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Labour Legislation In Zimbabwe: Historical and Contemporary Perspectives

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LABOUR LEGISLATION IN ZIMBABWE: HISTORICAL AND CONTEMPORARY PERSPECTIVES

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By

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INTRODUCTION

The relationship between the legal and social structures which underpin social relations of production is potentially an area of fruitful inquiry. It is the intention of this paper to examine the basis of the Industrial Conciliation Act promulgated in 1934 and subsequently amended in 1960 and labour legislation that was enacted at independence in 1980 and 1981 and later incorporated into the comprehensive Labour Relations Bill of 1985. It is hoped that a critical evaluation of the material basis of this legislation, its conjunctural significance and its expression of social contradictions will assist in our understanding of its importance and limitations. This exercise will be attempted in relation to the analysis of the evolution of the regulatory controls over trade unions, the structure of the dispute settlement machinery and the heated public and parliamentary debate on the merits and demerits of the Labour Relations Bill which now exists as a fully fledged Labour Relations Act (LRA).

LAW IN CAPITALIST SOCIETY: A THEORETICAL PERSPECTIVE

Recent discussion on the basis and role of law in capitalist societies has been quite illuminating. One such discussion was by Collins (1982), who observed that the theory of historical materialism was useful in explaining the various forms in which law emerged.

Just as there would be links between certain modes of production and a customary informal style of law so historical materialism linked the development of modern relations of production to the form of modern legal systems with their panoply of courts, legislature and lawyers (Collins, 1982:21 - 22).

Although such linkages existed, it was important not to lapse into the economistic approach which simplistically held that law was a mere reflection of the economic base. Laws were not a mere reflection of the mode of production but primarily creations of the state apparatus to advance the interests of the dominant class. As Collins pointed out:

> The class instrumentalist approach shows how the economic relations which determine the class structure of a society eventually exercise their influence on the law through the mediation of the state apparatus. In short, the economic base determines the legal superstructure, not instantaneously and mechanically, but through a process of class rule in which participants further their interests through the legal system (*Ibid.*29).

However, it sometimes happened that the ruling class could not pass any legislation which it wanted owing to the resistance of the subordinate groups. Those instances necessitated the modification of the intended legislation. This need not necessarily, however, detract from our assertion that the ruling class would always attempt to ensure that the legal apparatus at its disposal and the legislation which it sanctioned did not undermine its dominant position and interests.

Marx observed that capital was reckless towards the health or length of life of the worker unless it was under compulsion from society. As he eloquently pointed out:

> To the outcry as to the physical and mental degradation, the premature death, the torture of overwork, it answers: Ought these to trouble us since they increase our profits? (Karl Marx, 1954 : 257).

Resistance by capitalists to laws which ameliorated the hardships associated with workers' living, working and wage conditions was the "logical" response of a social and economic system which required the unfettered exploitation of workers. The history of capitalist development would, therefore, demonstrate that any changes in the conditions of workers for the better were the outcome of a prolonged struggle against the obduracy and resistance of capitalists against making concessions.

The establishment of a normal working day, for example, was the result of centuries of struggle between capitalists and workers.

According to Marx:

> The history of this struggle shows two opposed tendencies: compare, for example, the English Factory Legislation for our time with the English Statutes from from the 14th century to well into the middle of the 18th century. Whilst the modern Factory Acts compulsorily shortened the day, the earlier statues tried to lengthen it by compulsion.. It takes centuries ere the 'free' labourer, thanks to the development of capitalistic production, agrees, that is, compelled by social conditions, to sell the whole of his active life, his very capacity of work, for the price of the necessaries of life *(Ibid* 257-258).

The protractedness of the struggle by workers for better working conditions did not lie in the length of the struggle but also in the stratagems and delaying tactics utilized by the capitalists. In spite of the legislation passed on working hours in the first half of the 19th century, the capitalists either ignored its practical implementation or circumvented it with the connivance of the state. In Britain, for instance:

> For 30 years, the concessions conquered by the workers were (therefore) purely nominal, although Parliament passed five labour laws between 1802 and 1833, but was shrewd enough not to vote a penny for their carrying out, for the requisite officials, etc. They remained a dead letter *(Ibid.,*264).

Thus though capitalists could be compelled by pressure from working-class struggles to make concessions they were also quite historically adept at nullifying those concessions.

The struggles between workers and capitalists in 19th century Britain were of historic interest and they were discussed at length by Marx and other historians. Of particular significance were the conclusions which Marx reached. Firstly, the struggles demonstrated that :

> The changes in the material mode of production, and the corresponding changes in the social relations of producers gave rise, first, to an extravagance beyond all bounds, and then in opposition to this, called forth a control on the part of society which legally limits, regulates and makes uniform the working day and its pauses (*Ibid.*, 282).

Secondly, the creation of a normal working day was the product of a protracted civil war, more of less dissembled, between the capitalist class and the working class *(Ibid.* 283).

Meaningful studies of labour legislation, therefore, need to assess its material basis within the context of the conjuncture of class struggles and their outcomes in a particular society. Studies which do not assess particular legislation in relation to the balance of class forces within an overall framework of social relations of production would contain a built-in poverty. As Corrigan and Sawyer (1981) have remarked:

> The law has historically been a major battleground of the working class because, bluntly, it is important *whether capital rules unfettered or hedged about by factory legislation. It is important whether the state rules through the courts or through torture chambers and concentration camps* (Corrigan and Sawyer, 1981).

Furthermore, there exists the need to demystify the fetishism of law which capitalists and their state propagated. Such fetishism concerning the neutrality of law masks the biases and inequalities that underlie and perpetuate laws and social structures in capitalist societies.

