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# **Constitutional Reform in Zimbabwe: Labour, Gender and Socio-Economic Rights**



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**CONSTITUTIONAL REFORM IN ZIMBABWE:  
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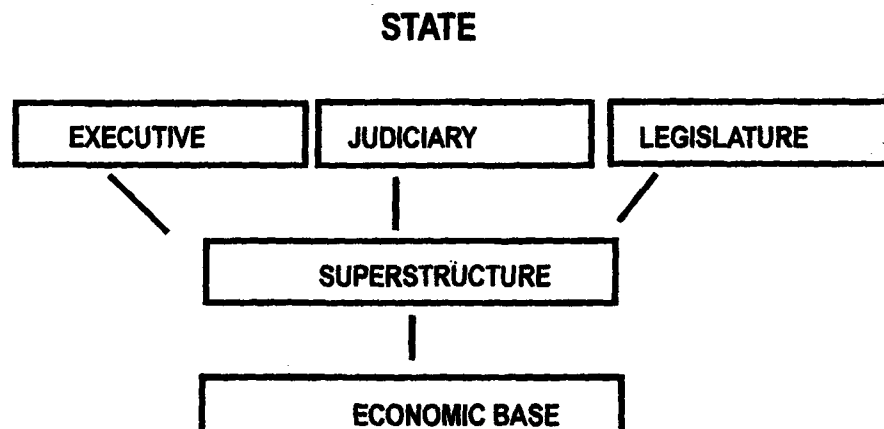
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# The Struggle for Labour Rights requires a struggle against Capitalism

Collin Gwiyo<sup>1</sup>

Comrades can I take this opportunity to greet all of you in these trying times? As for me, I initially thought that I should not come to this meeting because of the economic situation but then I also thought that this constitutional project must be done justice to. Then another thought came into my mind that the colleagues who have organized the conference have always been my friends if I do not attend, they will think that I have neglected them because I am now a Member of Parliament. Finally I decided to come.

As regards to the topic that I was given, I would want to take a different dimension, which is best illustrated in the diagram below.



My approach is from a political economy perspective. This is the manner in which our economy is run. We have *relations of production* that constitute the *base of any economy* and we have a *superstructure*, which constitutes the mechanisms within which the relations of production are managed. The State and Law constitute key elements of the superstructure. The state has several major arms, including the executive, the judiciary and the legislature.

The character and nature of the state and law is determined by the economic base. In particular is the question of ownership and control of the resources, tools and wealth of society, collectively called the *means of production*. Since the emergence of class societies, over 10 000 years ago, the economic base and means of production have been owned and controlled by a small minority in society as private property, whilst the vast majority of people in society are denied major ownership or control of such means of production and forced to work for those who own the means of production either as forced labour, slaves, peasants or today as workers. We call these people *working people*. The fruits of their labour, called *surplus value*, is however largely taken or better still, stolen, by the few who control the means of production, whom we call the *ruling class*. Working people are left with just barely enough to keep themselves and their families alive. And throughout this history, working people have periodically risen up against their oppressors and exploiters in powerful revolutions, and in turn the ruling classes have brutally crushed such rebellions but in some instances the ruling classes have been defeated by the ordinary people. We call these fights *class struggle*. The state and law emerged in society to deal with this class struggle and ensure that production and work continue... for without work there can be no new wealth created nor can human society survive. Work is therefore the most central thing in all human societies, now and since the emergence of the modern human being over 100 000 years ago. And the most important aspect of every society has been how it regulates the process of work, in particular the key questions of : how are the means of production, that is - the tools, raw materials and skills or technology used in work owned or controlled – publicly or privately; secondly how is the work process done, whether under the autocratic control of the few who own/control the means of production or democratically by all producers se *nhimbe* or what we call *mushandirapamwe* ; and thirdly how is the fruit of society's labour distributed – whether the surplus value or profits made are taken by the few who own and control the means of production as their private property, what you can call *umbimbindoga ne gutsarushoma*, or it is shared equitably or communally amongst those who have worked and with society in general, what we call *gutsaruzhinji* or communism.<sup>2</sup> In all societies where the means of production

<sup>1</sup> Collin Gwiyo has been one of the leading militant trade union leaders in Zimbabwe since the end of the 1980s when he rose to become the general secretary of ZIBAWU, the bank workers union and a trustee of the newly re-organised ZCTU. Currently he serves as an MDC-T Member of Parliament (Zengeza).

