due to the change in both the economic and political developments; and the labour market. Zambia has had different statutes to deal with the different political periods that the country has passed through from colonialism, to the First Republic after independence in 1964, to the Second Republic with its emphasis on socialist oriented policies and finally to the Third Republic with its free-market and capitalist economic tendencies.

At independence in 1964, Zambia inherited a strong mining-based economy. As stated earlier, it deteriorated in the mid-1970s following a sharp decline in copper prices and production compounded by the oil shock. The country's failure to make positive policy changes in response to the declining economic environment further worsened the situation. Instead, foreign borrowing was increased to minimize the decline in living standards. Zambia recognized during these early years the need to diversify her economy and reduce over-dependency on mining exports. The preferred strategy was import substitution industrialization that was import-dependent. This encouraged firms to produce for the domestic market but did little to build the requisite capacity to export. With little foreign exchange being earned amidst entry into the highly competitive consumer imports period of the 1990s, the industrialization strategy failed, leading to increasing unemployment.¹⁵

¹⁴ Fifth National Development Plan 2006-2010, Chapter 23 on Employment and Labour, page 172-76, Government Printers, Lusaka

¹⁵ National Employment and Labour Market Policy (Increasing Employment with Decent Working Conditions). November 2004. (GRZ). Ministry of Labour and Social Security. Government Printers, Lusaka

The 1980s marked the first phase of implementing Structural Adjustment Programmes (SAPs) amidst a stagnating economy. The implementation was, however, often piecemeal and failed to fundamentally alter the economic structure. In particular, the design and implementation of SAPs often failed to sufficiently address the growing poverty challenges. The pace of reform accelerated in the 1990s after the Movement for Multiparty Democracy (MMD) government assumed office¹⁶. Public enterprises that constituted a fiscal drain on state revenue were either closed or earmarked for privatization. In addition, price controls were lifted and agricultural input and output markets opened up to private sector entry. In foreign exchange, the rate was freed and capital controls were totally removed.¹⁷

The basis of the legal framework for industrial relations in Zambia originates from the fundamental rights in Part III of the Constitution of Zambia¹⁸ and more particularly from a provision in Article 21 which in sub article (1) reads “...no person shall be hindered in the enjoyment of his freedom of association.....and in particular to form or belong to any.....trade union for the protection of his interests”. In view of this constitutional basis we shall consider the other pieces of legislation that govern labour relations and how they developed.

The **Industrial and Labour Relations Act**¹⁹ was first enacted in 1971 (Act No. 36 of 1971) and replaced and repealed in 1990 by Act No. 36 of 1990. The current Act was enacted in 1993 (Act No 27 of 1993)²⁰. The Act provides the legislative framework for the establishment, organization and management of trade unions, employer’s organizations and their federations. It provides for

¹⁶ www.ilo.org (information obtained on the 5th of September 2008)

¹⁷ www.ilo.org (information obtained on the 5th of September 2008)

¹⁸ Chapter I of the Laws of Zambia

¹⁹ Chapter 269 of the Laws of Zambia

²⁰ It should be noted that considerable amendments were made to this Act (No 27/1993) in 1997.

collective bargaining, settlement of industrial conflicts, consultative mechanism and the establishment and operation of the Industrial Relations Court. In 1997 considerable amendments were introduced to accommodate, among others, the dictates of the liberalized political and economic environment. The changes entrenched the principles of freedom of association in accordance with the ILO standards and abolished the policy of “*one union one industry*” which promoted monopoly trade unionism. The new arrangement also made it possible for enterprise level collective bargaining to flourish.²¹

The **Employment Act**²² was first enacted in 1965 and is the basic piece of legislation on employment law in Zambia. It provides the legal framework for employment relationships. It provides for enforcement of contracts of employment, protection of wages and welfare of employees. This Act was also extensively amended in 1997 to take into account among others ILO Conventions which Zambia has ratified relating to minimum contractual age, termination of employment, protection of wages, and maternity protection. Concern has been expressed that there is insufficient protective provisions in the Act covering work people infected with or affected by HIV/AIDS pandemic. Consensus has since been built up for a need to incorporate protective provisions in this or other appropriate labour laws particularly with regard to discrimination. This is a response to the ever-changing social needs of society.²³

²¹ The said amendments were introduced in 1997. The intention behind these amendments was to accommodate, among others, the dictates of the liberalized political and economic environment.

²² Chapter 268 of the Laws of Zambia

²³ Trade Union Country Report. December 2003. **Authors:** E.J. Nyirenda, Industrial Relations Court (Chapters 1&2); Adrian Shikwe, Zambia Congress of Trade Unions (3&4)

The **Minimum Wages and Conditions of Employment Act**²⁴ is an enabling law. The Act empowers the state through the Minister of Labour and Social Security to prescribe minimum wages and other conditions of employment for sectors where collective bargaining is not possible or effective.²⁵ The **Employment of Young Persons and Children Act**²⁶ provides protection to young persons particularly in occupations that are hazardous or injurious to their health, safety and development. Zambia has now ratified the ILO Convention No. 182 on the elimination of the worst forms of Child Labour.²⁷

The **Factories Act** provides for occupational safety and health in factories, construction sites and other workplaces. The Act empowers Factory Inspectors to enforce occupational safety and health regulations at workplaces. Concern has been expressed over the limitations of this Act particularly with regard to occupational safety and health in the agricultural sector and indeed other employment places falling outside the scope of the Act.²⁸ Nevertheless there have been discussions to establish an all embracing occupational health and safety standards policy.

Having discussed the legal instruments for labour relations and their development in Zambia (which include the Constitution, Industrial and Labour Relations Act, Employment Act, the Minimum Wages and Conditions of Employment Act, the Employment of Young Persons and Children Act, and the Factories Act) we shall consider the trends in the labour environment that give rise to law reform.

²⁴ Chapter 276 of the Laws of Zambia

²⁵ Currently SI No. 56 of 2006 and SI No. 57 of 2006 are in force.

²⁶ Chapter 271 of the Laws of Zambia

²⁷ Trade Union Country Report. December 2003. **Authors:** E.J. Nyirenda, Industrial Relations Court (Chapters 1&2); Adrian Shikwe, Zambia Congress of Trade Unions (3&4)

²⁸ Mwenda, W.S., Employment Law in Zambia. (UNZA Press. Lusaka, 2004)

1.6 Recent Trends and New Challenges

Nyirenda et.al²⁹ writes that, *“following the liberalization of the labour market some important developments have occurred. The free exercise by the workers of their right of association has manifested in the emergency of many more and often competing unions seeking registration and recognition. For the workers, multiplication of unions has meant fragmentation and weakening their ability to articulate and champion the workers cause effectively. For the employers, the multiplication of trade unions has made collective bargaining cumbersome as the employer has to deal with a number of unions”*. He further contends that in the implementation of the liberalized economic and labour market policies, a number of challenging key issues have emerged. These include notable reluctance of new investors to tolerate and deal with trade unions leading to preponderance of casualisation of labour and the use of contract labour. Other challenges relate to retrenchments and redundancies, non payment of benefits when due, and the effects of HIV/AIDS pandemic on human resources and its development. These are issues of grave concern to the Government and the social partners needing concerted attention and effort.

In the National Employment and Labour Market Policy it is indicated that Zambia has experienced declining levels of economic growth leading to high levels of unemployment and poverty. The Government of Zambia is committed to the goal of reducing poverty through sustained economic growth and employment creation. It is implementing macroeconomic policies to promote economic stability; sector policies to promote growth and equity; and crosscutting policies to deal with political, social, environmental and infrastructural issues.

²⁹ Trade Union Country Report. December 2003. **Authors:** E.J. Nyirenda, Industrial Relations Court (Chapters 1&2); Adrian Shikwe, Zambia Congress of Trade Unions (3&4)

Further it is submitted that despite these policies, unemployment and labour market tensions remain key concerns to all Zambians, as increasing proportions of the labour force cannot find productive and remunerative employment. The formulation of the employment and labour market policy is aimed at focusing government attention and actions towards policies that promote employment, and improvement of conditions under which labour is employed. This seems to be the justification for government to propose amendments to two key pieces of legislation through the Employment Act (Amendment) Bill and the Industrial and Labour Relations (Amendment) Bill. The latter³⁰ is our primary model in achieving the objective of this research. The main objective of the policy document is then to create adequate and quality jobs in conditions that ensure adequate income and protection of workers' basic human rights.