EARLY LABOUR LEGISLATION IN ZIMBABWE

The colonization of Zimbabwe at the end of the 19th century was essentially a process of intrusion of capital whose earliest representatives were entrepreneurs who had built up fortunes out of diamonds and gold in South Africa. Cecil John Rhodes and his British South Africa Company epitomised the brigandage of this early capital. But capital on its own would not initiate economic growth, much less capitalist development; hence the immense appetite for labour by this capital.

The earliest steps to establish and regulate a labour market were the founding of Provincial Labour Bureaux in 1895 and the Labour Board of Southern Rhodesia (RNLB) in 1903. These institutions were labour procurement agencies whose role was facilitated by such legislation as the Pass Law (1902), which controlled the flow of unskilled labour and penalised desertions; the Masters and Servants Act of 1901; and the Private Locations Ordinance of 1910. Further labour legislation which the state formulated and administered on behalf of capital included the Compulsory Native Labour Act of 1943 and the Industrial Conciliation Act of 1934. The object of this legislation was to control the flow of labour and impede unionization and political activity amongst labour. State laws and the related institutions must be construed as responses to the imperatives of capital to broaden its productive capacity and scope to reproduce itself. They were, therefore, necessary conditions for its accumulation and reproduction.

It is, therefore, fairly clear that during the first 50 years of colonial capitalism in Zimbabwe there was an intense preoccupation with legislation relating to labour. This arose from the initial scarcity and reluctance of such labour due to the grinding nature of the labour processes on estates and in the mines and the abysmal wages. Hence the recourse to coercive labour-inducing legislation during this period. Multiple taxes were imposed on African males to coerce them into wage-labour. The Masters and Servants Ordinance which regulated relations between employers and workers in agriculture and domestic service was modelled on the Masters and Servants Act of South Africa of 1856. The Ordinance imposed criminal penalties on those who breached the employment contract and in practice those who were penalised in most instances were African workers. In 1911, "native" labour regulations were drawn up to regulate the recruitment and employment of African workers. The "native" Juvenile Employment Act was passed to regulate the employment of African youths in 1926. This was followed by the more comprehensive Industrial Conciliation Act of 1934 to which we now turn our attention.

THE INDUSTRIAL CONCILIATION ACT

This Act was the first comprehensive piece of labour legislation in terms of its regulatory scope in the colony. Its concise objects were to make provision:

- for the prevention and settlement of disputes between employers and workers by conciliation;
- for the registration and regulation of trade unions and employers' organisations; and

- for other incidental purposes.

The fact that it omitted the bulk of the working class including workers in agriculture and domestic service because they were "natives" possessed some significance in that in addition to its racist undertones, the Act nevertheless represented some substantial improvement of the lot of white workers and unions who were covered by the legislation. But did the Act really advance the interests of any other class except that of the capitalists? A close analytical reading of the Industrial Conciliation Act (hereafter referred to as the ICA in short) reveals the extensive powers of the state in industrial relations to maintain their stability.

The regulation of trade union formation, registration and activities was easily one of the most detailed sections in the ICA. It was, for example, specified that the constitution of every trade union should, among other things, fix the qualifications of membership; the election of representatives on any industrial council or conciliation board, and a periodic audit of the accounts and the circulation to members or branches of a certified statement of income and expenditure. The secretary of every trade union was required to submit:

> within two months after the receipt by him of a written demand by the Registrar a statement showing the number of members of the trade union and the number of such members whose subscriptions were in arrears for a period of over three months (ICA, 1934).

To ignore such a demand or refusal to comply with it courted a fine or jail.

The strictures on those unionists who aimed for executive posts in trade unions were considerable. Barred from office for five years were any unionists previously convicted of any offence involving fraud or dishonesty and barred for 10 years was any person who, as from December 1971, had been sentenced to a term of three months or more on conviction of any offence under the Law and Order (Maintenance) Act (Chapter 65) or the Unlawful Organisations Act (Chapter 91). More explicitly suppressive clauses prohibited the use of funds and facilities by trade unions for political purposes. Specifically, trade unions were denied rights to:

- affiliate with any political party or political organisation;
- use of any of its monies or funds for furthering the interests of any political party or political organisation;
- by any provision in its constitution require or permit any member thereof to subscribe to the funds of any political party or political organisation;
- use or permit the use of any of its services, equipment or facilities for the purpose of furthering the interests of any political party or political organisation; and
- accept any monies or services from any organisation which is permitted by its constitution or otherwise use its monies or funds for furthering the interests of any political party or political organisation (ICA, 1934).

The detailed references to the possibilities of linkages between trade union and nationalist parties contained the apprehension of the white minority regimes at the actual fusion of trade union and nationalist struggles during the 1950s through to the 1960s. It was, however, never quite possible to separate economic struggles from political ones under colonialism. The convergence between the two was quicker than under normal conditions of capitalism and post-colonial struggles. One of the major objectives of the ICA (1960), therefore, was to legislate for a suppressive divorce

between trade unionism and nationalism. Unions or their office-bearers were thus barred from accepting assistance from any organisation ...

> specified by the Minister, by notice in the Gazette, or from any person or agency acting on behalf of such organisation. For purposes of this subsection, "assistance" includes services, donations, loans and travel vouchers or tickets (ICA, 1960:63).

