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LABOUR LEGISLATION AND POLICY IN A POST-COLONIAL STATE:  
ATTEMPTS TO INCORPORATE TRADE UNIONS IN ZAMBIA, 1971 - 86.

By

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Thesis submitted for the Degree of Doctor of Philosophy  
to the University of Warwick, School of Law

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CONTENTS

|  |    |
|--|----|
| <u>Table of Contents</u>                               | ii |
| Acknowledgements                                       | ix |
| Abstract   | xi |
| <u>CHAPTER ONE</u>                                     | 1  |
| INTRODUCTION   |    |
| 1.A. Analytical Framework                              | 3  |
| 1.A.1 Economic Imperatives                             | 6  |
| 1.A.1(a) Effects of Economic Decline                   | 9  |
| 1.A.2 The Legal System and Constitutional Developments | 15 |
| 1.A.3 The Geo-political Situation                      | 17 |
| 1.B. Sources and Research Methodology                  | 19 |
| 1.C. Thematic Summary of Contents                      | 22 |
| Notes  | 25 |
| <br>   |    |
| <u>CHAPTER TWO</u>                                     |    |
| TRADE UNION INCORPORATION IN ZAMBIA: POLICY FRAMEWORK  |    |
| 2.A. Incorporation for Development                     | 30 |
| 2.B. Post-Colonial Labour Policies in Africa           | 34 |
| 2.B.1 The Search for Development                       | 37 |
| 2.B.2 Political Authority and Stability                | 40 |
| 2.B.3 New Role for Trade Unions                        | 41 |
| 2.B.4 Forms of Trade Union Control                     | 42 |
| 2.B.5 Recent Developments                              | 44 |

|       |   |    |
|-------|---|----|
| 2.C.  | Labour and the State in Zambia                  | 45 |
| 2.C.1 | Origins and Evolution of Incorporation Strategy | 48 |
| 2.C.2 | The Role of Ideology                            | 53 |
| 2.C.3 | Labour's Response to Incorporation              | 55 |
| 2.D.  | Conclusion                                      | 57 |
| Notes |   | 59 |

### CHAPTER THREE

#### FOUNDATIONS OF MODERN LABOUR POLICY

|       |   |    |
|-------|---|----|
| 3.A.  | The Changing Role of the Colonial State                 | 65 |
| 3.B.  | The Development of African Trade Unions                 | 67 |
| 3.B.1 | Tribal Representatives                                  | 69 |
| 3.B.2 | Boss Boys' Committees and Other Groups                  | 70 |
| 3.C.  | European Labour   | 78 |
| 3.D.  | The Regulation of Trade Unions and Industrial Relations | 81 |
| 3.D.1 | Legislation, 1949                                       | 83 |
| 3.D.2 | Administrative Control of Unions                        | 84 |
| 3.D.3 | The Closed Shop   | 87 |
| 3.D.4 | Picketing and Essential Services                        | 88 |
| 3.D.5 | Immunities and Penal Sanctions                          | 90 |
| 3.D.6 | Dispute Settlement Procedures                           | 91 |
| 3.E   | Initial Impact of Policy                                | 94 |
| 3.F   | Industrial Relations on the Copperbelt                  | 95 |
| 3.F.1 | Labour Policy in Neighbouring Territories               | 96 |
| 3.G   | Demands for Change                                      | 99 |

|       |                             |     |
|-------|-----------------------------|-----|
| 3.G.1 | Response                    | 104 |
| 3.H   | Further Demands and Changes | 106 |
| 3.I   | Conclusion                  | 112 |
| Notes |                             | 113 |

#### CHAPTER FOUR

##### TRADE UNION ACTIVITY

|       |  |     |
|-------|--|-----|
| 4.A   | Introduction                                       | 119 |
| 4.B   | Trade Unions in the Political Process              | 120 |
| 4.C   | The First Phase: Transitional Policy               | 122 |
| 4.C.1 | Protective Legislation                             | 122 |
| 4.C.2 | Trade Union Legislation                            | 123 |
| 4.C.3 | Post-independence Union Structure and Organisation | 128 |
| 4.D   | The Second Phase: Legislation for Incorporation    | 132 |
| 4.E   | Trade Union Responses                              | 134 |
| Notes |  | 137 |

#### CHAPTER FIVE

##### COLLECTIVE BARGAINING

|       |  |     |
|-------|--|-----|
| 5.A   | Introduction                                 | 140 |
| 5.B   | The Nature of Agreements                     | 142 |
| 5.C   | The Collective Bargaining Process            | 144 |
| 5.C.1 | Institutional Framework                      | 146 |
| 5.D   | Impact of Restructured Collective Bargaining | 152 |

|     |            |     |
|-----|------------|-----|
| 5.E | Conclusion | 154 |
|     | Notes      | 156 |

#### CHAPTER SIX

##### INDUSTRIAL CONFLICT AND DISPUTE SETTLEMENT PROCEDURES

|          |   |     |
|----------|---|-----|
| 6.A      | Introduction                                | 159 |
| 6.B      | Dispute Settlement Procedures in the Period | 162 |
| 6.B.1    | Industrial Action                           | 163 |
| 6.C      | Post-1974 Dispute Settlement Procedures     | 165 |
| 6.C.1    | Collective Dispute Settlement Procedures    | 165 |
| 6.C.2    | The Industrial Relations Court              | 167 |
| 6.C.2(a) | Composition, Status and Procedure           | 167 |
| 6.C.2(b) | Jurisdiction and Powers                     | 170 |
| 6.D.     | The Effectiveness of Policy                 | 177 |
| 6.D.1    | Resort to Procedures                        | 177 |
| 6.D.2    | Extent of Industrial Action                 | 178 |
|          | Notes                                       | 183 |

#### CHAPTER SEVEN

##### PRICES AND INCOMES POLICY

|       |                            |     |
|-------|----------------------------|-----|
| 7.A   | Introduction               | 188 |
| 7.B   | The Pre-Incomes Policy Era | 190 |
| 7.C   | The Era of Incomes Policy  | 193 |
| 7.C.1 | The First Turner Report    | 194 |
| 7.C.2 | The Second Turner Report   | 198 |

|       |  |     |
|-------|--|-----|
| 7.C.3 | Institutional and Legal Framework of<br>Incomes Policy | 200 |
| 7.D   | Conclusion   | 202 |
| Notes |  | 205 |

**CHAPTER EIGHT****WORKERS' PARTICIPATION**

|       |  |     |
|-------|--|-----|
| 8.A   | Introduction   | 209 |
| 8.B   | Historical Perspectives  | 211 |
| 8.C   | Institutional and Legislative Framework<br>of Workers' Participation | 215 |
| 8.C.1 | Formation and Composition of Works<br>Councils                       | 217 |
| 8.C.2 | Objectives and Powers  | 218 |
| 8.D   | Impact of Workers' Participation                                     | 222 |
| 8.D.1 | Company Law and Workers' Participation                               | 223 |
| 8.D.2 | Workers' Attitudes   | 224 |
| 8.D.3 | Works Councillors' Attitudes   | 225 |
| 8.D.4 | Trade Union Perceptions  | 226 |
| 8.D.5 | Employers' and Business Community's<br>Attitudes                     | 227 |
| 8.D.6 | Attitudes within the Government                                      | 229 |
| 8.E   | Conclusion   | 231 |
| Notes |  | 233 |

CHAPTER NINETRADE UNION INCORPORATION IN ZAMBIA: SUMMARY AND CONCLUSIONS

|          |  |     |
|----------|--|-----|
| 9.A      | Trade Union Incorporation Through Law                        | 239 |
| 9.B      | The Effects of Incorporation                                 | 241 |
| 9.B.1    | Trade Unions and Incorporation                               | 241 |
| 9.B.1(a) | The ZCTU's Role  | 244 |
| 9.B.2    | Restructuring Collective Bargaining<br>and Incomes Policy    |     |
|          | (a) Institutional Changes                                    | 245 |
| 9.B.3    | Industrial Conflict  | 247 |
| 9.B.4    | Workers' Participation                                       | 249 |
| 9.C      | Incorporation and the Law: Limitations<br>and Constraints    | 250 |
| 9.D.     | The Abandonment of Incorporation as a<br>Strategy: Prospects | 254 |
| Notes    |  | 259 |

LIST OF TABLES

|         |  |        |
|---------|--|--------|
| Table 1 | GDP Comparisons: Zambia and Five<br>other African Countries, 1970            | 11     |
| Table 2 | GDP Comparisons: Zambia and Five<br>other African Countries, 1985            | 12     |
| Table 3 | Trade Unions, 31 December 1983   | 129    |
| Table 4 | Joint Industrial Councils and Industry-<br>wide Agreements, 31 December 1985 | 148    |
| Table 5 | Activities of the Industrial Relations<br>Court, 1974 - 83                   | 173    |
| Table 6 | Industrial Stoppages   | 179-80 |



## APPENDICES

|              |  |     |
|--------------|--|-----|
| Appendix I   | Interview Question Guideline and Sample of Interview Categories                                | 262 |
| Appendix II  | Zambia: A Country Profile  | 266 |
| Appendix III | Major Labour Developments, 1945 - 63   | 271 |
| Appendix IV  | Typical Collective Agreement under the Industrial Relations Act, 1971                          | 274 |
| Appendix V   | List of Major Reports, Research and Case Studies on Workers' Participation in Zambia Consulted | 286 |

## LIST OF MAPS

|       |   |     |
|-------|---|-----|
| Map 1 | Zambia: Administrative Divisions and Geo-Political Location | 267 |
|-------|---|-----|

## ABBREVIATIONS

288

## BIBLIOGRAPHY

289

ABSTRACT

LABOUR LEGISLATION AND POLICY IN A POST-COLONIAL STATE:  
ATTEMPTS TO INCORPORATE TRADE UNIONS IN ZAMBIA  
1971 - 86

Evance Kalula

This is a study of some of the major aspects of the development of post-colonial labour policy in Zambia. It examines the Zambian Government's attempts to 'incorporate' trade unions into its strategy of national development. Except for such later references as it was possible to include, it covers the period from 1971 to 1986.

The purpose of the study is to examine the role played by law in the Zambian Government's attempts to incorporate trade unions and the rank and file sufficiently in the plans for national development. Zambian trade unions at independence were quite autonomous. Given the power and autonomy of trade unions, their attitude and approach have been viewed by the Government as crucial elements of national development. The Government has, therefore, progressively adopted measures aimed at the closer control and regulation of the trade union movement and its membership. In spite of such attempts, however, the approach in Zambia has been less coercive than in some other African countries. The Government has tended to rely on "pressure rather than force".

In this context government reforms are examined in four key areas: the regulation of trade union activity, the restructuring of collective bargaining (including incomes policy), industrial conflict and dispute settlement procedures, and workers' participation. It is concluded that the Government has not achieved its stated major objectives. Although trade unions and their members have generally accepted the Government's overall authority to set the agenda of national development, they have resisted attempts to curtail their autonomy. It is on account of this failure that the Government now intends to integrate trade unions into the State completely.

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During my field work in Zambia, I benefited from my association with a number of organisations and government agencies. Many workers, trade unionists, employers and government officials, most of whom

prefer to remain anonymous for various reasons, gave me candid interviews and the benefit of their experience. I can mention Brothers Frederick Chiluba and Newstead Ziaba, Chairman and Secretary-General of the Zambia Congress of Trade Unions (the ZCTU) respectively; Mr F Sumbwe, Executive Director of the Zambia Federation of Employers; the Hon Mrs Justice Lombe Chibesakunda, formerly Chair of the Industrial Relations Court; and Mr D A R Phiri formerly Governor of the Bank of Zambia and lately Chairman of the Prices and Incomes Commission who was instrumental in obtaining for me a fellowship at the ILO.

The courtesy and assistance of the staff of a number of libraries deserve special mention: The National Archives of Zambia, Lusaka; the Copper Industry Service Bureau, Kitwe; the University of Zambia Library's Special Collections; the Rhodes House Library, Oxford; the Public Record Office, London; the ILO Library, Geneva; the Zambian High Commission Library, London; the University of Warwick Library, the University of Keele Library and the Crewe Public Library.

I was privileged to have the assistance of Mrs Pat Herring who typed the thesis and gently urged me to make good many missed deadlines.

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I also wish to take this opportunity to dedicate this study to my late father and other African trade unionists of his generation 'who were present at the creation'.

Except for such later references as it was possible to include, the law and developments are stated as on 31 December 1986.

I am, of course, entirely responsible for any errors of fact or interpretation in this thesis.

## CHAPTER ONE

### INTRODUCTION

This study is primarily concerned with an examination of some of the key aspects of post-colonial labour policy in Zambia in pursuance of the thesis that attempts to 'incorporate' trade unions into the government strategy of national development have been the major pre-occupation of the State and, consequently, labour relations law since independence. Research was conducted at various intervals during the period between January 1981 and December 1986. The purpose was to examine both primary and secondary materials in various libraries and archives in Zambia and the United Kingdom. Further research was also conducted at the International Labour Office (the ILO) in Geneva between July 1984 and July 1986 in the course of the author's fellowship there. Field work consisted of interviews with Zambian government officials, trade unionists, officers of employers' associations and ILO officials (see Appendix I at P. 264). Additional material was also drawn from the Zambia Labour Relations Project which the author initiated at the University of Zambia at Lusaka with the aim of collecting and collating teaching and research materials.

The main justification for the study lies in the need to broaden research into Zambian labour issues. The 'labour question' in Zambia has attracted considerable scholarly interest since the development of the mining industry on the Copperbelt. As a result we have had notable contributions by a number of historians, anthropologists, political scientists and sociologists.<sup>1</sup> Legal scholars however, have not followed suit. No attempt has been made to analyse the role of the law in the development of labour relations and policy within the economic and socio-political context.<sup>2</sup>

This study is, therefore, an attempt to fill part of the gap in that respect. The evolving Zambian industrial relations system continues to be of interest to students of post-colonial developments. It presents the researcher with a viable system where in spite of attempts at 'trade union incorporation' and the advent of the one-party state, certain fundamental principles adopted from the British industrial relations system, including the "tripartite" structure have been maintained in varying degrees. The trade union movement continues to be one of the strongest and best organised in Africa, including Nigeria, South Africa and North Africa. Thus the system inherited at independence has been adapted to post-colonial political, social and economic developments without totally destroying trade union autonomy in spite of the ever increasing state intervention in industrial relations.<sup>3</sup>

In this introductory chapter we briefly outline the analytical framework of the study. In particular we briefly describe the basic approach which emphasises the economic and socio-political context of the policy we have characterised as 'trade union incorporation'. This can be defined briefly as an attempt to persuade trade unions through legislation and other means to assume a non-conflictual role in line with the Government's defined objectives for national development. We explore this concept of incorporation in greater detail in Chapter Two. In this thesis we are examining the law within the context of other factors so it is necessary to highlight relevant economic, constitutional and legal developments that have formed the background to the Government's labour policy since independence. We also describe the sources and methods of research used in the study. We conclude with a summary of the major themes discussed in the following chapters. Before looking more closely at these points, let us consider how we view the study of law and our basic analytical approach.

### 1.A. Analytical Framework

As we have noted, the main justification for embarking on this study is the need to broaden the study of labour issues in Zambia, to take into account economic and other critical factors that have been instrumental in shaping labour policy. The significance of the relationship between law on the one hand and economic and other factors on the other, although still problematic, is now widely recognised by many legal scholars.<sup>4</sup> The relationship between law and other factors is crucial in the study of labour law policy. Extra-legal factors, particularly economic ones, are of paramount importance in this field as they determine the shape and role of the law to a large extent.

Our analytical approach in this study has benefited from two broadly similar traditions of legal scholarship that recognise the importance of the economic, social and political context in the study of law. These are the "Law in Context" and "Law and Development" approaches. Although the two approaches are not in themselves schools of thought along the traditional lines of jurisprudence, they do, however, have distinctive analytical features that merit consideration. They can be summarised as follows:

#### (a) Law in Context

The Law in Context approach, as set out in the book series of that name published by Weidenfeld and Nicolson, seeks to put the study of law in context by examining issues "beyond the exposition of legal doctrine, to consider critically the law in its social and economic context."<sup>5</sup> Thus the approach calls for the treatment of legal issues from a broader base than has been traditional among legal scholars. Materials from other social sciences are used to explain the effect of law. In this way it has been suggested that the study of law is both "stimulating and more realistic than the bare

exposition of legal rules".<sup>6</sup> Although the Law in Context approach was devised with the United Kingdom, a developed country, mainly in mind, its relevance to the study of law in developing countries is obvious. Developing countries have relatively few stable institutions of the modern state and extra-legal factors have a more direct influence on the administration of law. It can, therefore, be argued that because the operation of policy is 'more volatile' and the law 'less autonomous', the Law in Context approach that takes account of these factors is more suitable in analysing the role of the law.

(b) Law and Development

The study of law and development was largely a response to attempts to use law in support of development objectives in the Third World.<sup>7</sup> There are a number of interpretations of the function of law in development. There are at least three: conflict amelioration, law and society studies and problem solving.<sup>8</sup> The function of law in conflict amelioration is "to create a milieu in which social and cultural diversities are harmonised, values essential to societal and governmental purposes are unified (and others left alone), and tensions resolved ... to maintain a climate of desired, necessary and inevitable change."<sup>9</sup> This approach approximates the use of law in the Third World to that of developed countries in spite of different underlying economic and other factors. Law and society studies on the other hand emphasise "the general connections between law, culture and development".<sup>10</sup> According to Trubek "the basic goal is to understand 'law' as a social phenomenon".<sup>11</sup> Law and society studies similarly proceed from assumptions derived from studies of law and society in the developed countries. This in itself, as we have suggested above, is not necessarily a short-coming. The approach, however, assumes "universalistic rules" or "the autonomous legal system".<sup>12</sup> The third approach,



what Seidman has called problem solving,<sup>13</sup> basically regards the function of law as being to induce the desired change in terms of development objectives. The task of the state in development and the use of law in this case becomes one of determining change. The law, therefore, is essentially an instrument for channelling change. The law seeks to change behaviour and creates institutions that bring about change.<sup>14</sup>

In our analysis of the relevant issues in this study, we have not adopted any one of the two approaches in preference to the other. We have, rather, been influenced implicitly by various elements in the two broad traditions of legal scholarship. This approach has been reinforced by the primary concern of this study which is the nature and product of the interaction between labour legislation as part of government policy of development and trade unions. We do not regard law as an exclusive determining factor in the interaction. We regard the law as subject to pressures within society and, naturally, from without. This perception does not deny the importance of law. On the contrary, it recognises that law provides a framework that accounts for social order, direction and cohesion. The law's effect is, however, affected by extra-legal factors. There is, therefore, a need to broaden the study of the role of law to appreciate issues more fully. We submit that this approach is more relevant to the study of the role of law in labour policy in Zambia. Like other emergent polities, the operation of policy imperatives in Zambia can be said to be more 'volatile' and the law less 'autonomous' as a result.

It is evident that in the development of labour policy, law, in particular labour legislation, has been used in an instrumental way. The use of law as an instrument of policy is a stimulating and controversial subject that a number of eminent scholars have dealt with.<sup>15</sup> Wherever we think it is useful to our analysis of developments in Zambia, we have taken account of some views in the debate. We have, however, refrained from any critical analysis

of the questions concerning the debate. We do not think it would usefully add to our concern in this study which is the effect of the strategy of trade union incorporation for development as we have defined it. What we think is more useful is our attempt to highlight the effect of law on the relationship between the state and trade unions in a post-colonial society. We explore some elements of the relationship in Chapter Two.

A number of background factors have been relevant to the development of labour policy in Zambia. In Appendix II (P. 266) we outline some of the basic social and economic indicators which constitute Zambia's national profile and, therefore, form the background to all developments in the country. There are, moreover, four elements in context that are more important and need to be mentioned here. These are the economic, constitutional, geo-political and the African experience. The most important of these have been economic factors since they have shaped labour policy more decisively.

Constitutional factors have also been instrumental in shaping labour policy, particularly as they have provided a basis for the necessary labour legislation. The African experience has generally influenced the development of the relationship between the state and organised labour. In the next chapter we discuss the significance of the general African experience to the development of labour policy in Zambia. In the following pages we briefly consider (i) economic imperatives, (ii) constitutional development and (iii) geo-political factors.

#### 1.A.1 Economic Imperatives

The primacy of economic considerations in the strategy of incorporation cannot be over-emphasised. It is clearly apparent from both the Livingstone Tripartite Conference Report, 1967, which was one of the major sources of impetus to the 1971 legislation,

and successive national development plans.<sup>16</sup> Various studies that have dealt with the question of labour and development in Zambia have also recognised that economic development has been central to labour policy, the wider elements of political, social and cultural development notwithstanding.<sup>17</sup> Thus economic development can be assumed to be the sine qua non to development in other areas. It is, therefore, not surprising that the policy to restructure collective bargaining, contain industrial conflict and formulate an effective incomes policy has been central to the incorporation strategy. Taken together, the introduction of legally binding collective bargaining procedures and agreements, restrictive strike policy, incomes and prices policy, and to a lesser extent, workers' participation represent the economic aspects of post-colonial labour policy in Zambia.

In the following chapters we shall deal with the issues concerning these areas of policy. For our present purposes it is useful to give a brief account of the main economic objectives and developments in support of which the law, in particular, the Industrial Relations Act, 1971, was formulated.

The importance of economic considerations which were later to become the main basis of the trade union incorporation strategy was evident as early as 1964, soon after Zambia became independent. In December 1964 a United Nations Mission, sent to make a survey of the prospects for the country's economic development, observed in relation to wages:

"There is really a choice for Zambia: in the next five years it can have big increases in wages or big increases in employment, not both"<sup>18</sup> (emphasis given)

It is economic considerations such as this that came to shape post-independence labour policy as much as any other factors. Increasingly, the government became pre-occupied with the need to balance what were seen as wage labour's aspirations with the rest

of society's claims.<sup>19</sup> Society's claims with which trade union's claims were to be reconciled were set out in a series of National Development plans which set out ambitious targets for the country's development. The First one was embarked upon for the period 1966-70, followed by the Second (1972-76), the Third (1979-83) and the current Interim National Development Plan devised in 1985.<sup>20</sup>

The goals were to raise the general welfare and education, to achieve sectional and regional balance in the economy, and to prevent the development of wide gaps in the levels of incomes. As will be apparent in the following chapters, wage labour as led by trade unions has been a central focus of these goals.<sup>21</sup>

The development plans were progressively followed by major changes in the economic structure and control of the economy. Thus in 1968, for instance, the government invited 26 major companies to accept a 51 per cent shareholding by the State, a move said to have been prompted by the national philosophy of 'Humanism' which we briefly discuss below (Chapter Two). In August 1969, therefore, the mining industry was nationalised. In 1970 similar measures concerning the banks and other financial institutions were announced, but later abandoned in 1971. The result of the nationalisation measures were the creation of the Zambia Industrial and Mining Corporation (ZIMCO) group, the holding company of most parastatal companies. In the mining sector, the Zambia Consolidated Copper Mines (the ZCCM) created in 1982 is a result of those measures. The Company is owned 60.3 per cent by ZIMCO, 17.3 per cent by the Zambia Copper Investments (part of South Africa's Anglo-American Corporation Group), 6.9 per cent by ITM International, 4.2 per cent by US private interests and 1.3 per cent by British private interests.<sup>22</sup>

The rest of the ZIMCO group has interests in virtually every sector of the economy from insurance, banking, transport, hotel and catering, wholesale and retail trades, to railways, airways,

telecommunications and energy. It has assets of well over K2,000m, making it the largest company in independent black Africa.<sup>23</sup>

The above changes were followed by other institutional changes from 1975 onwards that included the intensification of rural development and changes in land tenure.

These changes provided the economic impetus with which to incorporate trade unions. They were so pervasive that the inclusion of labour became a matter of course, its autonomy notwithstanding. Thus the major argument was that there was need for labour to bring its attitudes in line with what had become national aspirations covering every sector of the country's economic and social life.

For the first decade of independence the changes were aided by a relatively prosperous economy. Largely owing to copper, the Zambian economy was one of the richest and fastest-growing economies in Sub-Saharan Africa. From 1964-69, for instance, the country's Gross Domestic Product (GDP) grew by an estimated 13 per cent per annum, real output grew by 5.5 per cent and trade terms improved 7 per cent annually due to higher copper prices.<sup>24</sup>

#### 1.A.1(a) Effects of Economic Decline

In contrast to the more favourable economic prospects during the initial years, worsening economic decline of recent years has had adverse effects on state/union relations and, consequently, government efforts concerning trade union incorporation. The Zambian economy has been on a steady decline since the beginning of the 1970's. In 1985 a sudden worsening of the country's foreign exchange shortage pushed the economy further into recession and led to difficult negotiations with external creditors

demanding more austerity. In domestic terms the austerity programme embarked upon as a result heightened political tension and called into question the Government's ability to impose the policies without resort to measures like anti-union legislation and detentions which have increasingly been a disturbing feature of recent years.<sup>25</sup>

The current economic problems which are straining the country's political cohesion and state/union relations have their origins in the country's dependency on the copper mining industry, which continues to provide over 90 per cent of the country's export earnings. The decade after independence was followed by high copper prices and, as a result, Zambian income per capita bore favourable comparison to a number of other African countries, (Table 1, P 11 below). By 1985 the overall picture of key economic indicators was markedly different (Table 2, P 12 below). While Zambia's position may not have worsened in relation to other countries, it has definitely not improved. The high metal prices enabled the government to borrow heavily abroad and invest extensively in industrial and infrastructural development. Since 1979 however, copper prices have been mostly on the decline resulting in a downward spiral of foreign exchange earnings. Productivity has also been adversely affected as industry has tended to economise on vital spare parts.

The decline in foreign exchange precipitated a debt and balance of payments crisis, and since 1981, the government has resorted to the International Monetary Fund (the IMF) standby facilities and the "Paris Club" reschedulings.<sup>26</sup>

TABLE 1

GDP comparisons: Zambia and five other African countries in 1970

| Country      | GDP per capita<br><br>(US\$) | Percentage of GDP<br>represented by: |         |
|--------------|------------------------------|--------------------------------------|---------|
|              |                              | Imports                              | Exports |
| Zambia       | 421                          | 37                                   | 54      |
| Ivory Coast  | 347                          | 28                                   | 33      |
| Nigeria      | 145                          | 16                                   | 17      |
| Tanzania     | 97                           | 28                                   | 24      |
| Malawi       | 74                           | 35                                   | 22      |
| South Africa | 784                          | 25                                   | 22      |

Source: Based on Daniel's calculations from International Monetary Fund (IMF), International Financial Statistics (Washington: IMF, monthly), Vol. xxix, No 9, September 1976 - Daniel P, Africanisation, Nationalisation and Inequality: Mining Labour and the Copperbelt in Zambian Development (Cambridge University Press, Cambridge), 1979, p 9.

TABLE 2

GDP Comparisons: Zambia and five other African countries in 1985:

| Country      | GDP per capita<br>(US\$) | Percentage of GDP<br>represented by: |         |
|--------------|--------------------------|--------------------------------------|---------|
|              |                          | Imports                              | Exports |
| Zambia       | 460                      | 27                                   | 26      |
| Ivory Coast  | 691                      | 41                                   | 34      |
| Nigeria      | 739                      | 25                                   | 32      |
| Tanzania     | 237                      | 27                                   | 14      |
| Malawi       | 210(a)                   | 28                                   | 22      |
| South Africa | 2654                     | 31                                   | 29      |

Notes: (a) 1983

Source: Calculated from African Review, 1986  
 (Saffron Walden, Essex 1986 and 1987)  
Africa South of the Sahara, 15th edition  
 (European Publications, London, 1986)



Consequently, the population has had to put up with a sharp drop in living standards. In 1985 the real per capita GNP was already over 25 per cent below the 1977 level. Since then, IMF - prescribed measures to boost export earnings and agricultural output, and cut budget and balance of payments deficits (including the devaluation of the national currency (the Kwacha) and its subsequent auctioning, subsidy removal, credit restraint and higher agricultural producer prices) have adversely affected the cost of living.<sup>27</sup>

Moreover, the measures combined with the shortage of goods caused by import cuts (up to 40 per cent of industry's requirements are imported) and falling productivity have constantly pushed up consumer inflation. It is currently estimated that inflation is running at 60-65 per cent, up from 12 per cent in 1982. Wage settlements for 1986, on the other hand, were averaging between 40 and 45 per cent.<sup>28</sup> Successive price increases have produced constant union demands for wage increases which the government and employers have been unable to meet in full. The response has been a succession of walkouts and strikes culminating in food riots in Lusaka and the Copperbelt late in 1986 and early 1987.<sup>29</sup>

Relations between the trade union movement as represented by the Zambia Congress of Trade Unions (the ZCTU) and the government were always uneasy. In 1983 they became acrimonious when the government tried to introduce a 10 per cent ceiling on wage increases to comply with IMF conditions for a standby facility. It was not until April 1984 that the dispute was resolved when the ZCTU accepted government policy in return for a resumption of free-wage bargaining. The compromise was short-lived. By the end of 1984 ZCTU criticism had shifted to the Government's handling of the economy, inefficiency and bad management of government operations and corruption in the Civil Service, the ruling party and parastatals. Because of the ZCTU's strong organisation and power base (relatively superior to that of the ruling party) the government has increasingly felt threatened, perceiving criticism by the ZCTU and its member unions as a direct political challenge to its authority.<sup>30</sup>

The government has responded in its traditional way, by a mixture of confrontation and conciliation. In January 1985, for instance, the President resorted to the rarely used Public Security Regulations and banned all strikes in the Health Service.<sup>31</sup> That was in response to walkouts and "go-slows" by doctors, nurses and other health employees in pursuit of a monthly wage increase of 50 kwacha. The next month, February, the government partially revoked price increases imposed earlier and announced a monthly wage increase of 30 kwacha for low-paid categories in the public service. The response was that labour unrest spread to the local government and the insurance sectors.

