

## TABLE OF CONTENTS

	Page
Table of Contents.....	1
List of Abbreviations.....	4
Executive summary.....	i-xi
<b>CHAPTER I.....</b>	<b>5</b>
<b>INTRODUCTION.....</b>	<b>5</b>
<b>Statement of Scope of the Report.....</b>	<b>6</b>
Terms of reference.....	8
Labour Law Reform Committee.....	10
Interpretation of the Terms of Reference.....	10
Methodology.....	11
<b>CHAPTER II.....</b>	<b>12</b>
<b>THE LABOUR REGIME IN TANZANIA.....</b>	<b>12</b>
Historical Labour perspective.....	12
State Management of Labour.....	14
Need for change.....	16
<b>CHAPTER III.....</b>	<b>18</b>
<b>THE CONTRACT OF EMPLOYMENT.....</b>	<b>18</b>
Introduction.....	20
Terms and conditions of service.....	20
Productivity.....	22
Worker's Participation.....	23
Determination of the contract of Employment.....	28
<b>CHAPTER IV.....</b>	<b>32</b>
<b>TRADE UNIONS.....</b>	<b>32</b>

Background of Trade Union in Tanzania.....	32
Statutory Trade Unions.....	35
Free Trade Unions.....	40
Analysis of the Ordinance and the Act.....	42
<b>CHAPTER V.....</b>	<b>59</b>
<b>COLLECTIVE BARGAINING.....</b>	<b>59</b>
Collective Bargaining in the Public Sector.....	59
Collective Bargaining in Private Sector.....	63
<b>CHAPTER VI.....</b>	<b>69</b>
<b>SETTLEMENT OF DISPUTES.....</b>	<b>69</b>
Disciplinary Control in the civil service and Local government.....	69
Disciplinary Code.....	70
Conciliation Boards for Management Cadre.....	74
Dispute and Trade Disputes.....	75
Strikes .....	77
<b>CHAPTER VII.....</b>	<b>84</b>
<b>ADMINISTRATION OF LABOUR LAWS.....</b>	<b>84</b>
Labour Statistics.....	86
Labour Advisory Board .....	87
Workmen’s compensation .....	88
Child Labour.....	89
Child Labour in Tanzania.....	90
Causes of Child Labour.....	91
General Findings.....	93
Regulatory measures taken to combat Child Labour .....	95
Experience from other countries.....	98
Employment of children in Training Institution.....	98
Protection of child’s Health and safety.....	99

Offences and Penalties.....	100
<b>CHAPTER VIII.....</b>	<b>103</b>
<b>RECOMMENDATIONS.....</b>	<b>103</b>

**APPENDICES:**

**LIST OF ABBREVIATIONS**

ATE	-	Association of Tanganyika Employers
DPP	-	Director of Public Prosecutions
EA	-	East African
GS	-	General Scale
HAT	-	Housing Appeal Tribunal
ICT	-	Industrial Court of Tanzania
ILO	-	International Labour Organisation
IMF	-	International Monetary Fund
IPEC	-	International Programme on Elimination of Child labour
JUWATA	-	Jumuiya ya Wafanyakazi Tanzania
KAMUS	-	Kamati Maalum ya Utumishi Serikalini
LLRC	-	Labour Law Reform Committee
NES	-	National Employment Service
NUTA	-	National Union of Tanzania Workers Association
OAU	-	Organisation of African Unity

OTTU	-	Organisation of Tanzania Trade Unions.
RP	-	Rare Profession
SADC	-	Southern African Development Community
TAAE	-	Tanganyika Association of Agricultural Employers
TANU	-	Tanganyika African National Union
TAPO	-	Tanzania Association of Parastatal Organisation
TFL	-	Tanganyika Federation of Labour
TFTU	-	Tanzania Federation of Trade Unions
TLR	-	Tanzania Law Report
TUGHE-		Trade Union of Government & Health Employees
UK	-	United Kingdom
UN	-	United Nations
UNDP	-	United Nation Development Programme
UNICEF	-	United Nations Children and Education Fund
UNO	-	United Nations Organisation
UPE	-	Universal Primary Education
WDC	-	Workers Development Corporation

## LABOUR LAW PROJECT

### CHAPTER ONE

#### **Introduction:**

1.0: “In the last six centuries, the labouring population has risen from a condition of serfdom to a state of political freedom. On this struggle for economic equality the victories have been won by the wage earners themselves. Where they did not pursue their interest, they lost their interest. When they forgot to demand their full reward they failed to receive their full reward. Their weapons were the strike and the trade union”<sup>1</sup>

1.1: In Tanzania people lived by working on the land until the times they were disturbed by the Easterners and Westerners. Slavery and robbery of ivory and minerals together with forced labour disturbed them a great deal. The crude methods used forced the inhabitants to begin the

---

<sup>1</sup> Labour Problems. Mc Millan 1905.

struggle for freedom. The crude laws made by the German administration were adopted by British administration with some modifications and by the year 1922 poor working classes saw some labour laws made by British Administration taking place although they were not fair or just laws. The struggle for good laws to govern the wage earners that emerged from forced labour had begun to take place in the 1950s culminating into a powerful trade Union i.e. the Tanganyika Federation of Labour.

- 1.2: Today there are many labour laws that need revision hence the need for the labour Law Project. The Law Reform Commission of Tanzania created under section 3 of the Law Reform Commission of Tanzania Act No 11 of 1980 is mandated to take and keep under review all the law of the United Republic including the labour law with a view to its systematic development and reform. To do so the Commission may receive References from the Government or may initiate References on its own accord. (Vide section 8 and 9 of Act 11 of 1980).

**Statement of Scope of the Report:**

- 1.3: This report deals with labour laws, some of which have been in the statute books since 1912. It outlines the background to the laws, institutions that operate the laws and a summary of proposed changes.
- 1.4: This report does not relate to labour laws in Zanzibar since labour laws do not form part of union matters.
- 1.5: Chapter one is an introduction. It discusses the genesis of the Labour Law Reform Project, terms of reference and methodology. Chapter two gives a history of labour and measures taken by the state to transform labour into a factor of production. It traces the development of the contract of employment from an involuntary arrangement to voluntary agreement between employer and employee. The need for change is addressed in this chapter. Chapters three to seven contain the main body of the report. The general findings are:

- (i) that labour laws are scattered; this position makes the exercise of finding the law a slow and painful process;
- (ii) that collective bargaining for junior civil servants is undeveloped and is completely non-existent for senior civil servants; this position also applies to Local Government servants.
- (iii) that collective bargaining in the private sector is heavily influenced by the state;
- (iv) That dispute settlement machinery for junior staff in the public sector is state controlled;
- (v) That machinery for resolution of trade disputes in the private sector is state controlled;
- (vii) That the Labour Department has ignored the Labour Advisory Board to the detriment of a purposeful development of labour laws.

Chapter eight contains recommendations. It must be pointed out that the basis and justifications for the various recommendations are stated in chapters three to seven. The principles upon which these recommendations are made are drawn from the history and specificity of Socio-economic conditions of Tanzania. These principles are;

- (i) promotion and enhancement of human rights;
- (ii) liberation of civil society and full recognition and protection of the right to organise;
- (iii) elimination of arbitrariness, officialism and excessive bureaucracy in the process of resolution of disputes;
- (iv) development of a free market economy leading to the private sector occupying the dominant position in the economy;

(v) deconcentration of the powers of the President of the United Republic;

(vi) development towards a lean government;

1.6: This report does not deal with social security i.e. Pensions, PPF, GEPF, NSSF. The justification for exclusion is that social security is not part of the labour regime.

**Terms of reference:**

1.7: On the 13<sup>th</sup> day of May 1986 the Honourable Minister for Justice and Attorney – General made a reference, in writing, to the Law Reform Commission of Tanzania. This reference was made under section 8 of the Law Reform Commission of Tanzania Act, No. 11 of 1980 which runs as follows:

“I, DAMIAN ZEFRIN LUBUVA, ATTORNEY – GENERAL, HAVING REGARD TO:

- (a) The function of the Law Reform Commission of Tanzania, in pursuance of references to the Commission made by the Attorney General, of reviewing laws to which the Law Reform Commission of Tanzania Act 1980 applies.
- (b) The desirability of enhancing productivity while at the same time creating a smooth and harmonious relationship between employees and employers.

HEREBY REFER the following matters to the Law Reform Commission of Tanzania TO REPORT UPON...

- (i) Whether the Permanent Labour Tribunal Act, 1967 after taking into account s.27 (1) of the Act on making awards of the Tribunal final and binding, adequately protects employees or employers from possible non-jurisdictional errors committed by the Tribunal in making an award or deciding on matters referred to it.
- (ii) Whether the Permanent Labour Tribunal Act 1967 has adequately served the purposes it was intended to serve.
- (ii) If the answers to (1) and (2) is no, whether any and what measures could be adopted by way of legislation or otherwise to achieve those objectives.

(Signed)  
DAMIAN ZEFRIN LUBUVA

Dated this 13<sup>th</sup> day of May, 1986

MINISTER FOR JUSTICE AND ATTORNEY-GENERAL”

1.8: When the Commission received the above named reference, it had on its own initiative under section 9 of Act No. 11 of 1980, begun preliminary research on labour laws. This preliminary research led to formulation of six issues which were submitted to the Honourable Minister for Justice and Attorney – General under section 9 of the Law Reform Commission of Tanzania Act, 1980:

- (i) the fact that our labour laws are scattered in numerous enactment’s thereby making their application difficult and uncertain,
- (ii) The relative definitions of the term “employee” as appearing in the Employment Ordinance Cap. 366, Severance Allowance Act Cap.487, and Security of Employment Act Cap. 574, have invariably reduced the law into absurdity and repugnance,
- (iii) That notwithstanding the existence of Part IV of the Security of Employment Act Cap. 574, there is need for clear guidelines on how an employer can declare his employees redundant,
- (iv) that the existing legal machinery for settlement of industrial disputes is structurally and intrinsically inadequate particularly on –
  - (a) legal enforcement of the decisions of the Minister or Permanent Labour Tribunal;
  - (b) representation of JUWATA and Employers in the Conciliation Boards; and
  - (c) the rationale for JUWATA assuming the role of spokesman for all workers whether or not they are members,

- (v) that there is need to rationalise and strengthen Workers' Education and participation as laid down in the Presidential Directive No. 1 of 1970 as read together with the 1973 and 1974 directive from the Prime Minister's Office and
- (vi) That the state of the labour laws as a whole as it is at present calls for review and change.

**Labour Law Reform Committee:**

1.9: On the 2<sup>nd</sup> day of December 1986 the Commission appointed the Labour Law Reform Committee (LLRC) under section 11 (1) of Act No. 11 of 1980. This committee is the one that prepared the draft upon which this report is based.<sup>2</sup> The Commission extends profound gratitude and thanks to them.

**Interpretation of the Terms of Reference:**

1.10: The committee interpreted the reference of the Honourable Minister for Justice and Attorney – General as requiring it to assess the track record of the Permanent Labour Tribunal (now Industrial Court of Tanzania, ICT) and to recommend remedial measures. With regard to the Commission's six issues the committee's understanding was that it was required to review the whole spectrum of the employment scene in Tanzania - in government, parastatal organisations and the private sector as well as machinery for settlement of disputes. The committee took advantage of issue number (vi) and, accordingly, decided that it could engage in areas not specifically covered by the issues (i-v).

**Methodology:**

1.11: In carrying out research, the committee used the following methodologies:

---

<sup>2</sup> Mr. Ernest Ndonde-Chairman, M/s Elizabeth Nyamubi, The late Job V. Mwambuma, Mr.Africanus T. Maenda, and Mr. W.S. Mandia-Secretary.

- **Extensive Literature reviews** – different labour statute/code from different countries were reviewed e.g. Germany, Cyprus, Kenya, Zambia, United Kingdom and ILO Conventions.
- **Administration of questionnaires** – the committee distributed ninety- two (92) questions on all five items in the terms of reference. A total of four hundred (400) copies of the questionnaires were distributed to various government offices, parastatal organisations, ILO, employers’ offices, the then JUWATA (now OTTU) and other interested persons.
- **Survey** – the committee visited Morogoro, Tanga, Kilimanjaro and Arusha regions to carry out in-depth interviews by using the questionnaires to canvas for views on the subject. Semi-structured interviews were also conducted during the visits in different employers’ offices.

## CHAPTER TWO

2:0

### THE LABOUR REGIME IN TANZANIA

“The working class and the employing class, have nothing in common. There can be no peace so long as hunger and want are found among millions of working people and the few who make up the employing class have all the good things of life.”<sup>3</sup>

---

<sup>3</sup> Industrial Workers of the World (I.W. W.).

### **Historical Labour Perspective:**

2.1: Labour as a factor of production in the modern sense was unknown in traditional African Societies and has developed slowly under the aegis of the State. In African communities labour was a personal service and was offered or withheld at will. The institution of slavery and colonialism changed all that. Under slavery free will shifted from the labourer (slave) to the owner of the labourer (slavemaster). When slavery was abolished in the 19<sup>th</sup> century the colonial State devised alternative methods of obtaining African labour.

2.2: In some instances Africans were expropriated of their lands in order to create a landless class, which would thereafter depend on wage employment. Sometimes outright force was used. For example in Tanzania Chiefs invoked the Native Authority Ordinance, 1923 to force their subjects to work on public works for pay or for free. In other instances the introduction of tax to be paid in cash made African work in European owned plantations. This situation reminds us of a statement made by Jack Waddis in his book "The Roots of Revolt" that:

"The history of African relations with the West has been a history of robbery, robbery of African manpower, its minerals and its agricultural resources, and its land"<sup>4</sup>

After the partition of Africa at the Berlin Conference of 1884 – 1885, colonies were formed and subsequently slavery was outlawed by 1910. The development of new colonies required labour. So methods of getting labour were devised to develop plantations and mines in the colonies.

2.3: The State through legislation created a framework for recruitment of labour. The Germans begun by creating Wage Labour and enacted the House and Poll Tax Ordinance 1912, Hut and Poll Tax Ordinance No. 13 of 1922 together with Involuntary Servitude (Abolition) Ordinance, No. 13 and House Tax Ordinance, No. 26 both of the same year, whose main purpose was to create Taxation which in turn forced the Africans to work in order to get money to pay taxes. In 1923 the Master and Native Servants Ordinance No 32 (Cap. 78 of 1923) was enacted. Its main purpose was to facilitate and regulate the procurement of labour for capital and repatriation. It made it mandatory for employers to pay wages in cash only (s.5). The Native Authority Ordinance 1926

---

<sup>4</sup> Jack Waddis: The Roots of Revolt, London, 1961 p. 1

legalised the “communal labour” “tribal turnouts” and the “tax defaulters” The Master and Native Servants (Written Contracts) Ordinance No. 28 of 1942 (Cap 79) came into force on 18/12/1942. It made it obligatory for certain types of contracts involving natives to be reduced into writing. The Master and Native Servants (Recruitment) Ordinance, No. 6 of 1946 (Cap 80) came into force on 15/3/1946. This Ordinance made provisions for licensing of recruiters who were divided into two categories: “private” recruiters and “professional” recruiters. Section 2 defined “recruiting” as:

“any operations undertaken with the object of obtaining or supplying the labour of natives who do not spontaneously offer their services at the places of employment, or at an office established by Government, or by an employer’s organisation with the approval of the Labour Commissioner for the purpose of receiving applications for employment, and “recruit”, “recruiter” and “recruitment” have corresponding meanings”.<sup>5</sup>

The distinguishing features of the above pieces of legislation were the element of involuntariness on the part of the native servant. Thus the notion of freedom of contract was jettisoned and in its place a quasi-penal regime was introduced.

- 2.4: A dramatic change occurred in 1957 with the enactment of the Employment Ordinance, Cap 366, which recognised that the contract of employment is a voluntary agreement between the employer and the employee. The colonial State purported to conform to the standards laid down by the International Labour Organisation (ILO) on employees’ welfare. Other laws passed in the 1950s are the Factories Ordinance, Cap 297, and Workmen’s Compensation Ordinance, Cap 263, Accidents and Occupational Diseases (Notification) Ordinance, Cap 381. Some of the above ordinances, amended from time to time, are still in force today.

#### **State Management of Labour:**

- 2.5: For six decades before independence Labour in Tanzania was available from the poorest working class. This labour was employed mainly in large Plantations; mines and a small manufacturing sector and it formed the permanent wage earning class. The management of this labour, was

done through various legislation spanning from the 1922 Hut and Poll Tax Ordinance to the 1962 Trade Disputes Settlement Act (**see Appendix A**)

2.6: Since independence the Tanzania Government has actively legislated in order to manage labour.

The principal features of post independence legislation are as follows:

- (i) State control of collective bargaining: Civil Service (Negotiating Machinery) Act, Cap 484, Local Government Services (Negotiating Machinery) Act, Cap 542 Local Government Negotiating Machinery Act No. 11 of 1982, Permanent Labour Tribunal ACT, No. 41 of 1967.
- (ii) Bureaucratic machinery for settlement of trade disputes; Civil Service (Negotiating Machinery) Act, Cap 484, Local Government Services (Negotiating Machinery) Act, Cap 542, Local Government Negotiating Machinery Act No. 11 of 1982, Permanent Labour Tribunal Act, No. 41 of 1967.
- (iii) Enactment of the Disciplinary Code: Security of Employment Act, Cap 574.
- (iv) Monolithic State sponsored “trade unions”: National Union of Tanganyika Workers Act, No. 18 of 1964, Cap 555, Jumuiya ya Wafanyakazi wa Tanzania ACT, No. 24 of 1979; Organisation of Tanzania Trade Unions Act No. 20 of 1991
- (v) Establishment of the check-off system: Trade Unions Ordinance (Amendment) Act, No. 51 of 1962.
- (vi) Ouster of jurisdiction of ordinary courts with regard to the Disciplinary code and trade disputes.

Reading through Acts made after independence one notes that the freedom of Trade Unions obtained through hard struggle had been curtailed. There was established a sole trade union by State legislation, and there was ouster of jurisdiction of ordinary courts of laws with regard to laws affecting disciplinary code and settlement of disputes in certain areas.

---

<sup>5</sup> Section 2 of The Master and Native Servant (Recruitment) Ordinance 1946 Cap 80.

**Need for change:**

2.7: By far the largest employer of labour is the public sector, (that is to say the Government and parastatal organisations). This situation is likely to change in the near future on account of the following factors:

- (i) Government is currently implementing (through the Civil Service Reform Program) the World Bank and International Monetary Fund (IMF) prescriptions on lean government; a large number of civil servants are retiring prematurely or are being retrenched.
- (ii) Government abandoned the bond system whereby any person trained at Government expense for one year or more was guaranteed employment for five years.
- (iii) Trade liberalisation has led to competition and destruction of monopoly hitherto enjoyed by parastatal organisations.
- (iv) Privatisation of parastatal organisations is steadily proceeding under the direction of the Presidential Parastatal Sector Reform Commission.
- (v) Corresponding development of the private sector in the economy.
- (vi) Advances in technology will result in displacement of human labour by machines.

2.8: These factors point to a smaller, better-trained labour force in public sectors. It follows that the regulatory machinery, which was devised, for a largely manual, less educated labour force must be reconstructed and developed to suit a modern labour force in a viable economy. Hence the need for new labour law Regime.

2.9: The guiding principles for the achievement of equitable labour regime should include the following:

- (i) Labour regime should be in consonance with the principle of the equality of all workers in all kinds of employment.