The ICA (1960), much more than the ICA (1934) had done, listed detailed regulations with regard to the constitution of a trade union. Some of the major regulations included "the keeping of books of account and the submission of such books of account for auditing at least once in every year", the holding of a secret ballot by ballot papers on any question of participation in any strike and such other matters as were prescribed *(Ibid)*. The constitution of a registered trade union was prohibited from containing any provision whereby any person was excluded on the grounds of race, colour or religion from membership. Nevertheless, and here there was a catch: it could provide (a) for the establishment of a branch of the union or organisation; and (b) for its membership to be divided into branches on the basis of class of work or the sex or the race or colour of the members or otherwise *(Ibid: 64)*. Furthermore, if the Registrar considered that the provisions in the constitution of any trade union in regard to the protection of "skilled and minority interests" or the voting rights of members were inadequate, he could recommend that such provisions be amended with a view to better the "protection" of those interests or rights, and the trade union concerned could then amend its consititution accordingly. This interventionist role of the Registrar in the protection of skilled minority interests was the norm rather than the exception. In the social and political climate of the 50s and 60s which verged on fascist racism, the manipulation of trade union regulations to safeguard the enfranchised minority which formed the political basis of colonial settler regimes was smothened by the familiar "divide and rule" tactics *vis-a-vis* the labour movement on a racial basis.

This panoply of powers included the conducting of investigations into the affairs of trade unions for various reasons. These included such circumstances as when the Registrar believed that "the provisions of this Act relating to the submission of any documents to him or the Minister" was not being complied with; or if he was of the opinion that any document so submitted did not disclose the true facts; or if he was of the opinion that any such union was not observing the provisions of its constitution or of the Act. The Registrar or an industrial relations officer authorised by the Registrar could, without previous notice:

> Enter the office of any registered trade union and may require the secretary of that union or organisation to produce to him there and then, or at a time and place fixed by him, all or any of the records of that union or organisation as he may specify which are or have been upon or in the premises or in the custody or under the control of that secretary, or may in like manner require from any person such records, and may examine and make extracts from any copies of such records and may require an explanation of any entries therein and may seize any such records as, in his opinion, may afford evidence on any matter to be dealt with under this Act (*Ibid.* 68).

Refusal to assist the Registrar in his investigations constituted an offence. The draconian nature of the Registrar's powers was quite clear but it was consistent with other suppressive and dictatorial aspects of the legislation.

The regulations pertaining to strikes and lock-outs were similarly instructive with regard to the material and ideological preoccupations of the state. No workers or trade union could declare or participate in a strike or in the continuation of a strike if the workers concerned were those referred to in paragraph (a) of subsection (1) of 101.

In addition, no workers or trade union could go on strike unless "all the relevant provisions of the constitution thereof" had been complied with; unless not less that 51 percent of a union's membership indicated by ballot that they supported the proposal to declare or take part in or in the continuation of a strike. Stricter controls militated against any organised strikes. The stiff conditions to restrain such strikes included the one that if any agreement, determination concerning the matter giving occasion for the strike or employment regulations had been made binding on the workers, the period for which the agreement, determination or employment regulations had been made binding must have expired. If such conditions did not exist and there was an industrial board or industrial council in the area and for the undertaking, industry, trade or occupation concerned, the matter giving occasion for the strike must have been submitted to and considered and reported in by such industrial board or industrial council. If this machinery was not available, the matter which constituted the source of the strike should have been submitted for the consideration of a conciliation board and if such a board did not exist in that particular undertaking, the dispute must have been referred to the Industrial Tribunal and the determination of the Tribunal published. Trade unions which were parties to a dispute could, however, within 28 days of the determination of the Industrial Tribunal notify the Minister in writing of their intention not to be bound by such determination.

The procedures to be followed before a strike could legally be declared were so deliberately cumbersome to minimise, if not deter, their occurrence:

> Where notification has been given to the Minister in terms of subsection (4), the determination to which the notification relates shall not become binding after the expiry of a period of 42 days next following the date of publication of such determination by the Minister in terms of this Act and the employees and employers who, and the trade unions and employers' organisations which, are parties to the dispute concerned may upon the expiry of the period aforesaid lawfully declare or take part in or in the continuation of a strike (ICA: 116).

Nevertheless, if he deemed it "expedient" in the public interest to do so, the President could at any time before the expiry of the 14 days after the date of receipt by the Minister of any notification in terms of subsection (4) declare that notwithstanding any such notification, the determination concerned should become binding from such date or dates as to the President "seems most appropriate in the circumstances to give effect to the intention of the Tribunal". The President's declaration made it illegal for workers to strike; made the determination binding on the workers and employers affected; and bound trade unions and employers in those relevant instances to the determination of the relevant industrial council.

A significant aspect of the ICA was its tolerance and indeed encouragement of a multiplicity of craft-centred trade unions within a particular industry. The term ascribed to this variety of unionism was "vertical", which was more open to abuse and manipulation than "horizontal" representation. As a clause in the ICA (1960) specifies:

> any trade union may apply to the Registrar for the registration of its union in respect of (a) one particular undertaking, industry, trade or occupation; and (b) a particular area and (c) the interests of persons engaged in a particular class or particular classes of work (ICA: 1960).

Vertical rather than integrative industrial unionism was the logical vehicle for the fragmentation of the trade union movement.

The institutional structure that the ICA (1960) established as dispute settlement machinery consisted of industrial boards, conciliation boards, Industrial Court and

ministerially appointed mediators and arbitrators. Industrial boards could be established in any particular industry, undertaking or trade and both employers and workers were entitled to equal representation on them. But the Minister possessed the prerogative to appoint a board in terms of subsection (1) on his own initiative or on representations made to him by an employer or worker in the undertaking, industry, trade or occupation concerned. A board consisted of a chairman chosen by the Minister, two or more persons chosen by the Minister "as in his opinion are likely to assist the board in carrying out its functions efficiently". The role of the industrial board was to :

> carry out its investigation in accordance with the provisions of this Act and make recommendations in regard to the conditions of employment in the undertaking, industry, trade or occupation concerned with the object of preventing disputes from arising or of settling disputes that have arisen, including recommendations for the making of employment regulations if, in the opinion of the board, such regulations are desirable (ICA: 1960).

Quite obviously, industrial boards were established to be conflict-resolving institutions but in whose composition and direction the Minister had a preponderant voice. Research into their operations would be required to assess their role in maintaining an industrial relations structure heavily weighted against the workers.

