

**THE LEGAL FRAMEWORK OF DEMOCRATIC GOVERNANCE TRADE  
UNIONS IN ZAMBIA**

**BY**

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## **DEDICATION**

To my children Bwembya, Chilekwa.

Muma and Chileshe, katongo

And

To the memory of my beloved late  
sister Regina Precious Mubanga  
Kansembe. Who fervently believed  
in my ability to achieve better things  
in ever thought possible.

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## INTRODUCTION

Democracy may be a word familiar to most, but it is a concept still misunderstood and misused in a time totalitarian regimes and military dictatorships alike have attempted to claim popular support by pinning democratic labels upon themselves.

In the English dictionary definition, democracy is “government by the people in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system”.<sup>1</sup>

In a democracy, government is only one element co-existing in a social fabric of many and varied institutions, political parties, organisations and associations. This diversity is called pluralism, and it assumes that many organised groups and institutions in a democratic society do not depend upon government for their existence, legitimacy or authority. They are said to operate autonomously. Many private organisations do operate in a democratic society, some local and others national. Many of them serve a mediating role between government institutions of which they are a part filling roles not given to the government and offering individuals opportunities to exercise their rights and responsibilities as citizens of a democracy. These groups represent the interests of their members in a variety of ways, by supporting candidates for public offices, debating issues and trying to influence policy decisions. Through such groups, individuals have an avenue for meaningful participation both in government and in their own

communities. The examples are many and varied: charitable organisations and churches; environmental and neighbourhood groups business associations and labour Unions.<sup>2</sup> All such organisations are assumed to base their operations on democratic principles such as democratic electoral system, democratic rule and governance, democratic guarantee of fundamental rights and freedoms.

The concern of this paper is the application and effect of these democratic principles on Trade Unions in Zambia.

Democratic governance in trade unions involves organising and operating the labour unions on the accepted democratic principles.

In Zambia the same democratic principles are embodied in the Industrial and Labour Relations Act of 1993, the Republication constitution, the Zambia Congress of Trade Unions' constitution the Civil Servants Union of Zambia's Constitution, Zambia National union of Teachers' Constitution, the Zambia Union of Financial Institutions and Allied Workers' Constitution and the National Union for Public Service Workers, and the Constitution of the Federation of Free Trade Unions in Zambia and many other union constitutions. This principle applied in the trade unions means that workmen have been guaranteed the right to freely associate and belong to a union of their choice, and unions to their federation of their choice.<sup>3</sup> Workmen in an industry can form unions according to their trade

and or professions. Unions in Zambia now have a choice to affiliate to one of the national centres between the ZCTU and the FFTUZ.

Freedom of Association is a fundamental freedom guaranteed under Article 21 of the Republican Constitution. Article 21 provides that except with his own consent, no person shall 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 associations for the protection of his interest.

This freedom is further guaranteed and protected under Article II of the ILO convention number 87 which also concerns the freedom of association and the protection of the right to organise. This article provides that workers and employers, without distinction whatsoever, shall have the right to establish and subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. This convention has been ratified by many countries in Africa including Zambia, and has led to the formation of new unions in industries where old unions already exist. It has also seen the formation of another labour centre, the FFTUZ which at the moment has only remained with one affiliate, ZUFIAW.<sup>4</sup> The 1993 ILRA, in section 5 (I) (a) (ii) has also provided for the freedom of association and it reads every employees between himself and his employer has the right to be a member of

any trade union of his choice. This freedom was also guaranteed under the 1990 Industrial Relations Act and the 1971 IRA. Under section 5 of the 1990 IRA, the workers were guaranteed the freedom of association which said that employees have the right, if they wish:

- (a) to help form a trade union
- (b) to join a trade union
- (c) to be active in a trade union and to hold office in a trade union.

Under section 4 of the 1971 IRA the freedom of association was also guaranteed and protected. It provided that employees were free to take part in the formation of a trade union, to be a member of any union of his choice, and the right of employees to take part in the activities of the trade union of his choice. Research done by D.A. Banda a renowned scholar and expert in labour law has revealed in his monogram that freedom of association though a democratic principle when applied or extended to the labour unions has impacted negatively on the organisation and operations of the Unions.<sup>5</sup>

Section 9(8) (c) 1993 ILRA for example stipulates that a trade union shall only be registered if it represents employees of a specific trade or profession or category qualified to form a union. This has been interpreted by the teaching industry to mean that all categories of teachers therein, form their own union. Hence there are so far four unions duly registered and recognised by the

employer and these are Zambia National Union of Teachers, Secondary School Teachers Union of Zambia and the National Union for Technical Education Lecturers. This has led to the weakening of the bargaining strength of the teachers who once were a strong force.

This has also contributed to the disintegration and weakening of the labour movement in Zambia today.

Another democratic principle inherent in our labour legislation is the procedure for the registration of trade unions. The ILRA (1993) in section 7 (1) provides that every trade union shall be registered under this Act with the commission within six months from the date of formation.

Section 9 (1) provides that subject to subsection 3 a body shall not be registered as a trade union with the commissioner unless it has a membership of not less than one hundred persons.

Section 9 (2) provides that the application for registration of a trade union shall be in the prescribed form signed by one hundred supporters and shall be accompanied by a copy of the constitution of the proposed trade union. The section further provides in subsection 3 for the submission of the application to the labour commissioner for registration, and in subsection 4 for notice of application to be Gazette. Section 9 (8) provides for situations when registration

may be denied. Section 9 (8) (a) provides that no body registering as a trade union shall be registered under a name identical to or by which any other trade union has been registered or so nearly resembles such name as to be likely to deceive its own members or members of the public.

Registration will also be denied if it does not comply with the conditions of registration which the minister may by statutory instrument prescribe, or if it purports to represent a class or classes of employees already represented by an existing trade union or are eligible for membership of an existing trade union unless the union intended to be registered represents a specific trade or profession or category or eligible employees who are qualified to form a trade union.<sup>6</sup>

The 1993 ILRA also provides for appeals against the decision of the commissioner for refusing to register a trade union<sup>7</sup> or for cancelling a certificate of registration. Section 9 (5) provides for the procedure of lodging objections to registration of any trade union.

The role of the minister of labour in the registration process of trade unions is also set out but shall be dealt with in chapter II in detail.

Another democratic principle practiced by the labour movement in Zambia is the concept of affiliation.<sup>8</sup> This concept is applied by many national unions the ZCTU, and the FFTUZ in accordance with democratic governance. Most national unions' constitutions provides for affiliation and disaffiliation to and from the ZCTU and now the FFTUZ and other International associations and trade unions who have similar objectives. The Civil Servants Union of Zambia for example, under rule 14 of its constitution provide that the National Executive Council shall have the power to affiliate the union with other Unions or Associations which have similar objectives, subject to the approval of the minister. The unions or associations to which the CSUZ is affiliated to are the Public Service International (PSI) and the International Confederation of Free Trade Unions (ICFTU). Furthermore the ZCTU constitution under article 64 provides that an application to congress shall be by two thirds majority of the delegates present and voting at a general conference of the trade union, and shall be witnessed by an independent person appointed by the union. Affiliation has now been made a voluntary act by the 1993 ILRA, on the part of unions, unlike the way it was before under the 1971 IRA where registration of trade unions meant automatic affiliation.

Another feature of democratic governance related to affiliation of trade unions to the national centre is the power of the Zambia congress of Trade Unions over its affiliates. This paper will examine the position whether the ZCTU has jurisdiction

over disputes of trade unions affiliated to the congress, and if it does, how much influence does it wield over its affiliates. These disputes can either be between two or more unions (inter) or those within the national unions (Intra) domestic.

The Industrial and Labour Relations Act [1993] provides for unions affiliated to the ZCTU to refer their disputes to the congress for reconciliation, if these disputes arise between two or more unions.” On the other hand, section 34 (2) of the ILRA (1993) denies the congress jurisdiction over domestic or internal affairs of national unions affiliated to it, unless such disputes have been referred to it by the unions concerned for reconciliation. Article 19 of the ZCTU constitution states that the ZCTU conciliation committee shall act as an appellate body on all labour disputes. This committee will only exercise latitude as an appellate body on issues referred to it. Section 34 (1) of the Industrial and Labour Relations Act (1993) provides that each affiliate to the congress shall maintain its separate status and shall have the right to organise itself as it considers fit with in its constitution. This implies that despite the provision of article 19 of the ZCTU constitution unions shall choose to refer or not to refer their disputes to the congress.

Other than the ZCTU as an institution of democratic, governance, there is the Tripartite Consultative Labour Council (TCLC) which consists of representatives from the government, Federation of Employers and the Labour Movement.<sup>8</sup> The

council meets twice in the year to confer and consult with one another and to review the Industrial Relations in the country.<sup>9</sup>

Chapter III of this research paper will examine the involvement and participation of labour at the design and delivery or implementation of police which are very important and pertinent to labour. It will examine how effective the labour movement has been in influencing decisions of the council. The paper will also examine the significance and efficacy of the TCLC in managing the industrial relations in the country, as a democratic institutions.

The research will finally examine the electoral system in the labour movement in Zambia including that of the ZCTU.

The Industrial and Labour Relations Act of 1993 provides for holding of elections for trade unions, and for the qualifications needed for one to be elected as an officer of a union.<sup>10</sup>

The Act further provides for the elections of the Zambia Congress of Trade Unions, and also sets out qualifications required for one to be elected as an officer of the congress.<sup>11</sup> Section 31 of the Industrial and labour Relations Act, makes it obligatory for the congress to notify the Federation of Employers and the labour commissioner within 30 days of the appointments or results of the elections.

The national unions and the ZCTU have also embodied rules pertaining to elections, in their constitutions in line with the provisions of the ILA.

The conclusion of this research paper will basically be centred on the lessons learned from the ZCTU and other union constitutions for purposes of democracy and governance for trade unions. One sure lesson learned is that the constitutions of unions as they are structured today provide for too much interference in labour union activities by the state and the congress.

This makes the whole process of democracy a mockery. It is also this aspect that has encouraged the state to capitalise on the weaknesses of the unions and ZCTU Constitution amendments be made to the ZCTU constitution and to those of the national unions affiliated thereto, so as to give the labour movement impetus to operate more effectively<sup>12</sup>.

## ENDNOTES

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8. ILR Act (1993) S.17.
9. ILR Act (1993) S.79.
10. ILR Act (1993) S.81 (2).
11. ILR Act (1993) S.19.
12. ILR Act (1993) S.31.

## CHAPTER I

In this chapter, we shall look at Freedom of Association under the Republican constitution, we shall then look at the Freedom of Association under the 1971 and 1990 labour legislation and the Freedom of Association under the 1993 Industrial and Labour Relations Act. We shall then examine the effects of the freedom of association on trade unions in Zambia.

Freedom of association is of fundamental importance in labour relations, but freedom of association has several ramifications and gives rise to various problems as we shall see later in this chapter. Generally speaking freedom of association as provided for under the Zambian constitution chapter 1. of the laws of Zambia is a fundamental freedom to be enjoyed by all persons. Article 21 (1) of the Zambian Constitution provides that except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and 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 associations for the protection of his rights or interest. Article 21 (2) (d) further provides that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that it is shown that the law in question makes provision for the registration of a political party or trade union in a register established by or under a law and for imposing reasonable conditions relating to the procedure

for entry on such a register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration; and except so far as that provision or the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society. Article 21 (1) guarantees the right and freedom to associate with any group, political, economic and social. Workers are also called upon in this article to associate themselves with any trade unions of their choice. This Article further guarantees that if there are any unions intended to be formed where others already exist, they will not be stopped from doing so.