- (ii) The Report should aim at a labour law which shall comply with the principles of human rights, in particular the rights enshrined in the constitution of the United Republic of Tanzania and in the African Charter of Human and Peoples Rights 1986 in general and ILO Conventions in particular.
- (iii) The Labour Law should be such as would enable this country to maintain respect for and uphold the Rule of Law.
- (iv) The Labour Law that will emerge from the report should serve employees well and should guide employers to provide equitable conditions of employment, just wages etc.
- (v) The law should serve as an instrument of liberation of civil society and recognition and protection of the right to organise the workers to claim their rights.
- (vi) The Labour Law should provide for elimination of arbitrariness officialism and excessive bureaucracy in the process of dispute management.
- (vii) The law should assist the growth of development of a free market economy leading to the private sector occupying the dominant position in the economy.

## **CHAPTER THREE**

### **THE CONTRACT OF EMPLOYMENT**

#### **Introduction:**

- 3.1. The Employment ordinance Cap 366 deals with all matters pertaining to employment. The long title of this legislation states the purpose of the law as being, “to amend and consolidate the Law

relating to Labour and regulate conditions of employment for Employers and Employees.” This Law governs all agreements of employment. Section 13 of Part III of this Law states:

Section 13. “No person shall employ any employee and no employee shall be employed under any contract of service except in accordance with the provisions of this ordinance.”

In this respect therefore this Law becomes the most basic law as far as employment and all its dynamics are concerned. No employment will be recognised unless it was undertaken under this Ordinance. All aspects of employment are covered under this law. Terms and conditions of employment are stipulated in this law.

Furthermore section 15-(1) states; “Contracts of service may be oral or written contracts.” Although this section is explicit, the details of these two aspects are dealt with more exhaustively in Part IV and Part V of this Ordinance.

The sections under Part III deal with contracts of service generally. Part IV and V deal with specifics. Sections 26-39 in Part IV deals with Oral contracts of service while sections 41-60 in Part V deal specifically with written contracts.

Section 27 states that “all contracts of service other than contracts which are required by this ordinance or any other law to be made in writing, may be made orally.” Section 28. provides that no oral contract shall be valid and binding unless the employment thereunder commences within one month from the date of the contract. Section 42-(1) states that when a contract of service of an employee is made for a period exceeding six months or a number of working days equivalent to six months, then that contract shall be in writing, and an employee is required by law to signify his consent to the contract either by signing the contract or affixing the impression of his thumb or finger thereto. This requirement is provided for under subsection (2) of this section.

Further, section 42-(3) states:

“ If a contract which is required by subsection (1) of this section to be made in writing has not been made in writing it shall not be enforceable except during the period of one month from the making thereof.”

The question of oral contracts was discussed in the case of **The Director of Public Prosecutions v Eliatosha Moshi and another, T.L.R 1983**, Where the High Court held that the appellant cannot be said to have been a workman and was not in a contract of service with the respondent but was on an agreement for hire. The appellant in that appeal, The DPP, had charged the respondents

who were partners running a fleet of taxis with four counts arising from labour laws. For purposes of this report, the relevant charge was failure to prepare oral contract of service contrary to section 35-(1) (2) and (3) of Cap 366. The respondents had engaged the complainant one Mwinyasumba Mrema as a driver of one of their taxis on the agreement that his remuneration per day be 20% of every day's collection. The complainant was subsequently fired on the 4<sup>th</sup> of August 1980 having worked since 13<sup>th</sup> February 1973. On termination a claim for payment of wages in lieu of leave and other terminal benefits was preferred through JUWATA, the worker's trade union. The respondents refused to pay the claims. They were subsequently variously charged for, among other charges, failure to prepare an oral contract of service contrary to section 35-(1) (2) and (3) of the Employment ordinance Cap 366. The trial court had acquitted the respondents on grounds that no proof had been provided to show that the complainant was an employee within the meaning of the law to impose liability on the respondents. In this case the major issue for consideration was whether or not the complainant was an employee of the respondents, that is, whether the agreement between the complainant and the respondents amounted to a contract of service as stipulated by the law. The Trial Court, The High Court and finally The Court of Appeal found that such a relationship did not amount to a contract of service.

From reading sections 13, 15, 27, 35 and the court's decision in the above cited case, it becomes apparent that the recognition of oral contracts though real in law, the scope for their application is limited. From history it would appear that such oral contracts were designed for use by largely labourers in big plantations of sisal, sugar, coffee, tea and such kind of workers as road or railway builders and repairers, or dock workers. Basically an oral contract were meant for those who were illiterate and whose work was temporary, piece meal or was only for a short period of time not amounting to or equivalent to six months.

The Commission is of the view that the principle of voluntariness of employment of contracts as provided for under section 42 (2) and further strengthened under section 45 (2) of the Ordinance should be maintained and should apply to written as well as oral contracts of service.

## **TERMS AND CONDITIONS OF SERVICE**

3.2 Terms and conditions of service in Tanzania are regulated by a multitude of laws depending on the grade of the particular employee and according to the employment sector, that is to say government, local government, parastatal sector or private sector. The **Regulation of Wages and Terms of Employment Ordinance Cap. 300** provides for the fixing of minimum wages by way of minimum wages orders for all sectors of the economy. The rates fixed are considered as constituting the most minimum rates, and a large number of employees get paid well above the prescribed rates particularly in the Government, Local Government, and the Parastatal sector. In the private sector however, the prescribed rates are usually regarded as constituting maximum rates; few employees if any in this sector pay anything above the prescribed rates. It should be noted that Cap.300 concentrates on the setting of minimum wages, therefore, it does not cater for the supervisory and management cadres. Like this Ordinance the **Severance Allowance Act Cap. 574 and Employment Ordinance, Cap.366** focus upon the bottom rung of employees. The terms of service of employees in the supervisory and management levels are purely contractual.

3.3 The grading system of government employees is based on salary and these are shown in sections 2 of the **Civil Service Act, No. 16 of 1989**:

2. In this Act, unless the context requires otherwise- "appointing authority" means-
  - (a) in the case of an officer in the SS salary scale, salary scales GS.9 and GS.10 and RP.6 to RP.10, the President;
  - (b) in the case of an officer in the salary scale of between GS.3and GS.8 and RP.1 to RP.5, the Civil Service Commission; and
  - (c) in the case of an officer in the salary scales of GS.1and GS.2 and for those in the Operational Service Scales, a Special Committee on Employment in the Government.
  
16. The Functions of the Committee shall be-
  - (a) to be the appointing authority-

- (i) for all employees in the operational service whose salary scales range from OS.1 to OS.10;
- (ii) in the case of the committee established for a Ministry or an independent department for all employees in the general scales which range from GS.1 to GS.2 ...

In Kiswahili this Special Committee is known as **KAMATI MAALUM YA UTUMISHI SERIKALINI or KAMUS**. The shop floor is the private sector comparable cadre to operational service in government.

3.4 The Commission proposes a three tier grading system for all employees in all sectors of the economy; SHOPFLOOR, SUPERVISORY and MANAGERIAL grades. There is a debate on whether the grading system should be based on the type of functions performed by an employee or on salary earned by the employee. The Commission is aware that salaries in the private sector differ from those in government or parastatal organisations. So the salary criterion may not be reliable. The Commission, therefore, proposes a grading system based on functions and those functions should be stated in the letter of appointment. In this way an employee will accept appointment aware that he/she is in the shopfloor, supervisory or managerial grade.

## **PRODUCTIVITY**

3.5 The Commission proposes that the following general provisions in order to enhance productivity should apply to all contracts of employment:

- (a) Grading and advancement should be on merit; the best qualified should have preference in employment. Subsequently actual performance should determine promotion and other forms of advancement in the service ladder.
- (b) Payment by results – minimum standards should be fixed for day’s work. Performance over and above the minimum should be awarded separately; the higher the performance, the higher the pay.

- (c) Recognition of talent – the “best worker” award should be institutionalised and the award system should be rationalised.
- 3.6 The Commission views with concern falling levels of efficiency in all employment sectors. Many complicated formulae have been suggested to redress this. The Commission feels that the minimum wage should be equivalent to a living wage based on the cost of living index for urban dwellers and must always take into consideration the varying levels of inflation.
- 3.7 Government periodically publishes figures on cost of living index for urban dwellers; these figures should form the basis for calculation of minimum wages. In this way yearly announcement of salary increases will not be necessary
- 3.8. Further, the Commission proposes adoption of a uniform CODE OF EMPLOYMENT ETHICS, which will bind all employers and employees in both the public and private sectors. It is intended that the Code should set out minimum rights and obligations of employers and employees and should form the basis of employment contracts. The Commission propose that the code be adopted in the process of collective bargaining which is discussed below. A sample of the code is shown in **Appendix B**.

#### **WORKERS’ PARTICIPATION**

- 3.9 The Commission notes that workers’ participation is an important element in the promotion of good industrial relations. Today, workers’ participation is governed by statutes as well as Presidential circular No. 1 of 1970.
- Section 14 of the **Civil Service Act No. 16 of 1989** makes provision for establishment of a Special Committee on Employment in the Government or of KAMATI MAALUM YA UTUMISHI SERIKALINI (KAMUS). It provides for representation by a trade union; the trade union representative is recommended by the union and appointed by the Minister. However, The Civil Service Commission, which governs employees in the supervisory and managerial levels, has no official trade union representation. This means that a large proportion of civil servants is governed by Civil Service Commission procedures, which are not participatory and not transparent. The Commission recommends that Part III, and in particular Section 5. of the Civil

Service Act no. 16 of 1989 be amended so that the composition of the members of the Commission include at least one representative from the relevant trade union i.e. TUGHE.

**3.10** Section 6 of the Regulation of **Wages and Terms of Employment Ordinance Cap 300** provides for establishment by employers of Staff Committees. Section 24 defines “Staff Committee” and specifies its functions:

24. In this Part [PART V] of this Ordinance-

“Staff Committee” means a body of persons representative both of the employer and the employees, **set up by an employer** in any undertaking after consultation with the employees with the object of-

- (a) giving the employees a wider interest in and a greater responsibility for the conditions under which their duties are performed;
- (b) providing a recognised and direct channel of communication between the employees and the employer on all matters affecting their joint and several interests; and
- (c) promoting throughout the undertaking a spirit of co-operation in securing the efficiency of the undertaking and the contentment of the staff engaged therein.
- (d) The Commission is of the view that this provision should be retained save that staff committees should progressively be disestablished at the option of the relevant trade union(s).

**3.11:** The **Security of Employment Act, Cap 574** established **workers’ Committees** whose functions included:

- (a) to discuss with the employer, at regular intervals and at least once every three months means of promoting efficiency and productivity;

- (b) generally to assist in the furtherance of good relations between the employer and persons employed in the business ...

Section 6 of the Security of Employment (Amendment) Act No. 45 of 1969 removed productivity in the functions of workers' Committees and under the Labour Laws (Miscellaneous Amendment) Act No. 1 of 1975, field branches of the single trade union effectively replaced workers' Committees.

3:12 Presidential Circular No.1 of 1970 entitled THE ESTABLISHMENT OF WORKERS COUNCILS, EXECUTIVE COMMITTEE AND BOARD OF DIRECTORS introduced the Yugoslav concept of workers' self-management in industrial establishments. It directed that every Public Corporation, which has ten or more workers, should form a Workers Council whose functions are to evaluate performance in the light of set targets. In the President's words:

“ 2. Given a proper work environment, and Proper Co-operation and support from their leaders and fellows, the majority of Tanzanian workers are capable of accepting more responsibility, and would like to do so; they can become more creative and can accomplish more. Easy communication of ideas and information between workers, and between workers and all levels of management, can have the effect of improving the quantity and quality of goods produced, provided that an atmosphere of common endeavour and common responsibility is created. In particular, the top management must have an attitude, which regards the workers and the lower levels of management as partners in a common enterprise, and not just as tools like the machines they work with.

5. This means that quite apart from the workers' committees which now exist, and which discuss conditions of service, warnings, and dismissals of workers, etc., there must be provision for the workers to be represented on bodies which consider matters of production, sales, and the general organisation of the

enterprise. It has therefore been decided that all parastatal organisations shall, as soon as possible and in any case not later than the end of 1970, establish workers' councils, and shall establish or re-establish their Executive Committees and Boards of Directors so as to give practical effect to workers' representation and participation in planning, productivity quality and marketing matters. These new Workers' Councils do not affect the existence or the functions of the Worker's Committees. Their job is very different: it is to further industrial democracy in relation to the economic functions of the enterprise, and give the workers a greater and more direct responsibility in production. It is, in other words, intended that the new Workers' Councils, and the reconstituted Executive Committees and Boards of Directors shall contribute to the general welfare of our nation by helping the efficiency and the effectiveness of our public enterprises. They will do this by ensuring that all workers in these enterprises understand and accept the practical implications of their responsibility to their fellow workers and peasants in other sectors of the Tanzania economy.

- 12 The functions of the Workers' Council in, and in relation to, the business for which it is established shall be:
- (a) to advise on the requirements of the existing wages and incomes policy as announced by Government from time to time;
  - (b) to advise on the marketing aspects of the commodity produced;
  - (c) to advise on matters relating to the quality and quantity of the commodity produced;
  - (d) to advise on matters of planning;
  - (e) to advise on other aspects of productivity, such as works and enterprise organisation, technical knowledge, workers' education, etc.;
  - (f) to receive and discuss the Balance Sheet."

The Workers' Council must have regard to the Government policy on Productivity. Of the 540 Workers' Councils targeted, 385 (or 64%) have been established to date. The text of the

Presidential Circular No.1 of 1970 is shown in **Appendix C**. One keen observer of workers' councils has given the following assessment:

“Actually the Workers’ Councils have been a mockery of industrial democracy. They have not been institutions for workers’ participation at all. The workers’ representatives in Councils, most of them unaware of the functions of the councils, the purposes and ideological significance of such councils; most of them ignorant of the items that are discussed or presented for approval, for example, the budget and the balance sheet; almost all of them unaware of their voting rights and their status, have proved to be clowns and sources of attraction to the management representative in the Council, at worst representing in the eyes of the management a rotting fruit of industrial democracy and at best used by the management to rubber-stamp measures and programs adverse to the workers who have neither autonomy nor power in the Councils.”<sup>6</sup>

3:13 There is now a debate on whether Presidential Circular No.1 of 1970 should be concretised in law. The Commission holds the view that putting legal teeth into Presidential Circular No. 1 of 1970 is unnecessary. It is proposed that Workers’ Councils should continue to be extra-legal and should perform an advisory role. The Commission notes that all the items listed under functions of Workers’ Councils are proper items for the process of collective bargaining. The Commission recommends therefore that Workers’ Councils should be scrapped off and where they must subsist they will do so at the instance of the relevant trade unions.

3.14 In Some trade and professions there is a period of apprenticeship. Views have been expressed that the contract of employment should commence on the date of commencement of apprenticeship. In this way an apprentice will be entitled to wages and other rights like any other employee. The Commission feels that a rule to that effect will discourage taking of apprentices by trade schools and employers. Furthermore an apprentice is actually a pupil, and cannot therefore be equated to a qualified employee.

---

<sup>6</sup> Mihyo P.B. (1974) “Labour unrest and the quest for workers control in Tanzania: Three case studies.” Eastern Africa Law Review vol.7 no.1 of 1974 pages 1-64 at page 7.

## DETERMINATION OF THE CONTRACT OF EMPLOYMENT

- 3.15 Determination of the contract of employment for employees in the supervisory and managerial levels in public and private sectors is governed by the contract of employment. The Commission endorses this position and further proposes that it should apply to employees in the supervisory, managerial and operational (or shopfloor) levels. It is proposed that a three months notice be legislated.
- 316 The concept of LAY-OFF is new in labour relations in Tanzania. It is not defined by any statute. For the purposes of this report the Commission defines lay-off as:  
“Temporary suspension of the contract of Employment by the employer for reasons outside the control of the employer, including, without prejudice to the generality of the foregoing, the non-availability or shortage of raw materials, breakdown of machinery, adverse climatic conditions or other natural disaster.”
- 317 While lay-off should be thus defined in legislation, the Commission is of the view that notice, duration of lay-off, rights and obligation of employer and employee during lay-off should be the proper subjects for collective bargaining.
- 318 The **Security of Employment Act, Cap 574** refers to “redundancy” of an employee. Section 39 states that Statutory compensation is not payable by the employer in the event such employer terminates the employment on account of the redundancy of such employee. Cap 574 does not define the concept of redundancy.
- 319 It was thus left to employees and employers, during collective bargaining, to define redundancy. And, the High Court in the case of **Southern Papermills Co. Ltd. v/s 1. The Minister for Labour 2. Attorney General** Misc. CC. No. 2 of 1994, has appropriately sought refuge in a definition provided by the LAW Dictionary, Third Edition, Oxford, wherein redundancy is defined as **termination of service when an employer needs fewer employees to carry out the work in the place in which the employee is employed.** Further, the High Court has properly held that neither the Conciliation Board nor the Minister for Labour has jurisdiction in Redundancy cases.

320 The remedy available to an aggrieved employee is to institute proceedings in a court of law. As decided in the cases of **Southern Paper Mills co. Ltd v. Minister for Labour** (referred to above); and **The National Bank of Commerce v. Minister for Labour, High Court of Tanzania at Dar es Salaam, Misc.CC. No. 11 of 1996**. Alternatively, if the redundancy in question relates to employees under section 9A of the Industrial Court Act, 1967 the Labour Commissioner may inquire into the causes and circumstances of the said trade dispute and refer it to the ICT for inquiry: **Said A. Marinda & 30 Others v. Minister for Labour**, High Court of Tanzania at Dar es Salaam Misc. CC. No.57 of 1996.

3.21 The current legislative provisions are concerned with procedural safeguards only. **The Security of Employment Act, Cap 574** provides:

Section 6-(1) The functions of a Union branch in, and in relation to the business for which it is established are-

(g) to consult with the employer concerning any impending redundancies and the application of any joint agreement on redundancies.

3.22 In the case of **Hamis Ally Ruhondo & Others v. Tanzania –Zambia Railway Authority**, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No. 1 of 1986 the Court of Appeal held that consultation within the meaning of the Act has to be prior to the effectuation of the redundancy. The Court further held that redundancy becomes impending before and prior to the process of consultation between the union field branch and the employer.

3.23 In **Kihanira Kulunge Kibaya v. United Africa Company of Tanzania Limited**, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No. 36 of 1987 the Court of Appeal entrenched the FILO rule. It held that the first person to lose his job in a redundancy exercise is the employee who has been in employment for the shortest period in the sector concerned.

3:24 **“Retrenchment”** is yet another nebulous expression now in vogue. It was popularised by the Civil Service Reform Program, the Parastatal Sector Program and the Local Government Reform Program. The common theme of these programs prescribed by the Bretton Woods Institutions, that is, The World Bank (IBRD) and the International Monetary Fund (IMF), is reduction of the Labour force. The basic concept in the thinking of these institutions is that by retrenching the labour force the few workers that remain would be better motivated and hence attain increased efficiency. Unfortunately this is also their basic flaw, because inspite of retrenchment, neither have the remaining workers been motivated nor has efficiency been attained. There has been an all round general economic malaise and rampant inefficiency.

3:25 The Commission feels that **redundancy** and/or **retrenchment** should now be defined in the **Employment Act**, it being the basic law on employment. The draftsman may wish to borrow from section 39(2) of the **Security of Employment Act, Cap 574** paragraphs (g) and (h) which state,

(g) the replacement of the employee for the purpose of improving efficiency and productivity;

(h) the occurrence of any circumstances which, having regard to the nature of the work or the character of the business, render the employee unsuitable to continue to perform the work he was engaged to do.