An overview of the Chapters will help in guiding us through our findings. Chapter two will give the state of the current law and the prevailing labour trends within the Zambian labour market. Chapter three will be dedicated to a closer look into the legal and political controversy surrounding the Industrial and Labour Relations (Amendment) Bill No.8 of 2008. An examination of some of its 'controversial' provisions and an objective commentary shall also be given. Chapter four will focus on a short case study on Kenya and the recorded improvements in critical areas such as the labour and employment sector. The results of the case study will act as a comparison and show the state and direction of labour law reform in Zambia. With the use of the sum results of Chapters three and four, Chapter five will point out eminent and consequential pitfalls that are brought about by lack of a pragmatic 'labour law reform' mechanism and labour policies that continue to remain on 'paper'. This will be aligned to the main objective of the analysis. The last Chapter will provide a conclusion and recommendations.

³⁰ Industrial and Relations (Amendment) Bill No.8 of 2008

CHAPTER TWO

2.0 THE STATE OF THE CURRENT EMPLOYMENT LAWS³¹ AND THE PREVAILING LABOUR TRENDS WITHIN THE ZAMBIAN LABOUR MARKET

2.1 The State of the Current Law

In this Chapter we examine the state of the current labour laws and the prevailing labour trends within the Zambian labour market. It is evident that the Zambian government has continued to register tremendous increases in both local and foreign investment. This ideally should lead to an economic boom that subsequently creates jobs for the citizenry. According to the former Minister of Labour and Social Security, Ronald C. Mukuma:- *“Government acknowledges the important role labour plays in social and economic development, and it is for this reason that it has put in place institutions for protecting workers’ welfare through the Ministry of Labour and Social Security and its social partners”*.³²

In its commitment to enhancing workers’ rights through dialogue, the **Decent Work Country Programme** was launched by His Honour the Vice President of the Republic of Zambia (as he then was), Mr. Rupiah Banda in November, 2007. This programme addresses four main areas of concern and these include *workers’ rights at places of work, social dialogue, social protection and employment creation*. In any labour market the government has to take urgent and necessary steps to ensure that the jobs are decent and this calls for addressing the challenges that arise from job creation.

³¹ Here the focus is on employment legislation which includes the Employment Act and the Industrial and Labour Relations Act; and the attendant amendment bills of 2008.

³² The Post, Thursday May 8, 2008

The four main pillars of the Decent Work Country Programme are discussed below:³³

Pillar 1 - fundamental principles and rights at places of work. Zambia has ratified the major International Labour Organization conventions (Convention No. 87 which allows freedom of association and protection of the right to organize ; and Convention No. 98 which allows for the right to organize and collective bargaining) promoting the fundamental principles and rights at places of work. With a strengthened labour and factory inspectorate, the government can improve its capacity to enforce the laws that protect workers' rights and occupational health and safety. As the decent work programme is implemented, the challenge before the government is to extend its enforcement capacity to the informal sector which accounts for 80 percent of the labour force. The labour and inspectorate unit must ensure that even employees in the informal sector have a social security scheme. This is intended to help employees in this sector to save money which they could access when they are old or unable to work. It also helps them access loans from financial institutions.³⁴ Under this pillar or labour concern we notice that the Zambian Government has committed itself to ensuring that the fundamental principles and rights of workers at the place of work are upheld.

Pillar 2 -employment creation. The government has integrated employment generation strategies into the *fifth national development plan*.³⁵ The government in this regard intends to continue working closely with the private sector in the creation of an enabling environment that would lead to the creation of sustainable and decent jobs. In order to successfully achieve this goal, the

³³ Speech by his Excellency the President of the Republic of Zambia, Dr Levy Patrick Mwanawasa, SC, on the occasion of the 2008 Labour Day celebrations in Lusaka, 1st May 2008.

³⁴ Speech by his Excellency., page 2

³⁵ Fifth National Development Plan 2006-2010, Chapter 23 on Employment and Labour, page 172-76, Government Printers, Lusaka

government and its social partners will have to continue to play a pivotal role on matters of economic development through programmes being initiated by the **Zambia Development Agency** and the **Citizens' Economic Empowerment Programme**. Work commenced in early 2008 on the collection of data for the 2008 labour force survey.³⁶ It follows that the outcome of this survey will enlighten the labour market on the trends with regard to employment, productivity, wages, and skills endowment in the economy.³⁷ According to the Republican President during his Labour Day speech, "*the challenge before the country is to create an enabling environment that will absorb the 130,000 new entrants into the labour market every year. It is our hope that the attainment of single digit inflation, maintenance of macro economic stability and increased local and foreign investment will result in an increase in the number of persons employed in the economy.*" Under this pillar or labour concern we notice that that the Zambian Government plans to working towards maintaining economic stability at full employment level.

Pillar 3 - social protection. In order to provide adequate social protection to the labour force, the government has commenced the process of creating *a comprehensive social security system*.³⁸ As the proposed social security policy is being implemented, the government in collaboration with its social partners commits to work tirelessly in ensuring that workers are provided with adequate social security benefits that will sustain them when faced with contingencies during and after employment.

³⁶ Information obtained courtesy of the Ministry of Labour and Social Security on the 24th of November, 2008

³⁷ Speech by his Excellency., page 3

³⁸ As of the 1st of May 2008 the nation was informed that the proposed national social security policy was being finalized (Speech by his Excellency the President of the Republic of Zambia, Dr Levy Patrick Mwanawasa, SC, on the occasion of the 2008 Labour Day celebrations in Lusaka, 1st May 2008)

A notable labour consultant Dr. Peter Machungwa observes that Government has from time to time appealed to employers of farmer labourers, domestic servants and shop attendants to consider schemes that can help their employees' access small loans and facilities that can help them and their families at the end of their working life. In this regard it is also important that financial institutions should, in as much as they would want to make a lot of profit, come-up with packages that target such groups of employees.³⁹ With reference to this labour concern of social protection in Zambia it will be observed that it is the people in high paying jobs who have access to loans. Employees such as domestic workers, farm workers, shop attendants, lowly paid civil servants and others in similar jobs are marginalized when consideration for loans is effected. The solution here lies in establishing ways and mechanisms of ensuring that the marginalized categories fully benefit from loan facilities by financial institutions such as Blue Financial Services.

Pillar 4 - social dialogue. As regards the labour aspect of social dialogue the Zambian Government contends that, "*The industrial climate in the country has remained relatively calm, mainly due to the social dialogue mechanism that has been put in place by the social partners. In order to strengthen dialogue between employers and employees, a tripartite secretariat will be established this year to coordinate the work of the tripartite consultative labour council. The membership to the secretariat will be drawn from the various social partners.*" This submission is

³⁹ The rationale here is that loan conditions from the various financial institutions should be so constructed as to allow people at all levels of society to access these funds. In this light the late President Dr.L.P.Mwanawasa contended that, "*One important aspect is a system through which employees can have access to loans to enable them build or purchase low-cost houses. If this is done, the financial institutions will have advanced corporate social responsibility to new heights.*"

questionable as we shall notice later. This is said in light of the fact that there have been a number of noticeable tensions within the labour market with the main players being the Government; the labour movement comprising trade unions; the employer and the employee.

According to officers at the **Ministry of Labour and Social Security**⁴⁰, the government intends to ensure that the tenets of the Decent Work Country Programme receives maximum attention in the Employment Act, with issues such as casualisation, labour brokering, enhancement of working conditions in general and stiffening of penalties for non-compliance to the labour laws are well addressed.⁴¹

Evidence of tensions in the labour market can be seen from Government's frequent advice that employees should not to take the law into their own hands to resolve disputes, but should instead engage in meaningful dialogue as provided for in the **Industrial and Labour Relations Act**. This is against the background that government is committed to ensuring that there is *social justice* in the labour market. At the time of Labour Day celebrations⁴² the President indicated that the social partners had concluded consultations on the *proposed labour law reforms* and that the *industrial and labour relations amendment bill No.8 of 2008*⁴³ had been tabled in parliament.⁴⁴ The Government of the day feels that this development is a great step towards ensuring that there is *social justice* in the manner employers interact with employees at places of work. Contrary to this

⁴⁰ Brief interview with officers in the Information Department at the Ministry of Labour and Social Security on the 24th of November, 2008

⁴¹ **Note:** the issues related to workers' welfare under the Employment Act Amendment Bill should not be confused with the Industrial and Labour Relations Amendment Bill.