In those occupations or trades where industrial boards did not exist, conciliation boards were set up to resolve disputes. Application for the establishment of a conciliation board could be made by any party or parties to the dispute to the Minister who would approve the same if he was satisfied that a dispute did exist and if he believed that the application was sufficiently representative of the workers and employers concerned. The Minister determined the size and composition of the conciliation board but employers and workers were entitled to equal representation. Furthermore, he could appoint a mediator to aid "the settlement of a dispute" on the application to that effect by an industrial council or conciliation board. A mediator would normally confer with the council or conciliation board, conduct such inquiries and investigations as he deemed necessary in the attempt to achieve the settlement of a dispute. He would then report to the Minister on the results of his mediatory efforts.

Finally, another institution of importance in the resolution of industrial disputes was the Industrial Tribunal whose determinations were intended to be binding on the parties concerned. At the apex of this whole edifice of dispute-settlement machinery was the Industrial Court which heard appeals and generally dealt "with all matters necessary or incidental to the performance of its functions" under the ICA. The picture that exists of this paraphernalia of institutions, powers and ministerial prerogative bespeak of the bureaucratic imprint and procedural rules that severely inhibited workers' opportunities to declare industrial action to back their demands for better conditions.

THE LABOUR RELATIONS BILL (1985): THE DIFFERENT PERSPECTIVES

Probably the most significant piece of legislation which the Zimbabwe Parliament debated and approved during the first five years of independence was the Labour Relations Bill of 1985. This was a comprehensive code of regulations relating to employment, remuneration, collective bargaining, the settlement of disputes, the registration and certification of trade unions and employers' organisations. The Labour Relations Bill (hereafter referred to as the LRB in short) incorporated some of the provisions contained in such existing legislation as the ICA and most aspects of

post-independence legislation relating to minimum wages, conditions of employment and terms of dismissal. But what distinguished the LRB from the previous labour legislation? Did it really represent a fundamental departure as far as labour relations were concerned? What were the conjunctural aspects which impinged on its general character and objectives? These are all very crucial questions which merit our fullest consideration.

The discussion of the broad social, economic and political background to the legislation should be an appropriate starting point of our analysis. Before independence in 1980, Zimbabwe was a capitalist society of a white-settler variety with all its characteristics of morbid racism, rabid anti-socialism and inchoate fascism. It was, however, capitalist insofar as the dominant economic system was a capitalist one buttressed mainly by imperial capital which had spawned an economy which simultaneously consisted of a comparatively well-developed infrastructure of transport networks, mining, farming and manufacturing and a backward, underdeveloped sector of largely peasant commodity producers. The latter participated in capitalism at the sites of exchange (through the sale of their products and consumption of certain goods and services); and in the labour process in capitalist enterprises via the production of the abysmally paid African labour.

The foreign domination of the capitalist settler economy raised fears of its collapse in the event of a mass white exodus on the Mozambican or Angolan scale. It was feared that the flight of massive amounts of capital and experienced manpower would damage the economy and delay reconstruction. This provided the rationale for the post-independence policy of reconciliation which became a watchword in Government economic and political strategy.

It became the justification for "realism" and "pragmatism" in economic planning. The inherited capitalist structures constituted the historical and contemporary reality of the Zimbabwean social formation. It was, therefore, "conventional wisdom" not to unduly tamper with the system and structures of production and their corresponding social and political relations. If you add to the scenario the observation that the social and political phase in which the young republic found itself was that of a national democratic nature then such conventional wisdom was not entirely misplaced. The immediate objective in the hostile environment which bellicose South Africa represented was, therefore, the creation of political and economic stability.

The balance of class forces tilted towards capitalist interests and once the initial fears about wholesale nationalisation and socialisation receded in 1981, the various coalitions of these interests regrouped. Throughout the same period, the labour question exercised not only the mind of Government but that of capital as well. The exercise to draft the LRB would take a total of four years.

The haggling that accompanied the deliberations of the legal draftsmen and the interminable meetings with employers' organisations and trade unions typified the kind of semantic and ideological struggles that characterise duels between the intellectual representatives of the bourgeoisie, state apparatus and trade unions.

It would be fairer to refer specifically to the conceptions of the State, employers and workers with regard to that long-awaited law. From the point of view of the State, the significance of the LRB lay in its thrust towards socialism. As former Labour Minister Shava remarked:

> From the point of view of the ZANU (PF) Government the Bill is a pillar for our socialist thrust and commitment, because its centrality lies at the core of the Party's political principles. It is a reaffirmation

of the Party's unshakable belief and conviction in the superiority of socialism over capitalism (*Shava*, 1985: 21).

The consistency of the Government's adumbrated socialist objective permeated its statements with regard to the LRB throughout the public and parliamentary debate on it.

Similarly consistent was the apologetic stance of the Government toward "inherited" capitalist structures! In the Senate debate, it was remarked that the Bill was neither a political manifesto nor an investment code; and while it laid the foundation of a new system of labour relations it did not disturb the basic economic structure of the country (*Hansard : Parliamentary Debates (Senate)* Vol. 9, No. 37, 1433). Moreover, while Government regarded the Bill as an instrument for restructuring the relations of production in the period of transition to socialism, it was cognisant of the concrete reality of capitalism and the dominant role of employers in industrial relations. Consequently, the Bill sought to promote, advance and protect workers' and employers' interests in order to foster balanced "management-labour relations". Clearly, tension existed between the socialist objective and the concrete capitalist reality.