3:26 The Commission recommends that notice and employees’ entitlements should be proper subjects of collective bargaining between employers and employees

## CHAPTER FOUR

### TRADE UNIONS

#### BACKGROUND OF TRADE UNIONS IN TANZANIA

4.1 While the Trade Unions Ordinance, Cap. 381 provides the current law governing trade unions in Tanzania, the Trade Unions Act, No.10 of 1998 is intended to, inter alia, repeal and replace this

Ordinance. Although the Act has been enacted, it is yet to come into force, as the Minister responsible for trade has not gazetted the operational date. Therefore given this unusual situation the analysis hereunder of the law governing trade unions will be based on both the Ordinance and the Act.

4.2 According to section 2 of the Trade Unions Ordinance, Cap 381(hereinafter referred to as the Ordinance), a trade union,

“means the specific union and either temporary or permanent, of twenty or more employees or of four or more employers, the principal purposes of which are under its constitution the regulation of the relations between employees and employers, or between employees and employees or between employers and employers whether that combination would not, if this Ordinance or the Trade Unions Ordinance had not been enacted, have been deemed to have been enacted, have been deemed to have been unlawful combination by reason of some one or more of its purposes being in restraint of trade:

Provided that such a combination of employees employed by the Government, or by any department, or service of any international body or organisation operating in Tanzania, of which Tanzania is a member, shall not be deemed not to be a trade union by virtue only of its being a combination of persons employed by or under the Government:

Provided further that nothing in this Ordinance:

(a) shall affect:

- (i) any agreement between partners as to their own business;
- (ii) any agreement between an employer and those employed by him as to such employment;
- (iii) any agreement in consideration of the sale of the goods, will of a business, or of instruction in any profession, trade or handcraft;

(b) shall preclude any trade from providing benefits for its members.”

- 4.3 This definition is in some particulars different from the one contained in the Trade Unions Act, 1998 herein referred to as the Act. The differences are that the concept of “the Specified Union” brought in by the National Union of Tanzania Workers Association (NUTA) Act, 1964 and sub-proviso (a)(i) have been abandoned by the Act. In addition the Act has re-numbered the provisos as sub-sections (2) and (3) and added a sub-proviso (3)(b) which in effect provides that nothing in the Trade Unions Act shall preclude any trade union from providing benefits for its members.
- 4.4 The concept of trade unions was introduced into Tanzania (then Tanganyika) through the enactment of the Trade Unions Ordinance, 1932 which followed closely most of the provisions of the Trade Unions Acts of 1871 and 1876 United Kingdom and several other pieces of legislation which were enacted thereafter designed to control and regulated trade unions. The legislation of the Trade Unions Ordinance, 1932 followed on the heels of an emerging permanent wage-labour. It was intended to avert the growth of independent radical workers movement by providing a legal mechanism by which the colonial State would use to ensure that trade unions toe the line. The State chose to practice a kind of enlightened paternalism to serve its own interests.
- 4.5 The Ordinance borrowed a lot from the English Acts. In addition to the definition of a trade union it also took aboard the provisions designed to control trade unions and those related to the civil and criminal liabilities of trade unions. The vast powers of the Registrar of Trade Unions on registration, control, cancellation of registration of trade unions were adopted. The only marked difference was that while in the English Acts registration of trade unions was a voluntary affair, the Tanganyika Ordinance provided the converse. Under s.6 of the English Acts registration of trade unions was voluntary but Section 5 of the Tanganyika Trade Unions Ordinance stipulated that registration of trade unions was compulsory and made non-registration a criminal offence. In addition under s.18 such an unregistered trade union could not avail itself of the immunity provided by s.3 of the Ordinance. This had a consequence of making unregistered trade union vulnerable to the common law illegalities such as conspiracy and restraints of trade. It also made a member of the unregistered union who participated in its proceedings guilty of an offence (s.10).

4:6 Appeals lay to the Governor until the enactment of the Trade Union (Amendment) Ordinance, No. 7 of 1939 that changed the appellate authority to be the High Court. Later the Trade Unions (Amendment) Ordinance, No. 30 of 1941 introduced immunity of trade unions from action in tort for tortious acts done in furtherance of trade disputes. However, while allowing peaceful picketing the Ordinance made it an offence to intimidate or to do any act calculated to intimidate even if in furtherance of a trade union. It introduced such a wide definition of intimidation and injury that even peaceful picketing was a risky undertaking. In addition those participating in illegal strikes were subjected to legal sanction.

4:7 The state attempted to further control trade unions by enacting the Trade Dispute (Arbitration and Inquiry) Ordinance, No. 11 of 1947 which provided for a standing statutory machinery for tripartite conciliation and arbitration of trade disputes which apart from trade unions, involved Labour Officers and an Arbitration Tribunal appointed by the Governor. This machinery had to have been fully utilised before any further industrial action could be taken. Though under the Act the Assumption was that the state would exercise neutrality but in practice it usually leaned towards the employers. It also enacted the Trade Disputes (Arbitration and Settlement) Ordinance, No. 43 of 1950, which introduced the concept of 'essential service' for which a special procedure for settlement of their trade disputes was put in place. The procedure involved the use of the Labour Commissioner and a Tribunal and restriction of the use of strikes and lockouts by making them illegal unless the two stage statutory dispute settlement machinery was exhausted. By making strikes illegal in essential services, like harbours, railways, telecommunication and posts, and providing mandatory arbitration the state managed to divide workers. All this portrayed the real intention of the colonial state to hinder trade union initiatives.

4.8 The Trade Unions Ordinance, 1932 was repealed and replaced by another such Ordinance of 1956. Though the intention of the change was recorded as to ensure that trade unions continue to

develop and establish themselves on a sound basis, the real aim was to provide provisions for more state control of trade unions. More conditions for registration and compliance of trade unions were prescribed and the Registrar was given more power to exercise control and supervision over unions in areas of funds, appointment of officers and rules of a union. All this portrayed 'a wolf in a sheep's skin'. The real intention of the colonial State was to keep under leash trade union activities.

## STATUTORY TRADE UNIONS

4.9 When mainland Tanzania gained independence the wave of strikes did not abate. Through strikes workers continued to demand for higher wages and to oppose oppressive management. The Tanganyika Federation of Labour (TFL) which was a trade union per excellence registered under the relevant law had participated in the nationalist struggle for independence in partnership with Tanganyika African National Union (TANU). Political leaders also had in turn fought besides TFL and other trade unions against the colonial government on its control over trade unions.

However, immediately thereafter a serious cleavage developed between the government and TFL notwithstanding that the government team included tested trade unionists like Mr. Rashid Kawawa and Mr. Michael Kamaliza. The contention was especially over two major issues, i.e. citizenship and africanisation. The union-party alliance was transformed into a union-party rivalry. The government sought for ways to bridge this rift in order to reduce strikes and bring the trade union more under its control. Hence the Trade Union Ordinance, Cap. 381 was heavily amended by the Trade Unions Ordinance (Amendment) Act, No. 51 of 1962. The amendment resulted in giving more power of control to the minister for Labour to appoint any federation of workers' trade union as designated federation of trade unions to which every registered trade union was obliged to affiliate (ss.7, 13 and 14). Although the federation was obliged to register every trade union, which applied for registration, however it could not cancel or revoke membership of a registered trade union without the Minister's approval. The Act also provided the Minister with powers over the finances of the designated federation over and above those already held by the Registrar.

4.10 The Minister had powers to direct the designated federation as to the purposes to which its moneys were to be applied and the federation was obliged to give effect to such direction [s.41B (1)]. On his part the Registrar was empowered to suspend officers of the federation if he was satisfied that its funds had been used or were being expended in an unlawful manner or on an unlawful object [s.47A (1)]. Under such financial situation the Registrar had additional powers to apply to the High Court for the appointment of a receiver of the assets of the trade union [s.47B

4:11 In addition the Trade Dispute (Settlement) Act, No. 43 of 1962 repealed and replaced the Trade Disputes (Arbitration and Settlement) Ordinance, Cap. 296. It was enacted to set up a standing industrial dispute settlement procedure and machinery involving negotiation, conciliation and arbitration. The Act obliged trade unions and employers to exhaust the machinery before they could resort to strikes or lockouts. It made participation in strikes and lockouts an offence unless the conditions provided were exhausted. This Act was later amended by Trade Union and Trade Disputes (Miscellaneous Provisions) Act, No. 64 of 1964 and the Trade Disputes (Settlement) (Amendment) Act, No. 47 of 1965. It was however repealed and replaced by the Permanent Labour Tribunal Act, No. 41 of 1967, which established the Permanent Labour Tribunal for, inter alia, the settlement of industrial disputes. The latter Act was itself later amended changing the Tribunal into an Industrial Court by the Industrial Court of Tanzania Act, No. 3 of 1990.

4:12 As Act No. 43 of 1962 did not cover government employees; correspondingly the Civil Service (Negotiating Machinery) Act, No. 52 of 1962 (Cap. 484) and the Local Government Service (Negotiating Machinery) Act, No. 66 of 1963 (Cap.542) were enacted to cater for employees of the central and local government respectively. The latter Act was initially repealed and replaced by the Local Government (Negotiating Machinery) Act, No. 11 of 1982, which in turn suffered amendment by the Local Government Laws (Amendment) Act, No. 8 of 1992.

4.13 Due to trade unions' strong opposition to the Trade Disputes (Settlement) Act, No. 43 of 1962, the Trade Unions (Revocation of Special Powers) Act, No. 44 of 1962 was enacted. It revoked the powers of the Minister to give directions to a designated federation as to the purpose to

which funds received shall be expended. Meanwhile the Tanganyika Federation of Labour (TFL) was designated;

'The Tanganyika Federation of Labour is hereby appointed, with effect from 24<sup>th</sup> August 1962, to be the designated federation for the purposes of the Trade Unions Ordinance.'<sup>7</sup>

This cooled the tempers of TFL leadership.

4:14 However, the TFL hostilities toward the government subsided only for a while. It erupted seriously in January 1964 when the President announced that the government was to abolish racial distinction in recruitment for jobs, training and promotions. Thereafter followed the army mutiny, which, it was claimed, had the support of some of the TFL leaders. This led to the downfall of TFL as some of its leaders were detained and on 21<sup>st</sup> February 1964 the government banned it. With the total eclipse of TFL this country witnessed the formation and development of monolithic statutory trade unions under firm state tutelage.

4:15 The National Union of Tanganyika Workers (NUTA) was instead established by the National Union of Tanganyika Workers (Establishment) Act No. 18 of 1964 (Cap. 555) dissolving TFL and its member unions and placing the labour movement under the care and control of the government and TANU. This brought to an end the autonomy of trade unions against ILO Conventions. Though it was required to promote the policies of and encourage its members to join TANU the new union was also assigned the same dominant role of its predecessor, TFL, i.e. the task of protecting and improving the wages and working conditions of the Union members through collective action. In 1979 NUTA was replaced by Jumuiya ya Wafanyakazi wa Tanzania (JUWATA) established by the Jumuiya ya Wafanyakazi wa Tanzania Act, No. 24 of 1979 and followed in 1991 by the Organisation of Tanzania Trade Unions (OTTU) which was established by the Organisation of Tanzania Trade Unions Act, No. 20 of 1991. Section 4 thereof stated:

4(1) OTTU shall be the sole trade union body representative of all employees in the United Republic.

---

<sup>7</sup> Government Notice no.351 of 1962.

(2) OTTU shall, with effect from the effective date, be deemed to be a trade union and the Registrar shall, upon appropriate application being made, register it in that behalf under the [Trade Unions] Ordinance.

4:16 In 1962 also a check-off system with regard to collection of union dues was introduced by legislation, through section 13 of the Trade Unions Ordinance (Amendment) Act No. 51 of 1962 (which amended section 52 of the principal Ordinance). The check-off system was further concretised in 1982 by the Jumuiya ya Wafanyakazi wa Tanzania (Amendment) Act, No. 1 of 1982 (s. 7A). At the same time service charge was introduced (s. 7B). These provisions were reproduced in the Organisation of Tanzania Trade Unions Act, 1991, (OTTU)(ss. 11,12 and 13). The Commission feels that these provisions were not necessary for vibrant trade unions do not require state tutelage.

4:17 Equally, these statutory trade unions can not be said to have been true trade unions since they were not established by the workers themselves. The right to form organisations is based on the right of association and is fundamental among trade union rights. The exercise of this right depends on three aspects; the absence of discrimination among those entitled to the right of association, the absence of a prerequisite authorisation to establish such organisations and the freedom of choice with regard to membership of such organisations. Article 2 of the International Labour Organisation (ILO) Convention, 1948 (No.87) states;

“Workers and employers, without distinction whatsoever, shall have the right to establish and...to join organisations of their own choosing...”

4:18 Furthermore, Article 5 thereof provides the right of workers and employers organisations to establish and to join federations and confederates. Although Tanzania is yet to become a signatory to the Convention, preparations are underway to do so. At the same time the Convention still sets international standards in trade union matters such that it is appropriate to use it as a yardstick in assessing domestic legislation.

4:19 The right to organise freely includes the right to express opposition to oppression and other undemocratic practices including strikes. In the manifestation of this right there should be no

interference not even by the State. Therefore, the statutory trade unions violated the Constitution of Tanzania and other related international conventions. The Commission supports the demise of the Trade Unions Ordinance under the Trade Unions Act, 1998.

## **FREE TRADE UNIONS**

4:20 The concept of free trade unions is an international phenomenon emanating from the concept of human rights. The UN has however adopted standards and principles also governing labour matters, including trade union rights. Hence, the Universal Declaration of Human Rights, 1948 provides that every one has the right to freedom of peaceful assembly and association (Article 20.1), the right of a person not to be forced to belong to any association (Art.20.2) and the right to form and join a trade union for the protection of his interests (Article 23.4). These rights are also contained in Articles 10 and 11 of the OAU Charter on Human and Peoples' Rights, 1986. In addition the International Covenant on Economic, Social and Cultural Rights, 1966 and the International Covenant on Civil and Political Rights, 1966 set forth rights and freedoms which are essential to free exercise of trade union rights. The covenants, which entered into force in 1976, contain provisions concerning the right to form unions and the right to strike.

4:21 The United Nations does not deal directly with labour matters as such instead according to an agreement concluded in 1946 with ILO it recognises that body as its specified agency in this area with responsibility for taking appropriate measures to achieve the objectives laid down in its Constitution. Therefore the international sources of law relating to trade union rights is basically the International Labour Trade (ILO) Conventions and other international instruments. The fundamental instruments are the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No.98) which together constitute the basic instruments governing freedom of Association. Tanzania has already ratified both Conventions. These international instruments set international standards, which can be used to gauge and improve the state of domestic legislation of a country, even where it has not ratified them.

4:22 The right to establish organisations provided by Article 2 of Convention No. 87 is the fundamental among trade union rights and it is the essential pre-condition without which other guarantees enunciated in Conventions No. 87 and 98 would be obsolete. Article 3 of the same Convention, which guarantees the functioning of workers' and employers' organisations by recognising four basic rights:

- (i) the freedom to draw their constitution and rules,
- (ii) to elect their representatives in full freedom,
- (iii) to organise their administration and activities and
- (iv) to formulate their programmes without interference by the public authorities.

4:23 However, since Art. 8 of the Convention provides that exercising these rights organisations shall respect the law of the land provided that it shall not be such as to impair nor applied to impair the guarantees provided for in the Convention. Therefore, although there should be complete trade union autonomy, the State cannot refrain from all interventions since it must at least ensure that trade unions carry on their activities within the limits of the law. In this respect however national legislation should only lay down formal requirements as regards trade union constitutions, such constitutions and rules should not however be subjected to prior political approval at the discretion of the public authorities. Legislation should be designed to ensure sound administration and prevent legal complications.

4:24 States are free to provide such formalities if their registration appear appropriate to ensure the normal functioning of organisations. National regulations governing the constitution of organisations are therefore not in themselves incompatible with the provisions of the Convention, provided that they do not impair the guarantees granted by that Convention. Also exemption in the right to form trade unions is provided in Art.9 of the Convention that permits states to determine the extent to which the guarantees provided for in the convention apply to the armed forces and the police.

4:25 These rights are also contained in the Constitution of Tanzania. Articles 18 and 20 provide freedom of opinion and expression and person's freedom of association respectively. The

freedom of association include the freedom to freely and peacefully assemble, associate and cooperate with other persons, and more specifically to form or join associations or organisations formed for the purposes of preserving or furthering the person's belief or interests or any other interests. In trade unions this also means the right to collective bargaining.

- 4.26 The enactment of the Trade Unions Act, no. 10 of 1998, which has the effect of, inter alia, repealing the OTTU Act, 1991 has brought back the concept of free trade unions. OTTU meanwhile transformed itself into the Tanzania Federation of Free Trade Unions (TFTU) though it is not clear under which law it is operating. For there is no amendment to the OTTU Act giving effect to the change of name nor is the new federation registered under the Trade Union Ordinance. Nevertheless, TFTU has invigorated the formation of numerous trade unions as its affiliates. The Commission is of the opinion that it should be made clear under what law TFTU is operating for otherwise it is operating illegally much to the disappointment of many trade unions deemed to be affiliated to it.

#### **ANALYSIS OF THE ORDINANCE AND THE ACT**

- 4:27 While the Ordinance represents the era of statutory trade unions the Act stands for free trade unions. However as will be demonstrated hereinafter the dividing line is still fine. The fundamental departure rests in the Act abandoning the trade union monopoly imposed by law as "designated union" which was introduced by the Trade Union (Amendment) Act, 1962 and thereafter perpetuated through the NUTA Act, 1964, the JUWATA Act, 1979 and the OTTU Act, 1991 as 'the Specified Union' through the Ordinance. In discussing the Ordinance the OTTU Act will feature prominently as according to s.1 thereof it "shall be read as one" with the Ordinance.
- 4:28 The Ordinance is divided into XI Parts containing 60 sections, while the Act has XIII Parts consisting of 88 sections. Part I of both legislation deal with Preliminary matters constituting the title of the Ordinance and the Act and interpretation (ss.1 and 2 respectfully). Part II covers the appointment of a Registrar of trade Unions for both legislation and also Deputy Registrar in respect of the Act (s.3), and other officers required to put into effect the provisions of the Act (s.4). Section 5 provides immunity for any suit against the Registrar and all other officers on any act or

omission in good faith in the execution of their duties under the Act. This immunity is important to facilitate the Registrar and other officers to perform their functions without fear or favour.

4:29 Part III of both pieces of legislation deal with registration of trade unions. The Registrar is obliged to keep and maintain a register for the registration of trade unions (s.6). Section 7 of both legislation makes it compulsory for every trade union to be registered within three months of formation before coming into operation or for those registered under the previous legislation to re-register or be dissolved. The time frame for a branch of a trade union is one month of establishment. Registration is made by application to the Registrar made in the prescribed form and containing prescribed particulars under s.8.

4.30 Before registration a trade union must comply with the requirements of the Ordinance or the Act which include:

- (i) to comply with the prescribed matters including to have constitution and rules which under ss. 33 of the Ordinance or 41 of the Act shall provide for matters specified in the Schedule to the Ordinance or the Act,
- (ii) at least twenty members of an employees' combination or association or four members for an employers' have to sign the application for registration,
- (iii) furnish to the Registrar particulars of officers of the trade union,
- (iv) where a trade union had been established before the Act, deliver also to the Registrar a general statement of assets and liabilities of the union.
- (v) where a trade union had been established before the Ordinance or Act fails to register within three months from the date of commencement of each of the legislation or after its formation whichever is the later.

4.31 Both sections 16 of the Ordinance and 18 of the Act prohibit unregistered trade unions from carrying on business. The penalty for defying the prohibition is a fine of up to shs. 500/= under the Ordinance or shs. 100,000/= under the Act.