⁴² The 1st of May 2008

⁴³ Industrial and Relations (Amendment) Bill No.8 of 2008

⁴⁴ It should be borne in mind that our analysis is on the direction and efficacy of labour law reform in Zambia with particular pertinence to the controversy surrounding the Industrial and Labour Relations Amendment Bill No.8 of 2008. The 'Bill' is our primary model in achieving the objective of this research.

there was controversy and mixed views were expressed amongst the social partners as regards the *proposed labour law reforms* especially the *industrial and labour relations amendment bill No.8 of 2008*. In sum, there had been political and economic controversy raised by the Industrial and Labour Relations Amendment Bill with a notable Trade Union leader warning of chaos if the current Industrial and Labour Relations Act⁴⁵ was amended⁴⁶ in accordance with the provisions in the proposed Bill. Discussion of the said Bill cannot be exhausted as this aspect of our research is the subject matter of Chapter Three.

Currently, records at the Ministry of Labour and Social Security indicate that capacity in the labour field offices around the country has been increased further to provide a systematic and effective law enforcement mechanism that will add value to employment relations in industry. Union leaders have been requested by Government to augment governments' efforts by enlightening workers on their rights and obligations in order to avoid social injustice at places of work. At first glance one might want to conclude that there are healthy relations between the government and the labour movement but this is not the case as shown below.

2.2 The Prevailing Labour Trends within the Zambian Labour Market

As the government continues to advance its commitment to providing an enabling environment for employment creation, this objective has been met with a number of obstacles especially in the area of labour law reforms. A recent example of tensions as regards labour law reforms was evidenced earlier in May 2008, when various factions of the labour market especially the **Trade Unions**

⁴⁵Chapter 269 of the Laws of Zambia

⁴⁶ Joyce Nonde (FFTUZ President) in The Post Newspaper dated Tuesday May 20, 2008 warned of the chaos that would ensue if the current Industrial Act is amended on the basis of the proposed bill which is before parliament.

stated that the labour movement was not consulted when coming up with the *Industrial Labour Relations Amendment Bill No.8 of 2008*. Government responded by stating that wide and comprehensive consultations were made with employers and workers through the Ministry of Labour and Social Security on the *Industrial and Labour Relations Amendment Bill No.8 of 2008*. These mixed positions amongst stakeholders as regards the labour law reforms are evidence of inefficiency in the early stages of law reform.

Stemming from what has been noted above, the former Minister of Labour and Social Security, Ronald C. Mukuma informed the nation⁴⁷ that, “*the consultative process started as far back as the year 2000 involving the Ministry of Labour and Social Security and its social partners who include the Zambia Congress of Trade Unions (ZCTU) and the Federation of Free Trade Unions of Zambia (FFTUZ) on the one hand and the Zambia Federation of Employers (ZFE) on the other. These consultations were carried out under the Tripartite Consultative Labour Council (TCLC) mechanism.*”⁴⁸ Between 2006 and 2007 the government has held a total of three TCLC meetings and two (2) Technical Subcommittee meetings on labour law reforms.⁴⁹ The position by government is that all representatives of the various sectors in the labour market have been involved in the consultations and labour law reform process as a whole. This does not seem to be the case owing to the manner in which the labour movement has responded. The labour movement has for a long time now been advocating for a *review* of the labour laws and in particular the Industrial and Labour Relations Act. The process of amending the Industrial and Labour Relations

⁴⁷ In a Press Statement in **The Post Newspaper** dated **May 8, 2008**

⁴⁸ This is in line with the provisions of **Section 79** of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.

⁴⁹ It should be appreciated that the TCLC is by law under **Section 82** of the Industrial and Labour Relations Act mandated to constitute Technical Sub committees. These Technical Subcommittees were mandated to make the final recommendations that were to be submitted for legal drafting.

Act came to an end with the passing of the Amendment Bill No. 8 of 2008 into law on 24th September 2008 after it received Presidential assent. The labour movement have maintained their stance that the clauses in the Bill⁵⁰ are not what had been bargained for. In a brief interview⁵¹ with Joe Kamutumwa, the General Secretary of the **Agricultural Technical and Professional Staff Union of Zambia**, he stated that, *“it is true that consultative meetings had been held with representatives from sectors in the labour market but what was of concern at inception of the amendments was the fact that some of the clauses proposed in the Bill were not recommended by the sub technical committee and had been thrown out by the TCLC.”* The Amendment Bill is now law and is to be read alongside the principal Act. This is yet again evidence of the inconsistencies that are prevalent in the labour law reform process. According to the various submissions of stakeholders the process of consultation is flawed and in effect the government is purporting to impose laws on the workers. It may safely be asserted that this could be the reason why workers were at pains in appreciating the Bill at the time it was tabled before Parliament. Some who include Joyce Nonde, the President of FFTUZ actually called for its withdrawal from Parliament. As we analyze the direction of labour law reform in Zambia it would be prudent to assess the legal and political controversy surrounding the Industrial and Labour Relations Amendment Bill No.8 of 2008 prior to it being passed into law after having received Presidential assent on 24th September 2008.

⁵⁰ Industrial and Relations (Amendment) Bill No.8 of 2008

⁵¹ Interview conducted at Kenneth Kaunda House, 1st Floor in room 101 on 10th December 2008.

CHAPTER THREE

3.0 THE LEGAL AND POLITICAL CONTROVERSY SURROUNDING THE INDUSTRIAL AND LABOUR RELATIONS AMENDMENT ACT No. 8 OF 2008

3.1 The Industrial and Labour Relations (Amendment) Act No. 8 of 2008

The Industrial and Labour Relations Amendment Bill No.8 of 2008 that was presented to Parliament addresses issues of trade union management and administration. The Bill sought to enhance transparency and accountability in the management of workers' funds, improve the bargaining process and strengthen law enforcement mechanisms.⁵² After the Bill had gone through the process in Parliament it was assented to by the President on the 24th of September 2008. At the time of presentation of the Bill before Parliament, Government enlightened the public that the main aim of the proposed amendments to the Industrial and Labour Relations Act was, among many others, to:

- Entrench fundamental rights and principles of workers at work places.
- Strengthen labour law enforcement mechanism to effectively deal with the emerging challenges of economic liberalization and globalization.
- Strengthen and quicken the collective bargaining process by providing for employers to negotiate with different unions collectively through alliances as opposed to fragmented and disunited negotiations that currently exist in order to strengthen worker bargaining power.
- Provide for alternative and efficient dispute resolution mechanism by the inclusion of arbitration as part of the process of settlement of collective disputes in the *Industrial and Labour Relations Act*.

⁵² In a Press Statement in *The Post Newspaper* dated May 8, 2008

-Monitor proper and effective utilization of representative bodies' funds for workers and employers with a view to ensure that they are applied for intended purposes giving particular and priority attention to workers' and employers' education to avoid unnecessary industrial strife in the labour market.⁵³

The former Minister of Labour and Social Security, Ronald C. Mukuma stated that, "*the above highlighted areas of concern are not aimed at targeting any one trade union centre or indeed any trade union leader. Government is alive to the fact that, it is likely that some ineligible union leaders who currently hold office in the Labour Movement will be affected by the coming into effect of the amendments to the Act and not necessarily one trade union or indeed one employer representative who presumes himself or herself as being targeted.*"⁵⁴ Below we examine the provisions that were provided for in the **Principal Act** and analyze the amendments to the said provisions which are provided for by the **Amendment Act**.⁵⁵

3.2 The Salient Amendments to the Principal Act⁵⁶

Section 3 of the **Principal Act** provides for interpretation. This section in the **Principal Act** on the meaning of '*bargaining unit*' read as follows:-

"Bargaining Unit" means - (a) in relation to collective bargaining at the level of an undertaking other than an industry, the negotiating team representing the management of the undertaking together with the trade union representatives of employees in such undertaking; and

⁵³ In a Press Statement in **The Post Newspaper** dated **May 8, 2008**

⁵⁴ This assertion by the former **Minister of Labour and Social Security** will be discussed in depth as we consider section 18(1) of the **Amendment Act No. 8 of 2008** on the *disqualification from election or appointment as officer of trade union.*

⁵⁵ Amendment Act No.8 of 2008

⁵⁶ Our concern is on the main amendments that have seemingly caused a lot of controversy in the labour sector.