The perspective of the bourgeois representatives was illuminating, too. It was furious over the intended displacement of the ICA (1960) and the enshrinement of fundamental rights for workers in the LRB and repeatedly reminded Government of the concrete reality of capitalism in Zimbabwe. One Senator argued that:

> the Minister (of Labour) should cease placing a terminal date on capitalism and private enterprise in this country ... I would urge the Minister to face the facts that a socialist utopia is just not on and it will not happen and that the economy of Zimbabwe will be mixed into the distant future; maybe for always (Parliamentary Debates, Senate; *Hansard*: 1380-81 Vol. 9, No. 36).

An even more virulent response to the appearance of the Bill was that of a former minister in the Smith regime, Van der Byl, who remarked that:

> this is really a most awful Bill and I think one of the most inept and biased pieces of legislation I have ever seen go through in this House (Hansard: 1837 Parliamentary Debates (House of Assembly).

But the most bewildering commentary on the Bill was from yet another Senator who earnestly believed that:

> future historians researching and writing the social history of the late 20th century will no doubt ponder the reasons why a Minister in a newly emergent state on the African continent produced an 18th century vintage piece of legislation and called it the "Labour Relations Bill 1985" ... In 1985 it is an anachronism. It accurately reflects the thinking of Karl Marx who, in his own environment and working conditions applicable over 200 years ago, was a deep and intelligent thinker ... (Parlimentary Debates, Senate; *Hansard*: 1387-88).

The response to the presentation of the Labour Relations Bill in Parliament was muted on the part of the labour movement. Its passage coincided with a period of intense crisis within the Zimbabwe Congress of Trade Unions (ZCTU) which was resolved only by the removal of the leadership. The crisis had stemmed from years of chronic maladministration, embezzlement of funds, unmitigated corruption and internecine squabbles which combined to damage the movement's domestic and external credibility. Ostentation and opportunism by the leadership provided an alibi for not seriously participating in the consultations and debate on the draft Bill before its introduction in Parliament. Indeed, several trade unionists lamented that the first time they knew of the final version of the Bill was when it was presented to Parliament (*The Sunday Mail*, 10th February 1985). But what were the major and salient provisions of the LRA? Was it as socialist a piece of law as both Government and opposition members agreed it was? And did it represent a fundamental departure from the ideological premises on which

previous labour legislation was based? These are the substantive issues to which we now turn.

THE MAJOR ASPECTS OF THE LABOUR RELATIONS ACT

As we have remarked above, the LRB was the most comprehensive legislation on labour to date in Zimbabwe. Its objectives were wide-ranging enough. In the preamble these were specified as follows:

- to declare and define the fundamental rights of workers;
- to define unfair labour practices; to regulate conditions of employment and other related matters;
- to provide for the formation, registration, certification and functions of trade unions, employment councils and employment boards;
- to regulate the negotiation, scope and enforcement of collective bargaining agreements;
- to provide for the establishment and functions of the Labour Relations Board and the Labour Relations Tribunal;
- to provide for the prevention of labour disputes and unfair labour practices;
- to regulate and control employment agencies;
- to repeal the Industrial Conciliation Act (Chapter 267), the Minimum Wages Act 1980, and the Employment Act 1980.

The new elements in the LRB related to the definition of the fundamental rights of workers and unfair labour practices; the setting up and spelling out of the functions of workers' committees; the regulation of the negotiation, scope and enforcement of collective bargaining agreements; and the regulation and control of employment agencies.

Our task would be to identify the salient aspects constituting both old and new elements in the legislation and relate these to the overall socialist objectives of Government and the tension which existed between these with the "reality" of capitalism in Zimbabwe today. Quite clearly the definition of the fundamental rights for workers represented a departure from previous legislation which had excluded "native" workers from the jurisdiction of law (the ICA of 1934) and of farm and domestic workers (the ICA of 1960). References to workers' rights had existed in a generally watered-down form and even then the machinery for their enforcement was often obsolete. The fundamental rights of the workers in the LRB ranged from entitlement to membership of trade unions and workers' committees without fear of reprisals or victimization from management; the protection of workers against discrimination in recuitment, advertisement of employment, in the determination of remuneration and benefits and in the creation, classification or abolition of jobs or posts. Discrimination on the basis of race, tribe, place of origin, political opinion, colour, creed or sex in relation to the foregoing was outlawed and punishable by a fine of not more than $2 000 or to imprisonment not exceeding one year or to both such fine and such imprisonment. Workers who had been victims of discrimination could claim for damages from the employer "for any loss caused directly or indirectly as a result of the contravention". For the purpose of the law :

> A person shall be deemed to have discriminated if his act or omission causes or is likely to cause persons of a particular race, tribe, place of origin, political opinion, colour, creed or sex to be treated (a) less favourably or (b) more favourably than persons of another race, tribe, place of origin, political opinion, colour, creed or sex, unless it is shown that such act or omission was justifiable and otherwise not prohibited as to the requirements of the occupations concerned (LRB, 1985: 12).

The provisions against discrimination completely negated the racial clauses in the ICA and enshrined the entitlement to equal rights for female workers. For the first time, the rights of female workers to jobs, remuneration and paid maternity leave (the bulk of it) were fully recognised and protected where previous labour legislation had been eloquently silent. The definition of workers' fundamental rights was a significant statement on Government's perception of those rights and the need for their protection. This is the progressive essence of this section of the LRB : it would be difficult to find fault in it on any grounds except perhaps to look forward to the day when maternity leave would be fully paid!

In addition to these new rights, there existed clauses to safeguard the workers' rights to fair labour standards which related to minimum wages, maximum number of hours of work per day, occupational health and safety, and rights of the worker to seek access to "any lawful proceeding that might be available to him to enable him lawfully to advance or protect his interests as an employee". Contravention of fair labour standards was an offence punishable by a fine of not more than $2 000 or imprisonment not exceeding one year or both. Further, the protection of workers' rights to democracy in the workplace was guaranteed. For that purpose, it was stipulated that workers should not be obstructed from :

> forming or conducting any workers' committee for the purposes of airing any grievance, negotiating any matter or advancing or protecting the rights or interests of workers; or threaten any employee with any reprisal for any lawful action taken by him in advancing or protecting his rights or interests (*Ibid.* 14).