<sup>2</sup> For fuller details refer to – Marx K and Engels F, *The Communist Manifesto* (Bookmarks Publications, 2003) and Gwisai M, *Labour and Employment Law in Zimbabwe: Relations of work under Neo-colonial Capitalism* (Zimbabwe Labour Centre & UZ) p 3 - 12



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are held as private property, from slavery through feudalism to capitalism today, we have the dictatorship of the few over the majority, because the process of work is under the tyranny of the few who own the means of production and is unjust because those few seize all the surplus value or profits from the process of work. Therefore these societies lack economic democracy.

Arising from this unjust and undemocratic economic base, is also an undemocratic superstructure, in particular the state and law. The rich use the wealth they have stolen from the working people to seize control and influence of not only the state and law but also other elements of the superstructure like religious, educational, cultural and media institutions. The later institutions are used by the rich – the ruling class to brainwash the working people to accept their oppression and exploitation as natural, permanent and God-given, saying statements like “the poor shall always be with us!” This is why the great communist revolutionaries, Karl Marx and Frederick Engels argued that the ruling ideas in any society are those of the economically dominant class, the ruling class. On the other hand the state and law, including key institutions like parliament, the government, the army and police and the courts, are the decisive weapons or elements of the superstructure used by the ruling class to draft laws that oppress the working people and benefit the ruling classes;<sup>1</sup> to judicially resolve disputes in society but in a manner that favours the ruling classes and if all fails to physically and violently smash and crush the revolts and uprisings of working people and other oppressed social groups, often outside the boundaries of the very laws and constitutions the ruling class would have set up.

Therefore in all societies where the means of production are owned and controlled as the private property of the few, the state and law always are biased against working people. Sometimes though, under pressure from the revolts from below or to try and co-opt the masses, the ruling class is forced to make some concessions to the working people, which concessions are reflected in the state and law as reforms that benefit ordinary people. The exact details of the nature of the state and law, including the constitution, at any given time is a reflection of the balance of class struggle or class forces between the ruling class and working people. In situations where working people are more militant and ideologically strong, they gain more reforms in the laws and constitutions. However, as long as the oppressed groups and working people, do not own or control the resources, tools and wealth of society, then they will never really control the state and law nor constitutions, which will remain under the control and for the benefit of the few rich layers of society, even if the working people and poor may receive a few crumbs once in a while. Without economic democracy there can never be political democracy. This is how society has evolved over the past thousands of years and how we must understand labour law, labour relations and the current constitutional reform in Zimbabwe today.

#### **Judges and Courts: Class enemies of labour and working people**

I wish therefore to make a submission that even if organized labour fought hard for progressive amendments to the Labour Relations Act, many of which were effected in the Labour Relations Amendment Act, 2002, in practice most of these gains have been eroded through undeclared amendments by a hostile and neoliberal judiciary. I am making these submissions to remind colleagues that when this government introduced ESAP at the end of the 1980s, one of the key areas was de-regulation of the disciplinary process away from through the introduction of Codes of Conduct. In an attempt to mitigate the likely adverse effects of these new neoliberal measures, a team was set up to come up with a Model Code of Conduct to assist unions. Members of this team included the late great communist Dean of the Faculty of Law at the University of Zimbabwe, Kempton Makamure. Kempton and his colleague, Kenyan exile, Shadreck Ghutto, led a team of progressive young lecturers from the university such as the late Shepherd Mzombe and now High Court judge Ben Hlatshwayo, to provide an unparalleled school of ideological training for the then emerging radical trade union leadership at the ZCTU including comrade Lovemore Matombo, now the president of ZCTU, and others like Jeffery Mutandare, Morgan Tsvangirai, Isaac Matongo and Nicholas Mudzengerere, the last two now late. I am therefore pleased and comment you for keeping alive the memories of the heroes of the union movement and working people like Kempton by holding this annual lecture in his remembrance. The team came up with a Draft Code of Conduct, which is reflected in many of today's codes of conduct, particularly provisions relating to “the Aims and Objectives” and “Disciplinary Procedures.” These have greatly helped the labour movement and some of them have found their way in current labour legislation.

However, recent judgments emanating from the courts have totally neutralized the right to protection from unfair dismissal or to strike that we had won. The courts have virtually cancelled the right to reinstatement for workers successful in challenging their dismissal in courts, many of whom are militant union and workers committee activists, substituting it with awards for damages.<sup>3</sup> These damages amount to a total war against workers by the judges on behalf of employers. The damages and back-pay are calculated as at the date of dismissal with interest at the prescribed rate of 30% when inflation is over 250 million, officially, and money is losing value weekly.<sup>4</sup> Indeed the amounts of damages now being awarded by the courts mean that a worker unfairly

<sup>3</sup> See cases like: *Hama v National Railways of Zimbabwe* 1996 (1) ZLR 664 (S); and *United Bottlers (Pvt) Ltd v Murwisi* 1995 (1) ZLR 246 (S)

<sup>4</sup> As the courts have done in judgments like: *Ambali v Bata Shoe Co. Ltd* 1999 (1) ZLR 374 (S); and *Marcussen & Cocksedge (Pvt) Ltd v Dzikitani* SC 72/06 2.