(b) in relation to collective bargaining at the level of an industry, a joint council.⁵⁷

The amendment to section 3 in the **Amendment Act** now provides:-

2. Section *three* of the principal Act is amended-(a) by deletion of the definition of “bargaining unit” and the substitution therefor of the following:

“Bargaining unit” means - (a) the management of the undertaking and the most representative trade union representing employees in the undertaking where collective bargaining is at the level of an undertaking, other than an industry; or

(b) the negotiating team representing the employers’ organization and the negotiating team representing the most representative trade union in the industry concerned where collective bargaining is at the level of an undertaking or industry.⁵⁸

The main argument as regards the insertion of the new provision above is that this provision is in conflict with the provisions of Article 21 of the Republican Constitution. Article 21(1) of the Constitution of Zambia⁵⁹ provides that, “*Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.*” Anything done or said contrary to this constitutional provision will be construed to undermine the protected interests of a person in this context and thus be deemed unconstitutional. Further, it can be argued that the amendment to the meaning of ‘*bargaining unit*’ in the Principal Act infringes on the right of an employee to belong to a trade union of his or her choice. The provision in the amendment of ‘*the most representative union*’ has the ability to suppress and stifle the voice of smaller trade

⁵⁷ Section 3 of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

⁵⁸ Amendment Act No.8 of 2008

⁵⁹ Chapter 1 of the Laws of Zambia

unions.⁶⁰The efficacy of smaller trade unions will greatly be undermined.⁶¹ As was highlighted in Chapter Two, Zambia is a member State to the International Labour Organization (ILO) and it has ratified and domesticated **Conventions No. 87** which allows freedom of association and protection of the right to organize and **Convention No. 98** which allows for the right to organize and collective bargaining. The phrase '*the most representative union*' in the amendment to section 3 of the **Principal Act** is evidently in conflict with the two ILO Conventions above.

Another provision that raised legal and political controversy is the provision in section 18 (1) of the Principal Act⁶².The amendment to this section in the **Amendment Act** now provides:

9. Section *eighteen* of the Principal Act is amended in subsection (1) by-(a) deletion of the word "or" at the end of the paragraph (e);

(b)the deletion of the full stop at the end of paragraph (f) and the substitution therefor of semicolon and the word "or"; and

(c) the insertion immediately after paragraph (g) of the following new paragraph: (h) is an officer of a trade union or trade union secretariat who is not employed outside the trade union or trade union secretariat.

It follows that the above provision has very serious negative implications in that chances of the labour movement having inexperienced trade union leaders is high. During her campaign to have the Industrial and Labour Relations Amendment Bill No.8 of 2008 withdrawn from Parliament, Joyce Nonde, the President of FFTUZ stated on this point that, "*the clause to disqualify union leaders who had retired from employment to work full-time at union secretariats was only targeted*

⁶⁰ It is for this reason that in the past trade unions have proposed for the formation of alliances among and between affected unions to discourage the prevalence of poor and ineffective representation of workers.

⁶¹ An example of a small trade union in this regard is the **Agricultural Technical and Professional Staff Union of Zambia**

⁶² This section provides for '*disqualification from election or appointment as officer of trade union*'.

at certain individuals". She further pointed out that , "*the bill was only aimed at weakening the unions by giving the Labour Commissioner powers to register and deregister unions.*" With reference to the amendment to section 18(1) of the Principal Act, another notable implication is that the elected officials of a trade union will only serve one term of office which will be grossly unfair to the institutions they serve as most of the experienced trade union leaders would be thrown out of the labour movement.⁶³ It is for this reason that the government has been accused (in this sense) of actually weakening the labour movement rather than strengthening it. Joe Kamutumwa, the General Secretary of the **Agricultural Technical and Professional Staff Union of Zambia**⁶⁴ argues that, "*our members of parliament spend years of service for the sake of their people in different constituencies as they are elected and re-elected; so why should there be a limit to term of office for trade unionists? When an officer of a trade union reaches the statutory retirement age he or she must relinquish the held union position ,if such person refuses to do so, the members can take the matter to the Industrial and Labour Relations Court.*" We notice here that as regards section 18 (1) of the Principal Act, the provision before the amendment to the said Act was adequate to address the issue of 'disqualification from election or appointment as officer of a trade union'.

⁶³ The circumstances under which one can be disqualified from election or appointment as officer of a trade union have been widen under the Amendment Act and will adversely affect the long-serving and experienced trade union leaders.

⁶⁴ Interview conducted with Joe Kamutumwa at Kenneth Kaunda House, 1st Floor in room 101 on 10th December 2008

Further, another provision that raised legal and political controversy is the amendment to section 21 of Principal Act on the 'annual reports of accounts of trade union'.⁶⁵ Section 21 in the Principal Act read as follows:-

21(1) As soon as practicable, but not later than twelve months after the expiry of each financial year of the trade union, the executive officer of every trade union shall submit to the Commissioner a report concerning the financial affairs of 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 audited balance sheet;

(b) an audited statement of revenue and expenditure; and

(c) such other information as the Commissioner may require.⁶⁶

The Amendment Act as regards section 21 on 'annual reports of accounts of trade union' now provides:-

10. Section *twenty-one* of the principal Act is amended-(a) by the insertion immediately after subsection (2) of the following new subsections:

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

⁶⁵ Section 21 of the Principal Act prior to the amendment.

⁶⁶ Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia

(4) The auditor appointed under subsection (3)-(a) shall conduct a preliminary investigation into the books of account of the trade union; and (b) may for purposes of auditing the books of account of trade union, recommend to the Commissioner that the officers of trade union be suspended.

(5) The Commissioner shall, where the auditor makes a recommendation under paragraph (b) of section (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 (c) appoint from among the nominations submitted under paragraph (b), an interim committee to oversee the operations of the trade union.

(6) Where the report of an auditor appointed under subsection (3) establishes that the officers of a trade union have misused, misapplied or misappropriated the funds or used the funds for purposes contrary to the objects 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 subsection *seventy-nine*; (b) in subsection (3), by deletion of the words “two hundred” and the substitution therefor of the words “two hundred thousand”; and (c) by the renumbering of subsection (3) as subsection (7).⁶⁷

The amendment to section 21 of the Principal Act above, has come under heavy criticism from the labour movement and independent observers mainly because of its legal and political implications. Firstly, it should be highlighted that a trade union is a club formed by the workers themselves and draw their own constitution on what they want to achieve provided this is done in conformity with

⁶⁷ Amendment Act No.8 of 2008

existing laws.⁶⁸ Trade unions also list down various procedures on how they can remove from power the executive members who have been found wanting as per their constitutions and recognition agreements; for instance the National Executive Council monitors and supervises the union Secretariat on a day-to-day basis which later reports to the annual conferences of delegates, quadrennial and extra ordinary conferences. The anomaly that arises as regards the amendment to section 21 is that the Labour Commissioner's powers under the provision questions the role of the statutory bodies of trade unions which have the same powers to dissolve, elect, replace and retain. One would wonder what role these statutory bodies will now play owing to the fact that the amendments to the Principal Act are now law.

Further, the amendment to section 21 above does not clearly and fully explain what would happen after the executive has been dissolved, how will the Labour Commissioner bring together all representatives of the union structure. Who then will be in charge of union funds as there would no be no executive, is it the Commissioner? As delegates come from all over the country who will foot their bills, is it the Labour Commissioner?⁶⁹ This is another notable anomaly that is evident in the amendment. The said amendment also provides for the appointing of an independent auditor by the Labour Commissioner but is not clear as to who will pay the auditor. Owing to lack of clarity in the wording of the amendment, we notice that the Labour Commissioner has the latitude to abuse his authority if he or she is not in good books with a particular trade union. On this issue Joyce Nonde, the President of FFTUZ had earlier commented that, *"if the proposed bill was passed into law it would give employers leeway to terminate recognition agreements with the unions, with*

⁶⁸ In the Principal Act a trade union is defined as an organization of employees which is registered as a trade union under the Act and whose principal objects regulate collective relations between employees, or between employees and organizations of employers, between employers and employees.