Every employer was, therefore, required to allow a labour relations officer or representative of the appropriate trade union or employment board to have reasonable access to his employees at their workplace during working hours for the purpose of advising workers on the law relating to their employment; advising and assisting workers in regard to the formation or conducting of workers' committees and trade unions; and ensuring that the rights and interests of workers were protected and advanced *(Ibid).* In addition, the employer was expected to provide these officials with reasonable facilities and access for the exercise of such functions.

Another new element in the LRB was the spelling out of employment practices. An employer was deemed to have committed an unfair labour practice if by act or omission he obstructed any worker in the exercise of any right conferred upon him in terms of the Act; contravened any provision of Part II of the Act; refused to negotiate in exercise of any right conferred upon him in terms of the Act; contravened any provision of Part II of the Act; refused to negotiate in good faith with a workers' committee or trade union which had been duly formed and authorised to represent any of his workers in relation to such negotiation; or refused to to co-operate in good faith with an employment council or employment board on which the interests of any of his workers were represented. Trade unions and workers' committees were also deemed to have committed an unfair labour practice if they contravened their constitutions; recommended illegal strikes; or failed to give workers proper representation. Thus the concept of unfair labour practice possessed novelty in that it sought to protect workers' rights from encroachment by the employers and from negligence by the representative workers' organisations.

For the purpose of promoting democracy at the workplace, an important innovative instrument was formed in 1980 in the shape of the workers' committees whose role was clearly defined in the LRB. Workers' committees are organisations created and elected by workers to represent themselves in discussions and negotiations with management. Consisting entirely of workers, they represent workers at the plant level on any issue affecting their interests and rights. They could negotiate collective bargaining agreements with an employer provided that the trade union representing the workers had not negotiated one. More broadly, the aims and objectives of workers' committees were defined as acting as a direct link and means of communication between management and workers. Thus they provided a channel for the presentation of and discussion with management about workers' requirements and grievances; the promotion of worker participation; the enhancement of stability and good worker/management relations. Their role also entailed the encouragement of settlement of differences and disputes by conciliatory methods, the promotion of productivity by generating a stable and good atmosphere within the company and in particular within the working environment, and co-operation with the established trade union in ensuring, where applicable, that the industrial agreement or the industrial regulations were observed to the mutual benefit of workers and management (Government of Zimbabwe, 1981).

It is nevertheless useful to remember that the role and function of workers' committees as defined in the LRB merely formalised and regularised what had been a *de facto* situation since the formation of the committees in 1980/81. In a recent study we have observed that following the unprecedented and sustained strikes of 1980 and early 1981:

> The Government saw a solution to the communication gap (between workers and management) in the establishment of liaison committees which later became known as"'workers' committees". The Minister of Labour urged workers to channel their grievances to management through committees elected by workers themselves... Thus the establishment of workers' committees in various enterprises may be viewed as an additional response to the industrial relations crisis experienced at independence... As an institutional innovation, the workers' committees came to stand on their own as a necessary worker body to defend workers' interests. It was a product of those workers' struggles, largely the strikes at independence (Sachikonye, 1984: 37; 1986).

In the Labour Relations Bill, the roles of trade unions and workers' committees were made complementary with the former, however, possessing greater clout.

The role of the ZCTU in the first four years of independence had not served to build up a cohesive labour movement. It was unable to fill the vacuum in leadership and ideological direction which existed in the labour movement. Its internal weakness and excessive dependence on external sources for funding illustrated its vulnerability to the inevitable temptations of corruption and authoritarianism. The resultant wranglings tarnished its image considerably while simultaneously allowing Government to act as mediator in the resolution of those problems. Towards the end of 1984, Government had intervened even more deeply into ZCTU affairs through the role and functions of the Administrator it appointed to rectify and run the affairs at the ZCTU headquarters until its next congress. In the LRB the interventionist role of the State is legitimated in explicit clauses on the role of an Administrator in those circumstances in which trade unions were under investigation:

> The Minister shall appoint in writing an investigator who shall, at all reasonable times and without prior notice, have power to enter any premises; question any person employed on the premises; and inspect and make copies of and take extracts from any books; records or other documents on the premises connected with or related to the trade union under investigation... An investigator shall report the results of his investigation to the Minister as soon as is practicable and may recommend that in the case

> of an unregistered trade union or federation ... such trade union or federation be wound up; or in the case of a registered or certified trade union or federation, such trade union or federation be de-registered and wound up or be administered (LRB, 1985: 75-76),.

The Minister could apply to the Tribunal to appoint an administrator and such assistants as the administrator might require to administer the affairs of the union concerned provided that he could not be appointed for more than six months or until the next annual general meeting of the trade union or federation. In terms of the LRB, an administrator would have powers to prohibit any person who was an office-bearer of the trade union from

> expending, disposing of or in any way dealing with any property of the trade union or federation concerned or operating any account with any bank, building society or other financial institution on behalf of the trade union or federation concerned.

The administrator would also possess the authority to direct any person who was an office-bearer of the union or federation concerned "to refund or return to such trade union or federation any property which he has misappropriated" from it. Contravention of this order and any obstruction of the investigator or administrator in the performance of his functions would be an offence.

The roles ascribed to the State through the functions of investigators and administrators were in some quarters interpreted as unnecessarily interfering with the autonomy of trade unions. That their roles and functions had a remedial intention could not be doubted; whether these would result in a healthy clean-up of the dross in the trade unions or federations concerned was an open question still. The role of the investigator was, of course, a carry-over from the ICA (1960) as we observed above. Under the ICA, an industrial relations officer on instructions from the Registrar undertook the investigations. But the office of the administrator is a slight innovation.