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dismissed and given damages and back-pay equivalent to five years pay, gets in reality less than the transport money she or he used to come and collect the judgment! This is judicial-sanctioned murder of workers!

Let me give another example, this time pertaining to court procedures. It is a fact that if you want to bring a case to court, let's say *Chamunorwa vs. Emerald Hills*, and the said Chamunorwa is an ordinary worker who has been unlawfully dismissed for his activities as a union representative and makes an application to court for an urgent set-down of the matter, almost always, the reality is that the courts would turn down his application. But if Mr. Robinson who is a general manager of Company A has been suspended and he needs an urgent application to have his matter dealt with, that matter will be treated as urgent. This is because those in the judiciary respect Mr. General Manager because he is a representative of capital, the class from which the senior judges are drawn from. They cannot allow him to suffer for long therefore they ensure that differences amongst members of the capitalist classes are managed quickly. Similarly bosses and managers get big retrenchment packages, what they call "golden hand-shakes" whereas workers get peanuts when they lose their jobs.

The point I am making is that as a labour movement, we have had opportunities to push for reform of labour laws, in particular the Labour Relations Act. I can confirm that some of the aspects of ILO Convention 87 may be found in the Labour Act especially Section 104 as well as in Section 4 in terms of fundamental workers rights. In terms of ILO Convention 98 on the right to collective bargaining and the right to organize, I think the spirit is also reflected in section 74 of the Labour Act. The same goes with Convention 100 on the right to equal pay and ILO Convention 144 on the issue of tripartite consultation. My view is that apart from the right to strike, many other aspects of international labour laws have been put in our legislation. However, whatever we have achieved in pushing Parliament has been rolled back by another organ of the state, the judiciary, especially the Supreme Court, where today out of every ten cases, workers win only one! This shows that what is paramount in society is class ... as much as the judiciary is now black and headed by a black Chief Justice, one must not forget that capital has no colour, it can easily be black or white.<sup>5</sup> Whoever said that the law is in favour of capital is correct because currently the law protects those that have property. Therefore one of the biggest challenges we must address in constitutional reform is the need for the democratization of the judiciary, to ensure its radical overhaul to make it accountable to the people. But the bigger point I am making is that capitalism is a monster with many heads, if you cut one and leave the others, it will still strangle you. To move forward we have to take the heart and roots of the entire system.

### Why our class needs a proletarian Ideology

Let me refer to another interesting dimension. Zimbabwe is an independent state ... we are supposed to be post-colonial. But this is a funny post-colonialism which is almost the equivalent to neo-colonialism, for twenty eight years after independence, we are all still living under the Lancaster House Constitution, though it has been amended time after time. Similarly it is also not surprising that the Labour Act [Chapter 28:01] that we are using and talking of today is also an amendment of colonial legislation, namely the Industrial Conciliation Act. The challenge now therefore is: Under what circumstances and when shall the people be given an opportunity to write and speak about their rights, write their own constitution?

I must confess that we are in a very difficult situation because the struggle for workers rights, although initially manifest in legislation, at the end comes out through the court judgments. Those who teach the Law say that a judicial precedent is also a source of law. The fact that there are very few celebrated judgments in favour of workers is a cause for concern. We have the celebrated **Robert Zambezi** case wherein it was held that the employment code of conduct did not apply in relation to workers who wanted to go on strike<sup>5</sup>. Workers celebrated in that case but then came the **ZISCO Steel** case that laid that the code of conduct applies<sup>6</sup>. However, in the **Standard Bank v Chikonye** case, we wanted the court to refer to the ILO Conventions, but our judiciary said that an international instrument was not binding unless it has been incorporated in our local legislation.<sup>7</sup> Indeed as you know cde president Matombo, from the painful experiences of your union and its members, the Communications and Allied Services Workers Union of Zimbabwe, who have paid a dear price in leading the struggles for a living wage, the courts have now virtually extinguished the right to strike and therefore collective bargaining granted in the Labour Act, interpreting the enactment so conservatively that today it remains virtually impossible for workers to go on a lawful strike.<sup>7</sup> Is it any surprise that without such right, despite over fifteen years of collective bargaining, workers' real wages in virtually all industries are lower than they were before we won the right to collective bargaining, in fact hovering at less than 20% of the poverty datum line ... we live are lives even worse than slaves, yet we are supposed to be free citizens.