⁶⁹ Interview conducted with Joe Kamutumwa at Kenneth Kaunda House, 1st Floor in room 101 on 10th December 2008

the Labour Commissioner sitting to arbitrate between the union and the employer."⁷⁰ Her warning comments are testimony of the fact that the Labour Commissioner's powers under the Amendment Act are too wide and subject to abuse to the detriment of the labour movement and the workforce at large.

One of the main concerns that the Amendment Act gives rise to, is the interference of Government in the operations of trade unions. The Labour Commissioner is a civil servant who receives instructions from the appointing authority. His independence is highly questionable in that he may be biased in the execution of his duties keeping in mind the fact that trade unions are always fighting for workers' rights which may not be pleasing to the sitting Government. It can therefore be asserted that the Government is not only being seen to be imposing laws on workers but the law is being structured in such a fashion as to ensure a considerable latitude of control over trade unions. This undermines the very essence of labour law reforms.

Finally, the amendment to Section 21 of the Principal Act has the ability to seriously interfere in the running of trade unions. In this light one can then argue that the law before the passing of the amendment bill was adequate as regards the submission of the audited accounts by the unions to the Labour Commissioner. At the time the Amendment Bill No.8 of 2008 was presented to parliament, Government through the Ministry of Labour and Social Security⁷¹ stated that, "*the areas of concern in the Amendment Bill No.8 of 2008 are not targeted at any trade union centre or indeed any trade union leader. Government is alive to the fact, it is likely that some ineligible trade union leaders who currently hold office in the Labour Movement will be affected by the coming*

⁷⁰ The Post May 20,2008

⁷¹ The Post, Thursday May 8, 2008

into effect of the amendments to the Act and not necessarily one trade union leader or indeed one employer representative who presumes himself or herself as being targeted.” Further it was stated that, *“It is clear that there is no clause in the proposed Amendment Bill adversely affecting workers’ welfare. If anything the Bill seeks to strengthen worker representation in order to promote workers’ rights at work places. Those leaders agitating for the withdrawal of the Industrial and Relations Amendment Bill are merely fighting personal battles and should not be allowed to carry out their self fulfilling interests under the name of fostering worker representation and workers’ rights.”*⁷² What is noticed here is a consistent pattern of varying positions between the Government and the Labour Movement as regards the labour reform process and the actual result of the reviewed laws at the end of the process. Taking the Amendment Act No.8 of 2008 as an example, we see that one can question the direction of law reform in the labour sector in Zambia and whether this reform process is achieving its intended purpose. A look at law reform in Africa presents one with an interesting view of how this ‘reform’ is effected and the considerations that are taken into account by the various stakeholders as regards review in a particular area of the law. Zambia is not an exception to this common tendency where the efficacy of law reform in a country is questioned and our area of concern in this instance has been the labour sector.

3.3 A Brief Comment on the Labour Law Reform Process

Rules and regulations in society are not static but dynamic and this gives rise to law reform so as to suit the prevailing circumstances of that period. In this instance our focus has been the labour sector and the primary model for the research is the Amendment Act No.8 of 2008 which has been discussed above. Essentially during the law reform process the key stakeholders should be

⁷² The Post, Thursday May 8, 2008

involved from start to finish. In the formulation of the Bill⁷³ the key stakeholders were involved in process as was pointed out in Chapter Two and as evidenced by the three TCLC meetings and two (2) Technical Subcommittee meetings on *labour law reforms*⁷⁴ that were conducted by government and other stakeholders between 2006 and 2007.⁷⁵ It follows that the necessary consultations were made but what appears to be the problem is the final content of the amendment documents. According to the various submissions of stakeholders in the Labour Movement the process of consultation was flawed and in effect the Government in most cases purports to impose laws on the workers. At this point what is clear is that there exists a problem in the reforming of the legal framework in the labour sector especially with regard to trade unions mainly because of the prevalence of political overtones in this area of the labour sector.

Before we point out the eminent and consequential drawbacks that may be brought about by the lack of a more pragmatic 'labour law reform' mechanism in the country, we shall consider a short case study on recent labour law reform in Kenya where 'reform' has been reasonably successful both in formulation and implementation. This will be related to the Zambian labour market and the all important aspect of economic development in relation to labour.

⁷³ The Bill referred to here is the Amendment Bill No.8 of 2008

⁷⁴ It should be appreciated that the TCLC is by law under **Section 82** of the Industrial and Labour Relations Act mandated to constitute Technical Subcommittees. These Technical Subcommittees were mandated to make the final recommendations that were to be submitted for legal drafting.

⁷⁵ The consultative process started as far back as the year 2000 involving the Ministry of Labour and Social Security and its social partners who include the **Zambia Congress of Trade Unions (ZCTU)** and the **Federation of Free Trade Unions of Zambia (FFTUZ)** on the one hand and the **Zambia Federation of Employers (ZFE)** on the other. These consultations were carried out under the Tripartite Consultative Labour Council (TCLC) mechanism.

CHAPTER FOUR

4.0 CASE STUDY ON KENYA AND THE RECORDED IMPROVEMENTS IN THE LABOUR AND EMPLOYMENT SECTOR

4.1 Introduction

Kenya is a republic in East Africa and is a member of the Commonwealth of Nations. Kenya has a varied landscape of plateaus and high mountains and is home to many different ethnic groups. Formerly a British colony, Kenya gained independence in 1963 and has been a republic since 1964. It is bounded on the north by Sudan and Ethiopia, on the east by Somalia and the Indian Ocean, on the south by Tanzania, and on the west by Lake Victoria and Uganda. Nairobi is the country's capital and the largest city in this country.⁷⁶ 2006 population estimates indicate that Kenya has a population of 34,707,817 and a population growth rate of 2.57⁷⁷.

The service sector accounts for 56 percent of Kenya's GDP. This includes the various services provided by the government and the increasingly important restaurant, hotel, and safari industries which have grown in response to the increasing number of tourists visiting Kenya. Tourism in Kenya has expanded dramatically since 1989, and since 1989 it has been the country's leading source of foreign currency. Tourist arrivals, mainly from Europe and North America, numbered 1,132,000 in 2004.⁷⁸ Kenya's main tourist destinations are the beaches along the Indian Ocean coast, national parks and game reserves⁷⁹ and museums and historical sites.

⁷⁶ M.R. Maxon, "Kenya". Microsoft Encarta Encyclopedia 2007. Redmond WA: Microsoft Corporation (2007)

⁷⁷ Population, population growth rate, and population projections are from the United States Census Bureau, International Program Center, International Data Base (IDB) (www.census.gov)

⁷⁸ M.R. Maxon, "Kenya". Microsoft Encarta Encyclopedia 2007. Redmond WA: Microsoft Corporation (2007)

⁷⁹ The national parks and game reserves include the Masai Mara Game Park, Tsavo National Park, and Amboseli National Park.

4.2 The Labour Market in Kenya

In 2004 Kenya had a labour force of 15.1 million people. About 19 per cent of the labour works in agriculture, most earning their living by subsistence farming. About 62 percent work in the service sector and 20 percent in industry. Many labourers earn their living in what is called *jua kali* sector—that is, through informal employment as mechanics, metalworkers, or in some other small-scale skilled craft.⁸⁰ Kenya's unemployment rate was estimated at about 21 percent in 1994. Trade unions represent a substantial proportion of private sector employees. All unions were brought under state control in 1965 with the creation of the Central Organization of Trade Unions (COTU).⁸¹

It should be highlighted from the onset that the selection of Kenya as the country for our case study for the analysis of labour law reforms is not under the pretext that the Kenyan labour market is the healthiest on the continent nor is the Kenyan labour market being cited as the factor that is solely responsible for economic growth in this East African country. Kenya has experienced serious political turmoil in the recent years and this has been coupled by violent clashes amongst ethnic groups in the country.⁸² In this light we are using Kenya for our case study because it is equally a developing country like Zambia and both countries fall within the same GDP bracket although Kenya's is higher by almost three fold.⁸³ What is of interest as regards this research is that a holistic look at Kenya's **national labour law profile** presents one with a case to consider insofar as a comparison with Zambia is concerned.