In other words this provision encourages the formation of as many unions as there can be in any given industry. Freedom of association under the Republican Constitution is simply advocating for proliferation of trade unions and indeed has seen a mushrooming of many unions breaking away from old unions to form new unions, as splinters there by weakening the bargaining strength of the old unions. The example are in the Zambia National Union of teachers, the division between University lecturers of Lusaka and Kitwe campuses and Middle management who all belong to one institution but belong to different unions. Proliferation of trade unions is not healthy for the labour movement because it creates inequalities in terms of awards to different union members of the same industry. For example one of the major complaint put forward by the University of Zambia Great East Road Campus is that there is discrepancy in the salaries of the lectures of the two universities and therefore, there is need according to

UNZALARU to harmonise the two sets of salaries but the employer remains adamant. The strength of trade unions lies in large numbers and not small numbers. The effect of article 12 of the Republican constitution on democratic governance in trade unions is that it is from the constitution that the labour legislation as it stands today, draws its strength and guidance on freedom of association. It does not protect the trade unions solidarity and unity needed for trade unions to thrive. It is divisible and it weakens the bargaining strength of the unions. The provision on freedom of association under article 21 of the constitution is compounded further by the Governments' ratification of ILO convention number 87 on freedom of association and the protection of the right to organise. Article II<sup>2</sup> of ILO conventions number 87 guarantees workers and employers without organising distinction the right to form or belong to organisations and federations of their choice without prior authorisation. It is the view of many labour experts in Africa that far from fostering organisational Independence and democracy, FAPRO indeed undermines the very basic principles of trade unionism whose success in the area of social justice must depend on unity. Where this instrument has been ratified such as in Zambia, the act of ratification has been a signal of government's intention to divide and therefore weaken the labour movement to the benefit of the politicians who stand to gain from a divided and weakened trade union movement. Apart from this government encourages the enactment of labour legislation which further forments the weakened positions of the labour movement all in the name of

democratic governance. In Zambia for example, under the 1971 Industrial Relations Act (IRA), this freedom was also guaranteed under section 4 and s.31 respectively. Government can however limit the enjoyment of any right in respect of workers when it suits it. A limitation was indeed placed on the enjoyment of this freedom as could be inferred from section 7 (8)<sup>3</sup> and section 112,<sup>4</sup> of the same Act in respect to workers. These sections when interpreted meant that there was allowed only one union per industry and no more. The obvious implication was that the freedom to associate had to be exercised within this one union one industry philosophy.<sup>5</sup> With all intent and purposes the law then provided a legal service to the labour movement in Zambia so as to maintain its strength through unity and so as to contribute to stable industrial relations in the country. Government stand then was to unite the labour movement through the philosophy of one union one industry.

In his opening address to the National Assembly of the 7th January 1979, the former president Dr. Kenneth Kaunda believing then that good industrial and harmonious relations promoted stability and prosperity of a Government, stated the following:

“Our policy still remains of supporting one union for one industry for we are convinced that a proliferation of trade unions weakens the bargaining strength of the workers.”<sup>6</sup>

It must be pointed out here that the government of Zambia under Dr. Kenneth Kaunda wanted a close association between ZCTU and the party that ZCTU

during the second republic almost became an appendage of Government. This was evidenced by the fact some of the labour leaders were appointed as members of the central committee of the UNIP Government. This was one way of controlling the affairs of the labour movement.<sup>7</sup>

As a matter of fact because of the Introduction of the principle of one union in one industry by the 1971 legislation, the labour movement was reorganised in such a way that unions existing in one industry merged to form one strong union.

This was done not only for the purposes of strength and unity in the labour movement but also to avoid the problem of multiple representation and its associated disadvantages of inter union conflicts, multiplicity of negotiations within the industry as well as the problem of overlapping membership.<sup>8</sup>

For example, shortly after independence the minning sector had three unions which amalgamated to form the Mine Workers Union of Zambia (MUZ). The Railways had two unions which merged to form the Railways Workers Union of Zambia while the two Unions in the transport sector, namely, the national Union of Transport and General Workers and the Zambia long distance and Heavy Haulage Union merged to form the National Union of Transport and Allied Workers.<sup>9</sup>

With the advent of plural politics in Zambia in 1990, the UNIP government made a major shift in its policy towards the labour movement. Liberalisation was also

imposed on the labour movement through the enactment of a new labour legislation, the 1990 Industrial Relations Act which repealed the 1971 IRA. Former President Dr. Kenneth Kaunda was on record as having said that trade unions had a duty to compete for membership and that the law should allow for proliferation of trade unions within industries.<sup>10</sup>

It must be noted here however that this unprecedented shift in policy by the government during the second Republic was exacerbated by the fear which president Kaunda had of maintaining the principle of one union one Industry which seemingly strengthened and united the labour movement. The labour movement led by Republican President Frederick Chiluba was now viewed with suspicions as a potential opposition party and its leaders for supporting reintroduction of plural politics, hence a way of clipping its wings had to be sought and the best way thought possible was through enactment of a new restrictive labour legislation of 1990.

Thus the legal service provided to the trade unions of protecting unity and the bargaining strength therein the second republic was withdrawn by the repeal of the 1971 Industrial Relations Act and the subsequent enactment of the 1990 IRA.<sup>11</sup>

This situation has further been compounded by the enactment of the Industrial and Labour Relations Act of 1993 which repealed the 1990 IRA. It is interesting to note that while the MMD as an opposition party strongly opposed the 1990 IRA introduced by the UNIP government as it was perceived to be divisive of the

labour movement, when they came to power, as a government they did very little to change this situation and instead went ahead to enact the 1993 ILRA which fueled the already volatile position of the ZCTU and its affiliates.<sup>12</sup> This Act not only provides for freedom of association and formation of new unions in industries where others already exist, it also provides for the smooth follow up of the duty to enter into recognition agreements for new unions as soon as possible.

Section 5 (l) (a) (ii) of the Industrial and Labour Relations Act of 1993 provides that; notwithstanding anything to the contrary contained in any written law, and subject to this Act every employee shall as between himself and his employer have the right to be a member of any trade union of his choice. This section has been interpreted to mean that any group of employees in an Industry even where other unions of their choice, or she/he can leave his/her old union to join a new one, as we are seeing now in the teaching industry where new unions namely SESTUZ PETUZ and NUTEZ have been formed other than the Old Union ZNUT. The Industrial and Labour Relations Act of 1993 under section 64 (1) supports such a move by providing that, not later than three months from the date of coming into operation of this part or from the date upon which this section becomes applicable to any employers, the employer registered under section thirty-seven and the trade union, if any, to which the employees employed by the employer belong, shall enter into a recognition agreement. It further provides under section 64 (2) that not later than three months from the date upon which

an association and a trade union have become established in an industry, the association and the trade union shall enter into a recognition agreement.

Following the enactment of the ILRA (1993) more unions have emerged, while some old ones have split into several unions. Others have disaffiliated from the Labour Congress (ZCTU) making the congress more divided and weaker than ever in the Industry of trade unions in this country.

The principle of Freedom of Association also saw a major upset in the structural arrangement of the Zambia congress of Trade Unions when in 1994 when at the height of a leadership crisis within the congress and following a dispute over elections procedures at the ZCTU 9th Quadrennial Conference, Five out of the 25 trade unions affiliated to the congress decided to leave the congress and form their own federation known as the Federation of Free trade unions in Zambia (F T U Z).

The five unions were Mine workers union of Zambia (M U Z) Zambia National Union of Teachers (ZNUT) National Union of Building Engineering and General Workers (NUBEGW) the Zambia Union of Financial and Allied Workers (ZUFIAW) and the National Union of Commercial and Industrial Workers (NUCIW).<sup>13</sup>

The Zambia Congress of trade unions while opposed to the formation of another National Labour centre in favour of a united Federation, taking advantage of the relevant section of the ILRA (1993), quoted above, supported and encouraged the splinter unions in those disaffiliated five unions, do register and their unions

enter into recognition agreements. The Bankers union of Zambia (BUZ) and the Zambia Revenue Workers union (ZRWU) split from ZUFAW, and the Secondary Teachers Union, NUTEL Split from ZNUT. The stand of the ZCTU was that as long as the splinter unions from ZCTU did not feel that it was necessary to form a strong alliance with the ZCTU, it was not the responsibility of the congress to prevent the splinter unions who would apply for affiliation to the congress for better representation.<sup>14</sup> This state of affairs damaged the much needed unity of the labour movement, and as a result of this split the state took advantage of the ensuing weakness of the labour movement and quickly took a decisive step to ratify the ILO Convention No. 87 on freedom of association and protection of the right to organise,<sup>15</sup> already alluded to above.

Following a reduction in the numbers of many a trade unions in Zambia due to mass retrenchments which have been necessitated by closures of many companies especially in the parastatal sector due to the government economic policy of liberalising the economy the bargaining strength of unions has dwindled. The Policy of Privatisation as an economic measure adopted by the MMD Government when the MMD came to power saw closures of many public companies in the parastatal sector which resulted into retrenchments of workers in the country.<sup>16</sup> Most private investors pleaded in adequate resources to maintain a high labour force. As a result of retrenchments and subsequent job losses, many unions' membership were reduced to very low levels. The freedom of association and the rampant job losses which characterised the early part of

the 1990s further weakened the bargaining strength of many trade unions and that of the congress at large. However, most of the break away unions have prudently decided to return to the fold (ZCTU) in order to strengthen their bargaining power through the congress, which is already well established. Of all the break away unions only Zuziaw has remained adamant and has not rejoined or reaffiliated to the ZCTU but has opted to remain with the FFTUZ. ZUZIAW has remained the only members or affiliates exercise of other unions to the FFTUZ and now PETUZ. It is the view of this paper that the PETUZ and ZUZIAW should just merge to be called one union. As a federation established in the exercise of freedom of association its performance has been very minimal indeed and hence its failure to attract members or potential affiliates who have continued to shun the association, even those who pioneered its formation have completely abandoned it.

### **EFFECTS OF FREEDOM OF ASSOCIATION ON TRADE UNION**

Freedom of associations as it is provided for in the Industrial and Labour Relations Act has given rise to various problems for the Unions and the Zambia Congress of Trade Unions at large. These problems are not only organisational and structural but there are financial problems. Unions which were once very strong but are now beset with divisions have been crippled by inadequate finances to carry out their objectives such as Workers Education Programmes. Splinter Unions have had to take away their portion of members monthly

contributions upon being registered and upon signing the Recognition agreements with the employer. For example, the Zambia National Union of Teachers (ZNUT) rated as the most fragmented unions by SATO, not only in Zambia but in the whole of Southern Africa region has been rocked with break away by three unions (splinters) namely SESTUZ, NUTEL and know PETUZ<sup>17</sup>. ZNUT was once a very strong and big Union and financially sound.