4:32 Even OTTU though declared under s.4 of the OTTU Act as the sole union body representative of all employees in Tanzania and deemed to be a trade union on the effective date had to register.

Section 4(2) of the OTTU Act provides that the Registrar shall register it upon appropriate application being made. The importance of registration for even a deemed trade union like OTTU was demonstrated in the case of **Zambia-Tanzania Road Services Ltd v J.K. Pallangyo (1982 TLR (C.A.) 24**. In the case it had been urged in court that since JUWATA was in law deemed to be a trade union it could operate without registration. However the Court of Appeal held that though in law JUWATA was recognised to exist as a trade union it must be registered under section 16 of the Trade Union Ordinance which prohibited it and its officers from acting for its members unless it was registered. Any purported acts of JUWATA in furtherance of the trade union before registration are in law invalid.

- 4.33 The fixing of a minimum number of members of a union applying for registration is not in itself incompatible with the ILO Convention No. 87. However, the number should be reasonable so that establishment of trade unions is not hindered. The ILO Committee of Experts on Application of Conventions held in its 1994 report that the requirement by section 418 of Labour Act of 1990 of Venezuela for twenty employees to establish a trade union and 40 occupational unions was not unreasonable. It however considered a requirement for 100 self-employed workers to establish an occupational, branch or sectoral union as too high. Section 7 of both the Ordinance and the Act meet the condition of reasonableness. Therefore, the Commission is convinced the provision does not amount to an attempt to hinder formation of trade unions.
- 4.34 In the case of determining whether to register a trade union the Registrar may call for further particulars (s.11) and even require alteration of the name of the trade union where he considers it misleading or likely to mislead or deceive (s.12). Where the Registrar is satisfied he registers the union and issues a certificate, which is, unless withdrawn or cancelled conclusive proof of registration (s.10 of the Ordinance and ss. 10 and.13 of the Act.).
- 4.35 The Registrar may refuse registration of a trade union on several grounds enumerated in sections 14 of the Act and 13 of the Ordinance. These grounds include where the unions constitution is unlawful or used for unlawful purpose, the principal objects are not in accordance with those of a trade union, it is an organisation consisting of persons engaged in more than one trade and its constitution does not contain suitable provisions for the protection of their respective trade

interests and its accounts are not kept properly. Under ss.15 of the Ordinance and 16(1) of the Act, an appeal against refusal of registration of a trade union or orders lies to the High Court whose decision under the Ordinance is final. The Act does not so specify the finality of the High Court decision thus leaving room for the possibility of further appeal to the Court of Appeal.

4.36 The Commission considers that the requirements for registration of trade unions is mandatory and a necessary formality so as to ensure normal functioning of unions as long as this requirement does not violate the right of trade unions to establish organisations. The Commission also notes that the fact that there is another trade union in the same establishment, which sufficiently represents the interests of the proposed union, is a ground of cancellation or withdrawal of certificate of registration under ss.14 of the Ordinance and 15 of the Act. However this reason has not been provided as a ground for refusal of registration of trade unions. This appears strange since under the present situation a trade union may be registered today and its certificate of registration cancelled tomorrow because of the most representative trade union principle. Therefore either the principle is also applied during registration otherwise it should be removed altogether from the legislation, as its present use does not adhere to good management of trade unionism.

4.37 A pertinent issue here is whether the principle should be retained at all. The intention of the principle is not to form indirect trade union monopoly or to stifle the workers' and employers' right to voluntarily form or join trade unions of their choice. Rather to forge strong unions which can best represent the interests of workers' and employers' interests. Indeed this is to their advantage to avoid having too many weak and competing trade unions, which may prejudice their interests. Unity creates strength and greater unity means greater strength. In this regard it has been written:

“Multiplicity may breed inefficiency and duplicity of efforts while rivalry and competition between unions can promote enthusiasm and a better service for members, it can also provoke resentments and hostility and the symptomatic demarcation of disputes which give trade unionism as a whole a bad name. The services provided by a union to its members are invariably limited by the extent of its financial resources and horizons...

Bigger unions can co-ordinate diverse pressures to better purpose.”<sup>8</sup> This demonstrates that the application of the principle actually advances the course of trade unions.

4.38 Given this position the Commission would not quarrel with the application of the principle as a reason for refusal of registration as well as for withdrawal or cancellation of the certificate of registration. This position has been taken knowing that the use of the principle does not contravene the constitutional rights of the workers and employers. In **Agasha & another v. The Registrar of Trade Unions (1973) E.A 297(Kenya)** the court discussed the issue of the most representative trade union contained in the Trade Unions Act of Kenya. It was held that although the Constitution protects the right to belong to a trade union the provision for refusal of registration where there are other registered unions which sufficiently represents the whole or substantial part of the interests of the proposed union is not ultra vires of the constitution. However, the Commission recommends that recognition of the most representative trade unions must be determined on objective, pre-established and precise criteria to avoid possible bias and abuse.

4.39 The Registrar has also the mandate to withdraw or cancel the certificate of registration under ss. 14 of the Ordinance and 15 Act on the following grounds:

(a) on request by a trade union upon its dissolution,

(b) If he is satisfied that:-

(i) the certificate was obtained by fraud or mistake,

(ii) the Constitution of the union or its executive committee is unlawful,

(iii) the union is used for unlawful purposes,

(iv) the union has contravened any provision of the Ordinance or Act or regulation, (which under the Ordinance specifically includes the union not keeping books of accounts as prescribed by the legislation or after registration becoming a branch of an unregistered trade union),

(v) the funds of the union are being expended unlawfully,

(vi) the union has ceased to exist,

(vii) trade union has fewer members than a similar one in same establishment.

- 4.40 In addition OTTU's certificate of registration may also be cancelled where the Registrar is of the opinion that the specified union has failed to satisfactorily carry out its objects or its operation is no longer in the public interest. Under s. 7(3) of the OTTU Act the Registrar should not cancel the registration only on omission from its constitution any matter required to be contained in the rules of a trade union or the fact that it is not an organisation consisting of persons engaged in one trade, failure to meet a requirement in changing of name or notification of dissolution. This is but a further demonstration of protection and privileged position of a statutory trade union.
- 4.41 In respect of s.14 (b)(iv) of the Ordinance and s.15 (b)(iv) of the Act it was held in the **Unguja Pemba Transport Workers Union v. The Registrar of Trade Unions (1958) EALR 722** that failure to submit accounts by an individual responsible for submitting accounts of a trade union contrary to s.21 of the Trade Union Decree, 1941 of Zanzibar is a failure by the union itself. Therefore cancellation of certificate of registration of the trade union on that ground was found to be proper. In this case the treasurer of the trade union had failed to submit accounts to the Registrar of Trade Unions as required by the provision
- 4.42 of the Trade Unions Decree, 1941 which also empowered the Registrar in such a case to cancel the certificate of registration of the union.
- 4.42 However, before such withdrawal or cancellation the Registrar is required to give a two months' (under the Ordinance) or thirty days (under the Act) prior notice to the trade union concerned. Where such union has failed to show cause or failed to give satisfactory grounds the Registrar may proceed with such cancellation and inform the union the reasons thereof.
- 4.43 According to s.9 (2) of the OTTU Act before cancellation of OTTU the Registrar has to consult all such parties he deems necessary in the public interest and obtain prior approval of the Minister by order published in the Gazette ordering the cancellation of OTTU. The Registrar shall also specify in the order another trade union which is going 'to step into the shoes ' of OTTU. Three months after his order the Minister has to present the report thereof to the National Assembly

and specify a substitute trade union which shall operate instead of OTTU and carry on trade union monopolism.

- 4.44 Surprisingly Section 14(7) of the Ordinance also provides that the Registrar can cancel the registration of a Specified Union only on the direction of the President. It is not clear at what stage the Presidential direction should be sought and obtained. The two sections need to be rationalised if the Ordinance continues to exist.
- 4.45 Sections 17 of the Ordinance and 18 of the Act provide consequences of cancellation of a certificate of registration of a trade union. Such a trade union becomes dissolved making it lose the attributes of a registered trade union. Consequently its funds are disposed of and the registration certificate has to be delivered to the Registrar for cancellation. In such circumstances, its officers and members cease to enjoy the rights and immunities, or privileges of a registered trade union. Also no person may take part in its management or act on its behalf except for defending or taking legal action for dissolving the union and disposing the funds thereof. With respect to OTTU the situation is different. The substitute trade union takes over rights and obligations of OTTU including legal proceedings, leaders and employees (ss.16-18 of OTTU Act).
- 4.46 Contravention of any of these conditionalities is an offence, which on conviction attracts a punishment of a fine not exceeding shs. 1,000/= under the Ordinance or shs.100, 000/= under the Act. An appeal against cancellation of registration and suspension of a trade union lies to the High Court where in line with the rule of the law the Registrar is also entitled to be heard under s. 15 of the Ordinance and s.16 of the Act. The decision of the High Court is final.
- 4.47 The wide discretionary powers of the Registrar are also displayed in suspension of trade unions. While awaiting cancellation the Registrar may prohibit a trade union, a branch thereof or federation from carrying on its activities under ss.19 of the Ordinance and 20 of the Act. According to s.20 of the Ordinance and s.21 of the Act the Registrar may also suspend for up to six months a trade union or trade unions which is or are used for purposes prejudicial to the interests of the security or public order of Tanzania. Before doing so he has to consult with the trade union or the federation. The Minister may vary or revoke the order.

- 4.48 Under s.20 the Registrar is also empowered to suspend or vary such order of suspension of a branch of a trade union after consultation with the trade union. Even though the Registrar is required to consult with officials of a trade union in case of a branch or federation where the suspension is to affect a trade union the ultimate decision lies with him. The Commission is of the considered view that the Registrar should retain the powers of cancellation and suspension of a trade union or federation to ensure that there is fair play in the activities of trade unions/ federations by levelling the playing field.
- 4.49 One of the fundamental rights of workers' and employers' organisations is to draw up their constitutions and rules and to organise their administration and activities. Part V of the Ordinance and Part VI of the Act deal with constitution and rules of trade unions. When it comes to formation of a federation the Act also dedicates a whole Part V for that in addition to the provisions contained in Part VI. A person aged fourteen years may be a member of a trade union under s. 24 of the Ordinance (s.32 of the Act). Members and officers are restricted to persons engaged or employed in an industry or occupation connected directly with the union. The Commission is in agreement with the ILO Committee of Experts that this restriction is acceptable as long as it is applied to first-level organisations, which are free to establish inter-professional organisations and to join federations or confederations in the form and manner of their choice.
- 4.50 In addition, not more than one officer of a registered trade union, except with the Registrars' permission, may be a person not engaged in the industry or occupation related to the union [Sections 25(2) of the Ordinance and 33(2) of the Act]. This provision though intended to ensure that trade union officers are persons conversant with and who have a genuine interest with the industry or occupation, it has also a negative part. The restriction may have the effect of preventing qualified persons such as pensioners from carrying out trade union functions thereby depriving the union the advantages of their experience and expertise especially when internal resources are limited. The Commission recommends also that the Registrar's powers under the section be retained

- 4.51 Furthermore, sections 25(3) of the Ordinance and 33(4) of the Act also prohibit an officer of one registered trade union from holding such similar office in another trade union. However, the Registrar has powers to permit a secretary of one trade union to be a secretary of another trade union [ss.25 (3) of the Ordinance and 33(5)] of the Act. A person convicted of any crime involving fraud and dishonesty is not qualified to be an officer of a trade union until three years after completing his sentence. At the same time the Registrar may disqualify a person from holding the office of secretary or treasurer of a registered trade union who is not qualified enough to perform the duties of his office. The Registrar has powers to call for information from a trade union to ensure that these provisions are complied with.
- 4.52 Section 26 of the Ordinance restricts voting members of a trade union to persons employed or resident in Tanzania (s.34 of the Act). A registered trade union may change its name if so consented by majority members voting in a meeting called and conducted according to the rules of the union (ss.27 of the Ordinance and 35 of the Act). Both the Ordinance and the Act provide the right of trade unions to amalgamate, form federations and affiliate. Two or more registered trade unions may amalgamate or form a federation. A decision thereof has to be reached by each union through a secret ballot in which at least fifty percent of members entitled to vote at the meeting recorded and those preferring the amalgamation exceed by twenty percent the votes against under section 28 of the Ordinance and 36 of the Act. However, the formation of a trade union federation under the Act requires only a majority vote of each concerned trade union at a general meeting or delegates meeting summoned by a three months notice. The notice must inform all the members the proposed resolution and has to be served also upon the Registrar (s.23 of the Act). While the Ordinance does not prescribe for matters of notice to the general meeting the Act is very specific.
- 4.53 Section 28 of the Ordinance is nevertheless not always operative in respect of employees' federation since it is provided by s. 4(i) of OTTU Act that OTTU shall be the sole trade union body in Tanzania. Notwithstanding that s.29 of the Ordinance requires that the Registrar be appraised by notice in writing of amalgamation and formation of federation for registration purposes within one month of such occasion.

- 4.54 In the case of amalgamation the procedure under s. 36 of the Act is almost the same as under the Ordinance as explained above. The only difference is that in the latter case a three months' notice is required to be given to the members and to the Registrar while no particular time frame is provided in the case of amalgamation or formation of a federation under the Ordinance.
- 4.55 In respect of affiliation, the Ordinance does not provide the procedure, as is the case under s.24 of the Act. Under this provision when trade unions are involved in formation of or affiliation with consultative or similar bodies the consent needed has to be reached democratically by a simple majority vote at a general meeting or a meeting of delegates after a fourteen days service of notice of the proposed resolution. The Registrar has to be notified of formation or affiliation within sixty days of such event. In the same vein the Registrar must be notified also of affiliation within three months under s. 31 of the Ordinance or one month under s.24 of the Act. The situation is different in formation of or affiliation with consultative or similar bodies. In such cases the time span within which to notify the Registrar is sixty days (s.28 of the Act).
- 4.56 The Registrar retains the power to declare all these union actions invalid. After the trade unions decision to change of name, amalgamate, affiliate or form a federation of trade unions subsequent approval has to be obtained from the Registrar for these actions to take effect. Therefore notice of such change of name and amalgamation has to be given to the Registrar for registration within one month of such occasion (ss.28 and 29 of the Ordinance and 36 and 37 of the Act). The Registrar may refuse such registration if the proposed name is identical with that of another registered trade union or resembles it such as to be likely to deceive the public or where it is misleading (ss. 29 of the Ordinance and 38 of the Act). He also has powers under s.29 of the Act to declare the affiliation invalid if satisfied that the consultative or similar body does not pursue objects of a trade union other than the resolution of relations between employees and employers, employees and employees or employers and employers, or the procedure for obtaining consent from members were not adhered to.
- 4.57 In dissolution of a trade union the Registrar has to be notified within fourteen days (ss. 36 of the Ordinance and 44 of the Act). According to s.39 of the Act where the dissolution relates to a branch of a trade union the Registrar has to be notified within one month. In such a case the

Registrar will only consider whether the rules of dissolution have been followed in reaching the decision (ss. 36 of the Ordinance and 44 of the Act).

- 4.58 Registration of change of name does not change the right or obligation of such trade union. Equally, amalgamation or federation of trade unions does not prejudice the rights or obligations of either or any of the unions (ss. 30 of the Ordinance and 38 of the Act). Proceedings can proceed in the former name or initiated in the new name for matters that occurred before the change of name. Appeal lies to the High Court on the Registrar's refusal to record such change of name or amalgamation.
- 4.59 Section 30 prohibits a person who has been a member of the executive committee of any trade union the registration of which has been cancelled under the Act from holding office in or being employed by a consultative or a similar body without the written permission of the Registrar. The Commission recommends that the power given to the Registrar in this section should be retained. Again as recommended elsewhere herein above regarding matters of management of a trade union, the Registrar should continue to oversee the employment of certain categories of trade union staff.
- 4.60 Sections 54 to 60 of the Act, Trade Unions (Collection of Union Dues) Regulations, No. 708 of 1962 and the OTTU Act deal with the check-off system, i.e. trade union dues, union service charges, levies and subscriptions and their deductions from the salaries of members' or employees' wages and payment to the trade union. The Regulations however do not cover union service charges. In the case of the Ordinance, it provides powers of a designated trade union to direct that part of union dues be paid to the federation (s.41A). In addition, Regulation No.708 of 1962 made by the Minister under s.52 deal also with deduction and payment of union dues by employers. Also under the Schedule to the Ordinance a trade union is also required to make rules for the rate of contribution for any member of a trade union.
- 4.61 Under the Act deduction of union dues from salaries of union members' salaries depends on the member/employee's written consent after which the General Secretary orders the employer thereof to effect deductions and submit the same to the trade union (s.55) This notice may be

given by publication in a Government Gazette. Under s.52 (2)(hh) of the Ordinance the Minister is required to make Regulations regarding such collection of union dues by an employer who employs ten or more union members from such employees.

- 4.62 There is also union service charge payable each month by every non-member employed in a business related to the trade union. The charge is determined by trade union members and approved by the Minister (s.56). It applies to a business where fifty or more percent of the employees are members of the union. This is the case with the OTTU Act. While it may be questioned why non-union members should be required to contribute to a trade union, it is also true that the same persons benefit from gains, which may result from efforts taken by the trade union. The Commission however recommends that union service charges be deducted from the non-union members' salaries only on their consent in order to protect their constitutional rights.
- 4.63 From ss.42-47B of the Ordinance and ss.65 to 73 of the Act the Registrar's mandate to control and supervise unions through their funds is evident. Where the Registrar is of the opinion that the funds of a trade union are being mismanaged he shall call for and approve expenditure according to submitted accounts. Trade Unions are required to keep books of account, treasurer to render accounts to the members or the Registrar, secretary of a registered union or federation to furnish annual returns and auditors reports (s.68) every member to get an audited general statement of annual accounts. Books of accounts and documents shall be open for inspection. The Registrar may call for detailed accounts, suspend officers where accounts are not kept properly or funds are expended unlawfully subject to appeal to the Minister, and may apply for appointment of a receiver by the High Court.
- 4.64 Under sections 46 of the Ordinance and 70 of the Act it is an offence to obstruct the Registrar from inspecting the accounts of a trade union. Under the Ordinance the offence is punishable with a fine not exceeding shs.1, 000/= or imprisonment for a term not exceeding six months or both such fine and imprisonment. However under the case of the Act the convicted person is liable to a fine not exceeding shs.50, 000/= or to imprisonment for not more than six months or to both fine and imprisonment.

- 4.65 While Part IX of the Ordinance covers only regulations, Part XIII of the Act deals also with repeals which in the former legislation are among matters included in miscellaneous provisions (Part XI). Under ss. 53 of the Ordinance and 87 of the Act the Minister may make regulations for carrying out the principles and provisions of the legislation, inter alia, in matters enumerated in these sections. It is noted that the Minister has not made regulations under the Act, as it has not been operationilised.
- 4.66 Offences and penalties are the purview of Part X of the Ordinance and Part XII of the Act. The court is obliged when it considers necessary to order a person to deliver to the trade union or federation the property or money where it has been proved that he has misused the property or money (ss.53 of the Ordinance and 84 of the Act). The court can only entertain the complaint of such misuse if filed by the Registrar or a member of the trade union concerned. Default of the court's order attracts a fine not exceeding shs. 1,000/= under the Ordinance or shs.50, 000/= under the Act.
- 4.67 However it is a defence for an alleged default officer to prove that he had reasonable cause to believe that a competent and responsible person was responsible for and was in a position to discharge that responsibility (ss.54 of the Ordinance and 85 of the Act). All offences under the legislation are triable by the Court of Resident Magistrate (ss. 55 of the Ordinance and 86 of the Act). The Commission has noted elsewhere that apart from the Registrar a member of a trade union or a federation may complain to the Court on misuse of trade union fund under s.84.
- 4.68 Part XI of both the Ordinance and the Act stipulate miscellaneous provisions. In this Part the Ordinance includes matters of repeal, which are part of Part XIII of the Act. Sections 78 of the Act and 56 of the Ordinance provide that a member of a trade union or federation under the age of fourteen years may nominate a person not being an officer or servant of a trade union or federation, unless a close relative, to whom the money due to the member may be paid to him (nominee) upon death of the member. This provision appears to be in contradiction with s.4 of both legislation, which indicates that the lowest age of becoming a member of a trade union is fourteen years. Therefore it is not possible to have a member aged below that age.