In further response, the government invoked powers under Section 20 of the Industrial Relations Act, 1971. The provision gives the Minister the power to instruct an employer to terminate arrangements for the deduction of trade union dues from union members' wages where a particular trade union or some of its members are engaged in illegal industrial action. For the purposes of the section, it does not matter whether a particular strike is approved by the union concerned (that is to say an official dispute) or not approved (that is to say unofficial dispute). It suffices that the strike in question, for instance, is in contravention of the procedures laid down under the Act. The measure was a deliberate threat to union finances, calculated to weaken the ability of unions to organise industrial action. Further industrial action resulted in the extension of the already too broad essential services category in which strikes are illegal. Thus, the banking and communication sectors were included in the category, among other sectors.<sup>32</sup> On Labour Day 1986, the President chose to resurrect the issue of 'total incorporation' of the ZCTU as a wing of the ruling party, by announcing a new committee to study ways of integration.<sup>33</sup> Although the proposal had been put forward as early as 1982, the government had until then resisted party attempts to push it further.

In late 1987 and early 1988 the continuing decline in the economy has resulted in massive redundancies which tended to curb union power. Food riots and growing dissension from the left wing of the ruling party compelled the government to re-assess its austerity programme. As a result, the President abruptly broke off negotiations with the IMF, decided on fixed foreign exchange rates and re-introduced price controls.<sup>34</sup> Whether state-union relations will improve as a result remains to be seen. Much will depend on how the economy performs. What is significant for the purposes of this study is that government efforts to incorporate trade unions were greatly affected by the decline of the economy. We shall return to this theme in the concluding chapter.

#### 1.A.2 The Legal System and Constitutional Developments

Zambia at independence inherited a constitution and a legal system. As in the case of the received industrial relations system these too have been modified over the years. A brief outline of the major elements of the legal system and constitutional developments is useful to appreciate the overall framework within which the policy of trade union incorporation was formulated.

In tracing Zambia's legal history, the country must be treated as comprising three territories - Barotseland, North-Western Rhodesia and North-Eastern Rhodesia.<sup>35</sup> In 1891 Paramount Chief Lewanika of the Lozi people is said to have requested British protection for Barotseland. Lewanika claimed hegemony over surrounding territories comprising most of what turned out to be present Zambia. As a result the whole country was brought within the Charter of Cecil Rhodes' British South Africa Company (the BSA) with powers of government and protection. In 1900 a concession with Lewanika was signed by representatives of the British Crown.<sup>36</sup> The concession was regarded as a treaty between Britain and the Barotse nation. It granted the BSA trading and mineral rights in exchange for undertakings to protect the country under a British Resident. Two separate Orders-in-Council made provision for the

BSA Company's administration, the Barotseland - North-Western Rhodesia Order in Council, 1899 and the North-Eastern Rhodesia Order-in-Council, 1900.<sup>37</sup>

The Protectorate's<sup>38</sup> government was taken over in 1924 by the Crown. In 1953 the Country became part of the Federation of Rhodesia and Nyasaland.<sup>39</sup> Each constituent country of the Federation retained its constitutional status, that is to say, Southern Rhodesia remained a self-governing colony, whilst Northern Rhodesia and Nyasaland were still protectorates. Each country also retained its own judicial system although there was a Federal Supreme Court with original and appellate jurisdictions. The Federation was brought about in the face of strong opposition from the indigenous African population in all the three countries. As a result of continuing opposition, the Federation was dissolved in 1963.<sup>40</sup> The country was granted full independence as a Republic on 24 October 1964.<sup>41</sup>

At independence Zambia inherited a Westminster style multi-party system under an executive President. The multi-party system, and the First Republic that came with it, lasted until 1972.

The country became a "One-party participatory democracy" on 13 December 1972 when the Second Republic was proclaimed.<sup>42</sup> It has a centralised government under an executive president. There are separate party and government structures both headed by the President. The Central Committee of the ruling party, the United National Independence Party (UNIP), in principle makes policies that the Cabinet implements. In practice however, the Cabinet has policy-making powers as well. Parliament consists of a President and an unicameral National Assembly which includes both elected (the greatest majority) members by universal suffrage and a few nominated by the President. The President also appoints the ruling party's Secretary-General, the Prime Minister and the Cabinet over which he presides. He is also Commander-in-Chief of the Armed Forces.

Other notable constitutional aspects include entrenched fundamental rights and the House of Chiefs with an advisory capacity.

Basic law consists of legislation by Parliament, the common law, doctrines of equity and the statutes which were in force in England on 17 August 1911, and later British statutes specifically applied by parliament.<sup>43</sup> Effect is given to customary law by all courts in appropriate cases subject to written laws.

The judicature consists of the Supreme Court, the High Court and Subordinate Courts divided into four classes. The Subordinate Courts have limited civil and criminal jurisdiction.

The status, within the legal system of the Industrial Relations Court which forms part of this Study (Chapter Six), is a matter of some debate. Some commentators have concluded that the court is unconstitutional and amounts to a usurpation of judicial power by the legislature.<sup>44</sup> Its constitutional status and powers have been challenged before the High Court.<sup>45</sup> In spite of such challenges, however, neither the government nor the National Assembly has felt it necessary to clarify its place in the constitutional and legal system.

#### 1.A.3 The Geo-Political Situation

Since the beginning of the quest for independence through armed force in the former Portuguese colonies of Mozambique and Angola in the early 1960's, and the Rhodesian Unilateral Declaration of Independence in 1965, the geo-political situation in Southern Africa has been a significant factor in Zambian domestic and foreign policy, including labour policy. Zambia has been embroiled in the costly turmoil arising out of the conflicts in the neighbouring countries.<sup>46</sup> The attainment of independence by Mozambique, Angola and Zimbabwe brought little relief as armed

conflict continues in the region. The continuing deadlock in Namibia and the deterioration of the political climate in South Africa has not diminished the problems the country faces as land-locked, especially the disruption of transport links.

The government has from time to time readily cited the problems arising out of the geo-political situation in support of the need for trade union incorporation. The trade union movement for its part has in the past broadly supported the government, including its stance on sanctions first against Rhodesia and now South Africa. However, there are indications that trade union support is now less forthcoming as the economic situation continues to worsen. A number of trade union leaders such as the ZCTU Chairman, Frederick Chiluba, have spoken of the need to be "more realistic about the Southern African situation and the country's vital interests."<sup>47</sup>

President Kaunda recently talked of the inability of frontline states to impose sanctions against South Africa at once because of the vulnerability of their economies.<sup>48</sup> In spite of Zambia's support for economic sanctions against South Africa, therefore, it has yet to impose them. Zambia has apparently taken note of President Botha's threats to impose retaliatory sanctions on South Africa's neighbours. That would hit copper exports. Some 70 per cent of copper and other mineral exports are still shipped through South Africa because of problems on the alternative Tazara railway route to the Tanzanian Coast.

The presence of the African National Congress headquarters (the ANC) in Lusaka also makes Zambia vulnerable to military operations by South Africa. In fact, there were several such operations against Zambian territory in 1987 and numerous others before then. Apparently, as a response to such pressure, President Kaunda has indirectly continued to encourage contacts between the ANC and South African interests, such as business leaders, which he

initiated in September, 1985.<sup>49</sup> With the escalation of the Civil War in Mozambique and the continuing deadlock in Angola, the geo-political situation is bound to continue being significant in domestic policy. Anxieties also continue in relations with Zaire which have been strained for years, culminating in major expulsions of each other's expatriate communities in 1984. Strains in relations with Zaire tend to have a more direct effect on the Copperbelt, the centre of the trade union movement.<sup>50</sup>

It is apparent from the above brief summary that the geo-political situation constitutes a potent background factor in state/union relations and, therefore, labour policy.

#### 1.B. Sources and Research Methodology

As indicated above, both primary and secondary sources were utilised in this study. Documentary materials used included official Labour Department reports, newspaper accounts, materials in various archives and libraries, including the National Archives of Zambia, the Copper Industry Service Bureau (the CIBB) and the ILO records on Zambia. Other documents included various Commissions of Enquiry Reports on labour matters, trade unions' and employers' associations' documents and data collected in the course of the Zambian Labour Relations project. We also made use of a number of surveys and experts' reports.

For field work we relied mainly on unstructured interviews, data collected in the course of our occasional work with various government agencies and trade unions, and the Zambia Labour Relations project, which as indicated in the acknowledgements section, was initiated with the aim of collecting and collating research and teaching materials at the University of Zambia. Research on labour matters in Africa, as several researchers before have testified, can present the researcher with a multitude of

problems.<sup>51</sup> It is, therefore, important to give a brief account of the problems, limitations and the choice of particular methods of inquiry. One of the major problems with research based on documents in Africa, including Zambia, is the inadequacy of facilities for the collection of information and data. More than twenty years after independence the collection of information and data in government departments still has a very low priority in government operations. Few resources and little manpower are allocated to the task. Elsewhere we identified the inability to gather data as one of the major problems that adversely affects the Zambian Labour Department's capacity to play its proper role in the development of effective labour policy.<sup>52</sup>

Even when documentary material is available it is often in a disorderly state due to unsatisfactory filing and cataloguing. In some cases, as we discovered at the Zambian High Commission Library in London, lack of manpower means that no attempt is made to sort out the material. The researcher has to find his own way through such material.

Materials also tend to be dated. Up-to-date material is difficult to find for various reasons. Government departments take years to bring out annual reports, at certain times there has been a backlog of three years or more.<sup>53</sup> Lack of current materials is also a result of government sensitivity and tendency to treat routine documents as confidential for as long as possible. We found instances where Zambian documents on open shelves in foreign libraries were still treated as confidential at home. In spite of these problems however, we endeavoured to utilise as many primary documentary materials as possible for the study.

We relied on oral evidence a great deal in our field work. Apart from commonly recognised problems concerning oral evidence which arise from possible bias and memory distortion, other limitations had to be confronted: identification of respondents and the



problem of interviewing techniques. Labour has always been a highly sensitive subject in Africa. It tends to generate adverse reactions ranging from cold indifference to white heat. The problem of the political sensitivity to labour matters is probably greater in Zambia than in most other African countries on account of the labour movement's relatively greater capacity and potential for political involvement. Preventive detention of labour figures has been quite frequent since independence. It is not surprising, therefore, that many people we interviewed preferred to remain anonymous except where their views were a matter of public record. We naturally gave assurances not to identify them in such cases. In some cases, however, we have used identifiable views in preference to anonymous ones. We have, therefore, not completely taken Foltz's reported view that

".... because of the conditions .... and even more in consideration of the use to which such information might be put, we have as a general rule, not identified our respondents... we are certain that anyone who has done recent political research in Africa will appreciate the need for such reticence."

Except for the data drawn from the Zambia Labour Relations project and two other surveys, we utilised the 'free-answer' ('open-ended') technique in our interviews. We did not use a formal questionnaire for several reasons. Some of our respondents, especially workers, were either barely literate or completely illiterate. Formal questionnaires also tend to 'direct' responses and generate fear and suspicion where a sensitive subject such as labour is concerned. Another reason why we did not use a formal questionnaire was that in some instances views were solicited in situations where we were participating. Such instances included situations where we were part of delegations, participating in seminars or consulted for advice. We did, however, make copious notes either during interviews where possible or soon after each interview. We also used a basic 'interrogatory paradigm' which sketched out our talking points for interview purposes

(Appendix I at P.262).

Our choice of the unstructured interview method was also influenced by its use by several prominent researchers in this field.<sup>55</sup> In 1971 a study group convened by the ILO - associated International Institute for Labour Studies (IILS) also preferred "the informal interview, rather than structured survey". In their view it would produce better results, given the nature of the subject and the type of respondents. The group also argued that "the interviews will not lead to a table of quantified responses, but are considered as checks on the more abstract findings developed by other methods".<sup>56</sup> It can also be argued that the 'contextual' approach such as we have endeavoured to adopt in this study - in particular the analysis of basic material like statutes, existing literature and some collective agreements - does not easily depend on the quantification of data.

#### 1.C Thematic Summary of Contents

Apart from Chapters Two and Three, the following chapters are organised around themes in the four areas that we have identified as crucial to the Government's strategy of trade union incorporation: trade union activity, collective bargaining (including incomes policy), industrial conflict and dispute settlement and workers' participation. Some of the major issues that form the subjects of the chapters are summarised in Chapter Two. It is, however, useful to briefly outline the themes dealt with in various chapters from the outset.

Efforts to incorporate trade unions in Zambia in part reflect the general African post-colonial trends in labour policy. It has, however, specific elements that mark it out as a distinct experience. In Chapter Two an attempt is made to examine the

conceptual framework of trade union incorporation in the light of general African experience. Specific developments, including ideological claims that shaped government policy are analysed. The nature of labour's response and indications of the overall impact of the policy are addressed from the outset.

Contemporary policy in many ways owed its existence to developments during the colonial era, especially those after the Second World War. It can be argued that in a number of areas there has been a continuity of policy trends embarked upon during the colonial period. In Chapter Three some of the main developments under the Colonial State are examined. The main focus in the Chapter is the development of African trade unions. Demands for changes in government policy and trends towards a more restrictive regime of labour relations law are also mentioned. The basic framework of colonial industrial relations policy is implicitly defined.

Government attempts to incorporate trade unions have been focused on a number of key areas. The following five chapters, that is to say, Chapters, Four, Five, Six, Seven and Eight examine each of the key areas in turn. Chapter Four analyses attempts to restructure trade union organisation and activity. In Chapter Five the institutions of collective bargaining are examined. Dispute settlement procedures and levels of industrial conflict probably provide the best yardstick with which to measure government policy. Measures to regulate industrial conflict form the subject of Chapter Six. The rural-urban imbalance and its consequences especially in terms of income distribution has been one of the taxing problems of national development policy. Attempts to control prices and wages have been an important part of the Government's aim to close the gap between the urban formal employment sector and the rural, mainly subsistent sector. Chapter Seven examines the issues that have been addressed as part of the Government's prices and incomes policy and the effect to date. In Chapter Eight workers' participation, the most radical

element of government policy is examined. Workers' participation is a completely new element in current labour policy. Unlike other elements of policy mentioned earlier which existed during the colonial period, albeit in different forms, workers' participation can be seen as a radical attempt to change attitudes in labour relations.

There have been two critical periods in the development of post-colonial policy in Zambia. The first period, mainly transitional in character, existed between the attainment of independence in 1964 until the implementation of the Industrial Relations Act, 1971, in 1974. The second period, the main focus of this study, is signified by the changes brought about by the Industrial Relations Act, 1971. The above Chapters, which examine issues in the key areas identified, take account of the two crucial periods.

Finally, in Chapter Nine we review the main themes which have been presented and appropriate conclusions are drawn. An attempt is also made to examine future prospects of labour policy, especially in the light of apparent government intention to review the current system of industrial relations in Zambia.

NOTES TO CHAPTER ONE

- 1 Among leading works see, for instance, Epstein A L, Politics in an Urban African Community (Manchester: Manchester University Press, 1958); Bates R H, Unions, Parties and Political Development: A Study of Mineworkers in Zambia (New Haven: Yale University Press, 1971); Berger E L, Labour, Race and Colonial Rule: The Copperbelt from 1924 to Independence (Oxford: Clarendon Press, 1974); Tordoff W (ed) Politics in Zambia (Manchester: Manchester University Press, 1974); Henderson I, "Labour and Politics in Northern Rhodesia 1900-53: A study in the limits of Colonial Power", PhD Thesis, (University of Edinburgh 1972); Zelnicker S, "Changing Patterns of Trade Unionism: The Zambian Case 1948-64", PhD Thesis (University of California, Los Angeles 1970); Gertzel C, et al, The Dynamics of the One-Party State in Zambia (Manchester: Manchester University Press, 1984).
- 2 To our knowledge only one work by a political scientist has to date attempted to focus attention on law and labour relations in Zambia as part of a comparative study. It was concerned with colonial law, among other factors, as inherited at Independence in five African countries. It did not pay any attention to the Industrial Relations Act, 1971, and, in the nature of comparative studies, resorted to a high degree of generalisation which emphasised the common British Colonial heritage rather than specific national factors. Lovegrove B R L, "Labour Relations and Law in East and Central Africa", M.Phil Thesis. (University of Reading 1975).
- 3 For an insight into the fate of the "tripartite system" of industrial relations in Anglo-phone Africa in recent years see Cambridge C, "Emerging trends in industrial relations systems of former British Colonies: The ratification of International Labour Conventions", (Fall 1984), Journal of African Studies, p 129.
- 4 See, among others, Seidman R, The State, Law and Development (London: Croom Helm, 1978); Fitzpatrick P, Law and the State in Papua New Guinea (London: Academic Press, 1980); "Law, Plurality and Underdevelopment" in Sugarman D (ed), Legality, Ideology and the State (London: Academic Press, 1983); Snyder, F G, "Law and Development in the Light of the Dependency Theory", (1981) 14, 3, Law and Society Review, P 723 Stevens, R, Law and Politics (London: Weidenfeld & Nicolson, 1979).

- 5 Introduction, Weidenfeld and Nicholson's "Law in Context" series. Other major works on labour relations and law have recognised the importance of the economic and social context. See, among others, Crouch C, "The Changing Role of the State in Industrial Relations in Western Europe", in Crouch C, and Pizzorno A (eds), Vol 2, The Resurgence of Class Conflict in Western Europe Since 1968: Comparative Analyses, (London: Macmillan, 1978); Thomson A W J, and Engleman S R, The Industrial Relations Act: A Review and Analysis (London: Martin Robertson, 1975); Davies P L and Freedland M, (eds), Kahn-Freund O, Labour and the Law, (London: Stevens and Sons, 3rd edition 1983); Wedderburn K W and Murphy W (eds), Labour Law and the Community, (London: IALS, 1982).
- 6 Weidenfeld and Nicholson's "Law in Context" series, *ibid*.
- 7 See for instance, Seidman, 1979, *op cit*; Trubek D M, "Towards a Social Theory of Law: An Essay on the Study of Law and Development", (1972), 82, 1, Yale Law Journal, P 1.
- 8 Seidman, 1979, *op cit*, P 15.
- 9 Proehl P, "Book Review", (1967), 42, Indiana Law Journal P 277 quoted by Seidman, *ibid*.
- 10 Friedman L, "Legal Culture and Social Development", (1969), 4, 2, Law and Society Review, P 29.
- 11 Trubek, 1982, *op cit*.
- 12 Seidman, 1979, *op cit*, P 16.
- 13 *Ibid*, P 17.
- 14 *Ibid*
- 15 See, among others, works mentioned in note 4, above.
- 16 Government of the Republic of Zambia. First, Second, Third and Interim Development Plans, (Lusaka: Government Printer, 1966, 1971, 1979 and 1985 respectively); Government of the Republic of Zambia, Report of the Livingstone Conference, (Lusaka, 1967).
- 17 See, *inter alia*, Bates, 1971, *op cit*, and Gertzel, et al, 1984, *op cit*.
- 18 Report of the UN/ECA/FAO Econic Survey Mission on the Future Economic Development of Zambia (New York: UN, 1965)
- 19 Sklar, R L, Corporate Power in an African State: The Political Impact of Multinational Corporations in Zambia (Los Angeles: University of California Press, 1975), P 97

- 20 Government of the Republic of Zambia, (Lusaka: Government Printer, 1965, 1971, 1978, 1985).
- 21 Bates, 1971, op cit; Dressang D, "The Political Economy of Zambia" in Harris R, The Political Economy of Africa. (New York: Schenkman, 1979), P. 189.
- 22 Africa South of the Sahara. (London: Europa Publications, 15th Edition, 1986), P 1040
- 23 Ibid, P 1042
- 24 Ibid
- 25 For elaborate profiles of events resulting from economic difficulties, see The Times, reports dated 19, 20, 23, 24, 25 and 26 March, 1987; Turner S, African Review, 1986, (Saffron Walden: World of Information, 1985), P 317.
- 26 Ibid, P 318
- 27 Ibid
- 28 Prices and Incomes Commission Statement, News From Zambia. (A weekly summary of Zambian newspapers' reports published by the London Office of the Zambian Consolidated Copper Mines (the ZCCM), 26 February, 1987, No 426.
- 29 Times reports, 1987, op cit.
- 30 This seems to be the common perception of not only union and government officials interviewed, but also employers' representatives.
- 31 ILO, (1985), 2, Social and Labour Bulletin, P 233.
- 32 Gazette Notice No 221 of 1985, 26 February 1985, P 231.
- 33 News From Zambia, op cit, 8 May 1986.
- 34 For a critical assessment of government action see The Economist, 15 - 19 May, 1987.
- 35 For a more elaborate account of the Country's legal history see Roberts-Wray K, Commonwealth and Colonial Law. (London: Stevens, 1966), P 745.
- 36 "Colonial Office papers, African (South) No 392", Colonial Office files. (London: Public Records Office), p 392.
- 37 Northern Rhodesia Orders in Council Nos 567 of 1901 and 89 of 1900 respectively.

- 38 The distinction between a 'protectorate' and a 'colony' was more legal than practical. A colony was a British territory under the Crown whilst a protectorate was not a formally annexed territory. As a result residents of a colony were British nationals whereas those of a protectorate were merely "British-protected persons". In colonial terms a protectorate was regarded as a more backward area needing 'protection' whereas a colony was regarded as more self-sufficient.
- 39 Rhodesia and Nyasaland Act, 1953 (1 & 2, Eliz. 2, C. 30).
- 40 Rhodesia and Nyasaland (Dissolution) Act, 1963, (C. 34); (S.I. No 2085, 1963).
- 41 Zambia Independence Act, 1964 (C. 65).
- 42 The Zambian Constitution as amended, Chapter 1 of the Laws of Zambia.
- 43 English Law, Extent of Application and British Acts Extension Act, Chapters 4 and 5 of the Laws of Zambia respectively. On 17 August, 1911, the Northern Rhodesia Order in Council amalgamating North-Western and North-Eastern Rhodesia was issued, hence the reference to laws in force in England on that date.
- 44 Mushiota R K, and Puta C N, "Constitutional Law and its impact on the Status and Jurisdiction of the Zambian Industrial Relations Court: A Case Study of the Usurpation of Judicial Power by the Legislature" Unpublished Paper, circa 1980
- 45 Zambia National Provident Fund v Mukuka and others, Selected Judgements of Zambia 1983/HP/433
- 46 The Zambian Government estimates that conflict in Southern Africa has cost the country at least US\$10 billion since Independence, Foreign Minister Mwananshiku, quoted in The Zambia Daily Mail, 13 April, 1987.
- 47 Times of Zambia, 4 April 1987.
- 48 Times of Zambia, 10 February 1987.
- 49 Turner, 1985, op cit, P 321.
- 50 Ibid.
- 51 Lovegrove, 1975, op cit, Chapter 1; Scott R D, The Development of Trade Unions in Uganda (Nairobi, 1966), preface; Friedland W Vuta Kamba: the Development of Trade Unions in Tanganyika (Stanford: University of Stanford, 1969), Appendix 1.



- 52 Kalula E, "The Influence of International Labour Standards on Zambian Legislation", (September - October 1985), 124, 5, International Labour Review, p 599
- 53 Ibid
- 54 Foltz W J, From French West African to Mali Federation (New Haven), 1965, P viii, quoted by Lovegrove, 1975, op cit, P 14.
- 55 Lovegrove, 1975, Scott, 1966, Friedland, 1969, op cit.
- 56 International Institute for Labour Studies, Interim Report of the Study Group of the IILS. (Geneva: 1971), Appendix 1, P 2.

CHAPTER TWOTRADE UNION INCORPORATION IN ZAMBIA: POLICY FRAMEWORK2.A Incorporation for Development

The role of trade unions in the national economy has been the main pre-occupation of the Zambian Government's labour policy since independence. The government at independence viewed trades unions as a sectional interest to be subordinated to the national interest. The State's concern with the role of organised labour was heightened by the major characteristic of Zambia's economy, one which was based upon the production of a single major commodity, copper; and the strategic position unions, especially the Mineworkers' Union<sup>1</sup>, occupied in it. A considerable proportion of the labour force at independence, led by miners, was already stable and unionised. The labour movement was, therefore, relatively autonomous. Government labour policy consequently came to be pre-occupied with attempts to constrain the labour movements' and the rank and file's post-independence aspirations and expectations in line with its development objectives. The state brought pressure to bear upon trade unions through reforms in four main areas of labour legislation. It sought to, (1) regulate trade union activities more closely, (2) restructure collective bargaining (including attempts to introduce an effective incomes policy), (3) reform dispute settlement procedures and the law of industrial action, and (4) introduce workers' participation. In these ways, the law became central to the Government's overall strategy of incorporation. Accompanying these legislative initiatives were two other extra-legal government policies: attempts to socialise the trade unions' rank-and-file through the ideology of "Zambian Humanism" and to incorporate individual trade union leaders into government from time to time.

It is suggested in this thesis, that the array of specific measures have been part of the overall strategy adopted in Zambia for labour policy: this can be characterised as one of "labour incorporation for development". In spite of the use of law as an instrument of union control and regulation, government strategy in Zambia has, however, been less coercive than in many other African states.<sup>2</sup> Thus, there has been no radical restructuring of the trade union movement itself such as has occurred in Tanzania, for example.<sup>3</sup> Rather, the government has relied on what Gertzel has termed "pressure rather than force"<sup>4</sup> - a form of incorporation to achieve the objectives of its strategy.

The term "incorporation for development" has overtones of the recent European debate about corporatism in that it implies an attempt by the State to convince unions and their members to accept that their autonomous interests should be pursued in a way that is not incompatible with the greater "public interest" in development, particularly economic development.

Until recently in Europe, corporatism was mainly equated with the political and economic system which prevailed in Italy for instance during the period of fascist rule. Simply described, it was a system in which industry remained in private ownership, but was controlled by the State and used in pursuance of some overriding national interest.<sup>5</sup> In recent years, however, attempts have been made to apply the corporatist model to contemporary developments elsewhere in Europe. Sociologists such as Leon Panitch and Colin Crouch have characterised the Donovan recommendations to reform the British Industrial Relations System and attempts at incomes policy for instance, as a 'corporatist' strategy.<sup>6</sup> Definitions of corporatism vary, but they essentially focus attention on the reciprocal relationship between the State and organised interests in society in respect of the formation and execution of public policy. In the case of trade unions, the term conveys the attempt to integrate trade union leaders in order to control and restrain their activities.<sup>7</sup> Cawson has defined it thus:

"Corporatism is a politico-economic system in which the state directs activities of predominantly privately-owned industry in partnership with the representatives of a limited number of singular, compulsory, non-competitive, hierarchically ordered and functionally differentiated interest groups."<sup>8</sup>

It has been said that whether corporatism in its more recent form provides a more accurate model of the political process depends on what degree of integration, taking factors identified into account, between various interests and the state is felt to be required to justify the label. It is also said to depend on whether economic policy is accepted as the central concern of the state.<sup>9</sup>

Drawing any simplistic parallels between Zambian developments and those in Europe would be misleading, not least because of the absence of the Western-type pluralism as a key factor in post-colonial labour policy in most African countries. Consequently it would not be useful to engage in a lengthy comparison. As we shall see presently, the Zambian experience is firmly rooted in the general African experience in which governments have uniformly sought to control trade unions in the cause of development. The debate on European corporatism does, however, offer a useful indicator to help us understand the relationship between labour and the state in post-colonial Zambia. It can be argued, for instance, that there is a common thread in the quest for the integration of economic interests into the policy-making process and efforts to persuade labour to take account of national objectives as articulated by the state.