⁸⁰ Information courtesy of the Kenyan Embassy located in Long Acres, Lusaka. (UN Avenue).

⁸¹ Information courtesy of the Kenyan Embassy located in Long Acres, Lusaka. (UN Avenue).

⁸² In the 1990s the country witnessed periodic clashes between ethnic groups, particularly between Kalenjin and Kikuyu peoples in west central Kenya. The post-election violence in 2007 became both a continental and global as many people lost their lives in the political crisis.

⁸³ According to 2006 estimates Kenya's GDP is 16 billion while Zambia's GDP is 5.4 billion.

4.3 Labour Laws in Kenya

The political structure in Kenya has a striking resemblance with the Zambian one in many respects mainly due to the fact that both countries were colonized by Britain. With industrialization, towards the middle of the 20th century in Kenya, an organized trade union movement was well established. The first wage earners' associations in Kenya can be traced back to the early 1940s and soon after the Second World War.⁸⁴

Aluchio⁸⁵ writes that , *“The first trade union regulation was made with the introduction of Ordinance No. 35 of 1939 that required all crafts organizations to apply for registration which they could be granted or denied depending on whether they had legitimate dealings consistent with government policy. The Ordinance also permitted any group of seven people to form a trade union and operate as one upon registration. Cancellation of registration under the Ordinance was not subject to appeal or open to question in a court of law.”*

In 1948, in order to gain complete hold on the wage earners organizations, the government brought in a Trade Union Labour Officer to be attached to the Labour Department with the duty to foster "responsible" unionism.⁸⁶ In 1952 a more detailed piece of legislation was enacted for Trade Unions but again with significant omissions. It lacked necessary provisions for effective operation of trade unions. It did not legalize peaceful picketing or provide immunity against damages as a result of strikes. On the other hand, the government encouraged creation of staff associations and work committees since they fitted in its interests to confining workers' organization to economic

⁸⁴ Maxon, Robert M. "Kenya". Microsoft Encarta Encyclopedia 2007.Redmond WA: Microsoft Corporation (2007)

⁸⁵ L.P.A. Aluchio, *Trade Unions in Kenya, Development and the System of Industrial Relations*, (Nairobi 1998), page 3

⁸⁶ T.Jackson, *The Law of Kenya, An Introduction*, (2nd Edition, Nairobi, 1984).

imperative alone and also lacked strike powers.⁸⁷ This rigid control of trade unions was maintained by the colonial government until the end. This notwithstanding, the movement was able to grow both in numerical strength and power. At independence the total number of union members was about 155,000 people in 52 trade unions, with four centres formed and registered, namely, **East African Trade Union Congress (EATUC)**, **Kenya Federation of Registered Trade Unions (KFRTU)**, **Kenya Federation of Labour (KFL)** and **Kenya Africa Workers Congress (KAWC)**.⁸⁸ Industrial confrontation arose not merely from traditional trade union activities, but also from the movement's political role in the struggle for freedom from colonial domination, particularly after individual political leaders had been arrested and placed in detention.

On the threshold of independence however, both employers and trade unions, felt that it was vital for the infant nation to make economic progress, that capital and labour should work together in harmony: the incidence of strikes and lockouts had to be drastically reduced.⁸⁹ At this juncture we note that in modern societies there is acknowledgement of the important role labour plays in social and economic development.

As a result of the above, in October 1962, a landmark was established with the signing of the **Industrial Relations Charter** by the government of Kenya, the Federation of Kenya Employers and the Kenya Federation of Labour, the forerunner of COTU (K), the Central Organisation of

⁸⁷ T.Jackson, *The Law of Kenya, An Introduction.*, page 15

⁸⁸ T.Jackson, *The Law of Kenya, An Introduction .*, page 16

⁸⁹ L.P.A. Aluchio, *Trade Unions in Kenya, Development and the System of Industrial Relations*, Nairobi 1998

Trade Unions (Kenya).⁹⁰The Industrial Relations Charter spelt out the agreed responsibilities of management and unions and their respective obligations in the field of industrial relations, it defined a model recognition agreement as a guide to parties involved, and it set up a joint Dispute Commission. The Industrial Relations Charter has been revised twice since then, but has still remained the basis for social dialogue and labour relations in Kenya throughout the years.⁹¹In 2002 the “Charter” was under review again; parties produced a draft Charter in 2001 that was signed in the context of the overall Labour Law review. With the set up of an Industrial Court in 1964, one additional basic cornerstone was laid for the development of amicable conflict resolution in Kenya.

4.4 Labour Law Reform in Kenya

In May 2001 a Taskforce to review the Labour Laws was appointed by the Attorney General under Gazette Notice No. 3204, within an International Labour Organisation project.⁹² The terms of reference for the Taskforce were:

- To examine and review all the labour laws including the Employment Act (Cap. 226); the Regulation of Wages and Conditions of Employment Act (Cap. 229); the Trade Unions Act (Cap. 233), the Trade Disputes Act (Cap. 234), the Workmen’s Compensation Act (Cap. 236), the Factories Act (Cap. 514) and make recommendations for appropriate legislation to replace or amend any of the labour law statutes;

⁹⁰ Earlier it was mentioned that all unions were brought under state control in 1965 with the creation of the Central Organization of Trade Union (COTU).The forerunner of COTU is the Kenya Federation of Labour (KFL).

⁹¹ Ibid.,

⁹² Information courtesy of the Kenyan Embassy located in Long Acres in Lusaka.(UN Avenue)

- To make recommendations on proposals for reform or amendment of labour laws to ensure that they are consistent with the Conventions and Recommendations of the International Labour Organisation to which Kenya is a party; and
- To make recommendations on such other matters related to or incidental to the foregoing.⁹³

As regards the mandate of the Task Force and their terms of reference the major points of concern were:

- Extension of the application of protective labour regulation into the informal sector;
- Harmonisation of the Kenyan labour legislation within the East African Community;
- Merging and redrafting the different Acts in order to produce a user-friendly and comprehensive labour legislation for the benefit of the people;
- The elimination of remaining colonial heritage in employment relations and contracts;
- The introduction of an Industrial Court of Appeal to overcome contradicting jurisdiction between the High Court and the Industrial Court;
- Review registration procedures and trade union monopoly based on the Trade Unions Act (Cap. 233) in view of the ratification of the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87);
- Review regulations on casual employees;
- Setting up of an administration system which promotes involvement and democratic participation of the social partners (role of the Labour Advisory Board, possible involvement of civil society concerned in specific fields, etc.);

⁹³ Review of the Labour Laws in Kenya 2001(National Labour Law Profile :Kenya[www.ilo.org])

- Review possible limitations of excessive powers and influence of the Minister for Labour in industrial relations;
- Creation of an efficient labour administration system (inspection pp.) which is capable of effectively enforcing the laws;
- Review the election procedures for trade union officials, and implement a system of directly elected workers' representatives;
- The establishment of an affordable, not contribution based, workers social insurance scheme, complementing the National Social Security Fund;
- Promote equity and equality in employment by incorporating anti-discriminatory (gender, HIV/AIDS) provisions into the Employment Act (Cap. 226), and as well as provisions against discriminating sexual harassment.⁹⁴

We notice from the above that there was a deliberate move to review all laws on labour and introduce new laws where necessary in the interests of producing a user-friendly and comprehensive labour legislation for the benefit of the people. The tripartite Taskforce, comprising members from the government, the trade unions (COTU) and the employers organization (FKE), officially handed over five new texts to the Attorney General in April 2004.⁹⁵ The five drafts were intended to replace the existing legislation on Labour Law in Kenya when (they) reached final version. These drafts related to the following matters:

- Draft on the Labour Relations Act: an Act to deal with the registration, regulation, management and democratisation of trade unions and employers organizations or federations, to

⁹⁴ Review of the Labour Laws in Kenya 2001(National Labour Law Profile :Kenya[www.ilo.org])

⁹⁵ Review of the Labour Laws in Kenya 2001(National Labour Law Profile :Kenya[www.ilo.org])

promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development and related matters.