- 4.69 However, the marginal note reads 'nomination by a member under sixteen years'. This introduces a possibility that the relevant age in reference on the other hand is below sixteen years and not below fourteen years. The Commission recommends that the position be clarified and the necessary amendments made in line with the side notes.
- 4.70 Section 79 declares the inapplicability of the Companies Ordinance, the Co-operative Societies Act, 1991 and the Societies Ordinance to any trade union or federation. On the other hand sections 57A of the Ordinance and 80 of the Act declare that the Penal Code shall not prevent the collection of subscriptions by any person where he has been authorised in writing by a trade union or federation.
- 4.71 Where as sections 58 of the Ordinance and 81 of the Act provide for service of legal process, section 82 prohibits certain persons from joining a trade union or federation, i.e., the Military Forces, the Police Force and the Prisons Services whether in the Mainland or in Tanzania Zanzibar. The wisdom of the latter provision is obvious for otherwise chaos and insecurity may occur if members of those institutions were to participate in a strike called by their trade unions. This is in line with Article 9 of the 1948 ILO Convention which leaves the determination of guaranteeing the rights related to freedom of association and the right to organise relating to the armed forces and the police to national laws or regulations.
- 4.72 The Registrar is under sections 58 of the Ordinance and 83 of the Act obliged to issue notices in the Gazette on registration, refusal or cancellation of registration, change of name or amalgamation and dissolution of a trade union or federation. This obligation operates also in respect of suspension of a union under section 21 of the Act.
- 4.73 Section 60 of the Ordinance repeals the Trade Union Ordinance Cap. 84. In the same vein section 88 of the Act is intended to repeal the Trade Union Ordinance and the Organisation of Tanzania Trade Union Act, 1991 closing the chapter of statutory trade unions. The Commission recommends that the Minister should operationalise the Act and make the necessary regulations as soon as possible.

4.74 The Trade Union Act is certainly an improvement on the Ordinance especially on the right of workers to form federation of unions. Although most of the provisions in both pieces of legislation are similar. The Act is designed to remove statutory trade union monopoly and to restore the right of workers to form and join trade union of their choosing. Increased pro-action is still required in translating workers' and employers' rights to establish organisations and make sure they are managed by the workers and employers themselves freely without interference from the state machinery.

4.75. The Commission recommends the following:

1. The principle of the most representative trade union be applied also in ss.13 of the Ordinance or 14 of the Act during registration and should be determined on objective, pre-established and precise criteria to avoid possible bias and abuse
2. Section 29(a) of the Act should be rationalised to reflect the real meaning of the kind of resolution of relations it is intended to be covered. It would appear that the resolution of relations referred to is not only "between employees and employers, or between employers and employees" for this is only repetitive but "between employees and employers, employees and employees or employers and employers".
- 3.. Section 56 of the Act be amended to allow union service charges to be deducted from non-union members' salaries only after their consent in order to protect their constitutional rights.

## CHAPTER FIVE

### COLLECTIVE BARGAINING

- 5:1 Collective bargaining is defined as a process or method of setting wages and terms of employment by voluntary negotiation between trade unions, representing employees, and employers or employers' organisations. The process is described as collective because workers are involved in it as a group and are represented by individuals chosen for that purpose. The process is bargaining because it involves give and take and ordinarily the making of a contract<sup>9</sup>
- 5.2 The aim of collective bargaining is to facilitate the improvement upon minimum terms and conditions of employment where the employer can reasonably be expected to be in a position to make such improvement. In Tanzania employees are organised in Trade Unions of varying sizes in terms of membership while the employers are organised in Associations such as Association of Tanganyika Employers (ATE), The Tanzania Association of Parastatal Organisations (TAPO) The Tanganyika Association of Agricultural Employers (TAAE).

#### **COLLECTIVE BARGAINING IN PUBLIC SECTOR:**

**The Civil Service (Negotiating Machinery) Act No. 52 of 1962 Cap 484 and The Local Government (Negotiating Machinery) Act, No.66 of 1963.**

- 5.3 Both the Civil Service and Local Government have collective bargaining machinery for junior staff. The Civil Service (Negotiating Machinery) Act, No.52 of 1962, Cap.484 and the Local Government (Negotiating Machinery) Act, No.66 1963, Cap.542 set up collective bargaining machinery in the form of a joint staff council and a national joint staff council, respectively, composed of representatives from Government and the trade unions. Section 3 of the **Civil Service (Negotiating Machinery) Act, Cap.484** provides for the composition of the joint staff council thus:-

“3. -(1) There shall be established for the purposes of this Act a Joint Staff Council which shall consist of a Chairman, a Vice Chairman and such number of other members, being not less than ten and not more than twenty, as the Minister may prescribe.

---

<sup>9</sup> Mills, D.C (1989) Labour Management Relations p.215

(2) The members of the Council shall be appointed by the Minister from persons who have been nominated by the Permanent Secretary or the trade union, as the case may be, and who are either civil servants or officers of the trade union.”

5.4 The objects of the Council adequately provided for under section 4, which states:

4. The objects of the Council shall be within the limits of its functions, to secure the greatest measure of co-operation between the Government, in its capacity as an employer, and junior civil Servants, to provide machinery for dealing with the grievances of junior civil servants and to enable consultation to take place in matters affecting the efficiency and well being of the Civil Service.

5.5 Provided that the Chairman of the Council shall be one of the persons nominated by the Permanent Secretary and the Vice-Chairman shall be one of the persons nominated by the trade union.

5.6 Section 5 of Cap 484 provides for functions of a joint staff council which are the following:

- (a) to negotiate on matters relating to the terms and conditions of service of junior civil servants or any class, grade or group thereof;
- (b) to discuss and submit advice to the Government on any matter on which the Government seeks the advice of the Council;
- (c) to discuss and make recommendations to the Government on any matter concerning the interests, well-being and efficiency of junior civil servants; and
- (d) generally to assist in the furtherance of good relations between the Government and junior civil servants

5.7 Reading these statutes it is observed that they deal exclusively with junior civil servants and junior local government servants, leaving other employees in the supervisory and managerial cadres with no negotiating machinery. The object of the Act is clearly stipulated to deal with grievances of junior civil servants and to enable consultation to take place in matters affecting the efficiency and well being of the civil service.

- 5.8 However, by virtue of sections 17A and 17B, 19A, 19B, of the Local Government service (Negotiating machinery) and Civil Service (Negotiating Machinery) Acts, all senior local government officers and senior civil servants are prohibited to go or take part or incite any junior officer in a strike. Both junior and senior officers compose the civil service while strike is cession of work to compel employer to fulfil terms of employment contract.
- 5.9 According to Article 4 of the **Convention No 98, on the Right to organise and collective Bargaining** of which Tanzania is a contracting party it is provided that governments should take measures to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers' organisations and workers organisation with a view to the regulation of terms and conditions of employment by means of collective agreement. Reading through this article together with article 20 and 29(2) of the Constitution of the United Republic of Tanzania on freedom of association and equal protection under the law suffices to prove inadequacy of the law.
- 5.10 Sections 5 and 23 of the **Industrial Court of Tanzania Amendment Act No. 2 of 1993** require collective agreements to be submitted to the Labour Commissioner before being forwarded to the Industrial court. The ICT's function is to 'proceed to decide whether or not to register the agreement'. Section 7(3) of the **Civil Service (Negotiating Machinery) Act, Cap.484** and Local Government (Negotiating Machinery) Act as amended by Act No.41 of 1967 require a signed and recorded negotiated agreement to be submitted to the Minister and the Minister to submit the same to the tribunal. The tribunal then refers it to the President. On receipt of the recommendations of the Tribunal in respect of any agreement the President is empowered to direct acceptance of the agreement with or without modifications or to reject the agreement. And every direction given by the President is final and binding upon the parties. The Commission notes that the ICT 's role in this respect is peripheral. The Commission further observes that the President should not be called upon to deliberate on ordinary matters of wages and terms and conditions of service. The collective agreement should only bind parties to it. In the case of **Knox v Down District Council (1981) IRLR 340**, Lord

Denning stated that “a collective agreement is an agreement made between an employers’ association or a single employer, on the one hand, and a trade union on the other, which as well as laying down the procedure which will govern the relationship between the signatories, will also provide for the terms and conditions of employment of those covered by the agreement.”<sup>10</sup>

- 5.11 The Commission, therefore, proposes that such agreement should be registered by the ICT as an award and there should be no further reference to the President. Instead an independent board should be established to deal with matters concerning terms and conditions of civil service. It is further proposed that the joint staff council should be restructured so that its powers are extended to civil servants in supervisory and managerial levels.
- 5.12 The provisions of sections 23(1), 23(3)(c) and 39(7)(c) of the Industrial Court Act give the court power to refuse to register a collective agreement if the agreement is not in conformity with the government economic policy. This is an important check because it ensures that agreements that are injurious to government economic policy are not legalised.
- 5.13 The Commission notes with interest that, according to the law, the parties may apply the agreement even though it has not been registered. However, as a general rule, the provisions requiring prior approval of a collective agreement for it to come into force are only compatible with the **Right to Organise and Collective Agreement ILO Convention no. 98** provided they merely stipulate that approval may be refused if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by relevant labour legislation. On the other hand, if legislation allows authorities full discretion to deny approval or stipulates that approval should be based on criteria such as compatibility with the general or economic policy of the government or directives on wages and conditions of employment, it in fact makes the coming into force of the collective agreement subject to prior approval, which is a violation of the principle of autonomy of the parties and freedom of association. Furthermore, the commission recommends that where grievances arise in registration of a negotiated agreement there should

---

<sup>10</sup> Selwyn, n.m. 1988-Laws of Employment, Sixth Edition Butterworths, London, pg. 59.

be room for appeal to the High court. Therefore section 27 (1) (c) of ICT Act No.41 of 1967 (as amended by Act No.3 of 1990 should be amended accordingly.

## **COLLECTIVE BARGAINING IN PRIVATE SECTOR:**

### INDUSTRIAL COURT OF TANZANIA ACT, NO. 41 OF 1967

5:14 The Industrial Court of Tanzania Act, (known as the Permanent Labour Tribunal Act, No. 41 of 1967 prior to 1990) made significant changes in dispute settlement. Since 1967 the then Permanent Labour Tribunal Act was amended several times namely by Act 31/70, 18/77, 25/82, 3/90 and 2/93. However, all these amendments did not address the issue of protection of employees or employers from non-jurisdictional errors committed by the Tribunal (and later Court) in making an award or deciding on matters referred to it. Act No. 3 of 1990 had a far-reaching effect on the Permanent Labour Tribunal Act making the Tribunal an Industrial Court and providing for a variety of matters.

5:15 There was a finality clause (ouster clause) in Act No. 41 of 1967 and the amending Act No. 3 of 1990 confirmed this finality clause and added some other avenues in which the decision of the Industrial Court could be interfered with. Section 27 was amended by first deleting the marginal note to that section and substituting for it the following marginal note:

“Powers of revision and finality of decision and awards of the court”.

Then there followed the deletion of section 27(1) and a substitution for it in the following subsection:

27(1) “The Court shall have power, in any proceeding before it, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of dispute involving injustice, revise the proceedings and make such decision or award in the matter as it sees fit; save that no decision or award shall be made by the Court in the exercise of its jurisdiction under this sub-section, increasing the liability of any party or altering the rights of any party to his detriment, unless such party shall have first been given an opportunity of being heard.”

- 5:16 Subsection (1A) deals with the composition of the Court exercising jurisdiction of revision under subsection (1). Even where a decision or award made by the Chairman is fixed for revision the Chairman of the court must be there with two Deputy Chairmen. This is an anomaly because in such a case the chairman of the Court would be revising his own decision or award. Moreover, the true meaning of the term revision is that it should be a higher court other than that which decided the case. In the case of subsection (1A) it is the same Industrial Court which handles the revision. The only difference here is that unlike in the original case where either the Chairman or a Deputy Chairman sits with assessors to make a decision or award, in the case of a revision the Chairman must sit with two Deputy Chairmen and two assessors. The Deputy Chairmen and the two assessors must be different from those who sat on the Court when first heard the dispute. But for the Chairman, it does not matter whether he sat on the Court which first heard the dispute or not. The chairman must preside over the Court when the revision is done even when what is being revised is his case i.e. whether he sat on the Court when it first heard that dispute due for revision or not. It could be said that it is the full bench of the Industrial Court which is doing the revision.
- 5:17 Subsection (1B) of section 27 requires the Chief Justice, after consultation with the Chairman of the Industrial Court, to make rules which have to be complied with by all persons dealing with revision of decisions and awards of the Industrial Court. The Chief Justice has made these rules and to say the least they leave a lot to be desired. These rules, [Industrial Court (revision proceedings) rules published as GN. no. 268 of 4/9/1992] limit revision only to a situation where a party was absent during proceedings or where a party was absent during the delivery of the decision or award of the court. In effect there fore this remedy of revision does not assist a party from non-jurisdictional errors committed by the court in making an award or deciding on matters referred to it. It is certainly nowhere near an appeal on merits.
- 5:18 Finally subsection (1C) makes an award and decision of the Court final and “not liable to be challenged, reviewed, questioned or called in question in any court save on grounds of lack of jurisdiction.” Lack of jurisdiction on the part of the Industrial Court is the only occasion when a full bench of the High Court may hear and determine a matter coming from the Industrial Court on appeal.

- 5:19 Fortunately, thanks to the courageous steps of OTTU on behalf of one P.P. Magasha, Dar es Salaam High Court Civil case no. 53 of 1993 (unreported) was filed questioning the wisdom and propriety of section 27(1C). The full bench of the High Court was required to decide whether section 27(1C) was unconstitutional in view of Article 13(6) of the Constitution. The High Court held that section 27(1C) did not abide by Article 13(6)(a) of the Constitution since it had the effect of curtailing the basic right guaranteed under that Article and that section 27(1c) fell outside the purview of Article 30(2) of the Constitution. The Court went on to hold that section 27(1C) was unconstitutional and invalid to the extent that it deprived a person of his basic rights of appeal or another legal remedy except on grounds of lack of jurisdiction.
- 5:20 Although Magasha’s case effectively gave parties in an Industrial Court trade dispute or inquiry the right of appeal to the High Court on merit, there has not been any amendment to the Industrial Court of Tanzania Act ever since. But there is no doubt that the law has now been effectively changed as far as appeals to the High Court are concerned. What is unsatisfactory is the fact that no amendment in the Act has been made and as such many people might not be aware of the High Court’s decision and might therefore still think the law to be the same as it was prior to the decision. We recommend that the necessary amendment be made to section 27(1c) of the Act as per decision of the High Court.
- 5:21 Before the Permanent Labour Tribunal Act was enacted in 1967 there were Trade Disputes (Arbitration and Settlement) Ordinance, Cap. 296, Trade Disputes (Settlement) Act 1962 and the Trade Disputes (Settlement Amendment) Act 1965. The Permanent Labour Tribunal Act was enacted in order to “repeal and replace the Trade Disputes (Settlement) Act 1962, to establish a Permanent Labour Tribunal, to amend certain laws relating to disputes in civil service and local government service, and to provide for matters incidental thereto or connected therewith.” It is the 1990 amendment, which changed it into an Industrial Court of Tanzania Act. The last amendment to the Act was in 1993. Another amendment as a consequence of Dar es Salaam Civil case no. 53 of 1994 is due. Even after this amendment there will remain many features which are still unsatisfactory. We will go through the Industrial Court Act to try and identify these unsatisfactory features.

- 5:22 Part II of the Act was amended by Act no. 2 of 1993 by repealing that part and replacing for it another part II. A lot of anomalies have been removed by the amendment such as in the procedure for settlement of disputes when the Labour Commissioner had to get the approval of the Minister in order to refer a dispute back to the parties for negotiation and settlement if any machinery for settlement of trade disputes which exists in the trade or industry or branch had not been made use of by the parties (proviso to 4(2) of Act no. 41 of 1967). There was yet another provision whereby the Minister could postpone reference of a trade dispute to the Tribunal even after the Labour Commissioner applies to the Minister to do so (proviso to section 4(4)(b) of the Act).
- 5:23 The problem with part II of the amending Act is that there is nothing said about a District Labour Officer or Labour Commissioner's failure to transmit a dispute to the next ladder. It is recommended that there should be some sanctions against this failure. It is further suggested that there should be more time and not only 21 days within which to transmit the dispute because it may not be practicable for a District Labour Officer in a remote district to transmit such dispute to the Labour Commissioner in Dar es Salaam within twenty one days after negotiations fail.
- 5:24 Another unsatisfactory feature is to be found in section 18 as amended by Act no. 3 of 1990. This section should have been enacted bearing in mind the provisions of the Civil Service Act, which requires appointments above a particular grade to be made by the President. The current Registrar of the Court was appointed by the President despite the provisions of section 18(1) which require him/her to be appointed by the Minister since such appointment by the Minister would be contrary to the provisions of the Civil Service Act.(see section 2(a) of the civil service Act 1989)
- 5:27 There has been great improvement brought about by Act no. 3 of 1990 concerning assessors. Before 1990 the assessors for each trade dispute or inquiry had to be selected by the minister and if a case was not heard due to any reason including the absence of the assessors, the Minister was requested to make another selection. This situation made the hearing of a trade dispute very

difficult. Now the Minister appoints panels of assessors from the Trade Union side and the Association of Tanganyika Employers. The presiding Chairman or Deputy Chairman selects the two assessors at the commencement of the hearing of the dispute. Despite the above it often happens that a dispute cannot take off because the assessors who have been selected do not turn up either both or one of them. Section 19 provides that the court shall be properly constituted if presided over by the Chairman or a Deputy Chairman sitting with 2 assessors. Since the Court may continue and conclude the proceedings notwithstanding the absence of the assessors who are only required to be both present at least at the commencement, we think that their presence or absence is not essential, as is the case in the High Court for Criminal sessions. The Commission recommends that in order to ensure that the assessors are present throughout the hearing for the purpose of getting the benefit of their opinions, there should be permanent assessors who are not involved in any other employment. Such assessors would be readily available for the hearing of disputes, and in that way the importance of assessors would be recognised.

5:28 The terms of appointment of the Chairman and Deputy Chairmen has been one of three years duration. Therefore Chairmen and Deputy Chairmen come and go at the Industrial Court every three years and new appointments are made in terms of section 16(1)(a) and (b). That sort of arrangement does not assist in moulding an Industrial Court, which is effective. In many countries including Kenya, Zimbabwe and the United Kingdom, Industrial Courts or Tribunals are manned by staff who are on a more or less permanent basis. The Judge in Zimbabwe's Industrial Court for example has been at his job for some time and the arrangements is that he remains there until retirement. Such is the position for his deputies as well. In that way the Industrial Court bench in Zimbabwe is bound to excel in Industrial relations cases.