In the year ended 31st December 1999, ZNUT received K666,600,000 members subscription, SESTUZ received K96,000,000 and NUTEL received K1,666 660, PETUZ a relatively new union received undisclosed amount of money as it is not yet an affiliate of the ZCTU.<sup>18</sup> Take note that Primary School Teachers are in fact in greater numbers than most. This means that all these monies due to the Splinter Unions are out of reach for ZNUT. The law supports the FA which now entails that new unions must collect their dues from their members through the check-off system done by the employer. Practically, ZNUT has lost almost 40% of its income and members<sup>19</sup> through these splinters.

In March this year ZNUT filed an Injunction in the Industrial Relations court to restrain the break away unions SESTUZ and PETUZ from collecting dues from their non members i.e. those who may be Secondary and Primary School Teachers but not registered for membership with the two new unions.<sup>20</sup> The unions who have duly signed collective agreements with the Ministry of

Education and have been recognised as the sole bargaining units for their members have made arrangements with the Ministry for the dues of their members to be transmitted directly to the respective unions. ZNUT has cried foul claiming that most of the members in SESTUZ and PETUZ were recruited and organised by ZNUT and that in effect they are still members of ZNUT. But the Industrial Relations court has ruled in favour of the splinter unions on the basis of the provision of section 5 of the ILRA 1995.<sup>21</sup> The latest information received by the author from members of PETUZ is that about 200 primary school teachers in Kabwe have ditched ZNUT in fact to join PETUZ citing lack of adequate representative and loss of direction by ZUNT.<sup>22</sup>

This development is crippling the unions and the congress in their operational costs of workers education and capacity building for their members. The national unions such as ZUNT whose incomes through subscriptions keeps dwindling are finding it increasingly difficult to remit their 30% obligation to the congress. This trend is also fueling the problem of Inter union conflicts in Industries as a results of the scramble for members thereby deepening the rifts between trade unions of the same industry.

Freedom of association has also created a problem of abuse of union contributions by unscrupulous individuals. A good example is that of PETUZ. This Union was formed by a retired teacher who has already received his pension. Mr. Chisala is not longer teaching but collects member contributions

from unsuspecting Primary School teachers which he never puts to any useful activity for the benefit of PETUZ members.

Another similar example cited is that of the Civil Servants Union of Zambia where agricultural workers under the leadership of Mr. Simuchimba decided to form the Agricultural Workers Union of Zambia breaking away from the CSUZ. He went round the country collecting money from unsuspecting agricultural workers which money he personally embezzled and none of his so called members saw a penny of that money put to any use.<sup>23</sup> The financial was of trade unions have also been compounded by retrenchments in most of the companies that were privatised or those that went under or folded up due to the policy of liberalisation. In the process of restructuring the privatised companies workers have been retrenched. By and large, membership of unions has been reduced in most unions and subsequently affecting their incomes as already alluded to above. This in turn has seriously affected the financial standing of the ZCTU which despite the reaffiliation of the break away unions which initially were the financial muscle of the congress, has continued to experience financial blues. The Mine Worker of Zambia for example in the year ended December 31st 1999, failed to remit any contribution to the ZCTU which might have amounted to K200,000,000.00. The WUTAZ also withheld K12,500,00.00 for the ZCTU under the same period under consideration.<sup>24</sup>

Fortunately for the ZCTU, its education programmes have largely been funded by the FES which has embarked on a capacity building for the labour unions to

help strengthen it.<sup>25</sup> The ZCTU also continues to look to and receive funding from the ILO and the International Confederation of Trade Unions such as the ICFTU to enable it carry out its education programmes. It is important to note however that despite the confusions which the provision on freedom of association has brought about in Zambia, the general trend for trade unions elsewhere in the world is inclined towards Unity and Solidarity in trade unions. Unions have realised that a fragmented labour movement tends to suffer many of the things cited above. Unions in various countries are merging even on International lines so as to strength the voice of the workers in any given category. For example the teachers in Southern African Teachers Organisation (SATO) which is championing the cause of teachers in the member countries, in the region, are uniting teachers in the region into one body.<sup>26</sup> A practical example of achievements achieved by SATO was the pension issue of Lesotho teachers. While other Public Service Workers were pensionable, in Lesotho for many years were not.<sup>27</sup> SATO demanded to meet the Minister and the permanent Secretary for education and held discussions with them in December 1998.

The teachers were put on a pension Scheme in Lesotho.

The teachers organisations in the whole world have gone ahead to form what they have called the World Confederation of Teachers profession (K) COTP).<sup>28</sup>

The representatives come from different countries unions to form a stronger and

United Labour front or alliance which will be able to counter the machinations of the employer the world over, in the face of freedom of association which in most cases are perpexiated by the employer themselves to weaken the old unions.

The Public Service Workers have also formed an international alliance for unions in the Public Service, called Public Service International (PSI). Public Service Workers are affiliated to the PSI and in Zambia we have the CSUZ, ZEAUW, NAPW and ZULAWN who are affiliated to PSI. These receive benefits from PSI in terms of Workers education programme funding for capacity building.

Even in Africa the Labour Unions have realised that multiple federations of unions cannot work well in poor countries like Zambia, but can do so in highly industrialised and highly developed countries with adequate resources and a well developed and roganised labour market. The more industries there are in a country, the move workers there are and hence a corresponding need to have more than one union or federation, for proper management of industrial relations.

## ENDNOTES

1. Article II of ILO Convention No. 87.
2. D.A. Banda *Trade Union Situation in Zambia* page 29.
3. 1971 IRA S.112.
4. Obligation Essay by Nanda M. Charity page. 52.
5. Banda D. A. *Trade Union Situation in Zambia* p.5.
6. Banda D. A. *Trade Union Situation in Zambia* p.6
7. Ibid
8. Ibid
9. Banda D. A. *Trade Union Situation in Zambia* p.7.
10. Banda D. A. *Trade Union Situation in Zambia* p.7.
11. ILR Act (1993).
12. ILRA Section 5 (1) a (iii).
13. CSUZ Research document compiled by Director of information Research  
G. Koyi entitled *Trade Union Organisations Today* (1999)
14. Banda D.A. *Trade Union Situation in Zambia* p.29.
15. Ibid
16. CSU Research document.
17. Article on SATO by A. Gondwe Chairperson for ZCTU Women's Affairs  
Committee, Published in the Times of Zambia, Saturday February 5th  
2000.
18. Annual Report compiled by the Research of Office

19. ZNUT Research Report compiled by Research Office.
20. Article form the Times Zambia dated 24th March 2000 Friday.
21. Ibid.
22. Interview with Mr.. Zulu William and official of the Primary Education Teachers Union of Zambia.
23. CSUZ Research document done by the another 1994.
24. ZCTU annual Report for the year 1999.
25. ZCTU Research paper by Mr.. P. Mulenga.
26. Article by Anne Gondwe on SATO.
27. Interview with Ms. A. Gondwe Chairperson for ZCTU Wac.
28. ZCTU Research Document by W. Kasase on Union Alliances.

## CHAPTER II

The present chapter will examine amongst other things;

- A. The legal procedures for the Registration of trade unions under the Industrial and Labour Relations Act of 1993, and the role of the Ministry of Labour in this procedure,
- B. Affiliation/Disaffiliation of trade unions to and from the Zambia Congress of Trade unions, and
- C. The Powers of the ZCTU and the FFTUZ over their affiliates.

### **A. THE LEGAL PROCEDURES FOR REGISTRATION OF TRADE UNIONS UNDER THE ILRA. [1993]**

The 1971 legislation like the Trade Unions and Trade Disputes Act of 1965, provided that an application to register a trade union had to be signed by not less than seven members.<sup>1</sup> This application had to be lodged with the labour commissioner. The labour commissioner could, under that legislation, refuse to register a trade union on any of the following grounds:

- (i) that it has a name that is identical with that by which any other trade union has been registered or so nearly resembling such a name as to be likely to deceive its own members or the members of the republic.
- (ii) that it purports to represent a class or classes of employees already represented by or eligible for membership of another trade union.<sup>2</sup>

The second ground meant that as long as another trade union existed in an industry, no other trade union could be registered there. By extension, no single employer could have more than one union to deal with.<sup>3</sup> This interpretation is drawn from section 112 (1) (a) of the Industrial Relations Act of 1971, which provided that;

Every recognition agreement shall be in writing signed by the parties thereto and shall provide that the Employer has duly recognised the trade union as the "sole representative" of and exclusive bargaining agent for employees employed by such employer, for the purpose of regulating the collective relationship of such employer and employees.

This piece of legislation defined the structure of trade unions based on the principle of one union in one industry as already alluded to, which piece of legislation also promoted harmony and unity in trade unions. This situation was upset by the advent of pluralism which was extended to the labour unions in 1990, by way of repealing the 1971 IRA as we have already seen.<sup>4</sup> The 1990 IRA did not impose any restrictions on trade union formation and registration as the case was before, thereby killing the philosophy of one union one industry. It did not contain any provision prohibiting the commissioner from registering any union whose members are eligible to be members in other unions or are already represented. This position is once again reinforced by S. 8 (l) (a) of the 1990

Industrial Relations Act which provides that, every recognition agreement shall be in writing signed by the representatives of the parties to it and shall provide;

a. that the employer or association has duly recognised the trade union as the sole representative of, and exclusive bargaining agent for employees belonging to that trade union for the purposes of regulating the collective relationship of the employer and employees. This ostensibly meant that other employees not members of that particular union and being eligible for membership would be within their rights to form another union in that industry and be duly recognised. This saw a mushrooming of new unions in the labour movement and an increase in intra and inter union disputes as illustrated in the previous chapter, which weakened the position of a once strongest labour movement in this part of Africa, prior to 1990.

When the MMD took over power from UNIP in 1991 it promised to embark on a complete overhaul of the legal structure of the labour movement in Zambia to give it more impetus. The MMD had described the 1990 IRA tailored by UNIP as divisive and saw to the redrafting of the 1990 Act and came up with the 1993 Industrial and Labour Relations Act. The MMD being proponents of democracy were faced with two choices, either to fulfill the promises of 1991 by enacting pro-labour legislation to strengthen the labour movement or to enact legislation which embarked on democratic principles regardless of their effect on trade unions.

Thus under S.7. of the 1993 ILRA, the Act provides for procedures of trade unions. Section 7 (i) provides that every trade union shall be registered under this Act with the commission within six months from the date of formation.

Section 9 (1) further provides that subject to subsection (3) a body shall not be registered as a trade union with the commissioner unless it has a membership of not less than 100 person.

Section 9 (2) also provides that an application to register as a trade union shall be in the prescribed form signed by one hundred (100) supporters and shall be accompanied by a copy of the constitution of the proposed trade union.

Subsection (3) provides that the application and the constitution referred to in subsection (2) shall be submitted to the commissioner for registration. Subsection (4) provides that notice of every application for registration as a trade union shall be published in three consecutive issues of the Gazette. Subsection (5) provides for objections to registration of the proposed trade union to be in writing and be lodged with the commissioner not later than 90 days of the last notice appearing in the Gazette.

Subsection (6) provides that on being satisfied the commissioner shall register such trade union and issue it with a registration certificate which is proof

according to subsection (7) that provisions relating to registration have been complied with. If any of the above conditions is not met the proposed trade union shall not be registered: Section 9 (8) provides that; nobody registering as a trade union shall be registered.

a. Under a name identical to or by which any other trade union has been registered or so nearly resembles such name as to be likely to deceive its own members or members of the public.

b. if it does not comply with the conditions of registration which the minister may by statutory instrument prescribe, or

c. if it purports to represent a class or classes of employees already represented by an existing trade union or are eligible for membership or an existing trade union unless the union intended to be registered represents a special trade or profession or category or eligible employees who are qualified to form a trade union.