- Draft on the Labour Institutions Act: an Act for the establishment of Labour Institutions, to provide for their functions, powers and duties. This text introduces a system of labour courts with exclusive jurisdiction on labour matters. The Act establishes Subordinate Labour Courts, as well as a National Labour Court. The latter is a superior court having the same authority, inherent powers and standing in relation to matters under its jurisdiction, as the High Court. Appeals on decisions from Subordinate Labour Courts lie in the National Labour Court. Second appeals lie in the Court of Appeal. This text also creates a National Labour Board, whose main duty is to advise the Minister on labour legislation and matters.
- Draft on the Employment Act: an Act to declare and define the fundamental rights of employees, to provide basic conditions of employment of employees and to regulate employment of children. This Act contains provisions on freedom from discrimination and from sexual harassment. Provisions on freedom from forced labour expressly domesticate ILO Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), both ratified by Kenya in 1964.
- Draft on the Occupational Health and Safety Act: an Act to provide for the safety, health and welfare of persons employed, and all persons lawfully present at workplaces and related matters.
- Draft on the Work Injury Benefits Act: an Act to provide for compensation to employees for injuries suffered and occupational diseases contracted in the course of employment, for insurance of employees and related matters.⁹⁶

⁹⁶ Review of the Labour Laws in Kenya 2001(National Labour Law Profile :Kenya[www.ilo.org])

In the preceding years Kenya experienced an overhaul of its labour laws. The drafts above played a key role in fostering a new direction of labour laws in this East African country. Not all recommendations and proposals were taken on board but most of the labour legislation was amended to meet the aspirations of the labour market and also to meet the international standards set by ILO.⁹⁷

4.5 A Comparison between the two Labour Markets

In 2004 about 4.9 million Zambians participated in the labour force while in the same year Kenya had a labour force of 15.1 million people. Both countries are developing economies with Kenya having by far, a larger population. From the discussion above it is clear that Kenya recently underwent a major law overhaul in the labour sector. Unlike in Zambia there has been a higher level of commitment from the Kenyan government on aspects of law reform. Despite Kenya experiencing serious political turmoil in recent years as earlier pointed out, it has a more stable and healthier labour market than Zambia. The labour laws are more pragmatic and there is (less) government interference in the trade union affairs as compared to Zambia. Further, the labour law reform process has achieved more in Kenya than Zambia through more participation by stakeholders; law review awareness to the general public is higher; transparency and accountability in law reform process is also at slightly a higher level; and relationships between employers and workers are more orderly in Kenya.⁹⁸ This is not to say that the Kenyan labour sector is flawless but on a comparative basis to the Zambian labour sector it is more progressive and labour law reforms there have to a considerable extent achieved the desired objectives.

⁹⁷ ILO-International Labour Organization is a specialized agency associated with the United Nations (UN), whose worldwide objectives are to improve labour conditions, promote productive employment and social progress, and raise living standards.

⁹⁸ M.R. Maxon, "Kenya". Microsoft Encarta Encyclopedia 2007. Redmond WA: Microsoft Corporation

CHAPTER FIVE

5.0 THE EMINENT AND CONSEQUENTIAL PITFALLS THAT ARE BROUGHT ABOUT BY LACK OF A PRAGMATIC LABOUR LAW REFORM MECHANISM

5.1 The Eminent and Consequential Pitfalls

Labour is one of the important themes falling in the meta-paradigmatic sphere of globalization and good governance. Thus the legal framework governing this sector of an economy is very cardinal. Below we outline some of the eminent and consequential pitfalls that are brought about by lack of a pragmatic labour law reform mechanism:-

➤ *Industrial Unrest*

Lack of a pragmatic labour law reform mechanism inevitably leads to industrial unrest in a country. Workers or employees will readily take to industrial action because the law does not adequately protect them. This industrial action is action taken by workers and their trade union in pursuance of a trade dispute. The action may take a number of forms which include a strike; a ban on overtime; a go-slow; the blacking of goods of a particular supplier or customer and so on. If the laws do not adequately cater for certain situations and reform of these laws is equally unsatisfactory, then the labour force in the country will face serious industrial unrest. On the 19th of May 2008, Joyce Nonde, the President of FFTUZ appeared before the Parliamentary Committee on Labour and Economic Affairs. In her statement Joyce Nonde warned of chaos, “*if the Industrial and Labour Relations Act, Cap.269 of the Laws of Zambia was amended on the basis of the*

proposed clauses in the Amendment Bill No. 8 of 2008".⁹⁹ The chaos she warned of is mainly that to do with industrial unrest in the country.

➤ ***Stifling of Employees Rights***

Essentially the law is there to protect the rights of employees at places of work. An employee for example should not be hindered from joining a trade union of his or her choice. From our discussion on the Amendment Act and its attendant provisions it can be noticed that certain provisions such as the new meaning of 'bargaining unit' are in conflict with International Labour Organization (ILO) Conventions 87 and 98¹⁰⁰ and the Republican Constitution in Article 21 (1)¹⁰¹. This seemingly indirect conflict has the potential to take away the freedom and rights of employees as a result of ineffective pieces of legislation.

➤ ***Loopholes for Abuse of Authority***

The lumping of too much power for certain critical offices such as that of the Labour Commissioner as evidenced in the Amendment Act has the potential to promote corruption. Laws should not be reviewed in such a manner as to create additional problems to the already existing difficulties instead of acting as a solution to the problems. Under the Amendment Act the Labour Commissioner has wide powers which include the power to register and deregister trade unions and this in itself weakens the entire trade union structure. Further, employers under the Amendment Act have leeway to terminate recognition agreements with trade unions, with the Labour Commissioner sitting to arbitrate between the union and the employer. These loopholes in

⁹⁹ The Post, Tuesday May 20, 2008

¹⁰⁰ Conventions 87 and 98 provide for the right of workers and the right to operate without intimidation as a union.

¹⁰¹ Article 21 (1) of the constitution provides for protection of freedom of assembly and association.

the new law can be a breeding ground for abuse of authority and corruption. The widening of powers and according of unnecessary discretion cannot certainly be an objective of law reform.

➤ ***Efficacy of Law Reform***

Laws cannot at any material time meet all the aspirations of society. They are always subject to various loopholes and at times will not address certain situations due to oversight by legislators. This is why in every jurisdiction around the world there is a call for law reforms periodically so that the laws can suit the prevailing circumstances. Mwenda¹⁰² rightly contends that, “*it is only when intertwined issues are addressed that the fabric of law begins to bear meaning to social, political and economic decisions of policy-makers*”. If a piece of legislation is reviewed and the necessary amendments are made, the persons to which this new law will apply should be reasonably satisfied with what it dictates. As evidenced from our earlier discussions of the Amendment Act No.8 of 2008, most of the actors in the labour movement have expressed displeasure with provisions of this Amendment Act which is now read alongside the Industrial and Labour Relations Act.¹⁰³ Lack of a proper labour law reform mechanism questions the efficacy of law reform in Zambia.

➤ ***Weak Labour Law Policy Framework***

Ideally laws and the reform process should improve labour conditions, promote productive employment and social progress, and raise living standards. The lack of a pragmatic labour law reform mechanism ultimately leads to the country having a weak labour law policy framework. As observed from our earlier discussion, Kenya has a better labour policy framework than Zambia mainly because of more participation of stakeholders and less government interference in the

¹⁰² Mwenda, K.K., and Ailola, D.A. Frontiers of Legal Knowledge: Business and Economic Law in Context. Durham: Carolina Academic Press

¹⁰³ Chapter 269 of the Laws of Zambia

labour law reform process. Laws should not be molded in a manner in which government seeks to have the power to interfere with affairs at all levels of society especially in democratic societies like Zambia. The law reform process should be inclusive and should to a large extent satisfy the aspirations of the persons that the law under review is intended to cover.