## **CHAPTER SIX**

### **SETTLEMENT OF DISPUTES**

## Disciplinary Control in the Civil Service and Local Government

- 6.1 The State established separate disciplinary authorities and dispute settlement machinery for government, local government and the private sector. The Civil Service Act, No. 16 of 1989 (which repealed and replaced the Civil Service Act, 1962, Cap. 509) designates the Head of Division, Principal Secretary and the Chief Secretary as disciplinary authorities (S.20 of the Civil Service Act No. 16 of 1989).
- 6.2 The guiding principle of all disciplinary authorities is that no one should be condemned unheard and is stated in section 19 of Civil Service Act No. 16 of 1989. The section provide that:
- (1) The power to dismiss and to terminate the appointment of civil servants shall be exercised in accordance with the provisions of this section.
  - (2) The power to dismiss a civil servant shall not be exercised unless –
    - (a) a disciplinary charge is preferred against him;
    - (b) he is afforded an adequate opportunity to answer the charge, and
    - (c) an inquiry is held into the charge in accordance with regulations made under section 24
- 6.3 Part III of the Constitution of the United Republic of Tanzania, under article 13 (6) (a) adds further that – “to ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely: when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned”
- 6.4 The above position of the law is also supported by the case of **I. S. Msangi v. JUWATA and Workers Development Corporation, TLR, 1992**. In this case the appellant sued the second respondent, the Workers Development Corporation (W.D.C) for wrongful termination of his employment. It was held by the full bench of Court of Appeal that, “...it was **necessary to afford the appellant the opportunity to be heard** by the body which ultimately decided his fate i.e. the board of directors, because there can be no

guarantee that given that opportunity his defence before the board of directors would necessarily be the same as his defence before the probe team.”

### **Disciplinary Code**

6.5 According to the provisions of section 4 (1) of the Security of Employment Act No. 62 of 1964, “Disciplinary code” is interpreted to mean:

“the code of disciplinary offences set out in the column of the second schedule to the Act No. 62/64, as varied from time to time in accordance with any order under section 52 of the Act”

6.6 The disciplinary code provided by the Security of Employment Act Cap. 574 (S.19 and Second Schedule) governs every employee in the private sector and parastatal organisation other than “an employee who, in the opinion of the labour officer, is employed in the management of the business of his employer” (S.4 (1)). In addition it governs every employee in government and local government in the auxiliary grade. The Disciplinary code is administered by trade union branches and Conciliation Boards established under section 10 of the Security of Employment Act, Cap. 574.

6:7 Part III (C) of the Security of Employment Act No. 62 of 1964, section 24 (1) sets out the functions and powers of the Conciliation Board as follows:

- (a) to decide whether the summary dismissal, proposed summary dismissal or deduction from wages was justified and appropriate and thereupon confirm, reverse or vary the imposition of the disciplinary penalty;
- (b) may in the case of an employee who has been dismissed or suspended pending the decision of the Board, order his re-engagement or reinstatement as the case may be, or direct that the dismissal should take effect as a termination of employment otherwise than by dismissal, and may authorise the imposition of a lesser disciplinary penalty;

- (c) may order the refund to the employee of any deduction and may authorise the imposition of a lesser disciplinary penalty;
- (d) may approve the terms of any lawful settlement between the employer and the employee;
- (e) May order reinstatement or re-engagement in cases of summary dismissal or unreasonable and unconscionable termination of employment – S.40A of Act No. 1 of 1975.

An incisive analyst has remarked that the Security of Employment Act is a misnomer. He states,

“The Act is unique in its deception of purporting to protect workers. In its operation this law affords security of labour for the employer through workers themselves who sit in the union field branches and enforce the Disciplinary Code at the instance of the employer”<sup>11</sup>

The Commission concurs with this remark and believes that the Act is rooted in a system where labour is largely if not totally controlled and managed by the State thus making it the largest employer desirous of protecting its own interests and not the workers.

6.8 There are voices, which argue that the mode of administration of the disciplinary code is the source of indiscipline or has contributed to the fall in discipline in Tanzania. The Commission feels that the disciplinary code is abundantly effective in controlling discipline as well as preventing employees’ alienation at places of work. However, while the disciplinary code should be retained, the following changes are proposed:

- (i) An aggrieved party should be able to refer the decision of the Conciliation Board to the Industrial Court of Tanzania (and not to the Minister);

---

<sup>11</sup> Kapinga, W.B.L. 91985), “State Control of the Working Class Through Labour Legislation” in Shivji, I. G. (ED) (1985), The State and the Working People in Tanzania, CODESRIA, Dakar 1985; p.87-106 at p.102

- (ii) The definition of “employee” should not depend on the labour officer’s opinion and should be consistent with our earlier proposal on the grading system. Accordingly, there must be specific criteria for definition of an employee.

6:9 Section 40A which was introduced by Act No.1 of 1975 overrides other provisions in Parts III and IV of the Security of Employment Act, Cap. 574. The section provides thus:

40A – (1) “Notwithstanding any other provision of this Act or of any other written law, where an employer terminates the employment of any employee or summarily dismisses any employee and employee is aggrieved by such termination or dismissal, employee may at any time before the expiration of fourteen days from the date on which such termination or dismissal takes effect, refer such termination or dismissal to the Board and the Board may, if is satisfied –

- (a) that the termination was manifestly unreasonable and unconscionable; and
- (b) that the circumstances in and around which the employment of the employee was terminated by the employer are not circumstances of the kind specified in subsection (2) of section 39; and
- (c) that the employee did not consent to the termination or that the termination was not at the instance of the employee, and
- (d) that the employee has not accepted any statutory compensation to which he may be entitled under this Act, and
- (e) that the employee has not taken up any other employment, and
- (f) that it will not be unreasonable or unjust to order the employee’s re-instatement or re-engagement by the same employer, order the employer to re-instate or engage the employee.”

What section 40A-(1) does is to make new provisions on termination of employment and dismissals of employees.

This section has been assigned conflicting meanings:

- (a) that reinstatement referred to in section 40A (1) is physical reinstatement of the employee;
- (b) that the provision is satisfied by the employer paying statutory compensation and twelve months wages in lieu of physical reinstatement, vide  
**D.A.N. Kavishe v. Arusha International Conference Centre, Court of Appeal of Tanzania at Dar es salaam, civil application no. 1 of 1987; Peter Ndonde v. Tanzania Shoe Company Ltd, High Court of Tanzania at Dar es salaam, Misc. CC. no.9 of 1986; Simon Byabato v. Mwanza Textile Limited High Court of Tanzania at Mwanza, Misc. CC. no.14 of 1991.**
- (c) that it is the employee who has the liberty to decide between physical reinstatement and receipt of statutory compensation and twelve months wages in lieu of physical reinstatement, vide  
**Juma Ally Kaziabure v. Tanzania Posts and Telecommunications Corporation, High Court of Tanzania at Dar es salaam, misc. cc. no. 94 of 1985; Stephen Nyigongo v. Tanzania Electric Supply co. Ltd, High Court of Tanzania at Dar es salaam, misc. cc. no.15 of 1986; Obadiah Saleh v. Dodoma Wine Company Ltd, High Court of Tanzania at Dodoma, civil case no. 53 of 1990.**

The Commission recommends for adoption interpretation (b) above on the ground that it is consistent with freedom of contract of employment. It is further recommended that the employer should not be liable to pay damages to the employee (section 27 (2)) nor should the employer be liable to be prosecuted under section 50 of Cap. 574 for failure to reinstate the employee.

**Conciliation Boards for Managerial Cadre:**

6:10 There has been changes made by the ICT Act No.41 of 1967 (as amended) by Act No. 2 of 1993, under Part II which provide for procedure for settlement of disputes. This law has extended time of reporting a dispute to the Labour Commissioner from 14 days to 21 days. Section 6 (2) of the Act states that:

“where a Labour Officer is unable to effect a settlement of a trade dispute, he shall report in writing to the Labour Commissioner **within twenty one days** of receiving the dispute.”

6:11 However, the above provision of the law does not spell out clearly,

- What happens if the Labour Officer **fails** to report a dispute to the Labour Commissioner within the time specified. Will the aggrieved employee not suffer?
- If Labour Commissioner fails to transmit within 21 days the trade dispute to the Court (ICT) what will happen?

The law should state clearly as to what happens and ensure that the rights of the employee are not lost through negligence or otherwise of the Labour Officer or Labour Commissioner. However, research revealed that, the period specified is too short for a Labour Officer especially up country District Labour officers to be able to report a dispute to the Labour Commissioner whose office is in the headquarter – (Dar-es-Salaam). The Commission therefore recommends that the time specified for the Labour officer to report to the Labour Commissioner be extended to thirty days from the current twenty-one days.

#### **Disputes and Trade Disputes**

6:12 The Civil Service (Negotiating Machinery) Act, Cap. 484 (as amended by the Industrial Court Act, No. 41 of 1967) makes provisions for settlement of disputes. Under section 2 (1) “dispute” means any matter relating to the terms and conditions of service of junior civil servants which has been considered by the Council, (i.e. Joint Staff Council) without agreement having been reached thereon and which has been reported to the Minister under section 8.

The process is as follows:

- (i) the Minister refers a dispute to the ICT – section 9;

- (ii) the ICT considers the causes and circumstances of the dispute and prepares a report – S. 11(2);
- (iii) the ICT submits its report to the Minister within twenty-one days from the date of reference – S.12(3);
- (iv) the Minister submits the report together with his comments, within fourteen days, to the President of the URT – S.13(c).
- (v) the President makes an award – S.13 (2).

6:13 Settlement of trade disputes was regulated by the Trade Disputes (Settlement) Act, Cap. 480. It contained elaborate machinery for inquiry into condition of industrial ferment in the form of boards of inquiry. The Industrial Court of Tanzania Act, No. 41 of 1967 borrowed some aspects of Cap. 480 and introduced new concepts and procedures such as reporting, conciliation and resolution of trade disputes. It defined a “trade dispute” to mean any dispute between an employer and employees or an employee in the employment of that employer connected with the employment or non-employment of or the terms of employment, or with the conditions of labour of any of those employees or such an employee – section 2(3). The following offices/institutions have been allocated functions by Act No. 41/67 ((as amended) by Act No. 2 of 1993 as follows:

- (a) Union branch, which reports a trade, dispute to the Labour Officer – S.4 (2).
- (b) The Labour officer uses his best endeavours to conciliate the parties – S.4(4)
- (c) If there is no settlement, the Labour Officer reports in writing to the Labour Commissioner – S.6 (1).
- (d) Labour Commissioner transmits the dispute to the Industrial Court
- (e) The ICT proceeds to consider the dispute and make an award thereon – S. 6(3).
- (f) If at stage (b) above a settlement (negotiated agreement) is effected, the Labour Officer submits the same in writing to the Labour Commissioner – S. 5(1).
- (g) The Labour commissioner transmits the negotiated agreement to the ICT – S.5 (2).
- (h) The ICT proceeds to decide whether or not to register the agreement as an award – S. 5(2). The ICT examines the agreement, the report of the Labour Commissioner

accompanying the agreement and any comments, which the Minister may have made – Section 23(1).

6.14 The Commission feels that as long as the aim of dispute resolution is industrial harmony, the relevant machinery should be reasonably fast to enable parties to resume good working relations. The following proposals are hereby made in that light:

- (a) Permanent negotiating procedural rules for use by conciliators and labour officers should be formulated and published in the Gazette.
- (b) Where a settlement is affected, the negotiated agreement arising therefrom should be forwarded by the conciliator or labour officer directly to the ICT for registration .
- (c) The ICT should register the agreement, as it deems fit.
- (d) Assessors should be reasonably motivated to attend proceedings of the ICT.
- (e) If possible to have assessors for ICT who are on more or less permanent basis like the members of the Housing Appeals Tribunal (HAT). This could cut down the delays.
- (f) Section 27 is also problematic vis a vis revision. First of all the word “revision” is a misnomer. The right word would probably be “review” but certainly not “revision” because only a higher court or tribunal can revise a decision. The revision under section 27 of ICT Act is by full bench of ICT as it were. What is abnormal is that the Chairman of ICT must always form part of the panel even where what is being revised is a case which he had determined. It is recommended that in view of the case of **P. P. Magasha v. The Attorney-General and The Clerk to The National Assembly, High Court, civil case, no. 53 of 1994** in which the full bench of the High court ruled that there must be a right of appeal from ICT decisions on merits, the revision exercise should stop.
- (g) The finality clause in section 27(1C) should be removed.
- (h) There should be specialisation in labour matters like what they have in Kenya, Zimbabwe and United Kingdom. The Judge appointed as Chairman should continue in the appointment as long as possible. The same should be for the Deputy Chairman. Rather than appoint persons for 3 years only they should be left on the job for a longer period in order to gain experience and become experts.

## STRIKES

- 6:15 A strike may be defined as an act by employees of concertedly refusing to work for an employer until their grievances or demands relating to wages, hours, or other terms and conditions of employment are satisfied or withdrawn-- section 2(3) of the Industrial Court Act, no.41 of 1967 and section 2(1) of the Civil service (Negotiating Machinery) Act Cap 484 as amended by Act no.4I of 1967. Employees who strike usually walk off their jobs together and picket the employer's premises.
- 6:16 A strike may also take the form of a "slowdown." In this case employees reduce their customary rates of production. The aim of a strike is to inflict financial loss, either by causing the shutdown of a plant or interrupting operations, in order to induce the employer to come to terms. Since strikers get no pay and thus also suffer financial loss, unions tend to use the strike weapon only as a last resort. Unions, however, often pay benefits to striking members. Such was the case in the 1786 strike of the Philadelphia printers; the first recorded union-led work stoppage in U.S. history.
- 6:17 The strike has been associated with the factory system as the characteristic form of worker protest against the employer's power to set and alter the terms and conditions of employment. Through membership in or representation by labour unions, the individual worker has strengthened his bargaining power. Unions, acting as employee representatives, have adopted the strike, and the threat of one, as major weapons for advancing the economic interests of their members.
- 6:18 **Other Strike Causes.** Unions have also called strikes to compel reinstatement of a

discharged employee, compliance with a collective labour agreement, recognition of the

union as bargaining agent (recognition strike), and assignment of particular work to the striking union's members rather than to members of a rival union (jurisdictional strike). Laws requiring an employer to bargain with a union certified by a government agency as the representative of a majority of employees have reduced the number of recognition strikes. Strikes support of strike action by employees of nonrelated employers (sympathy strikes) are restricted by law in the United States. Sympathy strikes involving entire communities are deemed general strikes and have taken place in Winnipeg, Manitoba (1919), and San Francisco, Calif. (1934). The most dramatic strike of this type was the British General Strike of 1926. Syndicalist and other political groups, chiefly outside of the United States and Canada, have led general strikes against governments.

6:19 Major U.S. strikes in the 20<sup>th</sup> century have occurred in the anthracite coal industry (1902), the garment industry (1909), the bituminous coal industry (1919; 1946), and the steel industry (1919, 1946, 1949, 1959). "Sit-down" strikes, with workers occupying the employer's premises, took place in the rubber (1936) and automobile (1937) industries. Canada has had far fewer major work stoppages. Since World War II, however, there have been a number of long and bitter strikes in Quebec and other provinces.

6:20 The legality of a strike in the United States under federal and states law depends upon the lawfulness of its purposes and on the means used by the strikers. Until about 1850 U.S. courts frequently outlawed strikes and trade unions themselves as forms of conspiracy. From the 1870's to the 1930's strikes were effectively headed off and broken by court injunctions, defiance of which brought fines and imprisonment. Army troops were used in the great railroad strikes of 1877, the Homestead Strike (1892), and the Pullman Strike (1894). But federal and state legislation now protects the rights of employees to organise and engage in peaceful concerted strike action, subject to limitations. Such laws include the Railway Labour Act (1926), the Norris-La Guardia Anti-Injunction Act (1932), and the

Byrnes Act (1936) against the interstate transportation of strike-breakers. Another is the National Labour Relations Act (1935) as amended by the Labour-Management Relations Act (1947) and by the Labour-Management Reporting and Disclosure Act (1959). Canada has provided similar legislative safeguards in its Industrial Relations and Disputes Investigation Act (1949) and in comparable acts in each province.

- 6:21 Strikes in Tanzania are governed by the Industrial Court of Tanzania Act, No. 41 of 1967 (as amended by Act No. 2 of 1993) which prescribes steps which must be taken before employees can lawfully take part in a strike (s.11) Part V of the Local Government Machinery Act No. 11 of 1982 prescribes the conditions to be fulfilled before a strike takes place. The Law (s.20 (1)) of Act no.11 of 1982 provides that no employer shall take part in a lock-out and no specified government officer shall take part in a strike unless the conditions specified in subsection (2) and which are applicable to the occasion are first fulfilled. The Law (S.20 (2) A (b) provides further that the minimum period allowed is forty-two (42) days after the trade dispute was reported to the Minister. And such strike must be preceded by a secret ballot under the supervision of the Labour Officer {s. 11(2) of the ICT Act}.
- 6:22 The Commission observes that the prescribed period is intended to be a cooling off period during which the labour officer uses his best endeavours to conciliate the parties (s.4(4) of Act No.2 of 1993). The Commission observes further that during that period of employees' agitation productivity is likely to fall and the longer the period the longer is the period of low production. Despite that the Commission finds it necessary to keep the status quo because the Labour Commissioner is at the centre of things. Thus, where the Labour Officer is unable to effect a settlement of the dispute he must submit the dispute to the Labour Commissioner who will submit the same to the ITC.
- 6:23 Lock-outs are less prevalent than strikes. What actually takes place is that the employees either lock out the employer so that he or she cannot enter the business premises. This is similar to "sit down strikes" described above. All these actions by employees are serious breaches of the law and are therefore illegal. It is the employer who is allowed in certain circumstances to lock out his employees so that they cannot enter the business premises and work there. The requirement for a secret ballot before a strike can take place appears to the Commission to be unrealistic; for, if any of the conditions listed in section 11(1)(a) to (d) are not fulfilled by the authorities, what more can be expected if not a strike to force whoever is concerned to do what is required of him or her by the law? Suppose the ballot is cast and those who want to strike fall short of 2/3, what next?

The dispute will remain there without being resolved. Until when will the dispute remain with the Labour Officer {Section 11(a)}, or the Labour Commissioner (b) or the ICT (c) or until when will ICT remain with the dispute without executing the award (d)? It seems to us that the purpose of section 11(2) is to frustrate the employees and in turn to protect those officials who fail to do their duty.

6:24 The Commission is also of the opinion that it is in order to put conditions before a strike can occur. It would not make sense for anyone to strike before the dispute has been dealt with. If a dispute has been reported to a labour officer for conciliation the Labour Officer must be given a chance to do so. The same is the position when the dispute is reported to the Labour Commissioner and eventually to the Court (ICT).

6:25 We also think that the Labour Commissioner must be involved in trade disputes and that it is correct for a report by a Labour Officer to go to the ICT through the Labour Commissioner as the Act provides. The Civil Service (Negotiating Machinery) Act, Cap.484 regulates strikes in the civil service. The general provisions are contained in section 17.

“17-(1) No junior civil servant shall take part in a strike unless the conditions specified in subsection (2) and which are applicable to the occasion have been fulfilled. (3) Any person who contravenes the provisions of subsection (s) shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.”

The specified conditions are as follows: a report is made to the Minister of existence of a dispute (i.e., “the council is unable to reach an agreement on any matter relating to the terms and conditions of service of junior civil servant or any class, grade or group thereof”) and twenty-one days have elapsed since the date of the report to the Minister without a settlement being effected or a reference of the dispute back to the Council or a reference of the dispute to the ICT. Where the dispute has been referred to the Minister and to the ICT a strike will be lawful if the ICT submits a report to the President of the URT and the President does not make an award within twenty-one days to receipt of the ICT report.