At least two other scholars of Zambian development have recognised the usefulness of the term "incorporation" to describe the state's attempt to persuade workers to align themselves with its designs for national development. Similarly, a number of other writers on African labour and development have used or implied incorporation to describe various attempts by African governments to control trade unions. We summarise the major trends in that respect in the following pages of this Chapter. We can, however, immediately

mention Jackson's analysis of developments in Tanzania up to 1979 as a notable point of comparison. What Jackson saw as a form of successful incorporation of labour in Tanzania, "a two-fold policy proceeding in parallel steps of imposing obligations on organised labour while at the same time creating new rights for workers", is what we refer to below as the "controlled unions" model. The model is basically exemplified by attempts to integrate trade unions at both the political and administrative levels. Thus the Tanzanian Government sought to exercise full managerial and policy control over trade unions. Gupta's analysis of trade unionism and politics on the Zambian Copperbelt is comparable to that of Jackson. In that respect, Gupta's perception is markedly different, at least in degree, from our own which we have presented in this study. The Zambian model of incorporation as we have stated above (p 31), is distinct from that of many African countries in that it has been less coercive and has relied "on pressure rather than force", to use Gartzel's words again. We, therefore, perceive attempts to incorporate Zambian trade unions, as will be more apparent later in this Chapter, more in terms of Bates analysis rather than that of Jackson or Gupta.<sup>10</sup>

This thesis will examine the nature of the Government's attempts to use legislation in a number of specific spheres of labour policy to incorporate trade unions. The effectiveness of such attempts will also be assessed. In the present Chapter we sketch the framework of the incorporation strategy on which our analysis of issues in subsequent chapters will be based. The Zambian experience has to be viewed within the African historical context. It has been part of similar trends elsewhere on the African continent. It is, therefore, important to understand the main features of the general African experience. We therefore first begin by examining some of the main features of post-colonial labour policies in Africa. We then proceed to summarise the Zambian strategy of incorporation and relate it to the general African experience, drawing attention to its distinctiveness of approach.

Before examining post-colonial labour policies in Africa, however, the use of the terms "government" and "state"<sup>10a</sup> needs an explanation from the outset. It will be apparent in some places of the thesis that the terms have been used interchangeably. We think this can be justified because of the dramatic change in the relationship between the ruling party on the one hand and government and other institutions in the state on the other, following the advent of the one-party state in 1973. In spite of the fact that the distinction in constitutional law between the state and institutions within it still exist, the usurption of many functions of state by the party has blurred that distinction in practice. After the one-party state was declared the government came under increasing attack over its conduct of affairs culminating in a political crisis in 1980 in which the trade unions played a big part. As a result the ruling party "asserted the principle of party supremacy, extended party control over government and in the process moved Zambia closer to a party-state". Thus there was a further concentration of power in the party through the presidency and the state. Attempts to incorporate trade unions have similarly been affected in terms of the actual sources of power directing them.<sup>10b</sup>

## 2.B Post-Colonial Labour Policies in Africa

Labour policies in African countries after independence as elsewhere in the Third World have had certain broad similarities. This is not to say that there has been any single pattern of labour policy in these countries. It has been suggested that the kinds of labour policies adopted in the Third World have corresponded to the types of elites governing various countries. To that extent it has been asserted that "each of these elite groups (had) a strategy by which it (sought) to order the surrounding society in a consistent fashion."<sup>11</sup> Nevertheless, the different policies pursued have had a common central strategy - the desire to defend national sovereignty and attain rapid progress through industrialisation and modernisation.<sup>12</sup>

The current pattern of labour policies in Africa started with the decolonisation process which produced a crisis. The crisis primarily centred on a common belief among African nationalists, who came to wield power at independence, that the colonially inherited laws and institutions were based on cultural, political and economic imperatives which, while appropriate as a means of serving the ends of colonialism, were distinct from, or even antagonistic to, the kinds of imperatives 'properly' operative in the context of independent Africa. Consequently, new African governments claimed that there was a need to rediscover pre-colonial traditional African values which could be adapted to modern development needs. It was further claimed that such imperatives were discernible in indigenous African culture.<sup>13</sup>

It was, therefore, asserted that there was a need for organised labour to relate itself to the problems of creating new societies on the continent. The assumption was that national governments would determine the form that state/trade union relations should take. It was further assumed, and this could be said to be the basis of the post-colonial crisis in state/trade union relations, as mentioned above, that effective union participation in the development process required a more clearly prescribed role for organised labour. It also required closer ties between labour and the political leadership than was the case during the struggle for independence against colonial governments. This marked the beginning of a trend, that has continued ever since in various forms, characterised by attempts on the part of African governments to institutionalise firm controls over trade unions.<sup>14</sup>

Attempts to subordinate trade unions to state control after independence have been in marked contrast to the relationship that existed between African labour movements and nationalist parties during the colonial period. By the time of independence, many African trade unions had attained varying degrees of autonomy from both the colonial state and the nationalist political parties. The attainment of autonomy by the unions from nationalist parties prior

to independence was possible because "African nationalism did not demand that unions define their relationship to politics in a precise way."<sup>15</sup> That was due to the fact that, at least in part, African nationalism as an ideology was a highly diffuse one. Although there had been many instances of broad collaboration between trade unions and nationalist parties in the articulation of anti-colonial values, many unions were never integral parts of nationalism.<sup>16</sup> In fact a number of unions asserted their independence from nationalist leaderships in a number of ways. To that end, some unions, like the Miners under Katilunga in Zambia, emphasised a relatively non-political industrial approach which manifested only a limited interest in the politics of independence.<sup>17</sup> Even in instances where trade union organisations were highly politicised, it has been observed that their awareness was not necessarily accompanied by close co-operation and agreement between unions and nationalist parties.<sup>18</sup>

In spite of the broad identity of interest that colonial rule helped to forge between unions and nationalist parties, colonialism was in fact an important factor in the development of union autonomy. Colonial governments encouraged union separatism and their non-political role and status. Colonial administrations sought to transfer metropolitan values and attitudes to colonial territories during what was by and large a paternalistic development of African trade unions after the Second World War.<sup>19</sup> The most important of those values was social pluralism, the Western concept that viewed trade unions as one of the many private interest groups whose appropriate role was to maximise social and economic advantages for their members. In that view, unions were, therefore, seen simply as a segment of a heterogeneous assortment of voluntary associations competing against one another for the attainment of primarily economic rather than political goals. To that end many colonial governments made it clear to African trade unionists that they could only operate in an atmosphere relatively free of restrictions and repression if they avoided sensitive political issues. Where necessary direct legislative and



administrative techniques were used to prevent ties between unions and nationalist parties.<sup>20</sup>

European labour movements also played a part in the development of African trade unions' autonomy with their efforts to foster a tradition of "free" trade unionism on the Continent.<sup>21</sup> In spite of the tendency in some European countries towards close co-operation of trade unions and political parties and institutions, organisations such as the International Confederation of Free Trade Unions (ICFTU), the General Confederation of Workers (CGT), and the International Federation of Christian Trade Unions (IFCTU) emphasised the need for union autonomy in their provision of organisational and financial assistance to African Unions during the formative stages.<sup>22</sup> At independence unions sought to maintain that autonomy from the political process.

The desire manifested by African trade unions to maintain their autonomy could, however, be said to be more than simply an indication of the continuation of institutional patterns established during the colonial period. The position taken by many African unions was rather a response to post-independence conditions and problems arising out of them.

In the face of union tendencies towards autonomy, African governments sought and continue to seek to control unions. Attempts to redefine state-union relations have been primarily motivated by three imperatives. First, the search for development; second, the desire to consolidate and stabilise political authority and third, the perceived need for a new trade union role.<sup>23</sup> We proceed to examine each of these in turn briefly before looking more closely at the different forms of control attempted by governments in pursuit of these aims.

#### 2.B.1 The Search for Development

African governments at independence were, without exception,

pre-occupied with the search for development.<sup>24</sup> In spite of its elusiveness since then, development is still viewed as the primary objective of government. The State's pre-occupation with development was not merely dictated by ideological considerations, but practical ones as well. In the absence of a well-developed private entrepreneurial class like that in Western industrial societies, the African State at independence was inevitably the core focus of national development efforts. In the words of one development specialist, "there (was) virtually no internal agency apart from the government, to undertake the vital tasks (of development)".<sup>25</sup> It meant, therefore, that the State had to assume leadership and the initiative. As a result there has been a tendency for development plans to follow a highly centralised and bureaucratic pattern.

Alongside central planning there has been a tendency for State control over major sectors of the economy and institutions. High wages and industrial conflict were inevitably seen as a threat that could jeopardise chances of success and, therefore, could damage the national interest. Besides, a critical lack of necessary resources - material, economic and infrastructural prerequisites for development - made the mobilisation of human and organisational resources by the State indispensable. It was, therefore, felt necessary from the start by governments, which assumed the role of custodians of the public interest, to resort to administrative and legal regulation of trade unions.

For a fuller understanding of the African State's pre-occupation with development strategy we have to take account of a second major difference between the historic process of development in the West and the position at independence in Africa. It has been said of Britain as the pioneering industrial country and other Western countries generally, that industrialisation was more or less completed before the advent of trade unionism. Unions as campaigners for better wages and conditions were, therefore, preceded by the industrial process. Africa at independence possessed a relatively well organised labour movement in comparison

to other groups in its societies, not least due to paternalistic efforts on the part of colonial powers in the development of trade unions.<sup>26</sup> In contrast, economic development was at its earliest phase and in many ways continues to be so after a generation. Significantly, trade unions were in a position to make demands upon the new state order comparable to those made by their European counterparts whose societies were at a more advanced stage of industrialisation. In an implicit reaction to that difference as a major factor in development strategy, African governments insisted that labour had to accept a measure of austerity, not anything like as harsh as that which their European counterparts had to endure at a comparable stage, but nevertheless, adequate sacrifices in the public interest to facilitate rapid development. After all, as was suggested by some students of the industrial revolution, the success of the initial stage of capital accumulation probably depended on the system's ability to impose regimented and harsh conditions upon the working people of Europe at the time.<sup>27</sup>

The public interest was consequently defined in terms of the absolute necessity for development. That in turn made the resort to administrative and legal regulation of trade unions a necessity. It is similarly significant that unlike the "Public Interest" in the classical liberal European tradition where it was viewed in competitive pluralistic terms of different interest groups, "each seeking to maximise its own advantage, ... limiting the role of government to the protection of the individual's life and property", the definition of the public interest in post-colonial Africa has tended to deny such private groups any comparable legitimacy.<sup>28</sup> The public interest has been articulated in centralised terms.

It is true that the concept of the public interest in the West has changed considerably since the classical liberal definition. In recent times the term has attained a more positive and activist role resulting in more government regulation of labour, business and other groups in many sectors of the economy. The contemporary notion of the public interest in the West, therefore, emphasises

government supervision of private interests in the light of a collective common interest of the public at large. In this respect it offers some parallels to the post-colonial African State's emphasis on economic development. Nevertheless, the difference in terms of intensity and scope is remarkable. African Governments since independence have given the impression, as is evident from the regulation of various activities, that the definition of the public interest is more than merely the limiting of scope of group conduct to make it compatible with the public good. In African terms, therefore, the public interest is regarded as more fundamental to the social order.

#### 2.B.2 Political Authority and Stability

The desire to consolidate political authority and stability was another compelling motive behind attempts to redefine the relationship between the State and labour in African States at independence. Almost everywhere on the African continent, governments faced serious organisational weakness, limited integration of societies and fragile formal institutions. Such problems prompted the new States to seek new ways of maintaining and increasing the viability of their political systems in order to ensure social control.

Besides, the new ruling elites felt vulnerable partly owing to a striking cultural gap between them and the mass of the population. Even where the level of education of the new leaders was relatively low, as in the case of Zambia, they were, in comparison to the rest of the population, strongly orientated towards Western attitudes, norms and ideological inclinations.<sup>29</sup> The vast majority of the population remained traditional. The cultural gap coupled with visible differences in incomes and life-styles tended to alienate the new leadership from the electorate. It is notable that in many countries the gap, especially in economic differentiation, has increased rather than decreased over the years since decolonisation.<sup>30</sup>

As in the case of development strategy, unions were viewed as crucial not only in bridging the gap between the deprived majority and the affluent few, but also in the quest for legitimacy as rulers by governments. At independence trade unions were capable of functioning as the middle group between the ruling elites and the governed. They also had the potential to pose a threat to the political elites. Although the political potential of many African unions later declined, particularly with the rise of the one-party state and firmer controls associated with it, their profile at independence was more visible and stronger.<sup>31</sup> They tended to be strong in the large cities and sectors of the economy vital to modernisation efforts - mining as in Zambia, and almost everywhere else in transport, commercial, agricultural and social services. Moreover, with their organisational framework, in most cases superior to the ruling parties, trade unions had the capacity to influence the mass of the populations socio-economically.<sup>32</sup> They could, therefore, help shape a strong consensus or exploit any possibility of the alienation of the masses from the elite.

### 2.B.3 New Role for Trade Unions

The search for a distinct African ideology coupled with the tendency of leaders to project images of the 'philosopher - King' as exemplified in the varying forms of "African Socialism" was another crucial factor bearing on attempts to control unions.<sup>33</sup> African leaders of varying ideological inclinations shared a widespread belief that independence demanded a substantially different and more varied role of trade unions than that of the unions in Western economies. Western unions were viewed as performing an exclusively "consumptionist" function seeking higher wages and better working conditions for their members. African trade unions, if they were to be effectively involved in development, needed to play a "productionist" role.<sup>34</sup> The latter role would involve bearing a major responsibility by the unions for increasing overall economic output while accepting conditions of austerity for the benefit of the entire community.

It also meant that African unions had to perform a variety of new functions stemming from the 'transitional' state of the post-colonial societies. To that extent "the first responsibility of the unions (was) to develop a disciplined, skilled and responsible labour force .... become involved in economic activities such as co-operatives, housing schemes and training."<sup>35</sup>

In some socialist-inclined countries trade unions were even conceived as a mechanism in the efforts of capital accumulation through investment projects.<sup>36</sup> With the benefit of hindsight it is now clear that the trade unions were either unable or disinclined to assume a multifunctional role. Nevertheless, at independence there were widespread concerted efforts to persuade African unions to assume a multifunctional role with emphasis on them as agencies of socialisation introducing other groups to the rhythms and patterns of new industrial behaviour. Specifically, unions were expected to be educational institutions for workers in the acquiring of managerial and technical skills socially necessary for development.

There is little need to emphasise that the socialising and educative responsibilities were inherently political in nature. Beyond this it could be said that efforts required of unions in conveying a sense of national citizenship to the detriment of regional and other parochial loyalties have been integral features of many African governments' strategies for national development and integration. In their institutional form, however, they have amounted to attempts to control unions and deny them autonomy. It is to forms of control that we must now turn and which we must briefly examine.

#### 2.B.4 Forms of Trade Union Control

The trend towards the control of trade unions by governments has been a universal phenomenon in post-colonial Africa. The emergence

of the one-party state and the military government has enhanced the trend rather than checked it. There has been, however, a wide variation in actual experience. At one extreme, there are those countries where attempts have been made to fully integrate unions into the political systems. On the other, is the now rare situation where unions have retained a large measure of freedom without such political interference. Between the two are instances where elements from both extremes are manifested in varying degrees. Three main categories have, therefore, been identified.<sup>37</sup>

The first of the categories has been referred to as "relative autonomy". The category describes the relationship between the state and organised labour where a fairly high degree of freedom of association has been or was at least initially maintained. Where this was the position, as in Nigeria at various times in spite of various military governments, trade union activities and orientation roughly corresponds to the classical pluralistic model of the Anglo-American tradition. Two chief characteristics of this model are the right to strike and the freedom to choose union leaders. It also implies union freedom from managerial and organisational interference by the state.

The second model has been termed "semi-controlled". It refers to situations where a certain amount of state supervision and control over unions has been established by the State, but has fallen short of full integration of trade unions into the political process. Zambia and Kenya soon after independence were said to be typical of this model,<sup>38</sup> the major characteristics of the model being in the manifestation of several forms of government regulations tending to limit trade union autonomy. Such controls have included the appointment of trade union leaders by government, the need for official union recognition and specific approval by the State for any international affiliation.

The third model advanced has been that of "controlled unions". This model has consisted of instances where efforts have been made to bring about political domination of trade unions with the aim of

fully integrating them into either government or the administration of the ruling party. Tanzania continues to be typical of this model.<sup>39</sup> In this model administrative integration has enabled the national political leadership to exercise full managerial and policy control over unions. Managerial and policy controls have been further supplemented by a range of legislation affecting such labour activities as industrial action and the internal conduct of union affairs.

#### 2.8.5 Recent Developments

It is now more than twenty-five years since the decolonisation process generally got under way in Africa. Indications are that structural tension still exists in state-union relations. The tension originated in the factors identified above, in particular the desire on the part of African Governments to establish firm administrative and policy controls over unions in what were claimed to be in the interest of national development and integration, and the need for a complex multi-functional role for labour. These factors, by and large, still exist.<sup>40</sup>

Many governments continue to exercise political power and bring legislative and other coercive means to bear on the unions. Governments have used such techniques as the prohibition of strikes, the regulation of collective bargaining, administrative scrutiny of internal union affairs and the requirement of fiscal accountability. In many jurisdictions, international affiliation is closely regulated and financial assistance from abroad restricted if not prohibited. Many governments have also resorted to the direct suppression of union leaders through detention and imprisonment. Alternatively, governments have tried to devise rewards to influence unions positively. Check-off rights have been conferred and recognition given to some unions in preference to others. In some instances, union leaders' access to power has been formalised by reserving government and Parliamentary seats and co-opting individual union leaders into government.<sup>41</sup>



Trade union response where institutionally possible, continues to be in search of autonomy. Where there are no institutional means to seek autonomy the rank and file continue to pursue it implicitly through industrial action regardless of the legal position. Although few unions if any have realised the full potential they possessed at independence, they have not completely lost it in a number of cases. Many unions still possess their organisation and voluntary membership, significant potential sources of power in any political context. Besides, unions still operate in large cities and in the modern sector of African economies.

It is probably the drastic decline in many African economies that has had the most adverse effect upon union capability. With continually rising unemployment the State has found it relatively easy to bring its power of supervision, control and restriction to bear upon the trade unions and workers they represent.

#### 2.C. Labour and the State in Zambia

In this thesis it will be apparent that the development of government policy towards trade unions in Zambia has, to some extent, followed the general pattern of developments elsewhere in Africa. As we have seen, the major concern of African states, in common with other emergent states elsewhere, has been development, in particular economic development. Governments' perceptions of labour and its role have been determined by development objectives. In that perception organised labour has without exception been regarded as a sectional interest to be subordinated to development objectives as defined by the state in the national interest. As a result, universal attempts have been made across the continent to control trade unions regardless of the co-operation that existed between organised labour and nationalist parties that later came to assume political power at independence. The nature and extent of control, as we have seen, have varied a great deal, but the general pattern has been the same. The justification for various attempts to control unions has also been the same. It has been in terms of the imperatives of economic development, seeking to cultivate

'productionist' rather than 'consumptionist' attitudes associated with the promotion of members' interests. In spite of other underlying fundamental factors, political issues, for instance, it is the economic imperatives that have been most important.<sup>42</sup>

The governments' unwillingness to allow autonomous centres of power free rein to resort to industrial action and the tendency towards the centralisation of power have, therefore, not been ends in themselves. In objective terms, they represent a broad range of efforts in search of development.<sup>43</sup>

The Zambian experience of relations between trade unions and the state have followed this general pattern, albeit as a distinct variation that we have termed incorporation. Labour legislation in turn has been influenced by that relationship between labour and the state. That relationship and the government strategy behind it has relied on pressure rather than force.<sup>44</sup> This approach is apparent in the policy that has sought wage restraint, less industrial action and increased productivity, among others, that we shall presently examine in the following chapters.

Like Gertzal before us, two contrasting works on the Zambian labour question have significantly contributed to our understanding of the relationship between labour and state, empirical studies by Bates and Burawoy.<sup>45</sup> The studies were concerned with mineworkers, a fitting choice. For as we have seen, the Zambian State has mainly been pre-occupied with the mining industry for obvious economic reasons we highlighted in Chapter One. The miners have been a focal point of labour policy initiatives and continue to be so in spite of the fact that they are no longer the largest union, (see Table 3 p 129). The founding of the miners' union was rooted in economic and other grievances. They have had a significant influence on the growth of Zambian trade unionism, in particular its autonomy both before and after independence.

Bates took the view, which we have embraced and logically extended to apply to the role of law, that post-independence labour policy

was motivated by the objective of economic development and social justice. Hence the state demands for increased productivity, wage restraint and less frequent resort to industrial action.<sup>46</sup> In our view that strategy of trade union control has amounted to incorporation efforts with labour legislation as an important instrument. Bates' conclusion was that the government's strategy up to 1970 generally failed to achieve its objectives. He cited the decline in productivity, increased strikes and wages as indications of failure.<sup>47</sup>

Burawoy on the other hand argued that relations between labour and the state were determined less by economic than political issues. To that end he argued that government strategy was governed first by a strong sense of identity (originating from the nationalist struggle during the colonial period) and the strength of the miners as an autonomous power centre.<sup>48</sup>

In Burawoy's view, the "pressure rather than force" strategy could very well change in future if the political situation so required. He also sought to explain the apparent failure of government policy in terms of class signified by the growing gap between the government officials and union leadership on the one hand, and the rank and file on the other:

"Workers are very conscious of the way the Union has been bureaucratized, with the leadership becoming increasingly remote. To many, in fact, the leadership appears as a privileged class which is given political support from the Government and Management while deriving its wealth from the workers' subscriptions ....

The workers see a grand alliance between the Union, the Government and the Companies."

Both Bates and Burawoy have given us invaluable insights into the relationship between labour and the state, and by logical extension, the role of law in labour policy. As we shall see in the following chapters, the strategy of incorporation has been attempted in similar ways to Bates' analysis. Burawoy's understanding of the underlying currents for possible future

changes in state strategy has, however, been borne out by prospective changes of policy which we discuss in Chapter Nine. In spite of his preference for political rather than economic factors as being central to the labour - state's relationship, the underlying issues which Burawoy saw as class determinants were, in the final analysis, also economic. This perception has influenced our analysis of the policy issues throughout this study, above all the use of law as an instrument of development policy which we discuss below.

#### 2.C.1 Origins and Evolution of Incorporation Strategy

There were two distinctive elements in Zambian labour policy at independence. Both were ultimately based on economic considerations. One was a development policy and the other a policy of social justice.<sup>50</sup> Labour, especially trade unions, was perceived as crucial to both elements.

The first element was based, as in most emergent nations of the Third World, on the new nation's aspirations for rapid development. Government policy, including such cardinal features as the desire to consolidate political authority to the exclusion of competing interests, was in the final analysis based on its primary commitment to development, in particular economic development. That commitment was clearly demonstrated in terms of the economic growth aims in the first development plan and subsequent ones.<sup>51</sup> As with many other underdeveloped countries, Zambia's development efforts were dictated by its reliance on a single major commodity, copper. As we noted earlier, the copper industry as a result of that reliance was the centre of organised labour whose support the government courted from the start. In that respect the government viewed workers as economic "patriots" whose discipline was necessary to increase production and maximise revenues to fuel "rapid progress".<sup>52</sup> The government, therefore, sought to enlist workers' co-operation in controlling excessive wages and industrial conflict.

The second element of government policy of labour incorporation for development was that of social justice, its emphasis on a fairer distribution of income within society as part of its development strategy. The government, therefore, warned against inequities in incomes not only between expatriate and local labour (a situation viewed as transitional and bound to disappear as more local labour was trained and replaced expatriates), but more crucial, between the urban and rural sectors of the country's economy. In other words, the government was concerned about the ever-increasing gap between urban labour, especially those who were in wage-paid employment, and rural labour who were subsistence farmers eking out a living from the land.

Government attempts to subordinate labour and incorporate it into its strategy for development have occurred, in two main phases. The first was essentially a 'transitional' phase. It consisted of different forms of regulations in response to a series of problems in industrial relations and within the trade union movement that affected state-union relations. In its wider context transitional labour policy consisted mainly of protective labour legislation intended to enhance individual employment rights and to remove discriminatory laws and practices inherited from the colonial period. Hence a new Apprenticeship Ordinance in 1964 ended racial restrictions, and a new Employment Act in 1965 replaced the notorious 1929 Employment of Natives Ordinance. The 1965 Act provided minimum conditions of employment, abolished contracts on the ticket system, abolished recruitment and its attendant abuses. It also ended discriminatory provisions which were a key feature of the 1929 Ordinance. In addition, the government passed a new Factories Act in 1966 and the Employment of Women, Young Persons and Childrens Ordinance was amended. Also amended and retained was the Minimum Wages, Wages Council, and Conditions of Employment legislation.

State intervention in union affairs during this phase was in part and at least initially largely prompted by bitter divisions within the labour movement along personal, ideological and to a certain

extent, ethnic lines soon after independence. Such struggles in due course came to pose threats of prolonged strikes that might cripple the economy, especially on the Copperbelt.

It was against this background that the government embarked on the incorporation of individual union leaders, particularly those perceived as militant and potentially disruptive, by offering them lucrative, but powerless posts.<sup>53</sup> It also passed legislation designed to regulate trade union activity more closely. The Trade Union and Trade Disputes Act, 1965, created one Central Trade Union body, the Zambian Congress of Trade Unions (the ZCTU) and compelled all unions to affiliate to it. The government also took advantage of the situation to set the course of the new Congress by appointing its first executive, a measure claimed to be an interim measure to deal with what was regarded as an explosive situation quickly.<sup>54</sup> The ZCTU was also restricted in some of its operations. It could not, for instance, affiliate to international organisations or accept financial and material assistance from abroad without government approval. The most significant restriction, however, was that concerning industrial action. No union could bring out its members on a strike without the ZCTU's consent.<sup>55</sup>

It is apparent that trade union regulations during this phase consisted mainly of elements identical to those of the semi-controlled model, hence the inclusion of Zambia in the model by some scholars.<sup>56</sup> What is most significant about this stage of government policy, however, is that there is little to suggest the existence of any deliberate strategy beyond attempts to curb militant trade union activity. Even with the controls instituted at that stage the government showed a remarkable degree of restraint and maintained many of the fundamental principles of "British voluntarism". It is evident that the phase was essentially transitional in the development of government strategy. The enactment of the Industrial Relations Act, 1971<sup>57</sup>, brought in the second phase which is the focus of our study. The legislation

which came into effect in 1974 marked a watershed in the development of labour policy. It was clearly an attempt to shift the balance away from the voluntary model to that of active incorporation of labour for development. The Industrial Relations Act as an instrument of labour policy was directed at three areas which we have already referred to above and which were perceived as crucial to the industrial relations system and to trade union behaviour. These areas were, trade union activity, collective bargaining, (including incomes policy), and dispute settlement. A new institution, that of works councils, was also introduced. The legislation made radical changes in these areas.

As we have seen above, the changes in the Trade Unions and Trade Disputes Act, 1965, sought to curtail trade union autonomy by closer regulation through the ZCTU. The 1971 Act which repealed that of 1965 sought to curtail trade union autonomy further through greater control over union activity. Not only were unions required to affiliate to the ZCTU as in the 1965 Act, the ZCTU was given greater powers over member unions. The Act also substantially increased the Registrar of Trade Unions' powers of supervision over both the ZCTU and member unions, particularly in relation to finances. It also legalised the Government's policy of one union in each industry, requiring unions to be formed on the basis of classes or categories of employees. Overall, it is apparent from the provisions of the Act that the aim of the government was to incorporate labour through structural changes and the use of union leaders as agents of labour incorporation.

Prior to the enactment of the Industrial Relations Act, 1971, collective bargaining could be said to be largely autonomous except for the usual superintendence by the State of economic affairs. That was mainly carried out through ad hoc incomes policies and such policies were, as we shall later see in Chapter Seven, largely ineffective. The Act substantially modified the position by the introduction of legally-binding procedures in which the parties had no ultimate control over the content of collective agreements, especially wage clauses. Collective bargaining was formalised at

two basic levels: bargaining units at the undertaking level and joint councils at the industry-wide level.