➤ ***Unwillingness by Governing Authorities***

When she appeared before the Parliamentary Committee on Labour and Economic Affairs on the 19th of May 2008, Joyce Nonde, the President of FFTUZ stated that, “*what the government needed was to come up with a law that would enhance the powers of the trade unions in order to cushion the employees from the harsh economy.*” She said this during her campaign to have the Amendment Bill No. 8 of 2008 withdrawn from Parliament. From her statement it is clear that she was questioning governments’ willingness to foster change in the labour sector through the reform process. Extreme poverty in Zambia has bred a dangerous work environment where many workers are willing to suffer abuse by their employers for fear of losing what little they earn.¹⁰⁴ It is in this desperate climate that labour laws become highly important for the protection of basic human rights and promotion of human dignity. If the government is unwilling to ensure that labour laws protect the rights of employees through the law reform process then the labour situation in this third world country will continue. Further lack of the said willingness by the governing authorities places the country in the wrong direction as regards labour law reform because the difficulties experienced in this sector continue to worsen with time.

¹⁰⁴ “Restoring Dignity to Employment in Zambia: Legal and Moral Motivation to Promote the Common Good”, by Chris Petrauskis. 26th September 2005 (JCTR).

5.2 Direction of Labour Law Reform in Zambia

Generally speaking, the problems that are noticed in the Zambian labour market are that:- (1) The current minimum wage is not sufficient to provide an adequate standard of living for workers and their families and this is only available to few workers ,given the large number of the population who work in the informal sector;

(2) Comprehensive social protection is not available to the vast majority of the population, in particular low-income workers over 55 years of age and workers employed in the informal sector; and

(3) The limits on the right to strike and, in particular the procedural requirement which make it difficult to effectively exercise the legal right to strike in the State.

Stemming from what has been stated above we realize that there are a number of deficiencies in our labour sector and this does not portray a good picture owing to the important role labour plays in social and economic development. The main eminent and consequential pitfalls that are brought about by lack of a pragmatic labour law reform mechanism have also been outlined above. If nothing is done to improve and make our labour law reform process more pragmatic, Zambia will continue to record poor employment records in all respects. The new law that arises from modifications and amendments should offer clear legal guidance to employment matters in all their modern forms as opposed to causing confusion and weakening the labour structure in the country. With that said we shall now conclude and submit recommendations in the next chapter.

CHAPTER SIX

6.0 CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

In an attempt to analyze the direction of labour law reform in Zambia, a brief historical background on the development of labour relations and the attendant labour law reforms in Zambia (post-Independence to date) was discussed; secondly, the state of the current employment law and the prevailing labour trends within the Zambian labour market was given; the research then turned to a closer look into the legal and political controversy surrounding the proposed Industrial and Labour Relations Amendment Bill as it underwent the process in Parliament and the attendant implications after it was assented to by the President on the 24th of September 2008.¹⁰⁵ At this instance an examination of some of the ‘controversial’ provisions in the Amendment Act and an objective commentary was also given. In order to have more comprehensive findings, a short case study on Kenya and the recorded improvements in critical areas such as the labour and employment sector was conducted. The results of the case study were used as a comparison to show the state and direction of labour law reform in Zambia. With the use of the sum results of Chapters three and four, Chapter five pointed out the eminent and consequential pitfalls that are brought about by lack of a pragmatic ‘labour law reform’ mechanism.

All the findings in the listed undertakings above were aligned to the main objective of the research. The main objective of this research has been an analysis of the direction of labour law reform in Zambia with pertinence to the notable upheavals brought about by the Amendment Act No.8 of

¹⁰⁵ It is now the Amendment Act No.8 of 2008

2008. The question to be answered at this point is whether Zambia is headed in the right direction insofar as labour law reform is concerned. On the basis of the findings of this research the answer is that Zambia is yet to set itself on the right path leading to a more pragmatic labour law reform mechanism as is the case with Kenya.

Earlier it was noted that, with a mission of formulating amendments to labour policy and advising the government on all labour issues, the **Tripartite Consultative Labour Council (TCLC)** operates as representative body of employers, employees and government. Representatives of trade unions, employer groups and the Ministry of Labour and Social Security are mandated to meet at least three times in a year to discuss all pressing labour concerns. It is through the TCLC that amendments and updates can be made to all the labour laws. Upon receiving recommendations from the TCLC, Parliament can make major amendments to the labour laws. It would be incorrect to state that this entire process has not achieved anything. The point to note as regards this labour law reform process is that it is flawed and tainted with government influence and interference leading to unsatisfactory pieces of legislation such as the Amendment Act No.8 of 2008. Zambia has a lot to learn especially from equally developing nations such as Kenya. The TCLC, Parliament, employers and employees in Zambia and members of the public at large should consider the recommendations outlined below.

6.2 Recommendations

➤ *Less government interference in legislative outcomes*

From our discussions throughout this research we have noticed that the reform process is characterized by inertia, ambivalence and repeated resistance to change by the sitting government. A number of union leaders in the labour movement have accused the government of making attempts and actually succeeding at controlling all labour matters through statute. This is evident with the loosely couched provisions in the Amendment Act No.8 of 2008. Not only are the provisions not clear but it can be seen through this piece of legislation that government will legally interfere in all labour matters especially with regard to trade unions. The Zambian government should be more proactive and interfere less in the legislative outcome of laws that tend to raise public interest. It seems the government is more interested in maintaining the imbalance in power that exists between the governors and governed. This is evidenced in the governments' reluctance to be transparent and accountable to the public over labour law reforms.

➤ *Inclusiveness in the Process and Stakeholder Input*

All the actors in the TCLC, Parliament, employers and employees should be included in the process of law reform from start to finish. Government in a number of cases has been openly accused of altering the final recommendations that are made by the TCLC. Voting of Bills in Parliament is usually done along partisan lines and in the interests of job security which defeats the objectives of law reform. Stakeholders in the reform process should all have some level of input to ensure that the process is effective. Union leaders should also desist from politicizing every decision and policy drawn by the sitting government. The interests of the large number of people in the work force should be given priority.

➤ *Effective Implementation of Policies*

When one studies the outlined objectives on labour and employment in the Fifth National Development Plan 2006-2010, one is presented with pragmatic labour law objectives and aims that the government intends to undertake. Presidential speeches on the annual Labour Day celebrations are usually promising and raise the hopes for the labour movement and the public at large but what is evident is that most of these policies remain on paper and only a few have been effectively implemented.

➤ *Education*

There should be a deliberate policy to educate employers, employees, employer groups, employee groups and the public at large on the obligations of employers and rights and duties of each employee category with regard to specific areas of labour such as wages, social security and trade union regulation. Information dissemination through educative programmes is indispensable as regards setting up a healthy labour market and establishing a purposive labour law reform mechanism.

➤ *The Ministry of Labour and Social Security*

The Ministry of Labour and Social Security capacity should be strengthened so as to monitor employment across all districts of Zambia and ensure compliance with all provisions of the labour laws. Currently, records at the Ministry of Labour and Social Security indicate that capacity in the labour field offices around the country have been increased further to provide a systematic and effective law enforcement mechanism that will add value to employment relations in industry. Further strengthening of this capacity will yield more positive results in the labour sector. Through

this Ministry, the government should strive to gain public trust and confidence on all labour matters especially in the labour law reform process.

6.3 Concluding Remarks

It is submitted that if the above major recommendations are embraced by all the key actors in the law reform process and implemented effectively, then Zambia will take a new path insofar as labour law reform is concerned. A good regulatory framework would then be realised in the labour sector which in turn would respond more positively to its important role of social and economic development. Labour disputes would gradually reduce; trade union matters would be divorced from an attempt to make them political affairs; workers whose rights are adversely affected would have recourse to the law; labour matters would be handled more effectively throughout the country; the sitting government would gain public trust and confidence and in this sense be accountable to the public; the essence of law reform as a tool responding to a changing society would bear meaning; and further when intertwined issues in labour laws are addressed that the fabric of law will begin to bear meaning to the social, political and economic decisions of policy-makers and all those involved in the reform process. This research set out to achieve the main objective of analysing the direction of labour law reform in Zambia with pertinence to the notable upheavals brought about by the Amendment Act No. 8 of 2008. On the basis of the findings of this research it has been shown that Zambia is yet to set itself on the right path leading to a more pragmatic labour law reform mechanism as is the case with Kenya. Through the submitted recommendations the research has suggested or mapped the course of future labour law reforms and it is hoped that the findings of the research will serve as an important advocacy tool for Labour Law Reform in Zambia.

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