Subsection 9(8) (c) makes it even much easier for the trade unions to be more divided, because the law now goes further than requiring eligibility and members by encouraging employees to form and register their unions on the line of profession, specific trades and categories. The implication of this provision goes back to the main offshoot of democratic governance in trade unions that is proliferation.

In the Civil Service for example there are so many professions that if each professional association or group had to transform itself into a union, there would be as many unions as there are departments in government ministries. We have also seen that proliferation of unions has worked to disadvantage employees and their unions but to the advantage of employers and the state. It was at the height of a collective dispute between public service workers unions and the government in 1994 that the then Minister of Health Mr. Sata encouraged the Health Workers association to transform it self in to a union and had the Health Workers Union registered. This move was meant to weaken the bargaining strength of the CSUZ so as to force it to abandon the on going negotiations and subsequent dispute. Hence the CSUZ was faced with two serious problems at the same time, the collective dispute and that of the impending splinter by Health workers. The move by the Health workers association was in compliance with S. 9(8) (c) similarly the agricultural workers association seen above complying with the same S.9(8) (c) provision on the basis of professionalism sought to transform into and register their association as a trade union, after the 1993 ILRA was enacted arguing that the CSUZ had failed to represent them adequately. Again at the height of a leadership crisis at ZCTU's 10th Quadrenmial conference government working together with the present leadership of ZCTU, seeking to unseat the leadership of Mr. Austin Liato President of the Zambia Electricity and Allied Workers Union, incited Zesco employees who had been agitating for the

formation of another union to register their Union NEAU, so as to break up ZEAWU. It was indeed registered and quickly affiliated to the ZCTU.

It must be noted here that it is ironic for ZCTU to deally-dally in considering applications for affiliation for some national unions, yet it is quick to register others.

Hence the ZCTU while crying for unity in the labour movement employs double standards by sponsoring some splinter unions and quickly registering them for affiliation. It has cried foul if and when splinter unions have been initiated by government and other unpopular factions.

More unions have broken away from their main stream unions as a response to section 9 (8) (c) of the ILRA of 1993.

the Tazara workers broke away from Zambia Railways Union Workers to belong to their own category and formed their union called WUTAZ. It has since been registered and affiliated to the ZCTU. On a similar plane, Buz left Zufiaw to belong to the category of bankers and formed Buz. The Revenue Authority Workers formerly the department of Income tax, upon reorganisation of the government department and upon being bestowed with autonomous status sought to form and register their own union by breaking away from the CSUZ.

They have since been registered with the ministry as a union and have affiliated to the congress. As earlier noted, SESTUZ, PETUZ and NUTEZ have all left ZNUT in order to belong to their own categories. These unions have since registered at the ministry of labour.

Section 9 (8) (c) of the ILRA of 1993, deliberately allows the formation of as many unions in Industries as there are professions, trades and different categories of employees. What is more now is that in this section, there is no time frame provided in which proposed unions are supposed to undergo the pre requisite tests of registering a union. The Ministry of Labour will have to determine when and where ever satisfied that a particular union should be registered. All is left to the discretion and caprice of the labour commission.

It is at this point that the state uses its muscle to deal with unions whose leadership seems to be at loggerheads with the government and its policies, and in the view of government, registration of such union would be inimical to the operations of the state.

Section 9 (8) provides for situations which can cause denial of registration of trade unions by the ministry of labour, as already seen earlier on in this chapter.

The law gives the ministry of labour too much latitude and control over the registration procedure of trade unions,<sup>5</sup> while proposed unions intending to

register with the labour commissioner are at the mercy of the ministry of labour if the government for any reason what so ever does not feel comfortable about particular grouping of employees or proposed body, it can simply deny it registration citing unsatisfactory requirements. Apart from considering applications for registration of trade unions and controlling registration of the same, it is the labour commissioner or the ministry of labour that ensures that the provisions on the prerequisite for registration of proposed unions are complied with<sup>6</sup> . These prerequisites are that:

- a. A proposed union should have not less than 100 supporters and supported by its constitution submitted to the labour commissioner.
- b. it should be registered under the 1993 ILRA within six months.
- c. It should make the application which should be in a prescribed form in accordance with section 9 (2) and signed by hundred supporters.

The commissioner shall dissolve a proposed trade union which according to him does not comply with any of the above, but if the proposed trade union fulfills the above, the labour commissioner if satisfied that the proposed body has complied with the provisions of registration under this Act and that the constitution of the body provides for matters prescribed by S.8 shall register such a body and issue it with a certificate of registration which is in a prescribed form in accordance with the provisions of S.9 (6).

If the certificate is not granted or if it is denied, it is prima facie evidence of non compliance to the prerequisites. In instances where some people object to the registration of proposed unions, the ministry of labour will receive such objections for consideration and subsequent action S.9(5) provides that objections to the registration of any body as a trade union shall be in writing and shall be lodged with the commissioner not later than 90 days of the last notice appearing in the Gazette. It is clear from the many example given that government whose role is to consider and approve these application, will indeed disapprove the registration of undesirable unions in favour of those favoured by the government and will quickly consider and approve those unions that seem to support government policies even where they are not reasonable.

#### **B. AFFILIATION/DISAFFILIATION TO AND FROM ZCTU AND THE FFTU.**

The Trade Union and Trade disputes Act of 1964, provided for affiliation under section 64 by stating that affiliation to the congress could only be effected if a majority of its officers resolved to affiliate<sup>7</sup>. Affiliation was therefore a matter left to the decision of the members. It was not mandatory to affiliate to the ZCTU. But it must be stated from the onset that it is the fervent wish of many employees to have a very strong labour union which could promote their interests even at such an early stage as this. However, the 1971 Industrial Relations Act made some radical changes to this matter by providing for the principle of affiliation by

registration. Under section 15 (i) (b) the Act provided that every trade union in possession of a valid certificate of registration shall be deemed to be a trade union duly affiliated to the congress. Subsection 15 (2) provided that upon registration and therefore affiliation, such a trade union shall be entitled to the rights and privileges, and be subject to the obligations specified in the constitution of the congress.

The law as earlier noted at this time provided another legal service to the labour movement by providing for automatic affiliation of unions to the ZCTU, upon their registration. Whether the union members of the particular union supported the automatic move to affiliate to the congress or not was immaterial.

Section 27 (1) of the 1971 IRA, reinforced this position by requiring that the constitution of the Zambia Congress of Trade Unions ought to state the rights, privileges, duties and obligations conferred and imposed upon trade unions by virtue of their affiliation.

The 1990 Industrial Relations Act which repealed the 1971 IRA. Still maintained the principle of automatic affiliation of all registered unions to the ZCTU, through statutory instrument number 66 of 1991, which allowed the pre-1990 situation to continue in force.<sup>8</sup>

Once again the law provided a legal service to the labour movement by providing for continued automatic affiliation of trade unions to the congress.

Under the 1993 labour legislation S.17 (1) (a) provided that from the commencement of this Act, a trade union with a valid certificate of registration issued under the 1990 IRA, and which was affiliated to the congress prior to that Act, shall, subject to paragraph (b) continue to be affiliated to the congress.

Paragraph (b) of Section 17. (i) provides that a trade union affiliated to the congress may by a simple majority decision of the members present and voting at a general conference of that trade union cease to be affiliated to the congress.

Paragraph (c) of Section 17 (i) provides that a trade union registered under this Act may be affiliated to the congress by a simple majority decision of the members present and voting at a general conference; and this requirement is supported by article 6 of the ZCTU constitution which provides that an application for affiliation to the congress shall be by two thirds majority of the delegates present and voting at a general conference of the trade union and shall be witnessed by independent person appointed by the union.

Automatic affiliation was hence done away with in the third Republic and hence it has been made a voluntary act for the national unions and a matter for debate and subject to voting at the union conferences. Affiliation to the national centre

by unions is very important not only for the centre but for the affiliates. There is a dire need for co existence between the congress and the unions. Trade Unions always need solidity from other affiliates to coerce employers to give in to their demands. Unions also need a national centre to resolve Inter union conflicts because it is not always feasible to run to the Industrial Relations Court for conflict resolutions. The court is always loaded with lots of cases which have accumulated over the years and are still pending.

National Unions have also amended their constitutions to incorporate the democratic principle of liberal affiliation in their constitution. The National Union of Public Service Workers under Article 27 of its constitution provides that the executive council shall have the power to decide the affiliation of the union to any body within Zambia. It deems fit in the interest of the members, subject to the final approval at the quadrennial conference provided always that the body affiliated to has similar objects. For NUPSW, affiliation is then a matter to be decided upon by the National Council and only subject to the approval of the highest body of the union, the quadrennial conference. Similarly for the Civil Servants union of Zambia, article 14 of its constitution provides that the National Executive Council shall have the power to affiliate the union with other unions or associations which have similar objects, subject to approval by the Minister of labour. It is interesting to note here that while the law has given the unions the latitude to provide for the mode of affiliation to the congress, whatever body or

association. The CSUZ, has chosen to limit its enjoyment of its freedom by subjecting the power of the National Executive Council to affiliate the union, to the approval of the Minister of Labour. Ultimately this power to affiliate the CSUZ does not lie in the National Executive Council of the Union but in the Ministry of labour. The implication of this provision therefore is that the Ministry of labour can disapprove of the decision of the National Executive Council in the matter of affiliation for whatever reason he may deem fit. The Federation of Free Trade Unions in Zambia has simply provided in its constitution under Article III (A) that the affiliation to the FFTUZ by every trade union registered under the Industrial and Labour Relations Act 1993, shall be voluntary. This means that who may want affiliation to this body may do so without any overt or covert act on the part of the FFTUZ. The ILRA of 1993 further provides for the disaffiliation of trade unions from the ZCTU or any congress. Section 17 (1)(b) of the ILRA (1993) provides that a trade union registered under this Act may by a simple majority decision of the members present and voting at a general conference of that trade union cease to be affiliated to the congress. This liberty to disaffiliated from the congress, like the freedom of association has created problems for the labour movement in Zambia. As earlier noted, a number of trade unions disaffiliated from ZCTU when a leadership crisis ensued at the quadrennial conference of the congress in 1994, thereby paralysing the operations of the congress. The unions which disaffiliated from the congress especially MUZ and ZNUT, contributed 80% of the income of the ZCTU,<sup>9</sup> therefore the move to disaffiliate

was a big blow to the financial as well as numerical strength of the congress. In cases where splinter unions have emerged in industries where unions already exist, ZCTU has been accused of employing double standards by accepting applications from splinter unions. But ZCTU on the other hand has been rendered witless because the law provides for Freedom of association and if new unions duly registered apply for affiliation ZCTU can not deny them the right to associate with the congress. Besides the congress needs its monthly contributions to sustain itself. For example SESTUZ, PETUZ, NUTEL from ZNUT and NEASWU from ZEAUWU. ACTU needs the contributions of all these unions.

Having regard to the relationship between the labour movement and government in Zambia, from the post Independence and the President, it would be true to conclude that the government has often time taken advantage of such provisions of the law to incite some employees in certain industries to either break away from main unions or to disaffiliate from the congress. This has been in a bid to weaken the labour movement, when the labour movement has seemed to assume too much power, control and influence over the Zambian labour force.