Another important innovation in respect of collective bargaining was the introduction of new government institutions, or new roles to existing government institutions. Initially, the Industrial Relations Court was given the power to approve collective agreements and subsequently the power was transferred to the Prices and Incomes Commission.<sup>58</sup> In addition, unlike under the previous legal regime, the 1971 Act made collective agreements legally binding.

Similarly, the law brought about radical changes in dispute settlement procedures. Compulsory arbitration was introduced under the auspices of a new agency, the Industrial Relations Court. In contrast to the 1965 regime where both conciliation and arbitration were voluntary and the role of the government limited to that of mediator or conciliator, the Industrial Relations Act gave the new Court the power to give legally binding decisions in addition to compulsory dispute settlement procedures. It is significant that up to 1984, under this new legal regime and with the further extension of the category of essential services, only two strikes had qualified as legal.<sup>59</sup>

The introduction of workers' participation through Works Councils at places of work was an even more radical departure from the previous system of industrial relations. At the time the legislation was passed, the provisions relating to Works Councils were considered to be so radical that their implementation was delayed until 1976.<sup>60</sup>

The provisions on Works Councils did not only attempt to modify traditional managerial prerogatives, but also tried to by-pass trade unions by giving workers on the shop floor, through their elected representatives on the Councils, a say in the running of their firms. It was by no accident that some of the areas over which Councils were given jurisdiction overlapped with traditional



collective bargaining areas. Thus, not only were Councils to be composed of employees' representatives and those of management to the exclusion of trade union representatives, but workers' representatives were given a majority of two-thirds. The Works Councils' functions include "participation in all health and welfare schemes operated by the undertaking; must be consulted on all schemes concerned with medical, housing, recreational and pension arrangements". Above all, Councils must be informed of decisions in some areas and have to approve management decisions in others.

#### 2.C.2 The Role of Ideology

Whereas government strategy has increasingly relied on the use of law to restructure industrial relations' institutions to bring about incorporation, political ideology in the form of "Zambian Humanism" has provided the philosophical basis of that strategy.

The use of political ideology as an important factor in the shaping of industrial relations systems in Africa has been common and the Zambian experience in this respect is not an isolated one. As Cambridge has recently observed, the adoption of socialism in some African countries as the vehicle for economic development has resulted in appropriate changes in industrial relations from 'tripartite' to 'unilateral' systems. Similarly, the adoption of the one-party state has influenced state-trade union relations.<sup>61</sup> This development underlines the importance of socio-economic and political contexts of labour relations, law and policy.

In Zambia, ideology has been a potent if ill-defined factor in the Government's development policy and consequently in labour incorporation. Ever since Zambian Humanism was launched by President Kaunda in 1967, after a request to him by the ruling party's Central Committee to formulate an official ideology for the party and nation, it has provided the state with a philosophical basis for its incorporation efforts.<sup>62</sup>

In practical terms, Humanism has been said to be a definition of national goals. It has, therefore, been represented as a set of philosophical guidelines rooted in traditional Zambian culture intended to unite the country in the common task of development. An important element of the philosophy in terms of labour incorporation has been its primary function of trying to dispel sectional conflict at individual, group and institutional levels, identified as contrary to the national interest.

The effect of Humanism on labour incorporation and other policies is probably more indirect than direct. It has been asserted that the ability of Humanism to provide an ideological basis for action, a cohesive and coherent direction has been inhibited by its own inherent weaknesses as a political philosophy, in particular its ambiguity. Despite subsequent attempts to elaborate and clarify its content, Humanism has remained "a set of ambiguous statements, many mutually contradictory, and depending on voluntaristic and volitional rather than structural solutions to social problems"<sup>63</sup> While the philosophy has been described as an alternative to Communism and Capitalism, no adequate explanation of its relationship with other ideologies has ever been given. Similarly, while the prevention of "exploitation of man by man" was given a central tenet, no definition of that term has ever been provided. Moreover, its prescriptions for development were based upon a utopian notion of Zambian traditional society based on rural life and not really applicable to the realities of urban life and organised labour. Consequently, Humanism has lacked conviction as a guiding force for development, let alone as a basis on which to restructure state-trade union relations. Nevertheless, the government has continued to advance Humanism as fundamental to its labour policy.<sup>64</sup> This emphasis is most apparent in one key area of government attempts to incorporate labour, participation through works councils. In spite of its obvious European origins, Works Councils have been presented as the embodiment of Humanism in industrial relations.<sup>65</sup>

The above shortcomings notwithstanding, the significance of Humanism in the conceptual framework of this study, therefore, lies in its probable influence on the character of the strategy of incorporation. As we have observed above, the Zambian Government's strategy in seeking the twin objectives of rapid development and social justice has mainly relied on "pressure rather than force". This in effect is what distinguishes the Zambian approach from many other strategies of trade union control in Africa. It places more emphasis on the search for consensus rather than forced integration. It is apparent that this approach is also basic to Humanism as a political ideology. <sup>66</sup>

### 2.C.3 Labour's Response to Incorporation

Labour's response to government policy has obviously been crucial to the success or failure of the incorporation strategy. The labour movement's response is best understood by appreciating from the outset that trade unionism in Zambia grew, in part at least, from the demands for a measure of autonomy at places of work. <sup>67</sup> By independence, trade unions' autonomy had emerged as an integral part of the country's industrial relations system. The pattern of work place relations was based on what we have referred to above as British voluntarism. That notion in Zambia enshrined basic trade union rights albeit within certain legislative and administrative restrictions. In spite of more visible state intervention, however, in contrast to the metropolitan British situation, minimum interference remained the basic philosophy of government policy and no radical attempts were made to restructure the system of industrial relations. The metropolitan system was, therefore, still the ideal despite the fact it was not fully realised. The colonial atmosphere especially in the period just before independence, did, however, provide ample opportunity for the attainment of a certain measure of autonomy. By independence a

number of unions, led by the Mineworkers' Union, had in fact attained a large measure of functional autonomy.

The emergence of African nationalism of course resulted in the development of a broad identity of interests between unions and nationalist political parties. There was, however, no "class alliance against colonialism" on the lines claimed elsewhere in Africa.<sup>68</sup> Indeed there was occasional conflict between labour and nationalist tactics especially in the early 1950's with trade unionists insisting that the industrial sphere was their domaine réservé. Such conflict was, on the part of trade unions, primarily motivated by a desire to retain their freedom of action in the industrial sphere, a quest for autonomy.

It is the insistence on autonomy on the part of the trade unions, that the new Zambian State resisted from the start. Instead, attempts were progressively made to design a strategy that would persuade organised labour to align itself with the State's conception of national development and integration. The labour movement's continued pre-occupation with its members' interests, at the national leadership level, may, therefore, be construed as the clearest response to the Government's strategy of incorporation. In that respect it can be seen as a re-assertion of the received traditional Western trade union autonomy. In other respects, however, trade union response has not been uniform. It is evident for instance, that incorporation has successfully been institutionalised at the level of individual leadership, recent attitudes within the current ZCTU leadership notwithstanding. As for the rank and file, indications are that while yielding to the Government's political authority and broadly supporting it, they continue to resist incorporation in many respects. The extent of that resistance is dealt with in the following chapters as we examine the effect of post-colonial government policy and legislation up to the end of 1986.

## 2.D. Conclusion:

In this brief analysis we have attempted to define the conceptual framework of post-colonial government policy in Zambia towards trade unions in particular, and industrial relations in general. This policy has been characterized not only by the desire of the state to control trade unions and regulate industrial relations but also by attempts to incorporate organised labour and workers at large into the government's strategy of national development and integration. In pursuit of this objective, the government has to a large extent relied on the use of law to regulate trade union activity, restructure such institutions as collective bargaining and dispute settlement, and to introduce workers' participation. In spite of the Government's increasingly interventionist and regulatory role, however, its strategy has been based more on pressure than force.

The strategy contrasts sharply with what would be the position if proposed changes in government policy currently under consideration were implemented.<sup>69</sup> The proposed changes and their likely implications will be considered in greater detail at the end of this study. It will suffice for the moment to say that they would entail a change from what is essentially a "tripartite" system of industrial relations to a "unitary" one.<sup>70</sup> They would amount to an attempt to fully integrate organised labour into the political process, a trend currently discernible elsewhere in Africa, in Tanzania for example.<sup>71</sup>

In the following chapters we analyse some of the main policy measures and their effect. Before this, however, we shall look at one of the major foundations of the current policy period, post-war colonial labour policy, since certain aspects of pre-independence

labour policy are important to our understanding of contemporary events. As will become apparent in some of the following chapters, there has been some continuity in some important respects between colonial and post-colonial labour policy.

NOTES TO CHAPTER TWO

- 1 The name 'Mineworkers' Union' refers to the African Miners' Union formed in 1949 which has had different names throughout its history, among others, the Northern Rhodesian African Mineworkers' Trade Union, the Northern Rhodesian African Mineworkers' Union, the Zambian Mineworkers' Union, and its current designation, the Mineworkers' Union of Zambia.
- 2 Gertzel, C, "Labour and the State: The Case of Zambia's Mineworkers' Union", (1975), 13, in Journal of Commonwealth and Comparative Politics, P 291.
- 3 For an account of the Tanzanian's experience in this respect see for instance, Miho, P B, "Industrial Relations in Tanzania", in Demachi U G, et al (eds), Industrial Relations in Africa, (London: Macmillan, 1979), Chapter 7, P 224.
- 4 Gertzel, 1975, op cit.
- 5 Ponton, G, and Gill, P, Introduction to Politics (Oxford: Martin Robertson, 1982), P 41.
- 6 Panitch L, Social Democracy and Industrial Militancy, (Cambridge: 1976); Crouch C, Class Conflict and the Industrial Relations Crisis: Compromise and Corporatism in the Policies of the British State, (London: Heinemann, 1977). Quoted by Lewis, R, "Method and Ideology in the Labour Law Writings of Otto Kahn-Freund", in Wedderburn K W, et al (eds), Labour Law and Industrial Relations: Building on Kahn-Freund, (Oxford: Clarendon Press, 1983), P 120. See also Crouch and Pizzorno, 1978, op cit, P 197.
- 7 See, inter alia, Panitch L, "Recent Theorisations of Corporatism: Reflections on a Growth Industry" (1980), 31 British Journal of Sociology, P 159; Winkler J T, "Law, State and Economy: The Industrial Relations Act, 1971 in Context", (1975), 2 British Journal of Law and Society P 103; Winkler J T, "The Corporate Economy: Theory and Administration", in Scase R (ed), Industrial Society: Class, Cleavage and Control, (London: Allen and Unwin, 1977); Schmitter P C and Lehmbruch E, Trends Towards Corporatist Intermediation, (London: Sage, 1979).
- 8 Quoted by Ponton and Gill, 1982, op cit, P 43.
- 9 Ibid.

- 10 On the use of incorporation in the Zambian context see, inter alia, Fincham R and Zulu G, "Labour and Participation in Zambia", in Turok B (ed), Development in Zambia, (London: Zed Books, 1979), P 216; approach also evident in Bates, 1971, op cit; cf Gupta A, "Trade Unionism and Politics on the Copperbelt", in Tordoff W (ed), Politics in Zambia, (Manchester: Manchester University Press, 1974), P 289; Jackson D, "The Disappearance of Strikes in Tanzania: Incomes Policy and Industrial Democracy", (1979), 17, 2, The Journal of Modern African Studies, 219 at P 250; for details of Tanzania's trade union integration policy see Mihyo P B, in Damachi et al, 1979, op cit, P 24.
- 10a Although the term state is commonly used, it is "the most opaque in the whole of political vocabulary". It is best defined negatively - the state is, for instance, opposed to mere governments. Governments come and go in the Western democracies. This negative definition is, however, inadequate in a one-party state like Zambia where the government is assumed to have a 'permanent status' as an instrument of the ruling party. It is significant that in Zambia the term the "party and its government" is usually used to describe what would be a combination of state and government roles in western democracies. For a definition of the term state, see inter alia, Robertson D, A Dictionary of Modern Politics, (London: Europa, 1985), P 307.
- 10b Gertzel C, et al, 1984, op cit, P 79.
- 11 Kerr C, et al, Industrialism and the Industrial Man (New York: Oxford University Press, 1964), P 32.
- 12 Bates, 1971, op cit.
- 13 Legum C, Pan-Africanism: A Short Political Guide, (London: Pall Mall, 1962), P 125.
- 14 Lofchie M F and Rosberg C G, "The Political Status of African Trade Unionism" in Belling W A (ed), The Role of Labour in African Nation-Building, (New York: Praeger, 1965), P 1.
- 15 Berg E and Butler J, "Trade Unions" in Coleman, J and Rosberg, C, (eds), Political Parties and National Integration in Tropical Africa, (Berkeley: University of California Press, 1964), P 340.
- 16 Fincham and Zulu, in Turok, 1979, op cit, P 214. See also Lofchie and Rosberg in Belling, 1965, citing the example of Ghana, op cit, P 4.
- 17 Lofchie and Rosberg cite the example of the French Cameroons in this connection, 1965, op cit, P 17.



- 18 For an elaborate account of British, French and Belgian Colonial labour policies in Africa, see Davies I, *African Trade Unions*, (Harmondsworth: Penguin Books, 1966) PP 31 - 50.
- 19 Ibid.
- 20 For example, the Zambian experience in this respect is recounted by Berger, 1979, op cit, PP 73 - 76.
- 21 Lofchie and Rosberg, in Belling, 1964, op cit, P 5
- 22 Ibid.
- 23 These are recurring themes in most of the literature concerning African labour and development. See, inter alia Belling W A (ed), 1965, op cit; Coleman and Rosberg, 1964, op cit; Dasachi U G. The Role of Trade Unions in the Development Process, (New York: Praeger, 1974); Dasachi et al (eds), 1979, op cit.
- 24 Although the term "development" is strictly speaking a wider concept, not limited to a nation's Gross National Product and Gross Domestic Product, including social and political modernisation as defined by Harbison and Myers in their Education, Manpower and Economic Development, (New York: McGraw-Hill, 1964), PP 1 - 3, it is usually taken to mean economic development. We recognise the wider meaning, but intend to emphasise economic development in accordance with the more popular usage.
- 25 Bern G, "Trade Union Attitudes and Development" in The Role of Trade Unions in Developing Countries, (Industrial Seminar, Brussels: OECD, 1967), P 23.
- 26 Colonial Paternalism was an important factor in the development of African trade unions after the Second World War, especially in British territories. See Roberts B C, Labour in the Tropical Territories of the Commonwealth, (London: Bell & Son, 1964).
- 27 Lofchie and Rosberg in Belling, 1965, op cit, P 6.
- 28 Ibid P 7.
- 29 Zambia at Independence had probably the worst educational record of all British Colonial territories in Africa. Less than 0.5 per cent of the population of about 3½ million at the time had full primary education, only 1,200 had secondary education and less than 50 were college graduates; Manpower Report: a report and statistical handbook on manpower, education, training and Zambianisation, 1965-66, (Lusaka: Government Printer, 1966), P 1.

- 31 This is the case for Kenya and Zambia, thought to be typical of the trend. In Zambia's case see ILO/JASPA, Basic Needs in an Economy Under Pressure, (Addis Ababa: ILO, 1981), Introduction.
- 32 In Zambia's case, trade unions continue to occupy a somewhat strategic position, at least residually. For a recent view, see Gertzel, C, et al, 1984, op cit, especially chapters 1 and 4.
- 33 Bates, 1971, op cit.
- 34 Friedland W and Rosberg C (eds) African Socialism, (Stanford: Stanford University Press, 1964), give accounts of early African socialist trends.
- 35 The distinction in union functions between "consumptionist" and "productionist" is based on Deutscher I, "Russia" in Galenson W (ed), Comparative Labour Movements, (New York: Prentice-Hall, 1952), p 502. The term was popularised in relation to Africa by Friedland W in various works, including "Labour in Emerging African Socialist States" in Belling W A (ed), 1965, op cit, p 20.
- 36 Kenyatta J, (first President of Kenya and a proponent of that country's form of African Socialism), "African Socialism and African Unity", (Summer, 1965), 1, 1, African Forum, p 1.
- 37 Friedland, in Belling, 1965, op cit, refers to Tanzanian efforts in this respect.
- 38 Belling, 1965, op cit, pp 10 - 13.
- 39 For accounts of Zambian developments in this respect see Central African Examiner (London: December 1964 and May 1965). We have referred to such developments as the 'transitional' stage of post-colonial labour policy in this study.
- 40 Mihyo, in Damachi, 1979, op cit.
- 41 For recent trends in trade union and wider industrial relations policy in some African countries, see, inter alia, Damachi et al (eds), 1979, op cit, and Cambridge C, "Emerging Trends in the Industrial Relations Systems of Former British Colonies: The Ratification of International Labour Conventions", (Fall, 1984), Journal of African Studies, p 129.
- 42 See, for instance, Mihyo in Damachi, 1979, op cit; Fincham and Zulu, in Turok, 1979, op cit.
- 43 Cf Gertzel, 1975, op cit.

- 43 Cf Friedland in Belling, 1965, op cit.
- 44 Gertzel, 1975, op cit.
- 45 Bates, 1971, op cit; Burawoy, M, "The Colour of Class on the Coppermines" (1972), 7, Zambian Papers.
- 46 Bates, 1971, op cit, PP 44 - 51.
- 47 Ibid.
- 48 Burawoy, 1972, op cit, P 50.
- 49 Ibid, P 79
- 50 For an elaborate and perceptive account of these twin objectives of Zambian Government policy, see Bates, 1971, op cit, PP 27 - 51.
- 51 Transitional, First, Second and Third National Development plans, (Lusaka: Government Printer, 1965, 1966, 1972, 1978).
- 52 Bates, 1971, op cit, and Burawoy, 1972, op cit.
- 53 Fincham and Zulu in Turok, 1979, op cit.
- 54 Personal interview with Wilson Chakulya who was Minister responsible at the time, 19 October 1982.
- 55 Trade Unions and Trade Disputes Act, 1965, discussed in Chapter Four, below.
- 56 Lofchie and Rosberg in Belling, 1965, op cit, P 11.
- 57 No 36 of 1971, Chapter 517 of the Laws of Zambia.
- 58 The Industrial Relations Court still retains the power of approval in relation to agreements made before 30 April, 1983. Industrial Relations (Amendment) Act, 1983, See Chapter Six, below.
- 59 President Kaunda's statement, quoted in The Times of Zambia, 21 December, 1984.
- 60 Quesby A, "Works Councils and Industrial Relations in Zambia" (1975), 1, Some Aspects of Zambian Labour Relations, P 85; discussed in Chapter Eight, below.
- 61 Cambridge, 1984, op cit, P 130.
- 62 Zulu J B, Zambian Humanism: Some Major Spiritual and Economic Challenges, (Lusaka: Neccsam, 1970); Kandaka T F, Fundamentals of Zambian Humanism, (Lusaka: Neccsam, 1977)

- 63 Gertzel, et al, 1984, op cit, P 9.
- 64 Kaunda K D, Humanism in Zambia and a Guide to its Implementation, Part II, (Lusaka: Government Printer, 1974), P 103.
- 65 Gertzel C, "Industrial Relations in Zambia to 1975" in Damachi, et al, 1979, op cit, P 323; Quesby, 1975, op cit, P 85.
- 66 Kandake, 1977 op cit. Kaunda, 1974, op cit, P 97.
- 67 Fincham and Zulu in Turok, 1979, op cit, P 214; Henderson I, 1972, op cit; Berger, 1974, op cit, Chapter IX.
- 68 Fincham and Zulu in Turok, 1979, op cit.
- 69 "Industrial Relations Bill", Government discussion document of proposed changes to the Industrial Relations Act, 1971, (Lusaka, 1984), discussed in Chapter Nine, below.
- 70 For a reference to these systems of industrial relations and their development in Africa in recent years, see Cambridge, 1984, op cit.
- 71 Miho in Damachi, 1979, op cit.

CHAPTER THREE

## FOUNDATIONS OF MODERN LABOUR POLICY

In the next five chapters we examine key areas of the Government's incorporation strategy as formulated under the Industrial Relations Act, 1971. The foundations of modern labour policy were, however, laid down well before independence. Many significant developments took place during the period following the Second World War.<sup>1</sup> Although this study is basically concerned with developments during the post-colonial period from 1971, developments during the colonial period, in particular those after the Second World War, formed an important basis for contemporary policy. It will be apparent in the following chapters that there has been some continuity in certain areas of the policy towards trade unions. Some aspects of colonial policy are, therefore, important to our understanding of current developments. In this Chapter we examine some of the main developments of the post-war colonial period. The rise of African trade unions was the dominant development of this period. It is, therefore, the main focus of the Chapter. We also examine other issues connected with the development of African trade unions, among others, European labour on the copperbelt, the evolution of industrial relations policy and legislation, and various demands for change.

3.A. The Changing Role of the Colonial State

The development of post-war labour policy in colonial Zambia is best appreciated by looking at the changing role of the government.

of the territory as an autonomous entity, separate from the metropolitan imperial state. Two scholars of political economy who have attempted to construct an analytical framework for Kenya suggest that the essential role of the colonial state was to articulate two modes of production.<sup>2</sup> The two modes of production were the pre-capitalist (subsistence) and the capitalist (money) economies. The state protected capitalist social relations, as distinguished from mere capital, and imposed social control in the political sphere. Unlike the role of the metropolitan state from whose imperial authority its role stemmed, the role of the colonial state overseas was not without its complications and contradictions. The major complication arose out of its "dual mandate". The colonial state was the agent of the metropolitan power and subject, from time to time, to the direction of the Colonial Office in London. In addition it was also responsible for local cohesion over heterogeneous and contending local forces.

The Zambian situation was similar to that of Kenya depicted by Lonsdale and Berman in their work. Its essential characteristics are useful in understanding the development of post-war colonial labour policy in Zambia. As early as the late 1930's the colonial state in Zambia had abandoned the practice of 'unrestricted state violence' which had been characteristic of the British South Africa Company Chartered rule when it resorted to unmitigated taxation and forced labour of the indigenous population. The territorial government's exercise of its role was coming increasingly under close scrutiny by the Colonial Office. Increased Colonial Office scrutiny over labour matters was demonstrated by its frequently resorting to commissions of inquiry and expert assessors to solve labour problems and formulate new policy, (see Appendix II P 266).

A number of factors were responsible for the Colonial Office's increased surveillance of labour policy. The emergence of the Labour Party as a contending party of government (Labour joined

Churchill's war-time coalition) was one such factor that added a new dimension to the better appreciation of the imperial mission in London. Labour professed a universal sensitivity to the problems of wage earners, including those of the colonies. The war effort and the need to maximise colonies' contribution created an impetus for the examination of colonial conditions which survived the war itself. As a result, an increasing number of politicians including some within the Conservative ranks like Arthur Creech Jones were increasingly keen to scrutinise colonial labour policy more closely. Labour policy also profited from the increased participation of the British trade union movement, in particular the Trades Union Congress (the TUC), in government-sponsored bodies.<sup>3</sup>

In the territory itself the government was confronted with the need to create an atmosphere that would ensure a more profitable exploitation of minerals to make the Protectorate a paying proposition. To that end the government had to come to terms not only with the political, social and economic demands of an increasingly entrenched white population, but also those of the Africans. The urban landscape was quickly changing. With the increasing stabilisation of African labour in urban centres, African workers were becoming a more permanent feature on the "line of rail". The previous more relaxed labour policy mainly based on migrant labour from the rural areas was no longer adequate. The government's role in labour matters had to develop beyond the mere collection and collation of labour data. A new framework based on new initiatives in legislation and administrative action was needed.

### 3.8 Development of African Trade Unions

The rise of African trade unions was undoubtedly the most important single development of post-war labour policy in Colonial Zambia.

The question of what gave rise to African unions generally and those of Northern Rhodesia in particular has been a subject of debate.<sup>4</sup> Was it entirely a result of African workers' consciousness and militant efforts or was it due to the paternalistic generosity of the Colonial State? It would seem that both pressure on the part of African workers and the Colonial State's enlightened self-interest played their part in the development of African trade unions on the Zambian Copperbelt. The formation of African unions was ultimately due to the grudging acceptance of the idea by the Northern Rhodesian administration under Colonial Office pressure, and the reaction of a new African urban society against economic conditions. Trade unionism was part of the increasing determination by Africans to seek a better deal for themselves and challenge racial prejudice in the process.<sup>5</sup>

The general atmosphere during the aftermath of the war encouraged a "fair deal" for the colonies and was, therefore, conducive to progress in a number of areas of colonial policy. As we have mentioned above (p 67), for example, the British trade union movement began to take an official interest in colonial labour matters indicated by the TUC's participation in government-sponsored committees and other bodies. It was significant that the TUC was represented on the Colonial Labour Advisory Committee and assisted in the choice of labour officers for the colonies. Equally important, as we have also indicated, was the rise of the Labour Party as a part of government. Increasing labour problems in the colonies also helped the drive for trade unions as part of official 'colonial development' policy.<sup>6</sup>

By 1947 a decision had been taken by the Colonial Office to send a trade union officer to help organise African trade unions. The sending of one William Comrie, a Scottish member of the Transport and General Workers' Union, was instrumental in the development of



African unions on the Copperbelt. In his evidence to the Dalgleish Commission Comrie described his job as follows:

"... My job amounts to this - where there is a demand on the part of Africans for some form of organisation along trade union lines, we have to guide that demand and help it and give all possible assistance to the Africans in building a proper organisation on proper lines with a reasonable chance of enabling it to succeed."<sup>7</sup>

In his task Comrie insisted on the application of British trade union principles without discrimination and quickly won the trust of African workers.

African trade unionism was, however, inevitably preceded by various forms of institutions that sought to foster African representation in urban society. Of these, Tribal Representatives and Boss Boys' Committees were probably the most prominent. A brief examination of their role is, therefore, in order.

### 3.B.1 Tribal Representatives

The outbreak of industrial unrest among African workers in the mines in 1935 and 1940 were important landmarks in the progressive development of African consciousness on the Copperbelt.<sup>8</sup> The labour disturbances, among other factors, prompted a review of the territory's labour policy which was spearheaded by the Labour Department which had been formed in 1940.

Policy review started with an attempt to overhaul the tribal elders system instituted in 1931 and aimed at developing an urban-based social representation for various ethnic groups among African workers.<sup>9</sup> The system of tribal representatives was instituted in place of that of elders. Whereas tribal elders were an informal system based on compounds where African workers lived, that of tribal representatives was more official in its status. It was the

first time that the administration in collaboration with the mine owners sought to prepare Africans for self-organisation and representation that was later to develop to full trade unionism. Under a 1942 agreement between the Chamber of Mines and the government, African representation was further expanded. The functions of the tribal representatives were "... to keep in close touch with all native workers in the mines, and to present to management, on behalf of the workers, any grievances there may be in regard to working conditions".<sup>10</sup>

Tribal representatives were, however, not entirely successful as a measure of independent African workers' representation. Although originally conceived as independent of both the government and the mines, in practice the position of tribal representatives turned out to be almost as subservient to management control as their predecessors, the tribal elders. The tribal representatives were also subsequently alienated from the mass of workers as they were perceived as a privileged elite. The mining companies' emphasis on the separation of semi-skilled African workers from the mass of unskilled groups further undermined the representatives' position. Consequently, although tribal representatives at times performed useful functions as de facto shop stewards, and also as adjudicators of low level grievances (thereby localising disputes for "cooling off" purposes), their effectiveness in aid of good industrial relations declined with the progressive proletarianisation of African workers.<sup>11</sup>

### 3.B.2 Boss Boys' Committees and Other Groups

African workers' consciousness, cutting across ethnic distinctions, developed rapidly during and after the War. The process was aided by, among other factors, labour "stabilisation", a policy which in contrast to the reliance on periodical rural to urban migration of labour accepted a settled African industrialised community.<sup>12</sup>

African labour stabilisation had in fact already been entrenched on the Copperbelt by 1944 although official government policy resisted it until 1956.

The lack of effectiveness on the part of tribal representatives inevitably created a vacuum. Between 1940 and 1949 various African organisations came into being, all seeking to fill the vacuum of African representation in industry. The government for its part cautiously watched developments hoping that a central organisation liable to easy official regulation would emerge in time. Of the latent organisations following the institution of tribal representatives, three made considerable impact on the Copperbelt: the Boss Boys' Committees (representing underground African Supervisors), the Works Committees, and the African Clerks Association (representing African clerical staff). All three were work-based.