6:26 Strikes in the Civil Service are regulated by the Civil Service (Negotiating Machinery) Act 1963 as amended by the Industrial Court of Tanzania Act of 1967. The steps proposed in the amendments and which are in force appear to be appropriate since the President who derives his authority from the Constitution cannot be ignored and by-passed (Articles 33(2), 34(3) and 35(1) of the Constitution).

6:27 Since World War II federal, state, and provincial laws have tended to put restriction on the freedom to strike. Special laws apply to strikes in critical industries and to strikes having a national emergency effect. National labour policies have fostered an increasing number of collective bargaining agreements with “no-strike” clauses and grievance and arbitration

procedures for handling disputes. A strike contrary to such clauses and without union authorisation or ratification is a “wildcat” strike.

- 6:28 Labour economists measure strikes by the number of actual work stoppages, number of workers involved, and number of man-days of idleness resulting. There are also measurements of the percentage of strikes called over various issues. Strikes over wages, hours, and fringe benefits constitute the largest percentage and are typical of U.S. and Canadian industrial history.
- 6:29 In Tanzania apart from the famous dock workers strike of the colonial times there has not been any strike of marked importance in the above terms. This is explained by the fact that after independence the Government and its public corporations have been the largest employer and the government has made sure of enacting laws that have protected it from any damaging strike action. Such laws may need to be reviewed in the face of the massive privatisation taking place now.

## CHAPTER VII

### ADMINISTRATION OF LABOUR LAWS

- 7.1 The Labour Commissioner is a key civil servant in the administration of labour laws in Tanzania. He is the head of the Labour Department whose functions include overseeing individual and collective labour relations, workmen’s compensation, and factory inspections and keeping labour statistics. At the head quarters there are heads of sections; industrial relations, factory inspection, international labour affairs, human resources deployment, finance and personnel. In the regions and districts Regional Labour Officers and District Labour Officers represent the department respectively.
- 7.2 The functions of the Labour department include:
- (a) to be custodian of all labour law regime;
  - (b) overseeing individual and collective labour relations;
  - (c) administration of the Workmen’s Compensation scheme.
  - (d) factory inspection;

- (e) keeping of labour statistics;
- (f) conducting litigation on behalf of the individual employees based on breach of employment contract;
- (g) under the Industrial Court Act as amended by Act No.5 of 1990. The Labour Commissioner has been given the task of acting as a filter in control of industrial action and settlement of collective labour dispute.
- (h) administer Presidential Directives No.1 of 1970.
- (i) control employment of foreigners.
- (j) to oversee, that there is co-ordination between social partners and international community i.e. between Government, employers/employees associations and international agencies such as UNDP, UNO, ILO, UNICEF, OAU, SADC etc.
- (k) to advise the government on the ratification of international instruments.

7.3 The Labour Department is required to conduct frequent inspection of places of employment such as factories to ensure compliance with the relevant laws, and has an inspectorate cadre for this purpose. However in the last few years no inspection has been conducted because of lack of working tools, such as motor vehicles due to lack of financial resources.

7.4 The present law depends on Labour Officers to ensure compliance and also to prosecute in case of the infringement of the provisions of the employment law. The labour officers represent employees in magistrate courts under Part XI of the Employment Ordinance at the same time perform the function of settling disputes between employers and employees. The relevant provisions of the Employment Ordinance state:

“S. 130. Whenever an employer or employee shall neglect or refuse to fulfil the terms of any contract of service, whenever any question, difference or dispute shall arise as to the rights or liabilities of either party to a contract of service or touching any misconduct, neglect or ill treatment of or by such party, the party aggrieved may report the matter to a labour officer who shall there upon take such steps as may seem to him to be expedient to effect a settlement between the parties.

S.131. Where, upon receipt of a report under section 130 or otherwise, a labour officer is of the opinion that an offence under the provisions of this Ordinance has been committed by an employer, employee or any other person, he may himself take such steps as may be necessary by making the facts known to the police or otherwise, to bring the employer, employee or such other person before the court”.

S.132. Where, on receipt of a report under section 130, a labour officer does not act in accordance with the provision of section 131 and is unable to effect a settlement between the parties, he may, at the request of either party or on his own motion submit a written report to a magistrate setting out the facts of the case.

S.133- (1) Every district magistrate (whether or not he is a civil magistrate) shall have jurisdiction, notwithstanding anything to the contrary contained in any Ordinance or law respecting the jurisdiction of such magistrate, in all cases or matters arising between employers and their employees and with reference to their relative rights and duties or to any matter or thing or offence for which provision is made in this Ordinance.

S.134- (1) On the receipt of a report under section 132 the magistrate shall, where the facts appear to him to be such as may found a civil suit, issue such process as he may think fit to cause the parties or either of them and the witnesses to attend before him.

(2) Upon the attendance of the parties the magistrate shall proceed to try the issues disclosed in the report as if the proceedings before him were a civil suit, without requiring the parties or any party to file any pleading.

## **LABOUR STATISTICS**

7.5 The labour legislation does not allow easy and accurate collection of labour statistics. The development of good labour economics requires accurate data on labour force mobility, composition, age spread, mean education, and contribution to the Gross National Product.

7.6 In order to facilitate the collection of such data the Commission recommends that the following should be done:

- (a) every employer should keep a register of all employees and furnish to the Labour Commissioner an annual report on the labour force engaged during the year as well as all the employees in his employment, including details relating to age, education, profession, etc;
- (b) require every person on reaching the age of eighteen years to register at the nearest labour office or other designated office and obtain a registration card with a registration number on it. If and when such a person secures employment he gets an employment card and hands over to the labour officer or private employment centre the registration card for custody;

7.7 The Commission notes that a National Employment Service (NES) was abandoned some years ago. The advantages of NES are;

- (1) provision of a central machinery through which a job seeker can approach the labour market;
- (2) provision of a central machinery through which employers can recruit workers;
- (3) provision of means of ensuring that only properly qualified persons obtain the advertised jobs; and
- (4) provision of means of checking that proper wages are paid through periodic labour inspection.

7.8 There have been suggestions for a liberalised NES. The Commission recommends it and proposes that private employment centres should be linked to the Labour Commissioner and they must submit to that office promptly accurate quarterly/annual reports".

## **LABOUR ADVISORY BOARD**

7.9 The Labour Advisory Board is established under the provisions of section 3 of the Employment Ordinance, Cap. 366. Its membership includes public officers and representatives of employers and Employees (Social Partners). The Labour Commissioner is the Chairman of the Board.

7.10 Section 4 of the Employment Ordinance provides functions of the Board, which are: -

- (1) to consider and advise the Minister concerning employment such as operation of the employment service policy and all matters concerning relations between the United Republic of Tanzania and the International Labour Organisation including preparation of reports replies and comments on questionnaire.
- (2) advising the Minister concerning action to be taken to facilitate compliance with the obligations imposed by the International Labour Conventions.
- (3) to advise the Minister on all matters relating to health and safety at work including preventive measures, control and protection against occupational hazards in work place due to pollution, vibrations and chemicals.

7.11 The board has not been active in recent years. The Commission recommends that the Labour department should take an interest in re-activating and convening sittings of the Labour Advisory Board. The Commission recommends that the law should prescribe a term for the board membership e.g. for a fixed period of three years. Provisions for removal of such members in case of misconduct should also be incorporated.

## **WORKMEN'S COMPENSATION**

7.12 The Workmen's Compensation Ordinance was enacted in 1948 to provide for compensation to workmen who suffer injuries in the course of their employment. Since its inception the Ordinance has been amended by Act No. 60 of 1966, Act No.43 of 1967 and Act No. 17 of 1983.

- 7:13 The Ordinance provides for a lump sum compensation for injury caused by an accident arising out of and in the course of employment. According to section 7 as amended by Act No.17 of 1983 where permanent total incapacity results from the injury, the amount of compensation shall be a sum equal to fifty-four months earnings.
- 7.14 The proviso to this section states that, in no case shall be amount of compensation in respect of permanent total incapacity be greater than fifty four thousands one hundred and eight shillings and not less than two thousand shillings.
- 7.15 Section 6 (C) of Act 17 of 1983 stipulates, that if the workman leaves no dependants the reasonable expenses of the burial of the deceased workman should not exceed the sum of five hundred shillings (500/=) which shall be paid by the employer.
- 7.16 By virtue of section 42(1) any employer who fails to comply with any compensation order under the Ordinance without any reasonable cause is guilty of an offence and is liable on conviction to a fine not exceeding forty thousand shillings.
- 7.17 The Commission observes that, despite the amendments the amount payable for compensation and penalty is very low. The Commission recommends change of formula. The Commission recommends that the compensation for total incapacity be no greater than two million shillings and not less than fifty thousands shillings. In case the workman dies the costs for his burial should be as is prescribed in the Government Standing Orders.

### **CHILD LABOUR**

- 7.18 Conceptually child labour is an engagement of a class of persons known as children below 15 years in activities that may impair physical, mental, moral, spiritual and social development.
- 7.19 According to International Labour Organisation (ILO) child labour is defined as work or employment situation where children are engaged on a more or less regular basis to earn a livelihood for themselves or their families. A child is a victim of exploitation because he or she is

a source of cheap labour. Besides the child being a source of cheap labour, she/he is also exposed to danger which may affect the child's physical as well as mental development.

7.20 It is observed that most of the children who are victims of child labour are orphans, neglected or come from poor families, single parents, and divorces. Child labour has the following characteristics:

- (1) Work in which the child is paid less than what he/she deserves for his/her labour input (exploitative child labour).
- (2) Work which subjects the child to immoral behaviour e.g. prostitution,
- (3) Work that exposes the child to hazards e.g. being affected by agro chemicals, poisonous substances, and accidents. etc.
- (4) While performing the work, the child is deprived of his/her rights such as the right to get education, recreation, protection and food.

#### **CHILD LABOUR IN TANZANIA**

7.21 Child labour is an alien concept in Tanzania. As in many other African traditional societies, it came with the introduction of the money economy and the monopolistic and often cut-throat capitalistic competition - whose main motive has been the maximisation of profit: thus the cheaper the labour, the bigger the profits. There is need however to distinguish between child labour and child work; child work is involving a child in doing various family and community activities as part of socialisation, by giving due consideration to the child's ability and best interest. While child labour is making a child perform tasks that are beyond his/her capacity, and denying his/her basic rights.

7.22 In Tanzania child labour has its roots going back to the colonial era, when children were employed to facilitate the expansion of the colonial economy.

One of the first pieces of legislation on child labour was The Employment of Women and Young Persons Ordinance of 1940. The Ordinance prohibited the employment of children in industrial undertaking (section 91), in other sectors children could be employed on a daily wage, on a day to day basis provided that each night they returned to the place of residence of their parents or

guardians (section 4). The above mentioned prohibition was not totally protective to the child since the Governor was given power to exempt any industrial undertaking from the provisions of the law. However, the interest of the colonial power which was to assist big farm owners, who employed a large number of children was preserved by not restricting child labour.

### **CAUSES OF CHILD LABOUR**

- 7.23 Tied directly to poverty, child labour remains an extremely serious issue throughout Tanzania. The problem of child labour relates not to the fact that children are working per se but rather that work may interfere with their development in a number of ways. In a wage - labour situation, long hours without enough rest, limited nutrition and lack of a nurturing environment may severely limit both physical and mental growth of a child. The working environment itself also hinders the growth and development of a child labourer, for instance where lighting is poor, the air is polluted, or the work itself is hazardous. Unscrupulous employers might also abuse the child and this may involve mental abuse, which breaks the child's spirit, in addition to physical abuse. Poverty is the single biggest factor forcing children to work; many child labourers are their families' source of income.
- 7.24 Child labour entails a denial of fundamental human rights on the one hand, and immeasurable long term costs to society, on the other; the lack of educational opportunities, substandard educational facilities, the direct and hidden costs of education and the low quality of education offered, all combine to perpetuate the problem of child labour. Other causes of child labour include the following:
- (1) **Entrenched social and cultural practices:** Equally important contributory factors are long-standing and resistant attitudes and practices that are often accepted uncritically. e.g. emphasis on educating boys at the expense of girls

- (2) **Adventure**: It was noted that some children are engaged in labour because they want to make their own living (money).
- (3) **Group Influence**: Some of the children become child labourers because of group influence e. g. tea picking, street vendors, domestic work or even prostitution.
- (4) **Decay of Society Morals**: Strong family ties which used to bind the society together are no longer there, for example children whose parents are dead or separated are left to struggle on their own for survival hence persistence of child labour.
- (5) **Lack of proper and systematic parental care**: This compels children to child labour.
- (6) **Cost sharing**: The policy of cost sharing in schools has forced some children to engage in child labour as the only alternative to generate money needed in paying for basic needs at school.
- (7) **Weak economy**: Tanzania faces an economic crisis. Rising poverty is driving more and more children into the labour market.
- (8) **Health threats**: The AIDS epidemic has contributed to the rising population of street children and child labourers.
- (9) **Regulatory measures**: Lack of effective enforcement of regulatory measures, has been the cause for easy exploitation of children.
- (10) **The removal of subsidies on education**: This has contributed to a situation whereby about 30% of all 10-14 year old are out of school.

- (11) **Retrenchment:** Retrenchment which is a result of astute government economic policies has compelled most parents to enlist the contribution of their children to supplement the reduced meagre family incomes.

## GENERAL FINDINGS

- 7.24 Today child labour is still a world-wide social problem. Available statistics indicate that children involved in child labour range from 100 to 200 million, which is equivalent to 4% -8% of the world employment potential of 2.4 billion economically active people.
- 7.26 A research carried out by labour inspectors during the period covered from January to August 1997 under the Ministry of Labour and Youth Development identified forms of child labour which exist in Tanzania to include:
- Pastoralism
  - Agriculture
  - Fishing
  - Petty Trade
  - Domestic labour.
- 7.27 The Inspection survey established that the employment status of child workers could be categorised into:
- (a) Children who are employed on full time basis and do not attend school completely. Basically these are children who work as domestic servants street vendors, petty traders and pastoralists.
- (b) Children who are on part time employment. These children are absent from school for all the time are employed. The inspection noted that these are children, who live close to small and large-scale tea, tobacco and coffee plantations and therefore their employment is seasonal.

- (c) Children who attend school but are engaged in part time employment after school hours. These are vulnerable to poor academic performance because they do not have adequate rest or time to study.

7.28 Research conducted by labour inspectors during the period (under Ministry of labour and youth Development) covered from September to November 1996 and January to August 1997 revealed that forms of child labour and nature of working environment differed from one work environment to another and or from task performed to another.

7.29 There are between 350,000 and 400,000 children below 15 years of age, engaged in (child labour) in agriculture, mining, informal sector and in domestic service. A recent study conducted by UNICEF shows that the following sectors are closely associated with the exploitation of child labour: -

#### **Agriculture**

- (i) Tobacco estates in Iringa District employ 1,200 to 1,500 children aged 10 - 15 years;
- (ii) Tea estates in Mufindi District employ approximately 120 children aged 12 to 15 years per estate;
- (iii) Rubber, cloves and green algae in Zanzibar employ children aged 8 to 15 years, constituting 10 to 14% of the labour force;
- (iv) Sugar cane plantation: At Mtibwa in Morogoro District, 40% of primary school children work part time in the plantation in order to earn some extra money to buy school uniforms and other school requirements;
- (v) Sisal and tea plantations: In Kilimanjaro, Morogoro and Tanga regions, 5,500 to 7,000 children, aged below 15 years are labourers.

## **Mining**

In Mererani in Arusha District, 30% to 40% of primary school drop- outs were found working underground

- 7.30 The increasing rural - urban migration of youths and young children has resulted in the swelling of urban informal sector, where children below 15 years of age are believed to constitute about half the workforce.

## **REGULATORY MEASURES TAKEN TO COMBAT CHILD LABOUR**

- 7.31 The ILO's Minimum Age Convention 1973 (No. 138) is the fundamental international standard on child labour. The objective of the convention is to abolish most intolerable forms of child labour, namely the employment of children in slave like and bonded conditions and dangerous and hazardous work, the exploitation of very young children, the commercial sexual exploitation of children, the denial of access to education and explicit inclusion of children in armed combat or military activities.
- 7.32 Since 1990, ILO action against child labour has developed in scope and intensity with technical co-operation featuring more prominently. In 1992, the creation of International Programme on the Elimination of Child Labour (IPEC) gave new impetus to the ILO's offensive against child labour.
- 7.33 IPEC was introduced in Tanzania following the signing of a Memorandum of Understanding between the Government of Tanzania and ILO in 1994. To some extent IPEC has helped to stimulate efforts to combat child labour by facilitating and supporting different action

programmes. The Government of Tanzania instituted schemes, to assist in the fight against child labour, for example in 1977 the Universal Primary Education (UPE) was introduced requiring every child aged 7 years and above to attend school thus reducing the number of children roaming around without going to school. In spite of the introduction of the Universal Primary Education, there were shortcomings such as poor quality education, unskilled teachers, high work load to teachers, high costs of schooling which led some parents to remove their children from attending school and sending them to work, in order to supplement the family income to contain high costs of living from draining the family income.

7.34 The other measures are contained in the Employment Ordinance Cap.366 under Part VII, which prohibit child labour in Tanzania. Section 77 of the Employment Ordinance as amended by Act No. 5 of 1969

- (1) “No child under the prescribed age shall be employed in any capacity whatsoever.
- (2) Any person who employs any child under the prescribed age shall be guilty of an offence against this part of this ordinance.
- (3) For the purpose of this section “prescribed age” means the apparent age of twelve years or such age between twelve years and fifteen years as the Minister may from time to time by order published in the Gazette declare to be the prescribed age for the purposes of this section.
- (4) Nothing in this part or in any other provision of this Ordinance or in any written law shall be construed as permitting employment of a child under the “prescribed age”.

7.35 Section 78 provides for employment of children. “A child shall be employed only upon a daily wage and on a day to day basis and upon the terms that he returns each night to the place of residence of his parent or guardian. Any person who employs a child is in contravention of the provisions of the Ordinance”.

7.36 Furthermore, section 79 (3) & (4) prohibits and restricts employment of children and young persons:

“No child or young person shall be employed in any employment which is injurious to health, dangerous, or otherwise unsuitable

(3) No person shall, after being notified in writing by the proper authority that the kind of work upon which a child or young person is employed is injurious to his health, dangerous or otherwise unsuitable, continue so to employ him.

(4) Any person who employs any child or young person in any employment which is injurious to health, dangerous or otherwise unsuitable or who continues to employ any young person in any work to which he/she has been notified by the proper authority that it is injurious to health, dangerous or otherwise unsuitable, shall commit an offence against this part of this Ordinance”.

7.37 According to sections 81(1), 82(1) no child shall be employed in any industrial undertaking or any open cast works or in any sub surface works which are entered by means of a shaft. However this section does not apply where work is done by children in technical schools or similar institutions where the work is licensed and approved by the Director of Education. The penalty provided for contravention of provisions under this part is very small. The section 94 states:

“Any person who commits an offence against this part of this Ordinance for which no penalty is expressly provided shall be liable upon conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, and in the case of a second or subsequent offence to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment”.