At the same time, the labour movement has allowed itself to be used as a tool for politicians to the injury of a once strong and formidable trade union movement.<sup>10</sup>

For example the FFTUZ alleged that at the 9th quadrennial conference of ZCTU where all these problems originated from, there were rampant malpractice and the situation so chaotic and undemocratic that they felt that ZCTU leadership had destroyed the cause of the workers by being bought and used by politicians<sup>11</sup>. The ZCTU leadership allowed the presence of political parties at the congress invited by and supporting the ZCTU leadership, all because of some political aspirations held by some leaders. The presence of National Party cadres was specifically identified.<sup>12</sup> Hence the FFTUZ has since 1994 been formed and exists as a national centre for unions in the financial sector. It is unfortunate for this body that most of the unions that were responsible for its formation have since left it to rejoin the ZCTU.

The only union that has faithfully remained with the FFTUZ and perhaps whose union officials form the administration of FFTUZ is ZUFIAW. Before the other unions that is ZNUT, MUZ, NUGW and NUBEGW reaffiliated to the ZCTU, and were bent on forming the FFTUZ, ZUFIAW and ZNUT felt that ZCTU was working against the alliance by promoting splinter unions and on this basis felt that they could not get back to ZCTU, which they accused of not being in favour of a strong and united union movement.

It is interesting to note that despite the accusations labeled at ZCTU, ZUFIAW is still the main affiliate of FFTUZ thereby still perpetrating the rift in the labour movement instead of promoting the much needed unity.

### **C. POWERS OF ZCTU OVER ITS AFFILIATES**

*This part of Chapter II examines the powers endowed by the ZCTU over its affiliates by the industrial and Labour Relations Act of 1990 and 1971; and also the ZCTU constitution and the national union's constitutions.*

Under the 1971 IRA the powers of ZCTU over its affiliates were provided for under section 28 and provided that where a dispute arose between two or more trade unions as to which of them had or should have the exclusive right to represent employees of a special class or category then the parties were under an obligation to refer such a dispute to the ZCTU with a right of appeal to the Industrial Relations Court. The trade unions in dispute could only refer the matter to the ZCTU if the issues in dispute related to representation and not other issue.

This also meant that the congress could not take it upon itself to intervene in a matter not brought before it by the parties in dispute whether the obligation to refer the dispute was there or not. It had to wait until it was formerly involved in the matter by the parties thereto.

The powers of ZCTU over its affiliates was judicially tested in the case of Luciano Mutale and Jackson Chomba v Newstead Zimba 1988.<sup>13</sup>

The facts of this case were that the National Union of Building Engineering and General Workers (NGBEGW) General Council passed a resolution in September 1987 to suspend the Union Chairman Frederick Chiluba who was also the chairman General of ZCTU. This was followed up by ZCTU convening its own General Council which decided to intervene by way of suspending the entire executive committee of NUBEAW and some of NUBEGW'S full time employees. NUBEGW objected to the intervention by the ZCTU arguing that ZCTU did not possess legal authority to do so.

When the matter was taken to the High Court, it was held that the action by the ZCTU was not in breach of the law. On appeal the Supreme Court reversed the decision of the High Court. It was decided that the rules or the constitution of the ZCTU did not give the ZCTU power to intervene in the internal affairs of the affiliates in the manner in which it did. The court observed that the power to expel or suspend members were expressly provided by rules or could arise by necessary implication of the ZCTU. Infact in ruling so, the Judge advised that, it was not too late for the ZCTU to amend its constitution so as to bestow upon itself such powers as would allow it to interfere with the affairs of its affiliates.

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This possibility was however diminished with the enactment of the 1990 IRA. Section 35 of this Act which provided that ZCTU will not have any jurisdiction over any trade union affiliated to it, unless in matters referred to it by the union. Hence even if the ZCTU had amended its constitution to accommodate its expanding powers over its affiliates, it would have been meaningless in view of the express provision in S.35 of the 1990 IRA. It was at this point in the 1990 IRA that automatic affiliation was removed it would appear that the law was repealed in order to clip the wings of the ZCTU whose leadership was viewed as a threat to the UNIP government at this particular time. Frederick Chiluba then Chairman general of the ZCTU was one of the group of men and women who were agitating for the reintroduction of plural politics in Zambia in 1990. Therefore the government of the day decided to extend liberalisation to the labour movement in order to deprive it of that unity, coherence and strength. The idea was to disintegrate the labour movement so that it could not stand as a threat to UNIP.

The 1993 ILRA makes it obligatory for unions affiliated to the congress to refer their disputes to the congress for reconciliation and so section 35 (1) of the same Act provides that where a dispute arises between two or more unions affiliated to ZCTU, the parties to that dispute refer the dispute to the congress for resolution by reconciliation. If this fails that parties have recourse to the Minister of Labour

and Social Security for arbitration with final appeal to the Industrial Relations Court, this is found in section 35 (2).

Section 34 (1) of the same Act provides that notwithstanding the other provisions of this Act relating to the affiliation of trade unions to the congress, each trade union shall maintain its separate status and shall have the right to organise itself as it considers fit in accordance with its constitution. Section 34 (2) goes on to say that the ZCTU shall have no jurisdiction over any trade union affiliated to it in any domestic management or domestic matter unless such a matter has been referred to it by the trade union concerned.

Section 34 (1) implies that although unions can if they want to, refer their disputes to the congress for reconciliation they are completely at liberty to elect to resolve their own problems instead of referring them to the congress. On the other hand, both subsections 34 (1) and (2) are in essence obliquely encouraging unions to disregard the jurisdiction of ZCTU in these disputes or even in their other operational and organisational activities. Important to note is that the same section in subsection (5) gives the congress general jurisdictions over trade unions affiliated to it on:

- a. any issue requiring adoption of a common policy position affecting the affiliated trade unions:
- b. the provision of professional and technical advice to trade unions involved in negotiations with employers associations or litigation: and

c. the submission of such information, date, documentation, annual reports and financial statements as congress may stipulate from time to time.

Notwithstanding the foregoing, the powers of ZCTU over its affiliates have usually been limited to inter union affairs in order to practice democracy in the labour movement. National Unions have maintained their separate status and have not given the congress too much power as to interfere in their domestic conflicts. The congress has in turn left the unions to deal with their internal matters, even though it would be the wish of the congress to intervene in serious Intra union disputes to maintain harmony in the labour movement. As a matter of fact, one of the objects of the congress in its article 3 (3) provides that the objects of the congress shall be to settle disputes between and within trade unions affiliated to it or between an affiliate of the congress and any other trade union. But this desire by the congress is indeed hampered by the provisions of the law as aforementioned and also by the fact that union constitutions do not provide for such intervention by the mother body as was evidence in the case of Luceano Mutale and Chomba of Jackson v Newstead Zimba, 1988.

### CHAPTER III

In this chapter, the paper will look at the significance of the Tripartite consultative labour council in the management of industrial relations in the country. It will also examine the efficacy of this body as a forum to resolve issues between the stakeholders as well as a forum to initiative policy issues by the three stakeholders which are the Government, the Federation of Employers and the Zambian Congress of Trade Unions. It will finally consider how democratic governance has been applied in this body by the members thereof.

The TCLC was first created by the Industrial Relations Act of 1990, and the aims of the council were 1, to provide a forum for consultations between the stakeholders, (ii), to lessen Industrial conflicts in the Industrial arena and (iii), to contribute towards policy formulation. The TCLC is consisted of not less than 21 members who represent the trade unions nominated by the congress, the employers nominated by the federation of employer (IFE) and the government who shall be nominated by the Minister.<sup>1</sup>

According to the 1993 Industrial and Labour Relations Act, the main objective of the TCLC is to manage the Industrial relations of the country. The functions of the council as provided for under section 83 of the ILRA (1993) are thus to advise the government on all issues related to labour matters, man power

development and utilisation, and any other matter referred to the council, by the government.

Section 81 provides for holding of council meetings which shall be held at least twice in the year, at such times and places as the chairman in consultation with the trade unions and the associations may determine.<sup>2</sup>

Subsection 8 of the same section provides that the government, trade unions and the associations shall be responsible for paying allowances for the attendance of meetings of the council, to their respective representatives. Looking at the provision of section 83, it is clear that since the council has to advise government on issues stated therein, it is then the duty of the members of the council to equip the council with the necessary information to be communicated to government. The Trade Unions, Federation of employers must initiate policies issues on matters relating to labour, manpower development and utilisation and on any matters referred to the council. It is important to state from the onset that it is the view of this paper that government has often times overlooked the involvement of the participation of the other members of the council, in policy design and formulation. The other members have only been informed of government decisions, and have only been expected to play a reactionary role in matters over which extensive debate should have taken place in the council. This rendered the other members of the Tripartite consultative

labour council especially the unions tooth less and almost relegated to irrelevance. Trade Unions have been sidelined on very important issues related to labour policy formulation and enactment of legislation related to labour, as we shall see later on in this chapter.

The examples are many and varied in which unions have only come to learn about policies on labour after they have already been passed for implementation, sometimes while they are being debated upon in the council, government has gone ahead and implemented the same issues under debate without due regard to the outcome of the council deliberations.<sup>3</sup>

When the Movement for Multiparty Democracy assumed political power in 1991 one of their priority areas was to embark on the World Bank and International Monetary Fund (IMF) supported Economic Structural Adjustment Programme (ESAP), which had far reaching implications on the labour market trends, employment and trade union density, mainly due to the privatization of public owned companies referred to above in chapter II, which could not stand the competitive nature of ESAP.<sup>4</sup> When this programme started to be implemented in earnest in 1992, government used archaic colonial laws relating to liquidation of companies privatised, minimum standards and employment. Government did not bother to involve the participation of the labour movement at the policy design, or delivery levels, despite the legal provision for a Tripartite consultative

labour council where these issues could have been debated exhaustively.<sup>5</sup> The labour movement and the federation of employers should have been involved in the formulation of new labour policies or legislation in order to change the archaic laws to suit the new situations. Government was in a hurry to implement such policies concerning ESAP as such there was no regard to the social as well as the legal safety mechanisms to take into consideration the changed economic *circumstances prevailing in the country in contrast with the economic environment obtaining during the colonial era, when these laws were made.*<sup>6</sup>

The conditions facing retrenched workers were so unrealistic that under the archaic law on liquidation, a former employee could only be entitled to ZK20.000 amount which could hardly buy such an employee even a bottle of coca cola in Zambia.<sup>7</sup> Such short falls discovered in the law and any possible amendments could have been made before the implementation of these policies if the spirit of tripartism had been prevalent in the council. Government concern was simply to meet the benchmarks set by the financiers of the Adjustment Programme, regardless of their effects on labour. The labour movement has been seen to fail its members because of the lack of involvement in the design of such policies and as a member of the TCLC, it could have at the initial stage negotiated for better packages for its members. It continued to be helpless even after these policies are implemented and workers retrenched. The labour movement is prevented from negotiating for its retrenched members, by a technical hitch that

retrenched workers are no longer members of the trade unions and therefore not capable of being negotiated for.<sup>8</sup> Therefore such employees remained at the mercy of government.<sup>9</sup>

As seen in section 81 (8) of the ILRA, because all stakeholders are supposed to fund their own members when they attend council meetings it has been revealed that trade unions have shied away from this responsibility and so government has capitalised on this weakness by sponsoring council meetings.<sup>10</sup> As such government will call for meetings when it feels like and knowing very well that meeting can only take place at the insistence of government which is to fund their meeting. It is between these periods that important policy decisions are made unilaterally at times, without the involvement of the unions. When these meetings have been held, deliberations of the council do not match the times therefore the decisions therefrom are misplaced as in the case of implementation of ESAP alluded to above.