But the courts and the state are not our only problem. The real major problem that we have as working people is that if the representative of the employer is harassed we all help him to cry foul. I want to raise it as a challenge to us comrades in terms of

the inclusion of workers rights in the constitution-making process. I see this as a challenge that relates to the ideological maturity of our movement. This is a question you and I have to address urgently. From 1986 up to about 1990, the labour movement, that is the ZCTU and its affiliates had only two or three university graduates. Let us digest this comrades. I am saying that up to 1990, there were not more than three graduates who were employees of ZCTU and hardly any in the affiliates, with the most advanced educationally being artisans. I am raising this point because our Labour Act is largely borrowed from the Thatcher period. It is centered on the lines of managing ideological overtones within the working class movements. So you will find that in a newly independent Zimbabwe, the newly educated worker is quickly employed and becomes white collar, after three or so years he becomes middle class, and then he is co-opted out of the struggles of workers. So there was no incentive for university graduates to join us in the struggling labour movement. We had nothing to offer them, financially.

Instead the labour movement had to rely on the likes of Kempton Makamure and Shadreck Ghutto and a few of their students' activists like Lovemore Madhuku and Munyaradzi Gwisai, then called Enock Chikweche, for its ideological training and on labour law and political economy. The challenge therefore is for the youngsters at colleges and universities today. We need their visibility within the rank and file of the trade union movement because this is what develops the intellectual capacity of the labour movement. If that does not take place how then can there not be antagonism between the educated elite and the working class movement?

In conclusion I am also giving myself a challenge as a parliamentarian, who has come from the labour movement to continue the struggle at this new platform we have and mobilize other MPS from labour and others who are progressive to ensure we do our part and continue the struggle for a fair and just society not only for workers but the whole of society. We will therefore be very keen to work with you comrades in the coming constitutional reform process and the fight for the inclusion of progressive labour, gender and working peoples rights in any new constitution. But at all times as we continue with the struggle for constitutional reform, we must remain alert to the fact that without demanding and winning economic democracy and ensuring that the main means of production in our society are collectively owned and democratically controlled by the majority, there will be no real political democracy for us, whatever rights may be proclaimed in the new constitution. And that this can only come out of our united social struggles as labour, social movements and all the oppressed and not from any parliamentarian, lawyer or party.

Let me end by saying that we definitely need a paradigm shift in almost everything. There is a provision in the ILO Declaration, which says that *poverty anywhere constitutes a threat to mankind and prosperity*. The problem that we have as Zimbabweans is that we are hesitant to take up class positions. We want to wait to take class positions when the wind is blowing or when some other unusual event has taken place. This is why it is not surprising why we are all crying of the fact that maybe they (ZANU PF) came to take Morgan Tsvangirai away. We are so hesitant to take immediate action such that by the time we want to take action it will be too late. We are trying to approach the structures and attack from below. This is a challenge on its own that we must face to ensure that ZANU PF and Mugabe do not engulf Tsvangirai and the MDC under the guise of the Inclusive Government.

If you want to have a meal, you have to prepare it, because even if you have the firewood and the mealie-meal and meat you have to cook them for you to eat. This is so because food does not cook itself. If you go away without preparing the meal you will definitely not eat. It is also a challenge to us as the labour movement to take action for us to "eat." I salute you –the Zimbabwe Labour Center members because at this conference you have so many officials and activists from the labour movement. I am pleased to see a panel of workers and leaders from the labour movement. Such is very rare in the civil society, since apart from Labour and Economic Development Research Institute of Zimbabwe (LEDRIZ), today there is no other Non Governmental Organization (NGO) that invites representatives and leaders from the labour movement to play such a leading role in activities of this nature, even if it's the labour movement that gave birth to the political movement that now gives them so much prominence and cushy jobs and donors and set Zimbabwe on an irreversible path towards full democracy. But we will not tire and continue the struggle.

Thank you.

5. **Cargo Carriers (Pvt) Ltd v Zambezi and Others** 1996 (1) ZLR 613 (S).

6. **ZISCO Steel v Dube** 1997(2) ZLR 172 (S)

7. Section 111B of the Constitution of Zimbabwe.

<sup>7</sup> The courts okayed the dismissal of hundreds of workers who had gone on strike demanding living wage in cases like:

**Net\*One Cellular (Pvt) Ltd v Communications and Allied Services Workers Union of Zimbabwe & 56 Employees**

SC 89/05; and **Tel-One (Pvt) Ltd v Communications & Allied Services Workers Union of Zimbabwe** SC 26/06



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