Probably the most controversial section of the LRB was the one that specified the circumstances and sectors in which strikes might be resorted to. The right to strike was generally accepted to be a fundamental right of workers and any encroachment on it is regarded with suspicion. Yet no social system - capitalist or socialist - countenances strikes. They are viewed as disruptive operations which are conducive to economic and political chaos. Governments by their very nature would favour as many safeguards and restrictions as possible on strikes; the lengthier the procedures that had to be followed before it would be "lawful" to strike the better!

In the LRB the sectors in which strikes were prohibited constituted a vast portion of the economy. Those sectors were euphemistically termed "essential services". These include the following : (a) any service relating to the generation, supply or distribution of electricity; (b) any fire-brigade or fire service; (c) any sewerage, rubbish disposal or other sanitation services; (d) any health, hospital or ambulance service; (e) any service relating to the production, supply, delivery or distribution of food or fuel; (f) any service relating to the supply or distribution of water; (g) mining, including any service required for the working of a mine; (h) any communications service; (i) any transport service and any service relating to the repair and maintenance, or to the driving, loading and unloading, of a vehicle for use in any transport service; (j) any service relating to any road, railway, bridge, ferry, pontoon or airfield; (k) and any other service or occupation which the Minister may, after consultation with the appropriate trade union and employers' organisation, declare by notice in the Gazette to be an essential service *(Ibid:* 65-66). Thus strike activity was illegal in a large range of sectors. Indeed the range of "essential services" was wider than that specified in the ICA (1960)..

Moreover, circumstances for resorting to striking were constrictive enough. No strike might be threatened, recommended or engaged in by any workers, workers' committee or trade union if the workers concerned were engaged in an essential service unless redress in respect of the dispute concerned had been sought in terms of Part XIII or in respect of any matter that had been determined or disposed of in terms Part XIII. A strike should not occur in contravention of a "show cause order" or "disposal order" if the matter in dispute was governed by existing employment regulations or collective bargaining agreement. No workers' committee should organise one if there was in existence a certified trade union which represented the workers concerned and had not authorised the strike. Similarly, no trade union, unless it was certified, should undertake industrial action (*Ibid.* 67). Workers could nevertheless strike if a certain occupational hazard was feared to pose an immediate threat to their health or safety; and if it was in defence of an immediate threat to the existence of a workers' committee or a registered or certified trade union. Workers were, however, generally required to give 14 days' written notice of intent to resort to such action specifying the grounds for the intended strike to the party against whom the strike action was to be taken.

Ministerial intervention in circumstances where strikes were imminent could delay the intended action for a considerable while. The Minister on his own initiative or on behalf of the person affected by a strike or lock-out could issue an order calling upon any party to the dispute to "show cause" why a "disposal order" could not be made. The "show cause" order "may direct that pending the determination of the dispute by the appropriate authority, the (strike) concerned be terminated, postponed, suspended or reduced in scope". When a "show cause" order was made, the appropriate authority would inquire into the matter and provide the concerned parties with an opportunity to make their representations. After the inquiry, the appropriate authority might issue a disposal order directing that :

> The strike or lock-out concerned be terminated, postponed or suspended or reduced in scope; or that the issue giving rise to the strike or lock- out concerned be referred to another authority...and that pending the determination of the issue the strike or lock-out concerned be terminated, postponed, suspended or reduced in scope (*Ibid.* 69).

The introduction of "show cause" and "disposal" orders had the effect of delaying strike action and allowing "a cooling-off" period. As we observed, analogous procedures had to be followed in the ICA (1960) to minimize the possibilities of strikes. There was, however, a new departure in the LRB in that strikes could take place where occupational and health factors warranted it and where the existence of a trade union or workers' committee was in jeopardy. Some of the initial reaction to the strict conditions of striking was very critical : in the words of one trade unionist, "where will the protection of a worker be if he is not allowed to strike?" *(The Sunday Mail, op. cit.)* Another remarked that :

> We can try to negotiate with the employers but they know we cannot do anything, we cannot strike, we can do f... all and we can be detained (*Ibid.*)

The anxiety concerning the undermining of the negotiating strength by unions because of the proliferation of "essential services" was real enough. The possibility that unscrupulous employers could take advantage of this situation did exist.

The Labour Relations Bill spelt out the various procedures and machinery for the settlement of disputes. The officials who were to be involved in industrial relations included hearing officers, labour relations officers, regional hearing officers and registrars. The institutions which would adjudicate industrial relations cases would be

the employment boards, the Labour Relations Board and the apex of the administrative structure, the Labour Relations Tribunal. The administration of the LRB would, therefore, depend very much on how smoothly these various officials and institutions performed their tasks and interpreted the law.

Playing a pivotal role in the implementation of the LRB, however, was the Minister of Labour who would wield extensive powers. The diffusive nature of his authority underlay the whole Act and resulted in the diminution of the powers formally belonging to the Registrar.

It is, however, necessary to point out that ministerial powers were ultimately State powers and so the concept that legitimized those powers was not so much one of the personal responsibility of a Minister as of increased State intervention in industrial relations. Such intervention was virtually guaranteed and amplified in the LRB. in addition to the instances that we have already referred to as ones in which a Minister might intervene: the investigation and administration of trade unions; their registration and certification; the constraining of strikes; the Minister would also possess the power to fix minimum and maximum wages; and "where the national interest so demands" supervise the holding of elections of a registered or certified trade union. The Minister also possessed the powers to annul a collective bargaining agreement between workers and management if it was not in the interests of consumers or the economy in general.