When called upon to call for such meetings government has pleaded inadequate resources and inadequate time to host the council meetings.<sup>11</sup> At times council meetings have not been held at all, and in a way, the other members of the council are at the mercy of the government.

For example in the year ended 1999, December 31st the Tripartite consultative labour council only met once for the first meeting. Government never called for the second meeting<sup>12</sup> which meeting in the opinion of the author was very cardinal because the unions could have made inputs to the budget for the year 2000. As such they could not even lobby amongst the members of parliament for support on any item in the budget.

The budget for the year 2000, also reveals a paltry allocation of 74 billion kwacha to the Public Sector Reform Programme. This amount was given in the discretion of government but with no regard for the unions' views or participation in the preparation of this budget<sup>13</sup>. Also as a result of the labour movement's weakened position and lack of adequate resources to initiate council meetings, even if there are important issues the labour movement wants to raise in the council meetings, the government will avoid holding such a meeting if it feels it is not in the interest of government to call for such a meeting.<sup>14</sup> Section 81 (3) provides that a meeting of the council may be called by giving notice of not less than four days:

provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving shorter notice. Notwithstanding the provision of section 81 (3), when the council meetings are called for, it is always the government that prepares the agenda for these meetings.

Another example in which, government unilaterally decided to formulate policy without the involvement of the other social partners is on the appointment of District Administrators. During the year 1999, many workers in the public service were laid off in a continued bid to restructure the public sector. Government has always argued that a smaller public sector, will be more efficient and easier to manage in terms of resource allocation surprisingly, the government decided to employ the district administrators without consulting the labour movement and federation of employers.<sup>15</sup> What is more, despite government's insistence that it has inadequate resources with which to manage a higher labour force, the 2000 budget has allocated 12 billion kwacha to the lavish life styled district administrators.<sup>16</sup>

The labour movement continues to be marginalised by the government which is supposed to be their partner in tripartism, as a result, the TCLC has lost meaning and direction. The government which is also a member of the TCLC continues to enjoy unfettered latitude in making decisions without consultation with the other stakeholders of the council as evidenced by the appointments of district administrators mentioned above.

Through various labour legislations such as the 1990 and 1993 Acts, the government has continued to marginalise the unions, which in turn has lost

cohesion and vision as a result of its weakened position, and no longer commands the confidence and respect of its members it once enjoyed.<sup>17</sup> It has indeed been the wish of government to see a divided and weakened labour movement which would be unable to articulate issues seriously and which will be unable to keep its members together, and hence be easier to be manipulated by the government.

Liberalisation has not only affected the effective organisational structure of the labour movement, it has negatively impacted on the roles that the labour movement plays on behalf of its members, outside trade union business. For example the labour movement in Zambia has in the past few years been rather very weak to influence government policy especially in the implementation of ESAP as seen above. Those employees ejected from employment either by virtue of privatisation or liquidation, have had very little protection from the labour movement which has been left helpless as the law on collective bargaining does not allow a negotiated package for retrenched workers.<sup>18</sup> Also the issue of "wage freeze" in the Public Service is another unilateral decision government has taken and which has left the labour movement unable to influence government policy. In the last few years, government has from time to time slapped a wage freeze on the unions rendering them incapable of exercising their right to bargain for their members. This right is protected by ILO Convention number 98 which has been ratified by the government of Zambia. Article 4 of the ILO Convention

number 98 provides that measures appropriate to national conditions shall be taken where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiations between employers or employers' associations or organisations and workers' associations, with a view to the regulation of terms and conditions of employment by means of collective agreements. Therefore the wage freeze which government as an employer continues to employ in the Public Service is a direct contravention of the Public Workers' right to bargain.

It is the view of this paper that the tripartite consultative labour council, has not been effective at all in carrying out and accomplishing the goals and aims for which it was formed. There has not been sufficient consultation between government and the other partners of the TCLC. The government has used the council as a sounding board for many of the decisions it has made unilaterally and yet the council is looked upon as a fountain of labour laws and policies.<sup>19</sup>

For example in 1993, section 40 of the employment Act which related to employers' obligation to provide accommodation to their employees was amended without involvement of the trade unions, and yet this issue directly affected their members.<sup>20</sup>

Again in 1995, the housing allowances given to the Civil Servants was withdrawn unilaterally by the government without due regard to the outcome of the council meeting as the same issue was being debated in the council and yet the council is supposed to check enactment of labour legislation so that it does not go through unchecked.<sup>21</sup> The council should therefore rise beyond advisory role if it has to be effective as a tripartite consultative council. It must be able to make effective decisions on all labour matters which decisions should be binding on all parties because all three stakeholders are specialised in their respective areas.<sup>22</sup> Because the council lacks legally binding powers very little has been achieved in terms of the aim of the council to contribute towards policy design and formulation.<sup>23</sup> The ineffectiveness of the labour movement and the employers' associations to influence any meaningful decisions in the council is also made apparent by the provision of section 81 (7) of the ILRA (1993). It provides that the validity of any proceedings, act, or decisions of the council or any committee of the council shall not be affected by any vacancy in the membership of the council or committee of the council, as the case may be or by any defect in the appointment of any member or member of such committee or by reason that any person not entitled to do so took part in the proceedings. The concept of tripartism implies equal rights in terms of the vote, participation and representation hence section 81 (7) is contrary to the spirit of tripartism.

As already seen, since council meetings are held at the insistence of government which is able to fund the meetings of the council, the provision of s.81 (70 implies that when government calls these meetings, they will go ahead with or without the participation of the two stakeholders. It also means that, in the absence of the unions and or employers government can appoint any one the Minister of Labour deems fit, to sit on any other two committees whether that person qualifies to sit on it or not. Therefore the effect of this section on the position of trade unions and the federation of employers is that these two have been turned into rubber-stamps and the council a forum for approving government decisions.

In addition, the council has taken a very low profile on matters of Industrial relations when it should be seen to be very vocal and speak out on pertinent issues. The council elects to keep quiet when there are strikes in the industries and a recent case which concerned the junior doctors country wide demonstrates this.<sup>24</sup> The council is yet to come out in the open and make its stand clear on the matter, for this case has been dragging on for over five months now, and it is yet to be resolved.

The plight of the junior doctors affects every one in society, employees, unions and employers alike, therefore members of the TCLC who are also directly affected by this situation should have taken a leading role towards the resolution of this conflict. Conflict resolution is one of the main aims of the council, in order

to reduce conflicts in Industrial relations. When there are problems in the Industrial arena, they are supposed to be tabled before the TCLC in accordance with the spirit of tripartism. As earlier mentioned in this chapter, the Second TCLC meeting for the year ended December 31st 1999, in which the problem of the junior doctors could have been tabled did not take place. Again as a result of the labour movement's weakened financial status, it has not been possible for the labour movement to initiate this very important meeting in order to resolve this crisis as provided for by section 81 (3) of the ILRA (1993). It has instead been left to the machinations of the government which has been toying with the plight of doctors for months on end.

In a nutshell, the Tripartite consultative labour council's performance in minimizing industrial conflicts, participation in policy design and formulation, and on any matter concerning labour matters has been very dismal for reasons adumbrated above.

According to Austin Liato former Vice President of the Zambia Congress of Trade Unions, the TCLC Council can only call itself a tripartite council within the true meaning of tripartism if it can be able to make coercive decisions which will influence the policy making process of the Zambian government. And according to Dr. Neo Simutanyi an Industrial Relations expert and lecturer at the University of Zambia, the council can only assume tripartism if it has legally binding powers

with sufficient consultations and effective contributions towards policy formulation.

Therefore as a tripartite consultative labour council, the TCLC is lacking in many respects as seen above, the position which has not been helped much by the law as it stands on tripartism. Hence its position in the management of Industrial relations in the country is insignificant relations in the country is insignificant, as illustrated by the so many incidents cited above, which would have required the Intervention and participation of the full TCLC. The true nature of tripartism has therefore been eroded by this gloomy picture portrayed above. Much needs to be done in order to restore the true nature of tripartism in order to give the council more force and teeth to bite.

## ENDNOTE

1. Industrial and Labour Relations Act [1993] S. 72 (2)
2. Industrial and Labour Relations Act [1993] S. 81 (3).
3. Interview with Austin Liato
4. Banda D.A. *The Trade Union Situation in Zambia*. page 10.
5. Banda D.A. *The Trade Union Situation in Zambia*. page 10.
6. Ibid
7. Ibid
8. Banda D.A. *The Trade Union Situation in Zambia*. page 13
9. Interview with Anne Gondwe President of ZCTU Women's Committee
10. Interview with Anne Gondwe President of ZCTU Women's Committee
11. Interview with Anne Gondwe President of ZCTU Women's Committee
12. Interview with Anne Gondwe President of ZCTU Women's Committee
13. National Budget for the year 2000
14. Interview with Annie Gondwe
15. Interview with New Simutango
16. National Budget for the year 2000
17. Interview with Austin Liato.
18. Banda D. A. *The Trade Uniion Situation in Zambia* page 14.
19. Interview with Neo Simuntanji.
20. Interview with Neo Simuntanji

21. Interview with Austin Liato
22. Interview with Austin Liato
23. Interview with Austin Liato
24. Interview with Neo Simuntanji.

## CHAPTER IV

In this chapter, the research will focus on the procedures provided for trade union elections and the elections for the congress, so as to determine how democratic electoral practices and procedures are, in the Trade Union movement.

In this regard recourse will be had to the provisions of the Industrial and labour relations Act and those of the ZCTU constitution and the constitutions of some of its affiliates.

The first part of this chapter will highlight the practices employed by national unions during elections in accordance with the ILRA and the provisions of their trade union constitution.

The third and final part of this chapter will be an examination of the external influence and its effect on elections of the unions and the congress, and especially that of the state on the electoral process of the labour movement and its effect on democracy in the labour movement.

The paper will also comment on the effectiveness of the congress as a democratic and Independent institution, in effecting democratic principles during elections of the congress.

It is important to note from the outset that the elections in national unions are held in a free and fair atmosphere.<sup>1</sup> The elections conducted in the national unions are branch, district, regional or provincial and national elections. These are conducted in accordance with the internal arrangement of individual national constitutions. The national level elections are held only once in four years and hence are termed as the quadrennial conference. It is at the Quadrennial conference that national leaders for national unions are elected. On eligibility to contest any trade union positions, the Industrial and Labour Relations Act of 1993 has set out conditions under which no person shall not qualify for trade union elections, and these are as follows:<sup>2</sup>

a. No person shall be qualified for elections or appointment as an officer of a trade union if he has not been engaged or employed for a period of twelve months or more in the trade, occupation or industry with which the trade union is directly concerned. Provided that the trade union may, if satisfied as to the suitability of a particular candidate, allow him to stand for such elections, or be appointed, notwithstanding that he has been so engaged or employed for a period of less than twelve months.

b. having been an officer (for a member of executive) of a trade union whose certificate of registration has been canceled under section eleven, fails to satisfy the commissioner that he did not contribute to the circumstance leading to such cancellation.