The Boss Boys' Committees had been formed as early as 1942 to handle grievances of African supervisors underground. Unlike tribal representatives, the Boss Boys' Committees' selection was professional in character although ethnic representation was broadly reflected. The Mining Companies did not object to the Boss Boys' Committees. They realized the benefit of their isolation from the underground African work force. The Boss Boys' Committees were also afflicted with the same structural ambiguity as tribal representatives to a large extent. Much as they were work-based, the distinction between social and work place grievances was not as clearly drawn.<sup>13</sup>

The formation in 1946 of the Works Committee and in 1947 that of the Clerks Association indicated a more progressive development in the representation of African workers. There were improvements on the Boss Boys' Committees which were more embracing and truly representative of various groups. The Works Committees, unlike the

Boss Boys which were an interest group within the African labour force, were more integrated agents of the workers. Similarly, the Clerks Association which sought to represent administrative and clerical groups did so regardless of rank or department of the mining industry. The Clerks Association although relatively short-lived, has been considered to have paved the way for the African Mineworkers Union.<sup>14</sup>

All three organisations co-existed for a while and their prestige varied among different groups of African workers in the mining industry. Given the increasing militancy within the ranks of the African workforce, one concern was probably most prevalent. The organisations tended to be at the mercy of mining companies' managements and were, therefore, at best regarded as "house unions".<sup>15</sup> In contrast to the African Mineworkers Union, which was to emerge later, the organisations were less populist and broadly-based. Besides this, they were also psychologically linked to tribally-based prestige structures.<sup>16</sup>

In spite of their short-comings however, the three organisations were a marked improvement on the tribal representatives. Conflict with the latter system was, therefore, inevitable. The mining companies, however, continued to give paternalistic support to tribal representatives in spite of their loss of credibility. It was not until 1953 that they were finally abolished.

The Boss Boys' Committees, the Works Committees and the Clerks Association in turn steadily declined, unable to achieve any credible participation of African workers in industrial relations. By 1947, with the organisational assistance of William Comrie, trade unionism entered the scene. It first came not from the African labour force in the mines, but from the even more politically conscious shop assistants. The Shop Assistants Union was formed in 1947. The focus of attention soon inevitably shifted to the mining industry where the African Mineworkers Union was formed in 1949.

### 3.8.3 The African Mine Workers Union and Other Unions

The founding of the Northern Rhodesian African Mine Workers Union (the NRAMU) came at a time when the demands and needs of the African work force in the mining industry were being brought to public attention. The new organisation was able to respond to those needs and demands better than any of the organisations in existence at the time.

Several factors were responsible for the ascendancy of the new creed of organised labour over the old one mainly based on tribal representation. One of them, as we have seen above, was the increased stabilisation of African labour on the Copperbelt. African labour stabilisation led to the decline of those roles performed by tribal representatives and other similar institutions which tended to be relevant only at times of relatively high labour instability due to the rural - urban migration. The new leadership's orientation was more proletarian than tribal.

The new organisation's success was, however, not easy. One of the major obstacles in its path was the mining companies' initial opposition to it. The companies were at first unco-operative with regards to bargaining issues and tended to use their managerial power excessively, encouraging dissension and divisions within African labour ranks when it suited them. The mining companies' attitude of course reflected their commitment to the officially-sponsored tribal representatives. The NRAMU had also to cope with initial apathy and distrust which were widespread among most African workers except among the more politically conscious and articulate ones.

In spite of the obstacles however, trade union activity on the Copperbelt was consolidated and spread to other urban centres in time. By 1954, 16 African trade unions were registered.<sup>17</sup> The major aim of the unions were universal. They sought to increase

wages, to improve working conditions and African advancement in employment and to bring an end to racial discrimination at work, the so called practice of colour bar that allocated jobs on the basis of race. The first decade of African trade unionism in which the NRAMU was the undisputed leader was heavily tainted by militancy as the record successive strikes readily testify.<sup>18</sup> Most unions faced organisation and financial difficulties. They drew their leadership from the new African elite comprising clerks, or as on the railways, messenger-interpreters. Internal divisions were frequent and a constant source of weakness. Membership was generally small before the adoption of "check-off" arrangements later in the 1950's and early 1960's. Seven of the fourteen functioning unions at the end of 1954, for instance, had fewer than one thousand members.<sup>19</sup>

Trade union activity during the period, however, laid down the foundation for four key unions dominant to this day (See Table 3, P129). The Shop Assistants' Union, the first African union to be formed in 1947, was the basis for the current National Union of Commercial and Industrial Workers (NUCIW). Out of the Artisans' Association grew the General Workers' Union, which after re-organisation and amalgamation emerged as today's National Union of Building, Engineering and General Workers, (NUBEGW). The present Zambia Railways' Union grew out of the Northern Rhodesian African Railway Workers' Trade Union formed in 1950. The NRAMU amalgamated with the Southern Rhodesian African Railways Union to form the Rhodesia Railways African Union (the RRAU) in 1955. The Zambian component of the RRAU reverted to its original form after the break-up of the Federation in 1963. In 1967 it became the Zambia Railways Union after the dissolution of the common railways system.

The most important union by virtue of its size, resources, strength and influence in the African trade union movement was the NRAMU, the present Mine Workers' Union of Zambia (MUZ). By the end of 1949 the union already had 19,000 members which peaked to 55,000

after independence. By 1956 the union had managed to sign a dues agreement with the mining companies and appointed a full-time general secretary.<sup>20</sup>

By virtue of its prominent role the NRAMU along with its European counterpart whose role we shall presently examine, was the key target of government labour policy. A brief review of major developments in industrial relations indicates the extent of the administration's concern with the union's affairs.

The NRAMU was equally prone to the multitude of internal problems which were usually a result of financial mismanagement and leadership shortcomings among African unions during the period. Partly as a result of such problems, the Mining Companies withdrew the "check-off" arrangements and did not restore them until 1957. The Branigan Commission of 1956 was in particular highly critical of the union's financial mismanagement and the over-centralisation of its leadership.<sup>21</sup> Such problems coupled with the mining companies' hostility and readiness to take advantage, constantly resulted in weaknesses of which other groups took advantage. In 1953, for instance, the mines recognised the Mines African Staff Association (MASA). The emergence of MASA led to a serious jurisdictional conflict that further impaired the NRAMU's capacity to represent its membership and carry on effective collective bargaining.

In spite of the difficulties that faced the union however, it was generally successful in its campaigns. Its strikes of 1952, 1955 and 1956, in particular its capacity to encourage African workers to take major industrial action in a peaceful and orderly manner, are examples of this. The 1952 strike over a wages claim lasted three weeks; in 1955 it managed to take out 33,000 out of 37,000 African workers on strike for ten weeks, even though only about 30 per cent were fully-paid up members of the union. In 1956 the union organised a series of "rolling strikes" which seriously

disrupted the mining industry and led to the declaration of a state of emergency, the arrest and detention of 40 of its leaders, and as we shall presently see, the amendment of labour legislation to introduce greater control over the unions.

It was the growth and relative success of the NRAMU which shaped the character of the labour movement. It benefited from the policy makers' desire to see unions maintain their autonomy from political influence, particularly that of the nationalist movement. The miners' objectives generally coincided with the policy of industrial autonomy for most of the period under review.<sup>22</sup> They saw the primary function of unionism as one of raising wages and improving working conditions through collective bargaining and industrial action where necessary. This perception was most evident in one significant incident concerning attempts by African nationalists to stop the imposition of the Federation of Rhodesia and Nyasaland in 1953. The miners' refusal to recommend to their members that they support protests by the African National Congress, the leading nationalist political party at the time, was critical in the campaign's failure.<sup>23</sup>

In later years the struggle for union autonomy shifted to attempts by the nationalist movement to create a central labour organisation sympathetic to its tactics.<sup>24</sup> With the later emergence of the United National Independence Party (UNIP) as the dominant nationalist party in 1959, the struggle for union autonomy centred on attempts to define a working relationship between the labour movement and the nationalist movement which could express mutual sympathy without encroaching on the two movements' respective domains. In spite of attempts to reach a mutually satisfactory understanding however, suspicion continued. It resulted in a serious split within the labour movement with the miners on the side of the faction that insisted on unions' autonomy. It was not until 1965 when the government imposed one central labour body by legislation that a semblance of unity was



restored.<sup>25</sup> The problem of autonomy however, was to continue unabated. As we shall see in the following chapters, it is union autonomy with which government labour policy is mainly concerned.

In contrast to the situation emerging in some other African countries where unions were more ready to sacrifice their autonomy for the greater cause of African nationalism, relative success tended to reinforce the NRAMU's desire for operational autonomy.<sup>26</sup> The NRAMU leadership was more responsive to the rank and file's main concerns which apparently measured success in terms of successful bargains secured by the Union. These concerns further helped to instill a parochial sense of interest.<sup>27</sup>

The "rolling strikes" of 1956 marked a significant change in the emphasis of labour policy by the administration. Although broadly maintaining the non-interventionist model, the government sought legislative changes that tended to be restrictive, as we shall presently see below. Nevertheless, the years 1957 to 1964 continued to witness increased union activity in most industries. Increased union activity in part benefited from better government efforts to develop a more stable industrial relations system based on improved work-place procedures in which unions were encouraged. government action in that respect was in response to successive Commissions of Inquiry, in particular the Branigan and Honeyman Commissions, which repeatedly emphasized the need for such efforts.<sup>28</sup>

The role of the NRAMU in the development of other unions cannot however be over-emphasised. The miners set an example that was invariably followed by other less successful groups. The formation of the Teachers' Union in 1962, for instance, was widely believed to be largely due to the miners' influence on Copperbelt teachers who were instrumental in its conception. The formation of the Teachers' Union was shortly followed by countrywide industrial action in demand of better conditions. The miners' influence was

similarly evident in other groups. The formation of the Building Workers' Union in 1958 and the Agricultural Workers' Union in 1962 whose leaders had Copperbelt experience also benefited from the NRAMU example.

The miners' influence set a trend towards union multiplicity which continued throughout the early 1960's. In 1962 there were over 18 unions commanding a meagre 50,000 membership.<sup>29</sup> Of these unions only a few eventually survived due to considerable re-organisation and amalgamation which took place just before and soon after independence. The major beneficiaries, as is apparent from the current situation from Table 3, were the big unions who attracted smaller groups and thus consolidated themselves. As a result there were in 1964 five unions with over 5,000 members each, whereas in 1960 the NRAMU was the only African union with members over that figure. Major amalgamations included those of the NUCIW, the Factory Workers Union, the NUBEG (which absorbed construction workers), the National Union of Local Government Workers, and the National Union of Public Service Workers. By the end of 1964, with further expansion and consolidation, there were 29 unions with an overall membership of 101,654. Union expansion and consolidations created a more favourable atmosphere for recognition by employers. As a result, unions progressively gained invaluable experience in collective bargaining, outstanding in Africa.<sup>30</sup>

### 3.C. European Labour

Although the role of European and expatriate labour is not a major theme of this study, it would not be complete without mentioning it. The presence of European workers especially in the mining industry was one of the most significant factors in the development of labour policy in colonial Zambia. The development of African unionism was in part due to the example set by European unionism. The success of European unionism provided valuable experience on

which Africans could draw. Probably even more significant was the fact that the advancement of Africans in industry and both government policy and the mining companies' attitudes were dependent on the position of the European labour force. Besides this, the significance of European labour was not restricted to the colonial period. It affected post-colonial policy in a profound way. The reliance on expatriate European manpower long after independence gave rise to the Government's localisation (Zambianisation) policy which sought to train local manpower through extensive education programmes.<sup>31</sup> A brief examination of European labour's position is, therefore, useful to the understanding of the background to post-war policy in Northern Rhodesia.

The development and expansion of mining operations on the Copperbelt during the late 1920's led to a steady increase of European workers and settlers.<sup>32</sup> Mining increasingly required skilled labour. In order to attract such labour from South Africa, Australia and New Zealand, the mining companies progressively offered the newcomers inducements in the form of high wages, fringe benefits and job security. The importance of European skilled workers increased with the further development of mining activity and led to further privileges. Privileges for European workers consequently resulted in disparities between white and black labour. In 1956, for instance, the African miner's highest pay was about £30 per month compared with the average European wage of £170 and extra fringe benefits of free accommodation, free children's education, free holiday passage and annual bonus. At the time it was considered that the Copperbelt European workers' "living standard was higher than any other group of workmen ... anywhere in the World."<sup>33</sup> The progressive entrenchment of European labour's privileges led to a dual labour policy subsequently reinforced by the development of

separate unions for Africans in spite of the absence of any official policy of discrimination.

It was probably inevitable that trade unionism in Colonial Zambia would start among European workers. Their privileged position led to entrenchment out of fears of eventual African encroachment. South Africa, where job discrimination along racial lines, colour-bar, had been officially recognised under Statute in 1926, provided the impetus.<sup>34</sup> In 1936 a branch of the South Africa Mine Workers' Union was established on the Copperbelt. The branch was subsequently transformed into an autonomous union, the Northern Rhodesia Mine Workers Union (NRMWU).<sup>35</sup> In 1937 the mining companies recognised the NRMWU.

The outbreak of the war provided the NRMWU with further opportunity to entrench itself. Under the British Government's direction the mining company undertook to supply all copper production for the Allied war effort. In 1940 the NRMWU took advantage of British fears of disruption of copper supplies and insisted on the legitimisation of job reservations for European workers. Under British Government pressure, the demand was acceded to. Thus de facto colour-bar was born. In 1942 another concession in the form of the closed shop was granted.<sup>36</sup>

The entrenchment of European labour's privileges and the NRMWU's conduct in industrial affairs continued to be significant factors both in the development of African unionism and labour policy until independence. As we shall presently see, European labour activity was a key factor in the impact of labour policy on industrial relations and influenced subsequent changes in that policy. It is, therefore, useful to bear in mind the background role of European labour for a better appreciation of wider developments during the period.

3.D. The Regulation of Trade Unions and Industrial Relations

As we have seen, the first trade union in the country was not established until 1936 when the European NRMWU was formed. Prior to the formation of the first trade union, British trade union and trade disputes laws of 1871, 1875, 1876, 1896 and 1906 had been made applicable by a general statute of application in anticipation of future developments.<sup>37</sup> By the time of the NRMWU's inception it was felt that new legislation was necessary. Thus followed the passing of the Imperial Acts Extension Ordinance, 1937 which extended a number of British Acts then in force to the territory. The 1937 Ordinance made applicable to Northern Rhodesia, British Trade Union Acts of 1913, 1927 and the Industrial Courts Act, 1919. As we have seen, the Colonial Office was, towards the outbreak of the Second World War, inclined to put pressure on colonial administrations to review their labour policies. Part of that pressure was in the form of directives for the introduction of local legislation to pave the way for increased trade union activity. In response to such pressure, the administration reluctantly attempted to pass a local trade union statute in 1938. Although the Bill introduced in the Legislative Council (the LEGCO) was for the most part a consolidating one, provisions which would have brought compulsory legislation of trade unions, and also compulsory conciliation and arbitration made it controversial. In fact, compulsory registration would have simply brought the position in Northern Rhodesia in line with that of most colonies. Compulsory arbitration on the other hand would have followed the experience of Southern Rhodesia where it was in force.<sup>38</sup> Both sides of industry, neither of which had been consulted in depth, objected to the Bill. The Miners lobbied the generally sympathetic unofficial members of the LEGCO. In spite of further government efforts which lasted well into 1943, the Bill had to be withdrawn owing to insurmountable opposition.<sup>39</sup>

Post-war conditions, however, which among other developments gave rise to African trade unions, made the postponement of local labour legislation increasingly untenable. It was felt that the British law applicable needed to be given a local orientation to suit labour conditions in the territory. The LEGCO subsequently set up a Select Committee in March 1949 to formulate proposals for local labour legislation.<sup>40</sup> The Select Committee toured major industrial centres to gather evidence. It produced two reports which were used as a basis for two Bills to regulate trade unions and industrial disputes, the Trade Unions and Disputes Bill and the Industrial Conciliation Bill, 1949.<sup>41</sup> The Select Committee had been urged by the Chamber of Mines to recommend separate legislation for African and European trade unions. The Chamber argued that the "general effect of the proposed legislation would be to apply to Africans the most advanced form of trade unionism many years before the vast majority of Africans (were) capable of understanding its implications or of carrying out the provisions of the legislation".<sup>42</sup> The Chamber also suggested two stages of registration and recognition in both the proposed separate legislations. According to those proposals every trade union would first have been compelled to register to ensure close administrative control. The second stage, that of recognition, would come after proof of progress in the conduct of a given union's affairs. The Registrar in his discretion would have to determine whether the union was fully representative of the workers in the industry and area concerned before according recognition. Only after such recognition would the union have its jurisdiction and capacity to engage in collective bargaining.

The proposals were rejected. In rejecting the proposal to legislate for separate unions, the government was mindful of the Colonial Office's directions against the introduction of official colour bar in contrast to de facto colour bar which already existed in all industries in the country. Separate legislation would have

amounted to the de jure recognition of discrimination along racial lines. The rejection of a two-tier registration and recognition procedure was, on the other hand, apparently based on the desire to maintain the principle of voluntarism. It was generally felt that recognition in particular was an extra-legal problem, a matter to be left to a given trade union and employer.

Two alternative proposals by the Chamber of Mines were also rejected, the introduction of compulsory registration and corporate personality for trade unions. On the question of compulsory registration the Chamber was initially supported by the NRMU who were keen to avoid trade union multiplicity and competition that might undermine its position. The union therefore, supported a system of compulsory registration which would require the consent of the existing trade union in a given industry.<sup>43</sup>

It argued in favour of maintaining a voluntary system of registration, the benefits of which when given to registered unions would prove a compelling bait to most unions. Under the proposed law, as under the position then obtaining, registered unions were automatically accorded legal capacity which included the protection against liability in pursuance of certain acts that would otherwise be tortious. The granting of Corporate personality was, therefore, deemed superfluous.<sup>44</sup>

### 3.D.1 Legislation 1949

The legislation which eventually emerged in the form of two Ordinances, the Trade Union and Trade Disputes Ordinance and the Industrial Conciliation Ordinance, 1949, were within the current colonial mould of most other territories. The legislation's essential features reflected British voluntarism at the time. In the following pages we briefly examine some of the key provisions concerning the regulation of trade unions, collective bargaining

and trade disputes. It should be noted that although the two statutes were intended to deal with different areas, one with the organisation of trade unions and their involvement in trade disputes and the other with the settlement of disputes under conciliation, in practice the two instruments overlapped and were complementary to each other.

### 3.D.2 Administrative Control of Unions

The administrative control of trade unions was a key feature of the Trade Unions and Trade Disputes Ordinance, 1949. One major innovation of the Ordinance was the introduction of the Office of the Registrar of Trade Unions which was responsible for overseeing the administrative regulation of trade unions.<sup>45</sup> Unlike the Solicitor General who had acted as registrar of trade unions prior to the enactment of the Ordinance, the Registrar of Trade Unions was an official of the Labour Department directly involved in the formulation and implementation of labour policy.<sup>46</sup>

As the official responsible for ensuring that trade unions complied with statutory requirements, the Registrar had a wide range of powers. For instance, the legislation required trade union constitutions to comply with mandatory statutory objects set out in Section 6. Before registration could be granted, the Registrar had to satisfy himself that a given constitution conformed to the statutory objects.<sup>47</sup> In certain circumstances the law gave the Registrar the power to cancel union registration where, for instance, the constitution had been altered in a way that made it incompatible with statutory objects. Appeals in such cases could be lodged directly with the High Court.<sup>48</sup>

The Registrar was also given extensive powers to regulate the financial management of trade unions. Unions were required to give an account of their revenues, expenditure and various assets to the



Registrar annually.<sup>49</sup> The use of finances was also more restricted than that obtaining in the United Kingdom. In spite of the fact that the English Trade Union Act, 1927, earlier applied to the territory, had been repealed when the 1949 Ordinances were enacted, restrictions on the use of union finances were still based on the Act. During the stages of the Ordinances' enactment, there had been a lot of controversial debate concerning the use of funds for political purposes. Many members of the LEGCO saw the existence of the political fund as contrary to the principle of union autonomy from political influence which had become cherished as a fundamental guideline in the development of colonial trade unions. Arguments were thus made for the exclusion of the political fund altogether.<sup>50</sup> In the end, however, the British precedent partially prevailed. It was instead decided to control the use of the political fund more closely. Not only was the use of union funds for political purposes restricted to activities which were less of a risk to union autonomy, but strict rules of operation were also to be drawn up and approved by the Registrar in advance.<sup>51</sup> Among other things, the rules had to stipulate that the political fund would be separate from other union funds and members were free to seek exemption without incurring any penalties for opting out. Above all, the question of contribution to the political fund could not be made a condition of admission to union membership.<sup>52</sup>

The use of union funds for other purposes had also to comply with prescribed objects. Thus union funds could only be spent on the following:

- (a) the payment of salaries and allowances to trade union officers;
- (b) the payment of expenses for union administration, including the auditing of accounts;

- (c) the prosecution or defence of any legal proceedings to which the union or any member (was) a party, when such prosecution or defence (was) undertaken for the purpose of securing or protecting any rights of the union as such or any rights arising out of the relations of any members with his employer;
- (d) the conduct of trade disputes on behalf of the trade union or any member;
- (e) the compensation of members for loss arising out of trade disputes;
- (f) allowances to members or their dependants on account of death, old age, sickness, accidents, or unemployment of such members; and
- (g) any other object which by notification in the Government Gazette the Governor, on the application of the union, declared to be an object for which such funds might be expended.

In addition, as we have seen, the law required the furnishing of annual returns of accounts to the Registrar. The requirements in that respect followed closely on Sections 11 and 16 of the Trade Union Act, 1871. The union treasurer was required to tender to the trustees or members a true account of monies received and paid out, including the balance of securities held according to union rules. The trustees were required to appoint a person fit to audit the accounts, and where necessary, the auditor could take control of the books, papers and other financial documents. The annual return and accounts had to be in prescribed form. The law further stipulated that the returns had to be accompanied by new rules and changes of union officers which had taken place during the year concerned.

The Ordinance also laid down elaborate duties of trade union officers and their qualifications. Persons who had been convicted of any crime involving fraud or dishonesty were not eligible to hold office, for instance. Holders of union office also had to be engaged or employed in a given industry for a prescribed period to qualify. In the latter case, however, the Registrar could give exemption from the requirement at his discretion. Union office was also barred to persons who had been on the executive or held office in a union whose registration had been cancelled or withdrawn under the provisions of the law. In such cases permission to hold office could only be given if the person concerned could prove to the satisfaction of the Registrar that he had not been at fault in the circumstances leading to the suspension or cancellation of union registration. Similarly, when a candidate seeking office had previously been suspended by the Registrar under Section 25, he could not hold office if the suspension had not been revoked or the period for which suspension was effective had not expired.<sup>54</sup>

### 3.D.3 The Closed Shop

The legislation also set out guidelines on the operation of the closed shop and secured members' rights in the running of union affairs.

To be legally valid a closed shop<sup>55</sup> had to receive a certain amount of support from the trade union membership in a secret ballot. At least 75 per cent of paid-up members had to participate in the ballot. Of those voting, two-thirds had to be in favour of the agreement for it to have effect. Where the above requirements were not met or where the ballot was not held within one calendar month of concluding the closed shop agreement, it would be null and void. In addition, it was required of the union holding the ballot to submit, within 48 hours before holding the ballot, a list of

paid-up members for the preceding month to the Labour Department. The Department was responsible for the ballot's supervision and was also empowered to make rules for its conduct.

The Ordinance conferred upon union members certain rights to ensure democratic participation and avoid victimisation. One such right was the right to information. Members were entitled not only to receive copies of the constitution and union rules, but also the union's annual report and accounts.<sup>56</sup> Union members were also given protection against unreasonable suspension and expulsion. Appeals to independent persons or ordinary courts were mandatory in such cases. The outcome of such appeals was binding unless overturned by higher courts, including the High Court.<sup>57</sup>

Trade union rules were also required to provide for the "right of every member to a reasonable opportunity to vote and state his case against any disqualification, including disqualification from receiving benefits if subscription was in arrears."<sup>58</sup>

Freedom of association was also protected under the legislation. Section 54 provided that no employee could be prevented from being or becoming a member of a trade union. The provision prohibited employers making it "a condition of employment of any employee that that employee (should) neither be nor become a member of a trade union or other organisation representing employees in any industry...." Any such condition in any contract of employment entered into before or after the commencement of the Ordinance was void. A penalty was also imposed against any employer contravening the prohibition.

#### 3.D.4 Picketing and Essential Services

The right to picket in the course of industrial action and restrictions in essential services received considerable attention

during the enactment of the Ordinances. The Chambers of Mines and Commerce had particularly opposed the inclusion of the right to picket in the legislation.<sup>59</sup> It was argued that in the climate then pertaining, picketing would simply result in widespread intimidation. On the other hand, picketing was regarded as a well-institutionalised weapon of persuasion, essential to industrial action. In the end the right to picket was included, but prohibited in or near private dwelling premises.<sup>60</sup>

At the time of the enactment of Ordinances, and ever since, the question of essential services had been central in attempts to control the trade unions' capacity to act effectively in industrial action in many tropical countries of the Commonwealth.<sup>61</sup> At the time the law in Northern Rhodesia was based on that of metropolitan United Kingdom. It is useful to recall that at that time the right to strike and lockout in Britain had been limited in three ways.

Firstly, there were the permanent restrictions on industrial action called in breach of certain contracts. Under the 1875 Conspiracy and Protection of Property Act, a breach of contract was a criminal offence when it was likely to endanger human life, cause serious bodily injury or endanger valuable property; or in the case of employees in gas, water and electricity industries, likely to deprive the community of their supply of any of those services. The second kind of restriction was in force between 1927 and 1946. The 1927 Trade Unions and Trades Disputes Act defined illegal strikes and lockouts. Penalties were laid down for declaring, instigating, inciting or taking part in such illegal activities. The 1875 Act was also modified in 1927 by restricting the right of public employees to strike. The third restriction was imposed under war time legislation. It was contained in the Conditions of Employment and National Arbitration Order No 1305 of 1940 which was in force until 1951. Compulsory arbitration was provided as a safeguard to each side of industry in return for the withdrawal of the right to strike or lockout.

Provisions dealing with essential services in Northern Rhodesia were based on the principles of the above British law. The scope of essential services, however, aroused much controversy. In spite of the general agreement to exclude services regarded as essential to the life of the community from industrial action, the scope of such services was not universally agreed. The original Bill had contained restrictions on water and electricity only. Later the case for the inclusion of sanitary services was made. In spite of demands to extend the scope further from the Chambers of Mines and Commerce and some LEGCO members, the Ordinance only dealt with the above three services.<sup>62</sup> From then onwards the scope of essential services was progressively extended. The current legislation gives the President the power to add to an extensive list of services already covered by resorting to the Preservation of Public Security Regulations.<sup>63</sup>

In spite of the need, recognised at the time, for an adequate machinery for the prompt settlement of disputes involving essential services, no special machinery was provided under the 1949 Ordinances.

### 3.D.5 Immunities and Penal Sanctions

Two other features of the Trade Unions and Trade Disputes Ordinance, 1949, should be mentioned here. One was the extension of traditional immunities to trade unions similar to those existing in the United Kingdom. The other was the resort to penal sanctions.

Sections 3 and 4 conferred protection on trade unions and their contracts. Unions could not, "by reason merely that they (were) in restraint of trade, be deemed unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy

or otherwise. Further, the objects of a trade union could not be deemed to be unlawful so as to render void or voidable any agreement or trust, merely because they were in restraint of trade".

Similarly, trade union contracts were protected. No legal proceedings could be instituted to enforce certain union agreements or recover damages for breach of contract. Such agreements included those concerning conditions of membership, subscriptions and certain contributions.