7.38 The law does not provide for adequate penalty for contravention of the stipulated offences. The Commission recommends amendment to enhance penalties so as to discourage child labour

## EXPERIENCE FROM OTHER COUNTRIES

### **Age for employing A child:**

- 7.39 In Kenya the minimum age of employment is 16 years but 15 years in Zanzibar and Zambia. The Minimum Age Convention 1973 (Article 2(3), provides that the minimum age of employment shall not be less than the age of completion of compulsory schooling but shall not be less than 15 years. Hence, completion of compulsory schooling is made a pre-condition for employment unlike many countries's legislation, which provide only for the age of employment.

### **Employment of children in Training Institutions:**

- 7.40 Some countries' legislation allow work by children in training institutions such as in:

#### **Kenya:**

In Kenya, section 25 of the Employment Act of Kenya, 1976, prohibits the employment of children under 16 years in any industrial undertaking unless such employment is under deed of apprenticeship or indentured leadership as governed by their Industrial Training Act.

#### **Zambia:**

In Zambia under the provisions of section 4(2) of the Employment of Women, Young Persons and Children Act, Cap, 505, work done by children in technical or similar institutions, which are approved by the Minister of Education, is allowed. Section 7 of the same Act further allows exceptional employment of young persons under a contract of apprenticeship as authorised by a labour officer.

#### **Zanzibar:**

The provisions of section 3(3) of the Employment Decree of Zanzibar, 1952, allow work done by children as long as it is approved by the Director of Education. The law further

provides that work done under a lawful contract of apprenticeship as an exception to the general rule of restriction of employment of children (see section 5).

### **U. N. Convention**

7:41 Article 28 (1)(d) of the Convention on the Rights of the Child encourages general and specialised education to be imparted to a child. Moreover Article 6 of the ILO Convention No. 138, reflects on the exception of allowing work done by children and young persons in vocational or technical education.

### **Protection of Child's Health and Safety**

#### **ILO Convention**

7.42 Article 3(3) of the ILO Convention No. 138 include international standards on the issue of protecting the child's health, safety and working conditions, while Article 9(3) of the same Convention requires employers to keep registers, especially of persons employed, who are under 18 years. Moreover, Article 32(1) of the Convention on the Rights of the Child states that parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental or spiritual, moral or social development".

7.43 For example in Zanzibar young persons are required to be medically examined before they can be employed. There are also restrictions on employment of children and young persons in work injurious to their health, is dangerous or immoral. (See section 11 of the Employment of Children, Young Persons and Adolescents (Restriction) Decree).

## Offences and Penalties

- 7.44 In Zanzibar when one contravenes the requirements of the decree by employing a child is liable to general penalty of a fine not exceeding Shs. 1,000/= or six months imprisonment as provided for in section 18(1); and where an employer does not keep a register, he shall be guilty of an offence and liable on conviction to a fine not exceeding 500/= or imprisonment not exceeding three months or both (see section 18(2)).
- 7.45 However, parents or guardian by wilful default or neglect of children commit an offence and are liable to a fine not exceeding Shs. 1,000/= or 6 months imprisonment or both such fine and imprisonment as provided under section 19.
- 7.46 In Kenya, the Chiefs Act 1982 protects children by “not permitting work to be done from 6.30 p.m. to 6.30 a.m. insisting on medical examination, and providing powers to a labour officer to cancel a contract of employment of a child. Restrictions are also imposed for children to work in bars, hotels or ships unless it is a family undertaking. Moreover, Article 8(1) of Convention No. 138 provides protection to children who participate in artistic performance such as acrobatics, singing, dancing and other artistic performance. International standards, including measures to ensure effective enforcement as well as penalties are included in Article 9(1) of ILO Convention No. 138 and Article 32(2)(c) of the Convention of the Rights of the Child. According to Article 28 of the Convention of the Rights of the Child, the child has a right to education and every member state is obliged to ensure that primary education is free and compulsory. Tanzania introduced Universal Primary Education (UPE) in 1977, while in Kenya it was introduced since 1974 and steps had been taken to ensure that all children attended school and that free education is provided. On the other hand, as far as Zanzibar is concerned, Education Act No 6 of 1982 provides for basic primary and secondary education as a right to every child and the Government is bound to provide education to every child.
- 7.47 The Commission considers it appropriate to recommend co-ordinated efforts by appropriate Ministries so as to ensure the registration of working children, inspection of the areas where they

work, enforcement of child labour laws (Ministry of Labour and Ministry of Community Development Women and Children).

- (1) The Commission also recommends the enhancement of the penalties e.g. under S. 94 of Cap. 366, a fine does not exceed 2,000/=; such a fine could be increased to 100,000/=.
- (2) Children should not be employed in hotels, bars and areas where alcohol is sold.
- (3) Since education can prepare a child for its future adult life the government should therefore continue to prosecute those who prevent children from going to school as such measure would reduce the loophole to engage children in jobs.
- (4) Children under the prescribed age of employment or even young persons (between 14 - 18 years) should be employed or allowed to participate for gain in artistic performance (entertainment) only if they are granted a special permit; as provided in Article 8(1) of Convention No. 138.
- (5) Parents and guardians should also be sensitised through public legal education to the risks and hazards, which may affect the health of children if they are employed in some jobs such as factories or underground mines.
- (6) The Government should amend laws by adding provisions to empower Local Government Authorities to make by laws prohibiting child labour.
- (7) The Government through the Ministry of Labour and Youth Development should create a data bank of all research surveys undertaken on eliminating child labour and in turn the data bank should be the reference point/area for everybody.
- (8) It is necessary to educate parents, teachers, village leaders, employers (and children) regarding the evils of child labour on the intellectual and physical growth of children and educate them on the need to ensure that children go and attend school. The following should also be considered:
  - (a) That children who are physically involved in different forms of child labour be aware that schooling for them should be accorded first priority.
  - (b) That school teachers must make the school environment more conducive to attract pupils. Teachers should also be totally against the evils of child labour in their respective school area.

## CHAPTER EIGHT

### RECOMMENDATIONS

1. The Commission has found that labour laws are scattered in numerous enactment and amending legislation. This position complicates their application in any given situation. Accordingly, a labour code was considered as a possible solution to the problem of multiplicity of laws. The argument is that a code makes reference easy.
2. The Commission further recommends that there is need for equitable labour law regime which should include the following guiding principles:
  - (i) Labour law regime should be in consonance with the principle of the equal treatment of all workers in all kinds of Employment.
  - (ii) The labour law regime shall comply with the principles of human rights, in particular the rights enshrined in the Constitution of the United Republic of Tanzania and in the African Charter on Human and Peoples Rights, 1984 in general and ILO Conventions in particular.
  - (iii) The Labour Law regime should be such as would enable this country to maintain respect for and uphold the Rule of Law.
  - (iv) The Labour Law regime should serve employees well and should guide employers to provide equitable good conditions of employment, just wages etc.

- (v) The labour law regime should serve as an instrument of liberation of workers and recognition and protection of their right to organise and claim their rights.
  - (vi) The Labour Law regime should provide for elimination of arbitrariness, officialism and excessive bureaucracy in the process of settling disputes.
  - (vi) The Labour law regime should assist in the growth of development of a free market economy leading to the private sector occupying the dominant position in the economy.
3. That in order to enhance productivity, the Commission recommends that the labour law regime should include the following:
- (a) Grading and advancement of staff should be on merit; the best qualified and experienced should have preference in employment. Subsequently actual performance should determine promotion and other forms of advancement in the service ladder.
  - (b) Payment by results – minimum standards should be fixed for a day’s work. Performance over and above the minimum should be awarded separately; the higher the performance, the higher the pay.
  - (c) Recognition of talent – the “best worker” award should be institutionalised and the award system should be rationalised.
  - (d) That the minimum wage should be equivalent to a living wage based on the cost of living index for urban dwellers and must always take into consideration the varying levels of inflation.
4. Further, the Commission recommends for the adoption of a uniform CODE OF EMPLOYMENT ETHICS that will bind all employers and employees in both the public and private sectors.
5. That Part III, and in particular section 5 of the Civil Service Act no. 16 of 1989 be amended so that the composition of the members of the Civil Service Commission include at least one representative from the relevant trade union i.e. TUGHE.

6. That lay – off and redundancy/retrenchment should be defined by legislation while other related matters should be adopted through collective bargaining.
7. That the three tier grading system, that is to say, shopfloor, supervisory and managerial grades based on functions, should also apply to government employees.
8. That section 56 of the Act be amended to allow union service charges to be deducted from non-union members' salaries only after their consent in order to protect their constitutional rights.
9. That the Minister's proposal for extension of an award made in respect of one undertaking of any trade or industry to any other undertaking of that trade or industry should be referred to the respective trade union(s) and employer or employers.( see s.40 of the Industrial Court Act)
10. The principle of the most representative trade union be applied also in ss.13 of the Ordinance or 14 of the Trade Unions Act during registration and should be determined on objective, pre-established and precise criteria to avoid possible bias and abuse.
11. Section 29(a) of the Trade Unions Act should be amended to reflect the real meaning of the kind of resolution of relations it is intended to cover. It would appear that the resolution of relations referred to is not only "between employees and employers, or between employers and employees" for this is only repetitive but "between employees and employers, employees and employees or employers and employers".
12. That any party who is aggrieved by the decision of the Conciliation Board may make a reference to the ICT and not the Minister.
13. That payment by the employer of twelve months wages and statutory compensation in lieu of reinstatement should satisfy the requirements of section 40A of the Security of Employment Act, Cap.574.

14. That permanent negotiating procedural rules for use by conciliators should be formulated and published. That assessors should be reasonably motivated to attend proceedings of the ICT; there be assessors for ICT who are on more or less permanent basis like the members of the Housing Appeal Tribunal (HAT).
15. That section 27 of the ICT Act should be amended by replacing the word "revision" by the word "review" to remove the misnomer; and the finality clause in section 27 (c) be removed.
16. That there should be specialisation in labour matters like what they have in Kenya, Zimbabwe and United Kingdom. The appointed chairman and Deputy chairman should be left on the job for a period of five years in order to gain experience and become experts.
17. That every employer should keep a register of all employees and furnish to the Labour Commissioner an annual report on the labour force engaged during the year as well as all the employees in his employment, including details relating to age, education, profession, etc.
18. That section 6 (c) of Act No. 17 of 1983 should be amended to read that "if the workman leaves no dependants the reasonable expenses of the burial of the deceased workman should be in accordance with stipulated costs in Government standing order, which shall be paid by the employer".
19. That section 42 (1) of Act No.17 of 1983 should be amended to increase the rate of fine an employer should pay due to failure to comply with the compensation from forty thousand shillings (40,000/=) to an amount which reflect the value of the currency
20. That despite the amendments the amount payable for compensation is very low; the compensation for total incapacity must reflect the current value of the currency.
21. That the Labour Advisory Board should be re-activated, the law should prescribe the term or duration of the board membership e.g. for a fixed period of three years and the provisions for removal of such members in case of misconduct should also be incorporated.

22. That on child labour, the Commission recommends co-ordinated efforts to be taken by the appropriate ministries to ensure the registration of working children, inspection of the areas where they work, and enforcement of the law.
23. That children should not be employed in hotels, bars and areas where alcohol is sold.
24. That there is need for the enhancement of the penalties under section 94 of Cap. 366, to increase the rate of fine from two thousand shillings (2,000/=) to an amount that will reflect the current value of the currency.
25. That children under the prescribed age of employment or even young persons (between 15-18 years) should be employed or allowed to participate for gain in artist performance (entertainment) only if they are granted a special permit; as provided in Article 8 (1) of Convention No.138.
26. That government should amend laws by adding provisions to empower Local Government Authorities to make by-laws prohibiting child labour.
27. That the government through the Ministry of Labour and Youth Development should create a data bank of all research surveys undertaken on eliminating child labour to be used as a reference point/area.
28. It has been a habit now to give one month's notice in cases of termination. In other countries it has become customary to give an employee with more years of service more notice. He has settled down in his job more, has given his employer good service and no doubt, he has more commitments as he gets older. For these reasons it seems fair to increase his entitlement. Since the average working life is about thirty years the periods of service and the notice period should be divided into three groups. For the first ten years of continuous service the notice period

should be one month. The second ten years of continuous service the notice period should be three months, and the third ten years of continuous service the notice period should be six months.

29. That sections 78 and 56 of the Ordinance and the Act respectively and section 4 of both legislation be rationalised in terms of the lowest age of becoming a member of a Trade Union.

## CHAPTER EIGHT

### RECOMMENDATIONS

30. The Commission has found that labour laws are scattered in numerous enactment and amending legislation. This position complicates their application in any given situation. Accordingly, a labour code was considered as a possible solution to the problem of multiplicity of laws. Since the argument is that because a code makes reference easy, there is need therefore to codify the labour law regime.
31. The Commission further recommends that there is need for an equitable labour regime which should include the following guiding principles:
- (i) The Labour law regime should be in consonance with the principle of equal treatment of all workers in all kinds of Employment.
  - (ii) The labour law regime shall comply with the principles of human rights, in particular the rights enshrined in the Constitution of the United Republic of Tanzania and in the African Charter on Human and Peoples Rights, 1984 in general and ILO Conventions in particular.

- (iii) The Labour Law regime should be such as would enable this country to maintain respect for and uphold the Rule of Law.
  - (iv) The Labour Law regime should serve employees well and should guide employers to provide equitable good conditions of employment, just wages etc.
  - (v) The law regime should serve as an instrument of liberation of workers and recognition and protection of their right to organise and claim their rights.
  - (vi) The Labour Law regime should provide for elimination of arbitrariness, officialism and excessive bureaucracy in the process of settling disputes.
  - (vii) The Labour law regime should assist in the growth of development of a free market economy leading to the private sector occupying the dominant position in the economy.
32. That in order to enhance productivity, the Commission recommends that the labour law regime should include the following:
- (e) Grading and advancement of staff should be on merit; the best qualified should have preference in employment. Subsequently actual performance should determine promotion and other forms of advancement in the service ladder.
  - (f) Payment by results – minimum standards should be fixed for a day's work. Performance over and above the minimum should be awarded separately; the higher the performance, the higher the pay.
  - (g) Recognition of talent – the "best worker" award should be institutionalised and the award system should be rationalised.
  - (h) That the minimum wage should be equivalent to a living wage based on the cost of living index for urban dwellers and must always take into consideration the varying levels of inflation.

33. Further, the Commission recommends for the adoption of a uniform CODE OF EMPLOYMENT ETHICS that will bind all employers and employees in both the public and private sectors.
34. That Part III, and in particular section 5 of the Civil Service Act no. 16 of 1989 be amended so that the composition of the members of the Civil Service Commission include at least one representative from the relevant trade union i.e. TUGHE.
35. That lay – off and redundancy/retrenchment should be defined by legislation while other related matters should be adopted through collective bargaining.
36. That the three tier grading system, that is to say, shopfloor, supervisory and managerial grades based on functions, should also apply to government employees.
37. That section 56 of the Act be amended to allow union service charges to be deducted from non-union members’ salaries only after their consent in order to protect their constitutional rights.
38. That the Minister’s proposal for extension of an award made in respect of one undertaking of any trade or industry to any other undertaking of that trade or industry should be referred to the respective trade union(s) and employer or employers.( See section 40 of the Industrial Court Act of Tanzania number 41 of 1967)
39. The principle of the most representative trade union be applied also in ss.13 of the Ordinance or 14 of the Trade Unions Act during registration and should be determined on objective, pre-established and precise criteria to avoid possible bias and abuse.
40. Section 29(a) of the Trade Unions Act should be amended to reflect the real meaning of the kind of resolution of relations it is intended to cover. It would appear that the resolution of relations referred to is not only “between employees and employers, or between employers and employees” for this is only repetitive but “between employees and employers, employees and employees or employers and employers”.

41. That any party who is aggrieved by the decision of the Conciliation Board may make a reference to the ICT and not the Minister.
42. That payment by the employer of twelve months wages and statutory compensation in lieu of reinstatement should satisfy the requirements of section 40A of the Security of Employment Act, Cap.574. The employer should not be liable to pay damages to the employee ( see s.27(2) ) nor should he be liable to prosecution under s.50 cap of 574 for failure to reinstate the employee.
43. That permanent negotiating procedural rules for use by conciliators should be formulated and published. That assessors should be reasonably motivated to attend proceedings of the ICT; there be assessors for ICT who are on more or less permanent basis like the members of the Housing Appeal Tribunal (HAT).
44. That section 27 of the ICT Act should be amended by replacing the word “revision” by the word “review” to remove the misnomer; and the finality clause in section 27 (c) be removed.
45. That there should be specialisation in labour matters like what they have in Kenya, Zimbabwe and United Kingdom. The appointed chairman and Deputy chairman should be left on the job for a minimum of five years in order to gain experience and become experts.
46. That the procedures preceding strike action are unrealistic particularly the requirement of voting in a secret ballot and the forty two days cooling off period mandatory before any strike action. It is obvious that section 20 of the local government machinery Act no.11 of 1982 and section 11 of the Industrial Court of Tanzania Act no. 41 of 1967 as amended are intended to protect the employer to the detriment of the worker. In the face of the massive privatisation now taking place as well as the democratisation process, the commission recommends that this situation be redressed by amending the necessary sections of the law so as to guarantee the workers' right to strike without so much

hindrance.

47. That every employer should keep a register of all employees and furnish to the Labour Commissioner an annual report on the labour force engaged during the year as well as all the employees in his employment, including details relating to age, education, profession, etc.
48. That section 6 (c) of Act No. 17 of 1983 should be amended to read that "if the workman leaves no dependants the reasonable expenses of the burial of the deceased workman should include the cost of a shroud, a coffin, grave, transport to burial grounds and such other related costs."
49. That section 42 (1) of Act No.17 of 1983 should be amended to rationalise the rate of fine an employer should pay due to failure to comply with the compensation from forty thousand shillings (40,000/=) to an amount commensurate with an reflective of the amount of compensation.
50. That despite the amendments the amount payable for compensation is very low; the compensation for total incapacity must reflect the current value of money at the time.
51. That the Labour Advisory Board should be re-activated, the law should prescribe the term or duration of the board membership e.g. for a fixed period of three years and the provisions for removal of such members in case of misconduct should also be incorporated.
52. That on child labour, the Commission recommends co-ordinated efforts to be taken by the appropriate ministries to ensure the registration of working children, inspection of the areas where they work, and enforcement of the law.
53. That children should not be employed in hotels, bars and areas where alcohol is sold.
54. That there is need for the enhancement of the penalties under section 94 of Cap. 366, to increase the rate of fine from two thousand shillings (2,000/=) to an appropriately higher rate reflecting the enormity of the offence committed.

55. That children under the prescribed age of employment or even young persons (between 15-18 years) should be employed or allowed to participate for gain in artist performance (entertainment) only if they are granted a special permit; as provided in Article 8 (1) of Convention No.138.
56. That Local Government Authorities should be empowered to make by-laws prohibiting child labour in their jurisdictions..
57. That the government through the Ministry of Labour and Youth Development should create a data bank of all research surveys undertaken on eliminating child labour to be used as a reference point/area.
58. Currently it is mandatory to give one month's notice or one month's salary in lieu thereof in cases of termination. In other countries it has become customary to give an employee with more years of service more notice. The logic being that he has settled down in his job more, and has given his employer good service and no doubt, he has more commitments as he gets older. For these reasons it seems fair to increase his entitlement. Since the average working life is about thirty years the periods of service and the notice period should be divided into three groups:
- (i) For the first ten years of continuous service the notice period should be one month.
  - (ii) The second ten years of continuous service the notice period should be three months, and
  - (iii) the third ten years of continuous service the notice period should be six months.
59. That sections 78 and 56 of the Ordinance and the Act respectively and section 4 of both legislation be rationalised in terms of the lowest age of becoming a member of a Trade Union.