In some quarters, the possession by the State of such sweeping powers was scrutinized very critically. The Members of Parliament representing minority parties and the Independents had a field day criticising the Minister of Labour. One Mr. Field observed that:

> With those regulatory powers, he (the Minister) has literally all the powers to do everything without the rest of the Bill... I think it gives a Minister far too many powers, to make regulations on various aspects. (Parliamentary Debates ; House of Assembly ; *Hansard*. 1448).

Concurring completely was another who remarked that :

> We are now enshrining dictatorial powers for the Minister. Who knows, next year or in five years' time, we might have a completely unreasonable Minister. I can see no purpose in giving the Minister dictatorial powers. Unintentionally, historically speaking, throughout the world, once this is done, sooner or later the Minister must use those powers (*Ibid*. 1500).

And yet another in reference to the relations between State and trade unions observed that:

> While in one vein the Bill seeks to encourage the formation and consolidation of the trade union movement in the country, hence we have the ZCTU, it appears to me that in another vein we are pulling the carpet from underneath the ZCTU How on earth can the ZCTU be an effective organ when in actual fact its powers are undermined as a trade union movement by the Bill itself? (*Ibid*.1510 - 11).

At the level of rhetoric, the critique of the excessive State powers was searchingly eloquent but some of the legislators had served in the colonial administration that wielded even more draconian measures against trade unions.

As we outlined above, the colonial state wielded enormous repressive powers which checked working-class mobilization. To that extent, the critique might be ignored. The question nevertheless remains as to why it was felt necessary for the State to possess such extensive powers in industrial relations. A clue to its understanding was perhaps the paternalism of the bureaucratic apparatus in the State towards a faction-ridden labour movement that had been undergoing crisis after crisis during the first four years of independence. Whether that paternalism was justified or the wisest response to the reality of a weak labour movement was unclear.

It is now left to provide a summary of the major issues that were identified in a heated debate of the LRB which in a way demonstrated the existence of the democratic spirit that still prevails in Zimbabwe in some quarters. It was quite interesting that the LRB was analyzed by some in utilitarian terms. According to *The Sunday Mail* :

> The rationale for the Labour Relations Bill is, therefore, tacit and commonsensical...But it would be harmful to the economy for the Bill to go to the other extreme and seek to protect the interests and rights of workers alone... Experience shows many of them to be hypochondriac malingerers, chronic absentees or lazy or undisciplined drones. Therefore, while it is necessary to protect workers from unscrupulous employers, it is equally necessary to protect industry from irresponsible workers. The law must seek to balance the interests of the three essential factors - employers, industry and workers (*The Sunday Mail*, 27th January 1985).

The Financial Gazette (1st March 1985) noted the "extraordinary powers" ascribed to the Minister of Labour and urged that "how he uses these will be the test to determine whether he adopts an adversarial stance towards employers on behalf of labour, or whether he will take the wider perspective that good labour relations embrace all parties in the national welfare". Platitudes of this nature abounded, underscoring the adherence to the assumption that the State was some impartial mediator in relations between capital and labour. It was, of course, unscientific to define the State as a disinterested institution which possessed no material basis in class.

A critique of the preceding position was that by *Moto* (1985 : 10-11) which believed that the basis of State intervention was too broad so much so that "whose interests the Bill will, in balance, serve, will to a large extent depend on how the Minister wields his powers." At a seminar organized by the *African Association of Political Science (Zimbabwe Chapter)*, a more radical critique of the LRB was attempted. The legislation was viewed by some as a reflection of the dominance of capitalism *vis-a-vis* labour which had historically been too disorganized to seize the initiative in the struggle for socialism. In the opinion of an official of the Employers' Confederation of Zimbabwe (EMCOZ), the LRB turned out to be not as horrifying and all-embracing as many had originally thought. Such sober analysis was quite different, of course, from the emotive comments elsewhere.

Quite clearly the public and parliamentary debate revealed the polarization of positions between those who advocated more rights for workers and those who resisted this. In a sense, the LRB was construed as a threat to capitalist interests. It was, therefore, instructive if not inevitable that most of the opposition came from institutions representing capitalist interests. To that extent, Minister Shava was right in summing up that :

> The recent debates, comments and criticism of the Bill clearly indicate who the proponents and apologists for capitalism and exploitation are, and who the champions of the workers are (Shava, *op.cit.*25).

The debate in Parliament certainly demonstrated this phenomenon clearly. Yet support for the LRB tended to be eloquently muted even within Parliament itself. The diffuse Left never really mounted a sustained, constructive evaluation or critique of the LRB. It could have come out more forcefully and welcomed its progressive aspects while simultaneously identifying its limitations. But then those institutions which were to be most affected by the LRB - the trade unions - did not either.

CONCLUSION

The ideological and material basis of law in capitalism was discussed in the first section of the paper: it was contended that the law has historically been a major battleground of the working-class because it was crucially important in the struggles for its emancipation. At the same time the fetishizing of the law by the bourgeoisie in order to enhance its efficacy as an instrument of control and regulation of its requirements for accumulation was pointed out.

The provisions of early labour legislation, and in particular those of the ICA, demonstrated clearly the material and ideological preoccupations of the white settler regime and capital. If initially black workers were even denied the privilege of being identified as workers in the ICA of 1934 and thus were outside its purview, subsequent legislation placed stricture upon stricture on their freedom to organise into viable trade unions, to participate in nationalist politics and to undertake industrial action to back up their legitimate demands for improvements in working conditions.

In the evaluation of the Labour Relations Bill it was suggested that although it progressively superseded the antiquated and repressive labour legislation of the colonial era, it retained certain aspects of that legislation relating to the regulation of trade unions and extensive State bureaucratic powers of intervention in industrial relations. The heated debate on the degree of ministerial powers in this regard and the response of the representatives of the bourgeoisie in Parliament and outside reflected anxiety on the possible effects of the legislation with regard to socialism. The actual implementation of the legislation will determine the degree of its socialist thrust or otherwise.

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