The resort to penal sanctions, including imprisonment, to enforce many provisions of the legislation was a distinctive feature. Penalties were prescribed for a whole range of contraventions. Some of them, as we have seen, were within the administrative control of the Registrar. Others, were however, subject to the due process of the courts. Penalties in both categories were not restricted to cases of misappropriation or dishonesty, but extended to other contraventions as well. Although not a general feature of the United Kingdom's legislation at the time, the use of penalties in trade union legislation was a common feature of colonial practice.<sup>64</sup>

### 3.D.6 Dispute Settlement Procedures

As in the case of trade unions, the law concerning the settlement of trade disputes broadly followed the British example save for a number of significant exceptions. In response to rising industrial relations problems in the 1950's, the law regulating the settlement of collective disputes became progressively more restrictive. Nevertheless, the legislation in Northern Rhodesia continued to be less restrictive than that of many other colonial territories in that respect. One of the factors responsible for the relatively

liberal position was of course the relative strength of the mining unions on the Copperbelt, both black and European unions.<sup>65</sup>

The position in Britain concerning the prevention and settlement of trade disputes at the time is instructive in appreciating the regime of the Northern Rhodesian Ordinances in that respect. British legislation at the time provided few positive procedures in the area of dispute settlement, as indeed in collective bargaining.<sup>66</sup> The only notable exception was in the case of industries covered by wages councils and boards. The Industrial Conciliation Act, 1896, did however, provide for the possibility of official intervention to help in the settlement of disputes arising in the course of negotiations between employers and trade unions. The Industrial Courts Act, 1919, set up regular channels for the voluntary submission of disputes to arbitration. Awards resulting from such settlements were generally accepted by the parties in spite of their non-binding nature in law. The Industrial Disputes Order, in force from 1951 to 1955, made provision for the compulsory referral of disputes to arbitration in certain instances. Awards in that respect were enforceable in Courts as implied terms of the contract of employment.<sup>67</sup>

The Industrial Conciliation Ordinance, 1949 was in certain respects a simplified consolidation of the 1896 and 1919 British Acts, with more emphasis on the former.<sup>68</sup> Unlike the Trade Unions and Trade Disputes Ordinance whose provisions were in many instances mandatory, the Industrial Conciliation Ordinance's approach was apparently to facilitate dispute settlement by negotiation between the parties. It provided the framework for settlement and did not affect sectors where conciliation machinery had already been agreed upon by the parties. This position was emphasized by a member of the Executive Council who introduced the Bill in LEGCO. Pointing to the fact that conciliation machinery already existed in the mines he went on to say:



".... On the other hand there are many undertakings in the country with no negotiating and conciliation machinery in existence between themselves and employees. For instance, there are many large firms of contractors here now. So far as we are aware they have no established machinery for the prevention and settlement of trade disputes. If a dispute arose .... the provision of this Bill could immediately be brought into effect."<sup>70</sup>

The regime of the Ordinance was mainly based on conciliation boards. The boards could be set up by agreement between employees and labour representatives on an industry basis. Each board had to register its Constitution with the Registrar and furnish annual returns of proceedings in a manner similar to that required of trade unions. Once registered a board's procedure merely had to conform to its Constitution. The conciliation procedure was, therefore, a matter for the parties in each industry. There were, however, instances where the government could intervene to set the machinery in motion.

Under Section 4, the Governor could, where it was felt there were no adequate arrangements in a particular industry for submitting disputes to conciliation, order an inquiry into conditions to determine the desirability of establishing a conciliation board.<sup>71</sup> Where a dispute was apprehended or came into effect in the absence of any conciliation machinery, the government could either take steps to enable the parties to meet under an independent chairman or on the application of one of the parties, appoint a conciliator or board of conciliation. Alternatively, a board of enquiry with a more general mandate could be appointed.<sup>72</sup> The government could also appoint an arbitral tribunal with the consent of the parties. In 1958, the Ordinance was amended to give the government the power to provide arbitration in addition to, as well as in place of, conciliation.<sup>73</sup>

The conciliation boards were intended to facilitate the speedy settlement of disputes. They were exempted from applying normal

rules of evidence as applied in criminal and civil proceedings. Counsel could, however, appear for the parties under conditions designed to ensure as much informality as possible.<sup>74</sup>

It cannot be overemphasized that in comparison to the current framework of dispute settlement which we shall examine later in the study, the framework for the settlement of disputes under the 1949 legislation was in the main voluntary despite later government attempts to shape its role.

### 3.E. Initial Impact of Policy

The above discussion of some of the main elements of post-war colonial labour policy would not be complete without an examination of its impact on industrial relations, particularly on the Copperbelt, which it was designed to shape. The impact of the policy is best appreciated by outlining some of the major developments in industrial relations and demands for changes in policy during the period beginning in the mid-1950's to the eve of the Country's self-government in 1963.

As we have seen earlier, the Labour Department was finally established in 1940. The objectives of labour policy and the Department's role were clearly spelt out as to "include the establishment of fair working conditions for those in employment, the maintenance of good industrial relations between employers and employees, and the peaceful settlement of disputes."<sup>75</sup> While the 1949 legislation which we have outlined above would confirm it as providing the framework for carrying out the above policy, the extent to which its objectives were attained was not always clear. Events appertaining to industrial relations on the Copperbelt do however, provide some insight into how the policy fared in practice and how the government responded to demands for a more restrictive policy.

### 3.F. Industrial Relations on the Copperbelt

Industrial strife had generally been on the increase in all industries, especially the mining industry, since 1950. In 1956 the government felt compelled to intervene by declaring a state of emergency following the so-called rolling strikes by African miners. A number of prominent African trade union leaders were detained in the emergency. Searching questions were increasingly raised about the circumstances which allowed the deterioration of industrial relations to such an extent.<sup>76</sup> How adequate and suitable was labour legislation as formulated in the 1949 Ordinances? Was the government right to allow trade disputes to continue being settled within a voluntary framework? What action could be taken to stem the rising level of violence and loss of revenue which were consequences of industrial action? These are some of the pertinent questions asked by the European electorate, managements and by members of the government itself.

Apart from the European NRMWU with a history of militancy going back to 1936, most of the industrial disputes involved African miners who felt cause for dissatisfaction with their conditions of employment in comparison to their white counterparts. African workers with an increasingly strong union to articulate their demands felt they were entitled to better wages, housing and food rations than they were getting. Bad relations with their European counterparts and difficult communications with management served to compound the situation. There was also a growing group of semi-skilled African workers who longed for the recognition of their increasing skills, but were denied advancement due to job reservation for white workers strictly enforced through the de facto colour-bar.<sup>77</sup> These factors, coupled with a worsening political atmosphere, especially after the creation of the Central African Federation of Rhodesia and Nyasaland in 1953, contributed to bad industrial relations on the Copperbelt.

Industrial strife presented a grave situation to the government not only because it posed a serious danger to social control, but also because strikes in the mining industry resulted in the loss of revenue in royalties and taxation. The increasing loss of revenue on account of strikes coincided with a down-turn in the fortunes of copper. Copper prices declined between 1956-59. The value of copper sales at the London Metal Exchange dropped from a peak of £400 sterling per ton in 1956 to £158 sterling per ton in 1958, for instance. Both territorial and federal revenues in the form of taxation from the mines fell from 66.2 per cent in 1956-57 to 40.2 per cent in 1958-59. The African strikes in 1955 alone, for instance, resulted in losses of £2½ million and £3½ million to the territorial and federal treasuries respectively.<sup>78</sup> In a situation where the country's financial and economic well-being was interlocked with that of the mining industry, pressures for more government intervention in the way industrial relations were conducted naturally increased.

### 3.F.1 Labour Policy in Neighbouring Territories

Demands for change increasingly focused on the role of the law as embodied in the 1949 Ordinances in comparison to the situation in the neighbouring territories of Southern Rhodesia and Katanga, and also South Africa.

The 1949 legislation permitted, as we have seen, parties to make their own arrangements for conducting industrial relations. The law merely set out the minimum standards especially in the conduct of union affairs. By convention, and not by government policy, trade unions were organised on racial lines. Similarly, in respect to the settlement of disputes the law merely provided a framework for conciliation where there were no internal arrangements or where a total breakdown in such arrangements ensued. Other than the

requirement to notify disputes, there was no direct government involvement unless requested. Even where there was a deadlock, government intervention was by way of arranging voluntary arbitration or an enquiry to clarify issues and make recommendations. The occasional intervention through the declaration of a state of emergency as that of 1956 was an extraordinary measure of urgency. In ordinary circumstances, therefore, government intervention was both indirect and informal following upon the proven approach of the British experience.

Similarly, the approach to collective bargaining, although not an exact reproduction, was based on the British system. Like most colonial institutions it was an imported system developed in different circumstances.<sup>79</sup> The result was, as in the British system itself, that the law was simply "a gloss or footnote to collective bargaining."<sup>80</sup> In spite of the fact that the framework had been applied in other colonial possessions with small variations, it had no parallel in the more immediate neighbouring territories.

Attempts had been made in the LEGCO to base some provisions of the Ordinance more closely on the Southern Rhodesian Industrial Conciliation Act, 1945.<sup>81</sup> The Southern Rhodesian Act followed South African precedents in excluding Africans from the definition of employees in connection with registered trade unions and Industrial Councils. Industrial Councils formed by employers and European workers could, however, make decisions binding on all workers in a given industry, including Africans. What made the Southern approach unattractive to liberal LEGCO members and government officials, apart from the colour bar built into it, was the need for a closer regulation by government of industrial relations which was cardinal to the 1945 Act in Southern Rhodesia. That law required that existing machinery for the settlement of trade disputes be fully utilised. Where there was no voluntary agreement or arbitration, compulsory arbitration would take its

place. Once arbitration was in process no strikes were allowed until a month after the consideration of the award by the parties.

The South African and Katanga experiences which had long been regarded as pace setters in labour policy, particularly that concerning the mining industry, were also cited in support of demands for changes in the industrial relations system in Northern Rhodesia. In South Africa, African trade unions could not be recognised under the Industrial Conciliation Act of 1926. The 1937 Amendment merely extended European and "coloured" (mixed race) collective agreements to all workers, including Africans, of the industry concerned. The 1953 Native Labour (Settlement of Disputes) Act simply provided for government-appointed Europeans to negotiate on behalf of African workers. The agreements reached by such proxy negotiations were, however, legally binding on the African workers concerned. There was, therefore, no statutory role for the African worker in collective bargaining. Strikes were punishable by a heavy fine and three years imprisonment. Racial divisions were further strengthened by the Industrial Conciliation Act, 1946, which compelled mixed unions to segregate their membership. The Act also authorised the Ministry of Labour to reserve jobs on a racial basis. Even where the white worker was concerned, the South African system of industrial relations was more closely regulated.<sup>82</sup>

In contrast to the South African system which was clearly designed to protect the white industrial worker, the Katanga mines took the lead in Central and Southern Africa in the training and advancement of the African worker.<sup>83</sup> But in spite of the more liberal policy in these fields, wages did not dramatically improve with better training opportunities. Moreover, African trade unions were firmly discouraged. Whereas the first European trade union had received recognition as early as 1921, African trade unions were not allowed until 1946. Even then they were confined to the local level and

certain crafts only. Membership was also limited to those with at least three years of employment in the trade concerned and the Congolese administration was given wide powers to regulate union affairs. As a result, therefore, only 7,500 African workers out of a labour force of 1,146,000 were union members in 1954. The deliberate discouragement of trade unionism coupled with a severely restricted collective bargaining system was in clear contrast to the position in Northern Rhodesia.<sup>84</sup>

### 3.G. Demands for Change

Given the different orientation in labour policy in the immediate neighbourhood, it was almost inevitable that the prevailing bad industrial relations would be readily explained in terms of the inadequacies in the existing law and policy. A close examination of the alleged inadequacies, however, reveals that they were not exclusively due to shortcomings of policy - if at all. Many factors, including peculiar developments in the mining industry, were responsible for the bad industrial relations.<sup>85</sup>

The administration faithfully followed the Colonial Office directives in many respects. One of those directives was that against discriminatory legislation. As we have seen, Comrie, the Scottish trade union officer sent out to advise African trade unions was opposed to any 'watering down' of the principles of trade unionism to cater for African labour. Comrie's position, as numerous communications testify, was very similar to that of the Colonial Office.<sup>86</sup>

In contrast, mine managements and other employers feared from the beginning that African trade unions could not comply with legislation rooted in the voluntary approach. They had demanded compulsory conciliation to cater for what they saw as bad leadership in both the European and African unions.<sup>87</sup>

The fact that the mining companies' arguments were rejected was due more to determined Colonial Office pressure in the background than consensus in the administration.

Although the establishment of African trade unions on a 'separate, but equal basis' in part reflected government policy against discrimination, it was not possible to prevent racial discrepancies in practice, particularly in the private industry. In the mining industry, for example, the granting of the closed shop to the European NRMWU and not the African Union (the NRAMU) was one such instance of racially-based differences in union bargaining power.<sup>88</sup> Although the mining companies had granted the closed shop reluctantly, the African miners were to seize upon it as an instance of de facto colour bar extending to job reservation. The mining companies also approached negotiations with the two unions differently. European trade unions negotiated with heads of departments while the African union met with the African Personnel departments. Justified as the two approaches were on the grounds of the need for better communications and the different economic considerations involved, the approach symbolised the double standards employed in the way industrial relations were conducted in other respects as well.<sup>89</sup>

Other trends suggested genuinely different orientation between the two unions. Demands in the European union tended to move upwards from members to the Executive. Those of the African union on the other hand (probably because of the unusual monopoly of literacy and appreciation of the intricacies of unionism by the few in leadership) filtered downward from the Supreme Council.<sup>90</sup>

The difference in the bargaining strength of the two mining unions was built into collective agreements as well. In the 1949 recognition agreement between the mining companies and the African union, the consent of 50 per cent of the



membership had to be obtained in a secret ballot where strike action was contemplated. The European union on the other hand was strong enough to resist the clause until it was forced upon it when labour legislation was amended in 1958.

Differences in the treatment of the two unions apart, the way in which industrial relations were generally conducted in the industry is equally revealing. Both African and European recognition agreements provided for the local discussion of grievances, but the strong centralisation of mining managements in the form of the Chamber of Mines affected unions as well. From 1941 the mining companies co-ordinated their policies through the Chamber under the direction of an executive committee composed of general managers of the biggest mines. Wage demands and other issues like African advancement were dealt with within the framework of the Chamber of Mines. Despite the fact that agreements were later individually signed with each mine management, centralisation and co-ordination by the Chamber excluded any creative, let alone any viable variation in the practice of industrial relations. Although employers in other industries were not as co-ordinated as the mining companies, the tendency was to follow standard procedures in dealings with unions.

As a result of the tendency towards centralisation grievances which could be settled at the local mine level usually involved union headquarters as well. Three Commissions from which this assessment is taken (Branigan, 1956; Honeyman, 1957; and Leggett, 1959) all pointed to the need to decentralise the grievance settlement machinery to the workplace not only in the mining industry, but in other industries as well. In the face of a renewed wave of industrial unrest the Morison Commission of 1962 also considered the issue of decentralisation.<sup>91</sup>

Industrial relations were also prone to poor communications between the parties, leading to distrust and lack of confidence. The 1955

African strikes over wages and discussions over African advancement thereafter revealed ample evidence of this state of affairs. On the basis of available evidence one has to go along with Berger's assertion that the mining companies tended to manipulate fine points of procedure to their advantage. Such a tendency was hardly reassuring. The unions in response usually resorted to strike action to embarrass the employers.<sup>92</sup> Thus in the summer of 1956, for instance, no less than fifteen African strikes broke out without recourse to notification procedures as laid down in the recognition agreement. Similarly, about fourteen stoppages by European workers took place between January 1956 and July 1957.

These problems were widely attributed to weak union leadership and organisation in employers and government circles. Available evidence at least partially justifies this assertion. Although the NRMWU's financial position was more stable than that of its African counterpart, changes in leadership were too frequent. There was also a feeling that the closed shop gave union leaders too much power. The 'pioneer spirit' among European workers made them less amenable to being led, hence the demands of leaders by union members to adopt uncompromising positions.<sup>93</sup>

These problems led to a partial breakdown in industrial relations generally and on the Copperbelt in particular. Demands for changes across the board in union organisation, collective agreements and legislation followed. They also forced the administration to take a more active role in labour disputes.

The government had from the beginning endorsed the voluntary settlement of trade disputes for several reasons. As we have seen, it was orthodox British industrial relations policy and was agreeable to an increasingly TUC-influenced Colonial Office. Minimum intervention was made attractive by the ever present problem of the shortage of administrative staff. Any effective

intervention would have required a manifold increase in the number of administrative and supervisory staff. That was not possible. The principle of non-intervention allowed the administration to stand aloof from the politically embarrassing problem of African advancement in industry, particularly on the Copperbelt. Above all, non-intervention was encouraged by the establishment of African trade unions and was interpreted as releasing the administration from the responsibility of representing African interests in industry.<sup>94</sup>

However, as industrial strife increased, the administration found it difficult to maintain a detached attitude. Even so it ventured into industrial relations with caution. The government knew from experience that unions, particularly the NRMWU would strongly resist changes in the law. The European Miners Union was particularly opposed to amendments that would weaken unions, including African unions. It feared that whatever pressures were brought to bear upon African unions as a result of any change in policy, the same were capable of being applied to itself if the situation so demanded. It, therefore, led a vigorous lobbying of elected unofficial members of the LEGCO, although they were not as sympathetic to its demands as a decade earlier. Elected LEGCO members' perception of the European interest had realistically narrowed down from demands for total autonomy of the past decade to the desire to attain responsibility within the Federal framework. The Federal experiment needed whatever changes that would ensure maximum production in industry and, therefore, high revenues. Undeterred and with African union support, the NRMWU also lobbied the British TUC, the Miners' International Federation and the British National Union of Mineworkers.

In contrast to the determined front presented by the trade union movement led by the miners, the proponents of restrictive changes were not so united. The mining companies for once were against the introduction of compulsory arbitration seen as crucial by some

critics. They were suspicious that compulsory arbitration would impose solutions by outsiders. They felt compulsory arbitration was only suitable for wage disputes and not matters which raised other issues of policy. Elected LEGCO members were torn between the need to stop the draining of the territory's revenues by strikes and the need to support European railwaymen and miners who formed the bulk of their constituents. Although they were the most affected, the Federal Government could not intervene directly. Federal intervention was restricted to diplomatic and other indirect pressures. Labour policy was constitutionally not a federal matter.<sup>94</sup> The Federal Government's ability to intervene indirectly was moreover restricted by its failure to intervene in Southern Rhodesia where the Industrial Conciliation Act, 1945 was clearly a threat to the federal ideals of racial partnership whatever their worth. In the circumstances, federal intervention would be difficult to justify in the north.

Demands for government intervention were, however, reinforced by other centres of pressure. After the African general workers and government strikes of 1954, the Associated Chambers of Commerce and Industry led in pressing for changes in the law concerning trade unions. Although the mining companies were ambivalent about the need to alter the law drastically at that point, believing instead that it was more a question of union leadership, they did not object to changes in the law. Lack of active opposition from the mines in the matter emphasised demands for change. In the end the government felt overwhelmed and had to respond.

### 3.G.1. Response

Government response came in two stages. During the African Strikes of 1955 and 1956, the issue of paramount importance was that of the maintenance of law and order. This concern resulted in the

declaration of a state of emergency and detention of persons identified as ring leaders bent on causing trouble.<sup>95</sup> The assumption clearly seems to have been that the strikes had political overtones.

The second stage of government intervention coincided with the decline in copper prices which increased the effects of the loss of revenue brought about by industrial unrest. The rationale for intervention then changed to the need to protect the national interest by stemming the loss of revenue. The national interest argument heightened the debate about the wisdom of adopting principles of trade unionism and industrial relations said to be more suitable for application in a more developed and diversified economy than in an economy that is overwhelmingly dependent on a single commodity, copper, for its gross domestic product and export earnings. (See Appendix II). It was further argued by the proponents for changes in policy that the minimum standards enunciated by labour legislation needed to be supplemented by some administrative regulation of negotiating procedures.<sup>96</sup>

The first specific response in legal terms came with the publication of the Trade Unions and Trade Disputes (Amendment) Bill, 1955.<sup>97</sup> The Bill proposed a tighter control of union affairs. To achieve this aim the Bill set out specific purposes for which union funds could be legitimately used. It further proposed to give the Registrar the power to inspect union books and accounts "at all reasonable times" in addition to annual return requirements already catered for. It also widened disqualifications from leadership. Prohibition of those convicted of fraud was extended to the previous ten years. Similarly, to be eligible for union office persons had to work in a particular industry for at least eighteen months. Most important, the Bill intended to make trade union registration compulsory in keeping with the practice in most British Colonial possessions. The overall effect of the proposed changes would have been to increase government supervision of trade union administration.

The trade union movement's response was as vigorous as anticipated. Both mining unions strongly objected to the Bill. The NRMWU exerted strong pressure on elected LEGCO members and the Colonial Office, through the trade union movement in Britain. The pressure proved effective for a while resulting in a delay of one year of the draft legislation. However, another Bill with identical proposals was published in 1956. This was also met with strong opposition from the unions, but with countrywide industrial unrest, government had little trouble in securing its passage through the LEGCO. Encouraged by this progress the mining companies even asked the administration to pass extra measures similar to the Southern Rhodesian Industrial Conciliation Act, 1945, which would prohibit strikes during negotiations. The mining companies were supported in their call by Roy Welensky, by then Acting Federal Prime Minister, who went further and called for compulsory arbitration.<sup>98</sup>

### 3.H Further Demands and Changes

The 1956 Amendment did not succeed in checking the rising tide of labour unrest. On the contrary, there was a fresh outbreak towards the end of the year. Under Colonial Office pressure the administration appointed a Commission of Inquiry, the Branigan Commission, which began sitting in September 1956.<sup>99</sup> Among the most significant evidence given to the Commission was that by the mining companies. They were still opposed to compulsory arbitration, favouring instead, as before, the compulsory use of procedural arrangements made in collective agreements to be followed by conciliation and voluntary arbitration where necessary.<sup>100</sup> The Labour Department was strongly opposed to the approach proposed by the mines. In its opinion the introduction of "... legislation creating new offences, the enforcement of which would be extremely difficult would tend to bring legislation itself into disrepute". It cited the recent strikes in which many people

were involved and argued that "if (those strikes had been) illegal in terms of the proposed legislation, it would be impossible to invoke the law".<sup>101</sup>

The government at large was also at this point not in favour of new legislation, but not necessarily for the same reasons as its field personnel in the Labour Department. Most policy makers in government believed the wave of industrial unrest sweeping the country, particularly the strikes of 1956, were due to the political effects of African nationalism and the inexperience of African union leadership.<sup>102</sup> Instead, as we have mentioned above, it chose to detain union leaders in 1956 and followed its action three years later with a new wave of arrests of nationalist leaders. But if African labour unrest could be explained in terms of political influence and inexperience in labour relations, that of white workers who joined in later could not. As industrial unrest continued unabated it led to a temporary shut down of the mines resulting in the laying off of 26,000 African workers.<sup>103</sup>

The widening labour unrest, particularly the involvement of the European miners, produced another Commission of Inquiry.<sup>104</sup> The Honeyman Commission received demands for stronger labour legislation from the mining companies. The companies made a plea for the prohibition of unofficial strikes coupled with the requirement that even official strikes not called according to laid down procedures be made illegal as well. They also asked for compulsory strike ballots and the abolition of the closed shop alleging that it gave the NRMWU leaders excessive power.<sup>105</sup> Although sympathetic to the position of the mines, the Commission felt the abolition of the closed shop would lead to further industrial unrest. They recommended instead that it should be illegal for union members party to a closed shop, to strike before exhausting negotiation procedures. Honeyman also accepted the need for strike ballots and recommended accordingly. The Commission further recommended that the NRMWU executive (on whose shoulders

they placed the blame for the union's irregular conduct), and the mining companies be given six months within which to work out a voluntary arbitration clause as part of their collective agreement to deal with unsuccessful conciliation. If the parties could not agree on the terms of voluntary arbitration within the time suggested, the Commission urged the administration to consider adopting the Southern Rhodesian system of statutory compulsory arbitration.<sup>106</sup> The last alternative recommendation was clearly meant to be a measure of last resort. The Southern Rhodesian experience proved that compulsory arbitration had been used to strengthen colour bar. As we have seen, attempts to legitimise discrimination in employment in Northern Rhodesia had been rejected during the Second World War with Colonial Office support. The fact that it was once again under consideration at all was an indication of the extent of the deterioration in industrial relations in the territory.

As with the last time round the administration anticipated union opposition to any new proposals based on the Honeyman recommendations. Given the compulsory arbitration alternative in the recommendations, the mines were not enthusiastic either. As before, they felt such measures could undermine their managerial prerogatives and give way to unnecessary outside influence in determining industrial relations practice. Only the LEGCO proved enthusiastic, even advocating the outright abolition of the closed shop. The unions as before managed to rally support in London. Concerted TUC pressure contributed to the later withdrawal of the proposals contained in the 1958 Bill which were based on the Honeyman recommendations.<sup>108</sup> In withdrawing the Bill, the government asserted that the Commission's proposals lacked clarity and the government would seek clarification from the chairman in due course.<sup>109</sup>



Once again the administration was forced to review its position resulting in the publication of a new bill later in the year. The new Bill simplified the procedure for notifying trade disputes to the government. It also removed penal sanctions for strikes called in defiance of secret ballot requirements except for unions with closed shop arrangements. The vote needed to approve closed shop was also reduced from two-thirds to a half of the total union membership. By far the most significant innovation was the introduction of penal sanctions for strikes called in defiance of strike ballots where the closed shop was in operation. It was also an offence to strike during the course of conciliation proceedings. Members penalised for defying official union line could appeal to an independent arbiter. In spite of the NRMU's strong plea to delay implementation to enable unions to work out voluntary arrangements, the Bill became law on the 14 May 1958.<sup>110</sup>

Attempts to pacify the industrial relations scene however, met with new difficulties. The slump in copper prices deepened. Given the bonus system for European miners which was based on the price of copper, a further deterioration in industrial relations on the Copperbelt was inevitable.<sup>111</sup> Another wave of labour unrest resulted from the 1958 European workers' wage claim of 15 per cent and negotiations with the mining companies to reduce NRMU's restrictive practices.

The administration intervened to press for a settlement and compelled the parties to include, as a condition in their agreement, the consideration of Honeyman's recommendations on compulsory arbitration. Unfortunately for the government, the case for compulsory arbitration had weakened since Honeyman made the recommendations. War time arbitration in Britain which acted as the impetus came to an end in the same year, 1959. The new British Labour Minister, Ian Macleod, had headed employers' pleas that compulsory arbitration gave

unfair advantage to the unions as they were not bound by unfavourable awards, unlike the employer.<sup>112</sup>

The administration resorted to what by that time had become the usual course to deal with any major deadlock in industrial relations. It called in British expertise to advise the parties on alternatives in dispute clauses for their new recognition agreement. Sir Frederick Leggett, called in to bring the parties in line, was not in favour of Southern Rhodesia's compulsory arbitration approach and differed sharply with Honeyman's emphatic recommendations in 1957 on the matter. He recommended instead changes in existing voluntary procedures to shift emphasis from the top level to the shop floor dealings in dispute settlement. Such changes would bring with them an increased role for shop stewards in resolving grievances. He also suggested a three day 'cooling-off' period before the NRMWU executive could intervene in local disputes to be written into the grievance procedures. He also drew attention to the long neglected problem of normal communications between management and the union executive. He, therefore, recommended the establishment of a joint industrial council as a forum of top level consultation. Each party would be represented by six people and the council would meet at least once a month.<sup>113</sup>

Leggett's advice was particularly welcomed by the union. Not only was it negotiated within the industry (which approach both sides favoured), but it was also a 'face saver' in a situation where the general tide of opinion was against union action. The union, therefore, welcomed the recommendations as 'revolutionary changes' whereas in fact they were a mere revision of the old system.

The Leggett guidelines produced some success in the Government's attempts to apply restrictive legislation in industrial relations. Their effect was, however, mainly restricted to the European work force. The government saw the problems of the African miners, and

indeed African employees in other industries, rather differently. Government officials saw two different problems within the African Miners Union particularly. The first, which was seen as extending to non-mining African unions as well, was political influence from the nationalist movement. The second, peculiar to the mines and railways, was the influence of irregular European industrial action. On many occasions African workers went on strike following European example.<sup>114</sup>

African workers increasingly resented the double standard treatment by managements. They made strong comparisons, for instance, between the harsh treatment given to their leaders in 1956 and the lenient treatment of the NRMWU executive in 1957. The African union resented its inability to prevent restrictive conditions being written into its 1958 check-off agreement. The restrictions were obviously intended by mine managements to bypass union rights to maintain political funds as guaranteed under labour legislation. The application of the Leggett proposals themselves were a further basis of alienation. Leggett had intended the guidelines to apply to both black and white unions. The companies maintained they were too advanced for the African union. The appointment of stewards, a major step in the strengthening of shop floor industrial relations, was not introduced for African workers. As in the case of the introduction of the joint industrial council to deal with the African Union, shop stewards were not introduced until 1963. By that time reforms in industrial relations policy were heavily dominated by and subject to political developments. The era of Colonial labour policy was effectively at an end.