- c. has been convicted of an offence involving dishonesty within a period of five years preceding the elections or appointment.
- d. is an undischarged bankrupt;
- e. is of unsound mind; or
- f. has been suspended, under its constitution or under this Act, from holding office in the trade union and his suspension has not been revoked, or the period for which he was suspended has not expired.

The Act also provides that where Trade Union holds an election to fill any office, the trade union shall, within thirty days of the elections or appointment, notify, in writing, the commissioner, and the congress, if the trade union is affiliated to it, of the result of the election or appointment, as the case may be.<sup>3</sup>

The quadrennial conferences that are held by national unions once in four years are organised in such a way that voters at these conferences are specially elected in their respective designated districts. These delegates to the quadrennial conferences are the only ones eligible to vote. Rule vi (c) (a) of the Zambia National Union for Teachers' Constitution provides that only provincial leaders will elect the national executive council at the quadrennial conference.

The Civil Servants Union of Zambia Constitution in Article 19 confers power on the branches to elect the delegates to these conferences to avoid the same

people monopolising the conferences and to avoid the national Executive committee hand picking delegates to the conference. It also provides that position for the NEC in the Civil Servants Union of Zambia are free to be contested for by any member, as long as one meets the requirements,<sup>4</sup> which are; no disciplinary action taken against an aspiring candidate and one not prevented by the operation of the law.

The constitution of the National Union for public service workers provides that the delegates of the conference shall be elected by secret ballot by the rank and file within each province from among paid up members.<sup>5</sup>

If vacancies arise in the National Executive Council before the Quadrennial Conference by elections are held during the Annual delegates conference.<sup>6</sup>

These vacancies may arise due to a number of reasons:

a. an office holder may retire from service and thereby rendered ineligible to continue holding office in the union. An example is that of Mr.. Japhet Moonde a renowned trade unionists who was retired from the Civil Service shortly after the CSUZ quadrennial conference in 1998. He was forced to vacate the office of General Secretary of the Union<sup>7</sup>

b. an office holder can also vacate office if for political reasons he joins active politics and he is elected a member of parliament, in this situation he also has to vacate office. An example in this regard is that of G. Mandandi now civil servants of Zambia Minister of Works and Supply. He was General Secretary of

the Union in 1991, when he was elected member of parliament for Kaoma, An extra-ordinary Congress was held to replace Mandandi.<sup>8</sup>

c. an office holder can vacate office if he ceases to be an eligible employee and rises to the level of management which is a decision making organ of an institution. Again the example is from the same union where its national Chairman W.O. Phiri was removed from office upon his being promoted to the level of principal, which is a management position.<sup>9</sup>

d. office bearers can also vacate their offices if they misuse union funds and are found guilty of the offence.

e. they can vacate office if they become of unsound mind or (f) undischarged bankrupt.

At these quadrennial conferences, there are observes invited by the unions themselves from the labour movement fraternity, from within the unions themselves, from the congress (ZCTU) and from the Ministry of Labour. The labour officers are in fact the returning a officers at these elections and normal election procedures are followed.<sup>10</sup>

Having looked at elections in the national unions, the paper will proceed to examine the electoral process which obtains in the Zambia Congress of Trade Unions (ZCTU).

The Industrial Relations Act 1993, provides for qualification and disqualification from elections or appointments as an officer of the congress.<sup>11</sup>

The Act provides that no person shall be qualified for elections or appointment as an officer of the congress if

- a. he has been an officer, or member of the executive of a trade union the certificate of registration of which was been canceled under section twelve and he fails to satisfy the commissioner that he did not contribute to the circumstance leading to such cancellation or dissolution;
- b. he has been convicted of an offence involving dishonesty within five years preceding the elections or appointment
- c. he is an undischarged bankrupt.
- d. he is of unsound mind.
- e. he has been suspended, under this Act or under the constitution of the congress, from holding office in the congress and his suspension has not been revoked, or the period for which he was suspended has not expired.

Although the Zambia Congress of Trade Unions has representations in all districts and provinces who have to be elected every so often, the most important and notable election in the ZCTU is the Quadrennial Conference which is held once in four years. By its nature, the ZCTU quadrennial conference attracts a

lot of interest and attention country wide. This conference attracts delegates from all national unions affiliated to the ZCTU.

The ZCTU constitution provides that, the Supreme authority of the congress shall be vested in the Quadrennial Congress which shall consist of the members of the Executive Committee, four members of the women's committee and delegates elected by national union according to the size of its membership.<sup>12</sup> These delegates will form the electoral college at the ZCTU quadrennial Congress. A part from the qualifications outlined in the Act, eligibility to vie for positions at the ZCTU congress, depends mostly on eligibility in a candidates is national union. An aspiring candidate. Vieng for a position at the congress must be a member of the national executive committee of his union, and which union must be an affiliate of the congress. (ZCTU). This is a general provision in the ZCTU that elected officials should have ties with their national unions, so that when they go to ZCTU upon being elected, they represent their union on the executive committee ZCTU. However, notwithstanding the foregone, the ZCTU constitution is not clear on eligibility that is why there has been a number of situations where retired members continue to serve on the committees of ZCTU and hence they continue to vie for positions during the congress.<sup>13</sup> There are a number of cases where this seemingly blurred position of the ZCTU on eligibility has surfaced and caused anxiety and at times frustrations in the membership of the ZCTU.

One of the classic examples in this aspect is when Frederick Chiluba then chairman general of ZCTU was suspended from his national union the National Union for Building, Engineering and General Workers for alleged financial misconduct<sup>14</sup> instead of being dropped at the ZCTU where he was chairman general, as he no longer had ties with his union, he was adopted by another national union (Zufiaw) Zambia union of Financial and Allied Workers. There is no provision for such an action in both the constitutions of the ZUFIAW and ZCTU. This was done to ensure the continuance of Fredrick Chiluba's chairmanship at ZCTU.<sup>15</sup> There are a number of incidents where elected officials who have been retired from employment, and have as a result lost their ties with their national unions have continued to serve on the ZCTU Committees.

In 1996, the Womens Advisory Committee Chairperson at ZCTU was retired from the Civil Service. She continued to sit on the committee until in 1998 at the general council the member of the Women's Committee raised concern at the continuance of Ireen Nkhinda's tenure of office which could have ended upon being retired.

It was alleged that this problem was prevented from being tabled exhaustively at the General Council by Alec Chirwa who was himself in the same situation of having been retired.<sup>16</sup> Chirwa's main aim it was alleged, was to rush to the quadrennial conference, to seek re election without any hindrance. His case

would which would have been brought up by tabling Ireen Nkhuda's case in the General Council.

Alec Chirwa knew that if he won the election of 1998, his position would be secured, because ZCTU, as aforementioned has no clear policy on such cases as these.<sup>17</sup> However, because of pressure from the membership, Ireen Nkunde was voted out of office at the quadrennial conference of women in 1999.

The latest case in this aspect is that of Japhet Moonde, former General Secretary of the Civil Servants Union of Zambia. Moonde was retired shortly after both elections of CSUZ and ZCTU which both positions he vied for and won.<sup>18</sup> The ZSUZ was Quick to take action to remove Moonde from his office of general Secretary. At ZCTU, the executive council has been timid like in many other cases to take the right decision on this case, as Moonde has lost ties with his national union. The executive council has instead decided that he should continue to serve as Vice President of the labour movement.

Another interesting case is that of Rose Chamululu who was a member of the Women's Committee at ZCTU. Chamululu came from the Mine Workers Union of Zambia. At the time when MUZ disaffiliated from ZCTU, Chamululu continued to serve on the ZCTU Women's Committee because of her individual allegiance to the congress.<sup>20</sup> It is unconstitutional for ZCTU to elect members of unions

who are not affiliated to it.<sup>21</sup> The best action would have been to dismiss her from office, and alternatively Chamululu could have left on her own.

Another example is that of Margaret Mukamba who also held office in the Women's Committee of ZCTU.<sup>22</sup> Mukamba came from the National Union for communication Workers. She was promoted to go into management and hence, ceased to be an eligible employee. Despite this knowledge, the ZCTU management allowed Margaret Mukamba to continue serving as though she was still attached to her union. (NUCW).

Fackson Shamenda is a manager at his work place and is answerable only to the Chief Executive, so he can not be an eligible employee of Postal and Telecommunications, although he continues to seek re elections, and serving as Chairman General of ZCTU.<sup>23</sup> All these cases cited above show that these people to be eligible for elections at ZCTU for the reasons illustrated above.

Alec Chirwa lost his election bid in 1998, probably because he had overstayed at ZCTU, and most of the members from his union knew and they sought to onst him out of office.

We shall now look at the external influence on the elections of the Zambia Congress of Trade Unions.

During the quadrennial conference of ZCTU there are observers who come from outside institutions such as the Federation of Employers, the Minister of Labour, the Unions from outside Zambia, and leaders of political parties.

Some of these observers have played a very influential role in determining the outcome of the results of the election of ZCTU. For example politicians have been said to sponsor some of the leaders seeking positions in the congress. Politicians have always wanted to control the labour movement, and the only effective way of doing it is by sponsoring and controlling individuals at ZCTU.<sup>24</sup> These should remain in power at all costs to satisfy the political ambitions of some individuals. In 1994 for example, during the quadrennial conference of the ZCTU, the elections was characterised by factionalism where the incumbent chairman general Shamenda was challenged by his deputy chairman the late Francis Kunda and the Secretary General Alec Chirwa was challenged by his Deputy Geoffrey Alikipo. These challengers lost the elections, and left the ZCTU (disaffiliated) to form their own national centre.<sup>25</sup> The losers with the help of some political leaders in government pushed for the amendment to the industrial Relations Act (1993) to provide for the formation of another labour centre other than the ZCTU.<sup>26</sup> Hence the Federation of Free Trade Unions in Zambia was established or launched. Although at the time of its official registration only two out of five unions had remained in the FFTUZ.

Political interference continued and saw a repeat of the 1994 scenario where the incumbent Fackson Shamenda was yet again challenged by Austin Liato his deputy chairman on the ground that he had ceased to be an eligible employee of his company. At this conference, the emotions were highly charged as Liato was accused of being sponsored by some opposition party, while his faction accused Shamenda's faction of being stooges of the MMD government. At this particular time Austin Liato sat on the Board of ZESCO as a Union leader up to the time of elections. It is also alleged that the MMD has been syphoning millions of kwacha from parastals such as ZESCO, to fund their political activiteis,<sup>27</sup> therefore the continued presence of Liato on the ZESCO Board would have meant Liato blocking the MMD move to access money from ZESCO. It also meant that as he (Liato) was accused of being sympathetic towards an opposition party, it was likely that he would pass on this same information to the political party in question.<sup>28</sup> As such, everything possible was done by the government in conjunction with ZCTU leadership to frustrate Liato's bid to contest for the presidency of ZCTU, and also to have him removed form the leadership of the Zambia Electricity and Allied Workers Union. Liato and the leadership of ZEAWU were accused of financial mismanagement which has been the subject of litigation in the courts of law. There were irregularities which characterised the 1998 quadrennial conference. It was reported that there were more delegates voting at the conference than was allowed. This is as a result of the ZCTU's weak monitoring structure, the department of Research which is supposed to

have the correct figures in statistics of the membership in all national unions affiliated to ZCTU, so that the actual numbers of voters can be verified during elections.<sup>29</sup>

Another irregularity is that all members of the Women's Committee (8) were allowed to vote instead of the four that are allowed to vote by the ZCTU constitution.<sup>30</sup>

The credentials committee is supposed to be headed by the head of the legal department at ZCTU. But just before the 1998 quadrennial conference the director of legal services Kelvin Hangandu was written a letter by the Secretary General to bar Hang'andu from attending the quadrennial conference. Hang'andu was accused of being aligned to the Liato faction although he was only an employee of ZCTU. He however filed for an injunction to restrain the ZCTU from barring him from attending the conference.