### 3.1 Conclusion

The above review of post-war colonial policy is significant to this study in several respects. Firstly, it reveals that law played a key role in the shaping of labour policy in response to socio-political and economic developments. Secondly, it also indicates the State's tendency in later years to intervene in industrial relations, taking account of what were perceived as the effects of industrial relations on the wider interests of society, in particular. As we shall see from the following chapters dealing with post-colonial labour policy, there has been a certain continuity in respect of the above two factors. Both law and the State have continued to play significant roles, indeed increasingly important roles in labour relations, and economic imperatives have been paramount.

The third observation to be drawn from the above review is rather different from the first two. In spite of the role of law and increased state intervention in the later period of the colonial administration, the system of industrial relations in the country was still essentially based on the British voluntary model. By and large the State merely provided a framework for industrial relations activity, leaving it to collective bargaining to shape the actual practice. As we shall see in later Chapters, the approach is in sharp contrast to current attempts to determine the actual content of industrial relations on the part of the State.

Colonial labour policy thus provides an indispensable background for the better appreciation of current policy.

NOTES TO CHAPTER THREE

- 1 See Appendix III for a list of major developments concerned or connected with labour policy.
- 2 Lonsdale J and Berman B, "Coping with the Contradictions: the Development of the Colonial State in Kenya, 1895 - 1914", (1979), XX, 4, Journal of African History, P 490.
- 3 For an elaborate account of developments of post-war labour policy and various factors responsible see Roberts B C, 1964, *op cit*.
- 4 Cf for example, Woddis J, Africa, The Lion Awakes (London: 1961), pp 36 - 43; Davies, 1966, *op cit*, and Henderson I, "Workers and the State in Colonial Zambia", Seminar Paper, (Edinburgh University Centre for African Studies, Circa 1982).
- 5 Gartzel in Damachi, 1979, *op cit*, P 307.
- 6 *Ibid*.
- 7 The Commission Appointed to Enquire into the Advancement of Africans in Industry (The Dalgleish Commission), 1947; Evidence of William Cosrie (Ndola, 13 October 1947), (Lusaka: Government Printer, 1947), P 72.
- 8 On 1935 and 1940 labour disputes and other significant developments, see Berger, 1974, *op cit*.
- 9 Epstein, 1958, *op cit*, traces the development of the system in one of the Copperbelt towns, Luanshya. See also Berger, 1974, *op cit*, pp 81 - 83.
- 10 Epstein, 1958, *op cit*, P 17.
- 11 Berger, 1974, *op cit*, and Epstein, 1958, *op cit*.
- 12 Berger, 1974, *op cit*, especially pp 68 - 72.
- 13 Zelnicker, 1970, *op cit*, Chapter 2.
- 14 *Ibid*, P 101.
- 15 *Ibid*
- 16 Epstein, 1958, *op cit*.

- 17 Report of the Commission of Inquiry Appointed to Inquire into Labour Unrest in the Mining Industry, (The Branigan Commission), 1956 (Lusaka: Government Printer, 1956), P 168.
- 18 Chronology of major labour events in Appendix III.
- 19 Labour Department, Annual Report, 1954, (Lusaka: Government Printer, 1954).
- 20 Gertzel in Damachi, 1979, op cit, P 316.
- 21 Branigan Commission, 1956, op cit.
- 22 Zelnicker, 1970, op cit, Chapter 2.
- 23 Roberts A, A History of Zambia, (New York: African Publishing Company, 1976), P 211.
- 24 Gertzel in Damachi, 1979, op cit, P 320.
- 25 Trade Unions and Trade Disputes Act, 1965, discussed in Chapter 4, below.
- 26 Finchem and Zulu in Turok, 1979, op cit.
- 27 Epstein, 1958, op cit, P 100.
- 28 Branigan, 1956, op cit and Honeyman Commission, 1957, (Lusaka: Government Printer, 1957), Appendix III.
- 29 Labour Department, Annual Reports, 1958 - 63.
- 30 Berger, 1974, op cit, P 167.
- 31 Manpower Report, (Lusaka: Government Printer, 1965 - 6); Zambian Manpower, (Lusaka: Government Printer, 1969); and Gertzel, in Damachi, 1979, op cit, P 339.
- 32 Roberts A, 1976, op cit, Chapter XI.
- 33 Hochschild N K, "Labour Relations in Northern Rhodesia", (July 1956), ccvii, Annals of the American Academy of Political and Social Science, P 12.
- 34 Lewin J, The Colour Bar on the Copperbelt, (Johannesberg: Mimeo, 1941).
- 35 Roberts A, 1976, op cit, P 203.

- 36 As Berger has observed, the generally accepted definition of a closed shop in Britain and the United States at the time was one in which all employees hired had to be members in good standing of the trade union representing the jobs concerned. A Union Shop on the other hand, was one in which all persons employed had within a given time to become and remain members in good standing with the union. Accordingly, the NRSWU sought a Union Shop although they used the 'closed shop'. This has apparently continued to be the use of the term in Zambia ever since. Berger, 1974, op cit, P 176.
- 37 Roberts A, 1976, op cit, PP 260 - 1.
- 38 Berger, 1974, op cit, P 176.
- 39 For the nature of opposition to the Bill see 43 LEGCO Debates Columns 328 - 30, (21 September 1942).
- 40 LEGCO Debates, 1st Session, Select Committee Motion, (28 March 1949).
- 41 LEGCO Debates, 1st Session (Resumed), Columns 533 - 51; Appendices A and B, Columns 551 - 58, (September 1949).
- 42 Ibid, Column 543.
- 43 Ibid.
- 44 Ibid, Column 535.
- 45 Section 5, Trade Unions and Trade Disputes Ordinance, 1949. (All references hereinafter to the Ordinance unless indicated otherwise).
- 46 No trade union was ever registered during the term of the Solicitor-General as Registrar, LEGCO Debates, (1949) op cit, Column 160.
- 47 Statutory objects substantially followed the English Trade Union Act, 1876. Unions registered under the Rhodesia Railways Act, 1949, a common service with Southern Rhodesia at the time, were exempt as the Act provided its own mode of registration.
- 48 Sections 12 - 13.
- 49 Section 19.
- 50 LEGCO Debates, Select Committee's Report, (1949), op cit.
- 51 Sections 55 and 56.
- 52 Sections 57 and 58.

- 53 Sections 19, 21, 30 and 31.
- 54 Section 23. Section 25 gave the Registrar the power to suspend union officers where he was satisfied that those concerned were involved in the unlawful operation of union affairs and financial irregularities.
- 55 Provisions as to closed shop agreements, Section 24.
- 56 Section 19.
- 57 Section 25.
- 58 Section 10(j).
- 59 Select Committee Report, LEGCO Debates, (1949) op cit, Column 229.
- 60 Ibid.
- 61 See Chapter Six, below.
- 62 Section 52.
- 63 Section 3, Industrial Relations Act, 1971.
- 64 Roberts A, 1976, op cit, P 260.
- 65 An African Labour Survey (Geneva: ILO, 1958), P 1440
- 66 Roberts B C, 1964, op cit, P 403
- 67 Ibid, P 308.
- 68 LEGCO Debates, (1949), op cit. Per Cousins C J, (Member of Executive Council), Column 172.
- 69 Ibid.
- 70 Section 3.
- 71 Section 5.
- 72 Section 6.
- 73 Sections 7 - 9 as amended.
- 74 Section 10
- 75 Memorandum on Industrial Relations prepared by the Labour Commissioner, 10 September 1953, as quoted by Berger, 1974, op cit, P 165.



- 76 On factors concerning industrial relations see, inter alia, Berger, 1974, op cit, especially Chapter IX, and Roberts A, 1976, op cit, especially Chapter XI.
- 77 Berger, 1974, op cit.
- 78 Baldwin R E, Economic Development and Export Growth: A Study of Northern Rhodesia, 1920 - 60, (Berkeley: University of California, 1966), P 190; Hall R, Zambia, (London: Pall Mall, 1965), P 280.
- 79 On problems attendant in the transfer of institutions see, inter alia, Friedland W, 1969, op cit, P 140.
- 80 Kahn-Freund O, "Legal Framework" in Flanders A and Clegg H A (eds), The System of Industrial Relations in Britain, (Oxford: Oxford University Press, 1954), P 66.
- 81 Welensky's Contribution, LEGCO Debates, (1949), op cit.
- 82 Lord Hailey, An African Labour Survey, 1958, op cit, PP 1440 - 5.
- 83 Davies I, 1966, PP 48 - 49.
- 84 Ibid
- 85 "Notes on Industrial Legislation 1949, Copper Industry Service Bureau (CISB), File 70 - 7, Vol 1, Archives (Kitwe).
- 86 Ibid.
- 87 CISB Memorandum on 1949 Ordinances, 25 May, 1949.
- 88 Berger, 1974, op cit, P 50.
- 89 Morison Commission, 1962, P 65, (See Appendix III).
- 90 It has been suggested that the trend has been reversed with demands going upwards from union rank and file. Gupta in Tordoff, 1974, op cit, P 289.
- 91 Appendix III.
- 92 Honeyman Commission, 1957, P 24, Appendix III.
- 93 LEGCO Debates, Column 94, 14 May 1958; Honeyman Report, 1957, op cit, P 32.
- 94 Roberts-Wray, 1966, op cit.

- 95 Zelnicker, 1970, op cit.
- 96 LEGCO Debates, Column 804-5, (14 May, 1958).
- 97 Trade Unions and Trade Disputes (Amendment) Bill, (Lusaka: Government Printer, 1957).
- 98 The Northern News. 4 July 1956.
- 99 Appendix III
- 100 Branigan Report, 1956, P 36.
- 101 Ibid.
- 102 Berger, 1974, op cit, P 177.
- 103 Hulford D, Zambia: The Politics of Independence, 1957 - 64 (London: Oxford University Press, 1967) P 104.
- 104 Honeyman, 1957; Appendix III.
- 105 Honeyman Report, 1957, PP 29 - 30.
- 106 Honeyman Report, 1957, Recommendations.
- 107 Berger, 1974, op cit, P 179.
- 108 Trade Union News from Overseas. (London: TUC, 20 August 1958).
- 109 LEGCO Debates, column 94, (25 March 1958).
- 110 Amendment No 99, 1958.
- 111 Berger, 1974, op cit, P 183.
- 112 CIBS File 70 - 29, "Correspondence from Governor to Secretary", Chamber of Mines dated 10 November 1958.
- 113 Berger, 1974, op cit, P 185.
- 114 Ibid.

CHAPTER FOUR

## TRADE UNION ACTIVITY

4.A. Introduction

It has been a significant feature of Zambian labour policy that major sectors of the trade union movement, notably the miners and railwaymen, had largely achieved organisational autonomy by independence. Nevertheless the majority of unions at independence were weak, seriously disturbed by leadership conflicts and unable to assert themselves in the generally unsettled industrial relations situation. Initial government policy towards trade unions was, therefore, at least as much a response to that unsettled situation as it was a desire to devise means of incorporating them into its development strategy.

As with other areas of the policy of incorporation, attempts at closer regulation and control of trade unions consisted of two phases of institutional re-organisation and legislative reform. The first phase, which largely amounted to transitional policy, was an attempt to eradicate the most visibly unacceptable elements of colonial labour policy in the light of post-independence expectations. It also consisted of efforts to check what the government viewed as the adverse effects of high expectations within the trade union movement brought about by the attainment of independence. The second phase was a much more deliberate and considered form of response on the part of policy makers. It went further than the transitional political and administrative changes of the first phase. It was part of the overall package of radical

legislative reforms brought about by the enactment of the Industrial Relations Act, 1971.

In this Chapter we shall examine each of the two phases and make an assessment of the trade union response, and therefore, to that extent the impact of that element of government policy. Before examining the changes made during the two institutional and legislative phases, however, it is useful to place things in perspective by examining some pertinent factors that have influenced the relationships between the unions and the ruling party and administration. Of the four areas that we have identified as the main focus of the Government's incorporation efforts, that is to say, trade union activity, collective bargaining (including incomes policy), industrial conflict and workers' participation, the attempt to incorporate trade unions has been the element most closely related to political developments. It, therefore, needs to be examined within the context of the wider political process during the period under study. Our intention is not to provide an exhaustive account of trade unionism and the political process, this task is left to other capable writers<sup>1</sup> who are specialists in the field, but rather to give a brief background of the factors that guided government policy.<sup>2</sup> It will also be useful to describe the changes that have taken place in the trade unions' organisational structure during the post-independence period.

#### 4.B Trade Unions in the Political Process

The trade unions' place in the post-independence political process was to a large extent shaped by events which took place during the colonial period. Some of the developments we have highlighted in Chapter Three above. The factors that shaped the place that the labour movement came to occupy in the political process after independence are important in appreciating the strategy of incorporation as part of the wider political process in Zambia after independence.

By independence the Trade Union Congress (TUC), formed in 1950, was torn apart by conflict between militant unionists, mainly leaders of unions other than the Miners' and Railwaymen's unions and the latter. The major source of conflict was the political involvement of trade unions and the subordination of labour to the ruling party, the UNIP. Militant unionists continued to urge the labour movement to embrace political action even after independence by accepting affiliation as an integral wing of the UNIP. Miners and railwaymen rejected this principle. Although some accommodation was eventually made that generally preserved the movement's autonomy, important differences concerning the labour movement's place in the political process remained. The differences were exacerbated by a further ideological split within the militant faction resulting from different conceptions of the future of the labour movement and the role of labour in the state.<sup>3</sup>

Against this background of conflict the ruling party sought, through government action, to establish a degree of unity within the trade union movement. That was accomplished to a large extent by persuading the principal protagonists to leave the labour movement for more lucrative jobs in the public sector and institutional reforms through legislation which we shall outline later in this Chapter. The political intervention had consequences for the labour movement in later years, in particular the political control of individual unions. The unions that were more successful at resisting political control were the miners' and railwaymen's, both relatively more viable and more effectively organised, superior in that respect to the ruling party itself.<sup>4</sup> The two unions were able to maintain autonomy at the levels attained during the colonial period. As for most other unions, political intervention resulted in disarray and serious weakness affecting the labour movement as a whole. Most unions were further weakened by internal struggles for power that other writers have chronicled at some length.<sup>5</sup> It is the situation of conflict and weakness within the labour movement that partly prompted initial government attempts to incorporate unions.

#### 4.C The First Phase: Transitional Policy

As we saw when we examined the development of colonial policy, in Chapter Three, trade union legislation by the time of independence was based on some fundamental principles derived from the British experience. In spite of increased State intervention that led to such modifications in the law as the introduction of compulsory registration and greater administrative and financial accountability, the system was essentially a voluntary one.

Immediate post-independence policy and legislation, that is to say, between 1964 and the enactment of the Industrial Relations Act in 1971, was a response to two factors: the expectations engendered by independence and the desire by the government to achieve a closer regulation of trade unions and their leaders.

##### 4.C.1 Protective Legislation

The first objective of transitional legislation, a response to the basic expectations of independence, was the desire to remove racial restrictions and to improve conditions for working people. Equality after all, had been the raison d'être of the nationalist cause and the struggle for independence. In keeping with this goal, therefore, legislation was amended to remove racial and discriminatory provisions in employment and to provide a framework for minimum conditions of service and better wages. Thus the notorious Employment of Natives Ordinance, 1929 that only catered for Africans to the exclusion of other races was repealed. It was replaced by the Employment Act, 1965, based on English legislation of a previous period.<sup>6</sup> The Act provided for minimum conditions of Employment and abolished contracts on the ticket system. It also abolished recruitment and its attendant abuses.<sup>7</sup> Similarly, a new Apprenticeship Ordinance enacted in 1964 ended racial restrictions.<sup>8</sup>

Other instruments of protective legislation were enacted or suitably amended during the period. They included a new Factories Act, also modelled on similar English legislation of a previous period, which was passed in 1966.<sup>9</sup> Among those amended and retained were the Employment of Women, Young Persons and Children Ordinance; the Minimum Wages, Wages Council and Conditions of Employment Act; and the Workmen's Compensation Act.<sup>10</sup> During this period the first legislation concerned with basic social security, the Zambian National Provident Fund Act was enacted in 1966.<sup>11</sup>

It is apparent from the above that most of the legislation was protective, mostly concerned with individual employment issues and not, strictly speaking, trade union legislation. The legislation did, however, possess a high 'perception value' among trade unions. Moreover, some of the subject matter covered by the legislation was of concern to trade union members. In a situation where many trade union members had no pension arrangements, for instance, the introduction of a social security scheme was a mark of progress and accordingly appreciated. Similarly, the training of workers for skilled positions as part of the Zambianization (localisation) Programme, that is to say the progressive replacement of expatriates by local personnel in all sectors of the economy, was viewed to be of critical importance by the unions. The removal of racial restrictions by the amendment of the Apprenticeship Act in 1964 was, therefore, relevant to the unions. Above all, the overall relevance of the changes for the unions lay in the fact that they represented many of the things the African unions had been campaigning for ever since their inception in the late 1940's.

#### 4.C.2 Trade Union Legislation

The second objective of transitional policy and legislation clearly was a desire for the closer regulation of trade unions and trade union leaders. It was a response to an unsettled industrial

relations situation that led to increased industrial unrest and internal union conflicts. It was also marked by increasingly explosive political relations between the ruling party, the United National Independence Party, (UNIP) and the trade union movement in general and the Mineworkers' Union in particular.<sup>12</sup>

Political acts of incorporation apart, the legislative basis of government policy was the amendment of the Trade Unions and Trade Disputes Act passed in December 1964 and effective in 1965.<sup>13</sup> The major objective of the Act was to check the escalating industrial unrest by creating a more stable framework for industrial relations and the management of trade union affairs. It sought to achieve this objective by increasing government powers of supervision of union affairs, especially in financial matters and also by the centralisation of the trade union movement through the creation of a new Congress, the Zambian Congress of Trade Unions (the ZCTU).

Notable among the new restrictive provisions was the one requiring new union officials to have three years' employment within the industry concerned and officials of unions with fewer than 500 members were required to be employed within the industry.<sup>14</sup> As one commentator has observed, this change seriously affected trade union leadership. Many unions lost a number of able and experienced organisers. It was no coincidence that many such leaders were among the most politically conscious tending to emphasise union autonomy in preference to political control by the UNIP.<sup>15</sup>

Among increased powers of supervision and control, the Registrar was entitled to refuse to give consent to the election of a trade union officer.<sup>16</sup> He could also suspend from office any union officer who failed in his duty under the Act, while the Minister could appoint another person to perform the duties of the suspended official.<sup>17</sup> The Registrar could also summon witnesses "to give information as to the existence or as to the operation of any trade



union, or federation of trade unions.<sup>18</sup> Finally, the Registrar or a person appointed by him was given the power of supervising every secret ballot required to be taken under the provisions of the Act.<sup>19</sup>

The government also sought to take advantage of one of the most intractable problems facing trade unions, the collection of dues.<sup>20</sup> The Minister was given far-reaching powers concerning union dues. He could make an order for the deduction of union dues by the employer for payment to the union (check-off facility). If he was satisfied that a trade union was sufficiently representative of the employees concerned, and if the membership exceeded 60 per cent of the total employees, he could make an order to deduct subscriptions for all employees unless exempted in the order (dues shop facility).<sup>21</sup> Such an order, however, could only be made if the union in question was affiliated to the ZCTU, and later provision was made for part of the dues to be credited to the Congress directly.<sup>22</sup> The Act also restricted unions' right to accept aid from foreign agencies and the right to affiliate to organisations outside Zambia. Ministerial approval was required in both cases.<sup>23</sup>

That the provision relating to union dues was intended to be a mechanism of control by the State has become apparent with recent developments. As a response to a wave of strikes in early 1985, the Minister issued the Trade Union (Deduction of Subscription) Regulation, 1985 empowering him to revoke existing check-off orders in favour of any trade union whose members strike illegally, whether the action is official or unofficial.<sup>24</sup> Statutory check-off arrangements made by the Minister under the Industrial Relations Act, 1971 (the provision is identical to that under the 1965 Act) in favour of qualifying unions have become the basis of financial security of most unions' operations. While some unions have chosen to respond to the Minister's actions as a challenge to develop direct arrangements with their members, many have been adversely affected by the withdrawal of the right.<sup>25</sup>

The most fundamental change under the legislation was the government attempt to centralise the trade union movement by creating the ZCTU. Until the Congress was created central union organisations had been troubled by splits and financial difficulties.<sup>26</sup> The Congress was clearly conceived as a powerful agency for the regulation of trade union affairs. Although affiliation to the Congress under the Act was to remain voluntary at that stage, the government hoped all trade unions would affiliate to it. Introducing the Bill in 1964, the then Minister of Labour, Justin Chimba, was candid about government intentions. He said: "membership of the Congress will confer considerable benefits upon the affiliated unions and will have the effect of strengthening their position and making it extremely difficult for any rival organisation to set up in opposition."<sup>27</sup> The Minister symbolically appointed the Congress' first executive until the first elections were held.<sup>28</sup>

The ZCTU was given considerable powers over member unions. Not only were member unions required to remit part of their subscriptions as we have seen above, but the Congress' approval was needed for certain "prescribed decisions" by the unions such as those concerning strike ballots, strikes, dissolutions and amalgamations.<sup>29</sup>

The ZCTU's jurisdiction was, however, limited in one important respect: it could not intervene directly in disputes between employers and workers. This limitation was more than symbolic, it was representative of the Congress' other structural and constitutional limitations. The then ZCTU General Secretary, Wilson Chakulya, reportedly complained: "the present constitution keeps the unions autonomous and the national centre (ie the ZCTU) is there mainly to provide advice and guidance without authority."<sup>30</sup>

It was, therefore, not surprising that with the Government's encouragement, the ZCTU Executive in 1972 set up a working party under the auspices of the Congress' General Council to look into the matter of further increasing the organisation's powers over member unions.<sup>31</sup>

The working party recommended giving the Congress far-reaching powers over member unions' finances and other decisions. Led by the miners, member unions unanimously rejected the recommendations. In spite of that rejection, the Minister unilaterally used his powers under the 1965 Act to impose some of the changes sought by the ZCTU Executive.<sup>32</sup> As a result subscriptions to the Congress were raised from 20 to 30 per cent of member unions' receipts and employers were obliged to remit that portion directly to the Congress. In addition, the ZCTU General Council was given powers to reverse some policy decisions reached by member unions' annual general conferences. The ZCTU was also given the right to appoint an observer to wage negotiations involving member unions. As the Ministry itself pointed out, the changes represented a considerable increase in the centralisation of the trade union movement.<sup>33</sup>

In making the changes briefly outlined above, the government claimed from the start that its aim was not only to stabilise industrial relations in the national interest, but that the trade union movement would be strengthened in the process.<sup>34</sup> Certain provisions of the legislation apparently did help strengthen the labour movement. The raising of the minimum number of members required for a trade union to qualify for registration from seven to 100 was one such measure. It prevented the mushrooming of smaller unions and as we have observed elsewhere, both employers and unions seem to approve.<sup>35</sup> The requirement of secret ballots over a wide range of decisions such as the election of delegates to a general meeting, election of officers, calling a strike, dissolution and amalgamation and so on has had a marked democratic effect on the conduct of union officers.<sup>36</sup> Equally beneficial were

the check-off arrangements introduced by the legislation. Many unions, especially smaller and financially insolvent unions, willingly affiliated to take advantage of ministerial check-off orders.<sup>37</sup>

In spite of apparent benefits in favour of unions, government policy was aimed at closer regulation and control using the ZCTU as the principal channel for the communication of its objectives. The ZCTU was encouraged from the start to involve member unions in the promotion of industrial peace, wage restraint and in the dissemination of State objectives for national development.<sup>38</sup> As we shall see when we examine the second phase of post-independence trade union policy presently, the government has maintained these objectives while increasing the ZCTU's powers and role. The transitional legislation also attempted to reform the structures of the member unions themselves.

#### 4.C.3 Post-independence Union Structure, and Organisation

Seriously unsettled by internal conflict and political intervention, unions were largely unable to assert themselves in spite of the fact that they still retained a large measure of operational autonomy. The transitional legislation of 1965 was prompted in part by the Government's concern to improve labour organisation while seeking to extend state control. One of the results of this legislation was that the structure of unions was greatly influenced by the Government's policy of one union in each industry. This, while strengthening existing unions, also helped the State's designs for closer control.<sup>39</sup> As a result of this policy considerable re-organisation and amalgamation of unions took place between 1966 and 1971. The current state of unions largely reflects developments during the period (Table 3 below).

TABLE 3  
TRADE UNIONS AS AT 31 DECEMBER 1983

| <u>Name of Union</u>   | <u>Year of*<br/>Registration</u> | <u>Membership</u> |
|--|----------------------------------|-------------------|
| 1. National Union of Public Service Workers                    | 1960                             | 72,964            |
| 2. Mineworkers' Union of Zambia                                | 1966                             | 51,000            |
| 3. National Union of Building, Engineering and General Workers | 1960                             | 29,000            |
| 4. National Union of Commercial and Industrial Workers         | 1960                             | 27,000            |
| 5. Zambia National Union of Teachers                           | 1962                             | 28,608            |
| 6. Civil Servants' Union of Zambia                             | 1969                             | 30,000            |
| 7. Zambia United Local Authorities Workers' Union              | 1971                             | 24,000            |
| 8. National Union of Plantation and Agricultural Workers       | 1962                             | 16,000            |
| 9. National Union of Transport and Allied Workers              | 1967                             | 11,000            |
| 10. Guards Union of Zambia                                     | 1972                             | 12,305            |
| 11. Railway Workers Union of Zambia                            | 1967                             | 10,038            |
| 12. Zambia Union of Financial Institutions and Allied Workers  | 1970                             | 9,000             |
| 13. Zambia Typographical Union                                 | 1971                             | 4,800             |
| 14. Zambia Electricity Workers' Union                          | 1971                             | 4,200             |
| 15. National Union of Postal and Telecommunications Workers    | 1964                             | 4,300             |
| 16. Hotel Catering Workers' Union                              | 1966                             | 6,700             |
| 17. University of Zambia and Allied                            | 1976                             | 2,400             |
| 18. Airways and Allied Workers'                                | 1968                             | 2,169             |

\* Subsequent years of Registration in accordance with periodical amendments to the law governing registration and various trade union re-organisation and amalgamation.

Source: Ministry of Labour and Social Services, Annual Report 1983 (Government Printer, Lusaka 1984)

As a consequence of that process of re-organisation and amalgamation the present Mineworkers' Union of Zambia, (MUZ) emerged out of three unions in the mining industry in 1966. The Zambia Railways Amalgamated Workers Unions (ZRAWU) came into being on the railways; the National Union of Transport and Allied Workers was formed out of two long distance and heavy haulage unions. By 1969 several Civil Service unions merged to form the present Civil Servants Union of Zambia. Similar amalgamations resulted into larger unions in other sectors including the National Union of Public Service Workers, currently the largest union.<sup>40</sup> Consequently the number of unions was reduced from twenty-four in 1964 with a membership of about 100,000, to eighteen in 1973 with a membership of 184,000 or about half the total wage-earning force. By 1983 (latest figures available), union membership had risen to 341,614 while the number of unions remained at eighteen.

One other consequence of the policy of one union in each industry has been the disappearance of the Craft Union. Only two categories of unions now remain, the industrial unions on the one hand (the most important of which is still the Miners' Union in spite of the decline in membership from a peak of 60,000 after independence to the present 51,000, reflecting the decline in mining activity), and on the other hand, the general unions embracing a wide range of sectors, especially building, commercial and transport unions. Whereas in 1973 four unions had a membership of less than 1,000, by 1983 none had less than 2,000; five are now between 3,000 and 10,000, while the rest are all above 10,000, two of them with memberships of over 50,000. (See Table 3, P 129).