When the election results were announced Liato alleged that the elections had been rigged by the sympathisers of the Shamenda faction.<sup>31</sup> He then requested for a recount of the votes through his election agent. The labour commission who was the returning officer openly refused to have the votes recounted, making it even more suspicious as to the genuineness of the election results.<sup>32</sup> As a result of these problems, the 1998 conference was not officially closed.

After the 1998, conference, the labour commission deregistered ZEAUWU and canceled its certificate on the basis of allegation levelled against ZEAUWU leadership of Financial misconduct. Liato and his team have since petitioned against the charges levelled at them, and against the decision of the Ministry of Labour to deregister the union without consulting the membership.

ZEAUWU has since been registered and its certificate of registration restored. The government acting with ZCTU pushed for the registration of the new union at ZESCO and quickly affiliated it to the ZCTU so that ZCTU could continue receiving subscriptions from ZESCO workers, even if ZEAUWU became non existent.<sup>35</sup> From the foregone, it is clear to observe that unity has eroded the labour movement as seen in the last two quadrennial conferences. The 1994, quadrennial conference caused the break away of some national unions already referred to above, to form another labour centre.

As an independent and democratic institution the ZCTU according to some affiliates, has failed to deliver its goods. It has allowed itself to be abused and used by politicians in particular who have political ambitions.<sup>36</sup> On its part the state has played its role in distablising the labour movement, by getting involved in the elections and other matters pertaining to the organisation of the labour movement. For example, when the section of the Industrial relations Act related

to formation of another labour centre was amended and FFTUZ was to be registered, there was only one union affiliated to it.<sup>37</sup> The TCLC proposed a national union to needed to command at least one third of the national centre in the country.<sup>38</sup> The state was keen to have another labour centre with which to promote their political agendae, so the Minister of labour quickly registered PETUZ a break away union form Zambia National Union of Teachers which has since been affiliated to FFTUZ so that FFTUZ could have two affilliate.<sup>39</sup> Which government decided unilaterally was enough to recognise FFTUZ as a labour centre. Therefore, there are now two labour centres existing in the country.

The problem facing the labour movement usually surface during quadrennial conferences over the choices of candidates. Hence these elections although they are democratic, there are many external factors that marr the well intended meaning of the labour leaders at the conferences as shown above.

## ENDNOTES

1. Interview the author held with General Secretary (CSUZ).
2. Industrial and Labour Relation Act S.18.
3. Industrial and Labour Relation Act S.19.
4. Article 21 of the CSUZ Constitution.
5. Article 6 (b) of the NUPSW constitution.
6. Article 21 CSUZ Constitution
7. interview with the Chairman of the CSUZ.
8. The author worked with this Union and had access to all this information whilst she was Director of Research and Information.
9. Interview with the National Chairman of the CSUZ .
10. S.30 (I) ILR Act. [1993].
11. Article 13. Constitution of the Zambia Congress of Trade Unions.
12. Interview with Leonard Hikaumba, Chairman of the CSUZ.
13. From the Facts of *Luciano Mutale and Jackson Chomba vs Newstead Zimba*. [1988]
14. Interview with Rose Chokolo a former member of the ZUFIAW Executive Committee.
15. Interview with Darrison Caala, General Secretary of CSUZ.
16. Interview with Leonard Hikaumba Chairman of CSUZ
17. Interview with Leonard Hikaumba Chairman of CSUZ

18. Interview with Leonard Hikaumba Chairman of CSUZ
19. Interview with Mr.. CSUZ General Secretary.
20. Article 13 of the Constitution of the ZCTU.
21. Interview with Darrison Chaala, General secretary of CSUZ.
22. Interview with Leonard Hikaumba Chairman of CSUZ.
23. Interview with Mr.. Hikaumba Chairman of CSUZ.
24. Interview with Leonard Hikaumba Chairman of CSUZ.
25. Interview with Austin Lliato former Vice President of ZCTU.
26. An Act to amend the ILRA 1993, 22nd December 1997 S.3 amended thereto
27. Interview with some labour leaders.
28. Interview with some Trade Union leaders
29. Interview with Leonard Hikaumba Chairman of the CSUZ.
30. Interview with Leonard Hikaumba Chairman of the CSUZ.
31. Interview with Leonard Hikaumba Chairman of the CSUZ.
32. Interview with Leonard Hikaumba Chairman of the CSUZ.
33. Leonard Hikaumba, CSUZ Chairman.
37. S.3 ILRA.
38. ILRA [1993].
39. ILRA Act amendment Act. [1997].

## CONCLUSION

There are many lessons learned from the application of liberalisation or democratic principles in the Trade Union in Zambia.

The Freedom of Association as seen above has brought serious challenges for the labour movement to contend with the most serious one being fragmentation of the National Unions as seen in the Teaching Sector. From a once strong one Union Industry, the teaching sector has to deal with four national unions namely, Zambian National Union of Teachers (ZNUT) Secondary School Teachers Union (SESTUZ) Primary Education Teachers Union of Zambia (PETUZ), and the National Union for Technical Education and Lecturers (NUTEZ). The fragmentation of the education sector has dealt above the ZNUT and ultimately the Zambia congress of Trade Unions whose financial capacity have weakened. The unions in this Industry have to compete for membership with each other, and they also have to fight for members contributions as well, as was the recent case between ZNUT and PETUZ<sup>1</sup>.

The problem of fragmentation is not only for the labour movement, it is also a problem for Permanent Secretaries who have to negotiate with trade unions individually, on top of their usual administrative duties in the respective ministries. Because they have to spend a lot of time on negotiations with different unions in the same Ministry<sup>2</sup>, their jobs are suffering as a result of this extra task brought by the unions. Permanent Secretaries especially in the

Ministry of Education are the busiest and have little time to rest between negotiations with different nations unions.

Freedom of associations has also weakened the labour movement from a once strongest labour movement in Africa to a very weakened labour movement<sup>3</sup>. The state has been seen to use the same principle to weaken the labour movement by encouraging splinters and also promoting the formation of the FFTUZ which is purportedly another labour centre. The Tripartite consultative labour council had agreed that for a labour centre to be recognised, it must command one third of the trade unions in Zambia, but government on the other side decided that only two unions would surface to form a labour centre. <sup>4</sup> And this saw the registration of FFTUZ with only Zambia Union of Financial Institutions and Allied workers on SUFIAW and the Primary Education Teachers Union of Zambia (PETUZ)

Sometimes this freedom of association has been curtailed by the government for some union members. One example is the cancellation of the registration of certificate of the Zambia Electricity and Allied Workers Union by the Ministry of Labour without consulting them<sup>5</sup>.

Another example is when the Civil Servants Union of Zambia wanted to change the name from CSUZ to Civil Servants and Allied Workers Union of Zambia and made an application to the Ministry of Labour. The Ministry of Labour had to seek the approval of ZCTU and the congress denied this approval <sup>6</sup>, and yet

there is a provision for change of names in the Industrial and Labour Relations Act, 1993<sup>7</sup>.

Over registration of Trade Unions, we have seen that again the government through the Ministry of Labour will approve quick registration of some Unions in the employment of distablising tactics against the labour movement. The recent example is that of PETUZ which the Minister of Labour instructed the commission to register it, so that it could serve as a second affiliate to FFTUZ. Again the Ministry of Labour will cancel certificates of registration for unions whose activities are not pleasing the government as in the example of ZEAWU. What is unfortunate is that the final approval for the registration of trade unions lies with the Ministry of Labour<sup>8</sup>.

On affiliation and disaffiliation, the changes in the labour legislation as it stands now leaves very little to do for the labour movement<sup>9</sup>. The law provides that trade unions are at liberty to affiliate or disaffiliate from the national centre. The national constitutions of national unions remain in consonant with provisions of the ILR Act on diaffiliation and disaffiliation. Again the law and the constitutions of national unions provide that the Zambia Congress of Trade Unions should not intervene in domestic disputes of national unions unless called upon to do so.

Commenting on the Significance of the TCLC, the author feels that as long as the government continues to down play the other two stake holders , tripartism in

Zambia will always be a mockery. The TCLC will be significant and effective when the government brings itself down to the level of labour movement and the Federation of Employers, so that whatever the council agrees upon is effected in its exact form. In this regard, the labour movement and the Zambia Federation of Employers must adopt a more aggressive approach towards tripartism, to strengthen their voice. They must also be prepared at all times to fund their council meetings, and even initiate the meetings. They must also lobby to have the ILR Act to be amended in such a way that they preparing of the agenda can be done by any of the council members but in consultation with the other stake holders.

The law must also be amended to provide that council meetings should only take place when all stake holders are in attendance.

Finally, the author feels that industrial relations in the country would greatly improve if the true spirit of Tripartism can be realised where all stake holders REGARD each other as equals.

The trade union elections especially those held at congress level have caused up heavals in the labour movements. The labour movement has only itself to blame for allowing politicians to manipulate them according to their selfish political ambitions. Looking at the last quadrennial conference for ZCTU, it is the

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The trade union elections especially those held at congress level have caused up heavals in the labour movements. The labour movement has only itself to blame for allowing politicians to manipulate them according to their selfish political ambitions. Looking a the last quadrennial conference for ZCTU, it is the

view of this paper that the ZCTU should stop forthwith to involve the Ministry of Labour in the conducting and supervising of these elections.

instead they should invite International and independent monitors to monitor and supervise the elections so as to situations like what happened in 1998.

Finally, ZCTU should have a clear cut policy on eligibility to avoid situations where retired officers continue to serve. It should adopt a serious stance towards retirees and other people and make provisions in the ZCTU constitution which provision should be clear and not ambiguous.

## **RECOMMENDATIONS**

1. The Industrial and Labour Relations Act should be amended so that Section 9 embodies a provision that not more than two trade unions shall be registered in big industries for ease of negotiations also to help strengthen trade unions.

This inclusion will read Section 9(a) of the ILR Act.

2. Section 81(4) of the ILR Act 1993, should be amended to read that meetings should only take place when all stakeholders are represented at the meeting.

3. Section 81(7) should also be amended to read that “proceedings of council meetings, acts and decision of the council shall be valid only if they have been done by the full council, represented by all three stakeholders.
4. Section 83 of the ILR act should be amended to include “initiation of labour legislation” in addition to what is already provided for.
5. The ZCTU constitutionism article 30 must be amended to provide that office bearers who cease to be eligible employees or are retired from the service or those who are removed from the service or those who are removed from office by their national unions must cease to hold office automatically at the congress as well.

## ENDNOTES

1. The case is still going on in the Industrial Relations Court between ZNUT and PETUZ.
2. Government officer at the Ministry of Education.
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4. Interview with Mr. Chaala, General Secretary, CSUZ.
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2. Federation of Free Trade Unions in Zambia.
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7. ILO Covention No. 87.