Unions draw most of their strength from the "line of rail", particularly the Copperbelt. They follow a similar organisational pattern based on the branch, although some have a measure of regional organisation as an intermediate level between the branch and the headquarters. The structure of each respective industry affects union organisation. The MUZ, for instance, follows the

organisation of the miners with shop stewards in each department. The ZRAMU is similarly based on branches at the main railway centres. The general unions on the other hand, cover diverse interests and that is reflected in their organisation. The National Union of Commercial and Industrial Workers' organisation in the public sectors (parastatal companies) varies from its organisation in the private sector, for instance. For the most part the union that covers the rural areas is the National Union of Agricultural and Plantation Workers (NUAPW). It suffers from the problems of the great majority of agricultural unions in the Third World. Employment is largely dispersed. This phenomenon coupled with generally difficult employers makes union organisation an equally difficult task. Although wages in the rural and agricultural sectors have improved in line with minimum wage requirements, they are still lower than in other sectors and other conditions of employment are correspondingly less attractive.

As we shall later see in Chapter Five, unions have achieved a good deal in terms of collective bargaining, not least as a result of new arrangements under the 1971 legislation. Although union membership is now thought to be falling in line with increasing job losses resulting from the continuing economic decline, it is still well in excess of 50 per cent. This strength in membership is significant. It has enabled most unions and the labour movement as a whole to maintain their operational autonomy and checked government incorporation efforts. However, few union leaderships are firmly in control of their membership. As will be apparent from our discussion in Chapter Five, for instance, union leaders are usually unable to prevent industrial action in many cases even where they think such action is ill-advised.

Financially, the majority of unions have benefited from the check-off arrangements now part of labour legislation. However, many unions still suffer from financial short-comings that adversely affect their activity. In spite of reforms in union

financial management effected by the government over the years, leaders are constantly accused of not sufficiently observing elementary principles of financial control. Unions' dependency on members' dues has also meant that unions are increasingly vulnerable as a result of continuing job losses through redundancies.

#### 4.D The Second Phase: Legislation for Incorporation

The enactment of the Industrial Relations Act, 1971 marked the second phase of the Government's strategy of trade union incorporation. The Act made substantial reforms concerning various industrial relations institutions including those concerning collective bargaining, dispute settlement and industrial action and workers' participation as we shall see in the following chapters. However, in the sphere of trade union regulation the Industrial Relations Act 1971 regime was in fact much less of a radical departure than had earlier been claimed by both its proponents and detractors.<sup>41</sup> In fact it was more of a consolidating Act than a radical departure. Many of the provisions of the Trade Unions and Trade Disputes Act, 1965 concerning trade unions were incorporated in the 1971 Act without substantial changes. Some of its provisions, however, amounted to a further extension of trade union control and regulation. These we shall presently examine.

The significance of the 1971 regime mainly lies in the fact that in comparison to earlier post-independence changes, it was a much more deliberate part of the incorporation strategy. The Act was a legal response to strategic political action by the government aimed at incorporating trade unions and employers alike to its objectives of development. It was a culmination of efforts that had started with the first tripartite national planning meeting, the Livingstone Labour Conference, 1967, aimed at forging a consensus on labour's role in national development. The Livingstone Conference was



followed by two national conventions in Kitwe, later in 1967 and in 1969 at which issues were more extensively discussed and resolutions concerning subsequent changes in labour policy made.<sup>42</sup> These meetings took place against a background of escalating industrial unrest and deteriorating state-labour relations with occasional confrontations between unions and activists of the ruling party.<sup>43</sup> Government anxieties about the deteriorating state of industrial relations were reinforced by expert findings made in the Turner report, 1969. Turner raised alarm about wage inflation and its devastating effects (we further consider the report in Chapter Seven) and alleged that there had been a drastic fall in labour efficiency and productivity. He attributed the developments to the fact that, "the colonial system of labour discipline (had) broken down and nothing yet (had) developed to take its place."<sup>44</sup> The worsening industrial relations situation strengthened government resolve to curb industrial unrest and incorporate trade unions into its strategy for national development. By the end of 1969 the government had managed to secure both employers' and unions' agreement in principle, through resolutions, for substantial changes in labour policy across the board.

The 1971 Act was the legal aspect of a strategy that included efforts to incorporate individual trade union leaders and politicise the rank and file.<sup>45</sup> The Act further strengthened the role of the ZCTU by making affiliation compulsory for all trade unions.<sup>46</sup> It also gave the Congress additional powers over member unions including the power to decide in jurisdiction conflicts between unions.<sup>47</sup>

One other significant change was that concerning the educational role of the ZCTU and member unions. Implicit in the government strategy of incorporation, "persuasion rather than force", had been the notion that education was an important part of the efforts to persuade unions and their members to accept national development objectives. Both the constitutions of the ZCTU and member unions

were, therefore, required to provide that one of the purposes to which funds "shall be applied shall be the advancement of workers' education and their participation in national development programmes in Zambia."<sup>48</sup> It is notable that workers' education has emerged as one of the most important objectives of both the Congress and unions at large. It is also probably one of the areas where unions have been most responsive to government incorporation attempts. This is apparent from the emphasis all unions give to workers' education.<sup>49</sup> The ZCTU policy document on workers' education and training embodies objectives similar to those of the State with emphasis of workers' role in national development.<sup>50</sup>

The Act also strengthened the Government's policy of 'one industry, one union' by providing that unions "purporting to represent a class or classes of employees already represented by or eligible for membership of another union" could not be registered and, therefore, could not legally exist. As we have observed above, this policy has now been implicitly accepted by both unions and employers.<sup>48</sup>

The general effect of the changes considered above coupled with new powers for the Minister and the Registrar of trade unions, especially over financial matters, has been the further extension of regulation and control.<sup>49</sup>

#### 4.E. Trade Union Response

As in other areas which have been the targets of government strategy, the trade union response has not followed a uniform pattern. Rather it has varied in terms of leadership levels and different measures. The trade union response has also been affected by periodical developments in state-union relations and above all, by the performance of the economy.

Two broad observations can be made of the trade unions' general response to policy innovations between the period 1964 to date. There have been indications that the trade union movement has accepted overall government authority.<sup>50</sup> This can be deduced from the willingness to co-operate with official agencies like the ZCTU. It will be recalled that when the Congress was created in 1965 and affiliation of unions was still voluntary, most unions, including the miners in spite of their initial reservations, affiliated and accepted the Congress' authority. The centralisation of power through the ZCTU has also been accepted in the field of workers' education. As we have mentioned, the focus of educational objectives has followed State defined goals. We should not, however, read too much into union response in these areas. For many unions, especially smaller and financially insolvent ones, affiliation to the ZCTU and the assurance of check-off facilities was a life-line they could hardly reject. Similarly, co-operation in other areas was, at least in part, due to government reciprocity. After 1973 for instance, the government greatly expanded union representation on various policy-making organisations of the State, including the National Council of the ruling Party.

In contrast to the acceptance of the government overall political authority in the formulation of national goals, the trade union leadership has continued to defend and has largely preserved its organisational autonomy. In spite of increased financial supervision by the State which has led to increased dependence of some unions, continuing incorporation of some union leaders and periodic detentions of union leaders, the trade union movement in general continues to assert its independence.

The approach of the ZCTU in its role as the main agency of state - unions relations, has been predictably ambivalent. There is little doubt that both the 1965 and the 1971 legislation envisaged a key role for the Congress, which, through frequent trade union leadership incorporation, the government could direct. Up to about

1981, it was apparent that the State had succeeded reasonably well in utilising the ZCTU as the main channel for the communication of its policy to the unions. A subsequent change in the Congress' leadership and a renewal by the ruling party of its efforts to control unions more directly seems to have changed the situation.<sup>51</sup> Moreover, the continuing deterioration of the economy in recent years has meant that government policies, particularly in relation to wages and prices have become increasingly difficult to defend. The ZCTU leadership, therefore, has increasingly become the focus of resistance to government policies, including provisions of the Industrial Relations Act, 1971.<sup>52</sup> One notable development has been the ZCTU's leadership reluctance to participate in the work of some organisations which formulate policy. Instead, they seem to be demanding fuller and more realistic participation, including the right to influence decisions. Announcing the withdrawal of the ZCTU from the Board of ZIMCO, the holding corporation of State companies, in 1986, Chairman Chiluba said he did not wish the trade union movement to be associated with "escalating redundancies and prices." The miners' leader has similarly warned the government that his union will stop co-operating unless rising prices and redundancies can be stopped.<sup>53</sup>

In so far as the trade unions have resisted efforts to make them cede authority over their own organisational policies - there has been a failure of the policy of incorporation by stealth.

NOTES TO CHAPTER FOUR

- 1 See, inter alia, Bates, 1971, op cit; Berger, 1974, op cit; Zelnicker, 1970, op cit; Gertzel, et al, 1984, op cit; Gupta in Tordoff, 1974, op cit.
- 2 Gertzel in Damachi et al, 1979, op cit, P 319 ff.
- 3 Ibid, P 321.
- 4 Gupta in Tordoff, 1974, op cit, P 288.
- 5 Gertzel in Damachi et al, 1979, op cit; Gupta, in Tordoff, 1974, op cit.
- 6 Act No 57 of 1965 (in effect in 1966), Chapter 512 of the Laws of Zambia.
- 7 Parts III - V, and VIII, ibid.
- 8 Act No 36 of 1964, Chapter 511 of the Laws of Zambia.
- 9 Act No 2 of 1966, Chapter 514 of the Laws of Zambia.
- 10 Acts No 36 of 1967 (Chapter 505); 161 of 1965 (Chapter 506); 57 of 1965, op cit; 4 of 1966 (Chapter 509) of the Laws of Zambia.
- 11 Act No 1 of 1966, Chapter 513 of the Laws of Zambia
- 12 Gupta in Tordoff, 1974, op cit.
- 13 Act No 57 of 1964, Chapter 507 of the Laws of Zambia; Repealed by the Industrial Relations Act, No 36 of 1971.
- 14 Trade Unions and Trade Disputes Regulations, 1966.
- 15 Gertzel in Damachi et al, 1979, op cit, P 323.
- 16 Section 17, Trade Unions and Trade Disputes Act, 1964 (all section references hereinafter are to the Act unless indicated otherwise).

- 17 Section 23
- 18 Section 25.
- 19 Section 35.
- 20 Section 64.
- 21 Section 31(1).
- 22 Section 31(8).
- 23 Sections 33 and 34.
- 24 Government Gazette, Notice No 221 of 1985 (26 February 1985),  
P 231.
- 25 Personal Interviews, Zimba N L, ZCTU Secretary-General and  
Sumbwa P C, Executive Director, Zambia Federation of  
Employers, Geneva, December 1985.
- 26 Gertzel in Damachi et al, 1979, op cit, P 324.
- 27 National Assembly Debates, Hansard No 1, Cols 72 and 76,  
(15 December 1964).
- 28 Labour Department, Annual Report. 1967.
- 29 Sections 61 and 65.
- 30 Times of Zambia, 4 January 1969.
- 31 Report of the Working Party appointed by the General Council  
to enquire into the structure of the Trade Unions in Zambia  
(The Mwendapole Report), (Kitwe: ZCTU, 1972)
- 32 See Section 42 of Act No 3 of 1965 (as amended).
- 33 Ministry of Labour and Social Services, Annual Report.  
(Lusaka: Government Printer, 1974), P. 19.
- 34 National Assembly Debates, op cit, Col. 76.
- 35 Kalula, 1985, op cit, P. 600.
- 36 Section 64
- 37 Gupta in Tordoff, 1974, op cit, P.299.
- 38 Gertzel in Damachi et al, 1979, op cit, P 324.
- 39 Ibid.
- 40 Ibid.

- 41 Quesby A, "Works Councils and Industrial Relations in Zambia" (1975), 1, Some Aspects of Zambian Labour Relations, P 85, Gertzel in Damachi et al, 1979, op cit, P. 323.
- 42 The Livingstone Labour Conference, 1967 (Lusaka: Government Printer, 1967); National Convention on the Four-Year National Development Plan: Kitwe, 1967 (Lusaka: Government Printer, 1967); Report of the Second National Convention on Rural Development, Incomes, Wages and Prices in Zambia: Kitwe, 1969 (Lusaka: Government Printer, 1969)
- 43 The frequency of union strikes during the period 1965, 1966, 1967 and 1968 reported in the monthly Digest of Statistics was 114, 241, 222 and 206 respectively. For an account of such union-party confrontations, see Gupta in Tordoff, 1974, op cit.
- 44 Turner H A, Report to the Government of Zambia on Incomes, Wages and Prices (The Turner Report - commissioned under the auspices of the ILO), (Lusaka: Government Printer, 1969).
- 45 Finchas et al in Turok (ed), 1979, op cit, P. 216.
- 46 Industrial Relations Act, No 36 of 1971, Section 15, (hereinafter all references to the Act unless indicated otherwise).
- 47 Section 28.
- 48 Section 8(c)
- 49 Policy and Recommendations on Education and Training for Workers in Zambia, (Kitwe: ZCTU, 1979).
- 50 Section 7(8); Kalula E, "The Influence of International Labour Standards on Zambian Labour Legislation", (Sept - Oct 1985), 124, International Labour Review, P 599.
- 51 For the Government's powers of supervision over financial matters, see particularly Sections 20, 21 and 29.
- 52 Gupta in Tordoff, 1974, op cit, P. 317.
- 53 For an account of the first major incident which led to the detention of ZCTU leaders, see Kalula E, 1985, op cit, P 599.
- 54 "Industrial Action Sparks Off Government Restrictions on Trade Unions", report in (1985), 2, Social and Labour Bulletin, P 233.
- 55 Times of Zambia, 8 April, 1986; Zambia Daily Mail, 7 April, 1986.

## CHAPTER FIVE

### COLLECTIVE BARGAINING

#### 5.A. Introduction

As we have noted in Chapter Two, the system of collective bargaining that was inherited at independence was a voluntary one. Its essential characteristics were those derived from the British system, where the law was, to use Kahn-Freund's famous words again, simply "a gloss or footnote to collective bargaining."<sup>1</sup> At the time certain characteristic features were thought to be central to the British industrial relations system. The most important for our purposes here being, first, that collective bargaining at industry or lower levels was a matter for employer and trade unions with little political input or government intervention; secondly, that collective bargaining was neither circumscribed nor supported by law.<sup>2</sup>

Derived from the above perception of the British industrial relations system, the function of the law in colonial Zambia and prior to 1971 was, therefore, not to set standards against which collective bargaining could be judged. Nor was it, in general, to control the parties. In fact the main purpose of the major legislation, the Trade Unions and Trade Disputes and the Industrial Conciliation Ordinances, 1949,<sup>3</sup> was first, to impose limits on the kinds of work place sanctions that could be used by one party against the other. Secondly, to the extent that it laid



down any standards at all, it laid down minimum standards intended to encourage the growth of and strengthen voluntary collective bargaining.

In spite of early tendencies towards increased state intervention, the position as inherited at independence continued until the enactment of the Industrial Relations Act, 1971. The 1971 legislation sought to restructure the whole system of collective bargaining introducing, as it did, mandatory and legally binding agreements and institutions to support the process of collective bargaining. Henceforth under the Act, collective agreements were to be approved by the Industrial Relations Court, a new watchdog institution. Later, in 1983, the power to approve collective agreements was transferred to a more specialised body, the Incomes and Prices Commission.<sup>4</sup> The legislation also prescribed collective bargaining procedures and required joint industrial councils in each major sector. The Act also, by implication, introduced the first statutory incomes policy. The Industrial Relations Court, which as we have seen initially had the power to approve collective agreements, was obliged to take into account the "Government's declared policy on prices and incomes."<sup>5</sup>

The policy to restructure collective bargaining has a firm economic basis. It is the central element to a fabric of policy that also comprises attempts to reduce industrial conflict and introduce an effective incomes policy which we discuss below in Chapters Six and Seven respectively. The major aims are to boost productivity, keep wage rises in check and control strikes. The introduction of legally binding collective bargaining procedures and agreements was in support of these aims. In this Chapter we examine the relevant aspects of the procedures and institutions and assess their impact to date.

### 5.B. The Nature of Agreements

One of the major changes in collective bargaining brought about by the 1971 legislation was that in the nature of collective agreements. Two types of agreements that can be concluded between the parties were introduced for the first time in Zambian labour relations. The first of these is the "recognition agreement."<sup>6</sup> Although the term is not specifically defined in the Act, its nature is apparent from Section 112 which provides for the "essentials" of the recognition agreement. Firstly, it requires the employer and association representing an employer or a number of employers to duly recognise the trade union involved "as the sole representative of and exclusive bargaining agent for employees employed by such employer, or by the members of such association" for the purpose of regulating the collective relationship of the parties. Secondly, it obliges parties to set forth in their written agreement such methods, remedies relating to procedure or otherwise and for settling disputes or remedying grievances through collective bargaining. Thirdly, the agreement has to specify the manner and circumstances in which an agreement can be reviewed, altered, varied, replaced or terminated.

Once the agreement has been concluded, the parties are obliged to submit it to the Industrial Relations Court which is vested with the power to approve or vary it. It should be noted that unlike in the case of the substantive collective agreement which we presently discuss below, the Court still retains the power of approval over recognition agreements which for the most part are merely procedural. Under Section 8 of the 1983 amendment, the Incomes and Prices Commission must also be notified of the recognition agreement once approved or varied by the Court. Where the parties fail or neglect to enter into a recognition agreement, it is deemed to be a collective dispute within the provisions of the Act.<sup>7</sup>

The second type of agreement envisaged by the Act is the collective agreement. Unlike the recognition agreement which is apparently procedural in character, a collective agreement deals with substantive issues. It is defined in Section 3 as "an agreement negotiated by an appropriate bargaining unit in which the terms and conditions of or affecting the employment and remuneration of employees are laid down." Every collective agreement is required to contain statutory clauses stipulating: (i) the period for which the agreement is to remain in force; and (ii) the method and procedure of amendment, termination or replacement. Under the 1983 amendment, the parties have to submit a collective agreement to the Incomes and Prices Commission (see example Appendix IV) for approval within fourteen days of conclusion.<sup>8</sup> The agreement then has to be gazetted under the auspices of the Commission, inviting comments from any person affected if it is of the opinion that it would be in the public interest.<sup>9</sup> The Commission also receives comments from the Ministry of Labour and Social Services through the Labour Commissioner.<sup>10</sup> Where the Commission is satisfied that a collective agreement contains the statutory clauses as required, is not contrary to any written law and to the Government's declared policy on prices and incomes, and is not prejudicial to the public interest (a term not specifically defined), it approves the agreement.<sup>11</sup> The Commission also has the power to vary or amend the agreement as it deems fit. It may also summon parties to give clarification.<sup>12</sup> Once approved it becomes legally binding upon the parties for such a period as the Commission shall approve.<sup>13</sup>

The requirement under the 1971 Act that collective agreements be legally binding was a major departure from the system of industrial relations as derived from that of Britain.<sup>14</sup> Similarly, the introduction of the distinction between recognition and substantive agreements was also new. The changes were in keeping with the restructuring of other institutions which we shall presently examine. They were intended to clarify obligations and rights in a system which had essentially changed from a voluntary to a

compulsory one. The change was profound, at least in theory. It introduced the notion of the written agreement in an otherwise 'oral tradition' where many experienced trade union negotiators' educational background was inadequate to understand intricate written agreements. The complexity of written agreements was a recurring comment during our field work.<sup>15</sup>

In practice, however, the changes have meant little. The enforceability of agreements has not attained any practical importance. There has hardly been any case before the Industrial Relations Court directly concerned with agreements as binding contracts. More important to the fate of government strategy, the legal nature of collective agreements has not curbed economically damaging industrial conflict as we shall see in Chapter Six. In spite of the requirement of the law, therefore, what the Donovan Report said of Britain<sup>16</sup> in its analysis is essentially true of Zambia. In spite of the legal requirement parties have shown little propensity of intention to be legally bound by collective agreements.<sup>17</sup>

#### 5.C. The Collective Bargaining Process

Collective bargaining under Part VIII of the Act is envisaged within a given set of procedures and institutions. The nature of collective bargaining is apparent from the definition of the term in Section 3. It is defined as "the carrying on of negotiations by an appropriate bargaining unit for the purpose of concluding a collective agreement". It would appear from the definition that although the conclusion of a recognition agreement may be regarded as falling within the wider framework of collective bargaining, it is not, strictly speaking, part of the substantive process under the Act.

Although collective bargaining is clearly conceived within certain procedures and institutions, no specific guidelines are given as to the subject matter and the manner of negotiation, for instance. The question of the subject matter is partly resolved by looking at the definition of a collective agreement and collective bargaining practice as it has emerged.

As mentioned earlier, a collective agreement is concerned with the laying down of terms and conditions of employment and remuneration. Thus the scope of bargaining issues is potentially very wide indeed. It is of course subject to interpretation by the Industrial Relations Court, which as in other matters, gives binding decisions (see Chapter Six, below). No such pronouncement has been made to date. In practice experience has been varied. Many collective agreements have followed the traditional format with the very minimum in the subject matter covered. On the other hand, a few agreements we examined have covered a wide variety of subjects well beyond any restrictive definition of remuneration and employment conditions.<sup>18</sup> It has been suggested by one observer that agreements and subjects for negotiations will in time become more comprehensive as parties gain more experience, a development which it is said, would be similar to the experience of some sectors in the United States.<sup>19</sup>

The Act is also silent on the actual manner in which collective bargaining is to be conducted. It seems to assume that parties either reach agreement on their collective agreement or reach a deadlock which amounts to a collective dispute. Section 87 does, however, require that the bargaining unit inform the Minister at least one month (but not earlier than two months) from the expiration of the existing agreement, if the unit has been unable to conclude a new agreement.

The legislation also lacks any guidelines on the nature of the duty to bargain.<sup>20</sup> There is no requirement that bargaining be conducted

in "good faith", for instance. It has, however, been suggested that the definition of collective bargaining "... the carrying on of negotiations by an appropriate bargaining unit for the purpose of concluding a collective agreement", charges the parties to negotiate in good faith.<sup>21</sup>

#### 5.C.1 Institutional Framework

The institutional framework of collective bargaining under the Act was conceived at two levels, at the undertaking (plant or firm) and the industry level. Several institutions are also involved both in the actual process of bargaining, if need be, and the approval of the agreement concluded.

Bargaining representatives at each level form a bargaining unit which in terms of Section 3 means (a) "in relation to collective bargaining at the level of an undertaking other than an industry, the representatives of the management of the undertaking together with the representatives of employees in such undertaking; (b) in relation to collective bargaining at the level of an industry, a joint council."

As we have mentioned, the duty of each bargaining unit is to commence negotiations for the purpose of concluding a new collective agreement within the time specified before the expiry of the existing agreement, that is to say three months. The unit is also required to inform the Labour Commissioner and the Secretary to the Incomes and Prices Commission within fifteen days after the commencement of negotiations. Where a unit neglects to commence negotiations, the onus of proof is on it to show reasonable cause.<sup>22</sup>

For the purpose of collective bargaining at the industry level, so far the more predominant feature of collective bargaining,

the law requires the formation of joint councils for every industry. By the end of 1985 (See Table 4, P 148, below) joint councils had been formed and industry-wide agreements concluded in most of the major sectors.<sup>23</sup> Every joint council must have a constitution which has to provide for, inter alia, the composition of its membership, rules and the holding of meetings at intervals not exceeding three months.<sup>24</sup>

Besides the bargaining units at the undertaking and industry level, three outside institutions are involved at various stages of collective bargaining. These are the Ministry of Labour and Social Services (in particular the Labour Commissioner and his officials), the Industrial Relations Court and the Commission on Prices and Incomes.

Taking the Court first, as we have seen above, its role in collective bargaining is now limited to agreements concluded before 1 May 1983, and still in force. Its current role in the collective bargaining process is, therefore, marginal. As we have noted, however, it retains the power to approve recognition agreements which are part of the wider process of collective bargaining, laying down, as they do, the procedural requirements. It also retains the function of interpreting the collective agreement, or indeed adjudicating in the event of negotiations reaching a deadlock.

The Court's past role in the approval of collective agreements was self-restricted. It viewed the approval of collective agreements as a formality, leaving the detailed work of checking the legal requirements to the Labour Commissioner's Office and, occasionally, the Attorney-General's Office. One case, that of Chanda versus The Zambia National Milling Company<sup>25</sup>, was indicative of the Court's attitude in that respect. The brief facts of the case

TABLE 4

JOINT COUNCILS AND INDUSTRY-WIDE AGREEMENTS,  
31 DECEMBER 1985

| <u>SECTOR</u>                              | <u>TYPE OF AGREEMENT</u>   | <u>YEAR OF INITIAL AGREEMENT*</u> |
|--|----------------------------|-----------------------------------|
| Agriculture                                | Recognition and Collective | 1975                              |
| Banking                                    | " "                        | 1974                              |
| Building and Civil Engineering Contractors | " "                        | 1974                              |
| Copper Mining                              | " "                        | 1974                              |
| Clothing Manufacturing                     | " "                        | 1975                              |
| Engineering and Steel                      | " "                        | 1974                              |
| Hotel and Catering                         | " "                        | 1976                              |
| Local Government                           | " "                        | 1980                              |
| Milling                                    | " "                        |                                   |
| Motor Trade                                | " "                        | 1974                              |
| Printing and Newspapers                    | " "                        | 1975                              |
| Railways                                   | " "                        | 1974                              |
| Road Transport                             | " "                        | 1975                              |
| Security                                   | " "                        | 1975                              |

Sources

Labour Department Annual Reports, 1974-83,  
Government Gazette Notices, 1985.

\*

Initial agreements concluded under the Industrial Relations Act, 1971.



were that the applicant, a former employee of the Zambia National Milling Company was claiming for wages retrospectively awarded under a new collective agreement in the firm. The employee had left the Company's employ in the interim period before the agreement was approved by the Court. The Court denied jurisdiction. Instead the Ministry of Labour had to obtain an advisory opinion from the Attorney-General's Office which was later distributed as guidance to all labour officers involved in similar claims.

The matter was apparently within the Court's jurisdiction, particularly as the agreement in question was later affirmed by it. One would have thought that the Court could have dealt with the matter then. It has been speculated that the Court's reluctance to involve itself in such cases is in part an indication of its lack of independence, in particular, vis-a-vis the Ministry of Labour and Social Services which has tended to regard the Court as one of its administrative departments. The Ministry furnishes the Court with its administrative staff and annually reports on its activities.<sup>26</sup>

In contrast, the Labour Commissioner's Office has not only kept its previously pervasive role as 'on the spot arbiter' of collective bargaining (through labour officers), but has shown a tendency to encroach on the functions of both the Court and the Commission. Labour officers tend to be the first to be involved informally by offering advice to the parties. In many cases they have been instrumental in the breaking of deadlocks during collective bargaining even without resorting to their formal powers of mediation under the Act.<sup>27</sup> Although once concluded collective agreements have to be sent to the Commission (previously to the Court), in practice they are sent through the Ministry who check them mostly to ensure that they contain statutory clauses required by the Act and also that they do not conflict with any written law. Similarly, the Ministry attempts to correct typographical mistakes and errors in format and ambiguous language. Although the Ministry officials do not generally try to interject

their own views as to what the content of any agreement should be, there are many instances when they informally advise parties as to prevailing conditions in comparable sectors and as to the requirement of other laws. The latter function is not insignificant in a situation where few parties retain legal counsel. We found, for instance, that in one year about 30 per cent of collective agreements examined by the Ministry were returned to the parties before submission to the Court to make them compatible with the requirements of the Employment Act which regulates individual rights and obligations frequently incorporated into collective agreements.<sup>28</sup>

It is a matter of credit to the Ministry's role prior to the submission of agreements for approval that to date there are only two known cases where substantial objections have been raised against gazetted agreements. In both the cases concerned, the Court accepted the Ministry's recommendations and changed the agreements accordingly.<sup>29</sup>

The role of the Prices and Incomes Commission in the collective bargaining process is dealt with below in Chapter Seven. Suffice it to say that it has not only taken over the power to approve collective agreements, but has the responsibility of formulating incomes policy which is central to collective bargaining.

Three other institutions should be borne in mind in appraising the experience of collective bargaining under the legislation. These are the works councils, the works committees, and the party committees of the ruling Party, the UNIP. We deal with works councils and their impact as a distinct area of the incorporation strategy in Chapter Eight below.

Works committees were a product of the tripartite initiative of the Livingstone Labour Conference, 1967.<sup>30</sup> It will be recalled that it was the first tripartite response to pressing post-independence

labour relations problems. Works committees emerged as part of a package intended to stimulate a post-independence approach designed to reduce conflict, in particular encourage better communication between management and labour in the quest for higher productivity and, therefore, enhancement of the development process. Their focus has mainly been shop floor work arrangements intended to facilitate better supervision by frontline managers and higher output.<sup>31</sup>

Party Committees on the other hand are a creation of the ruling party intended to raise political consciousness of the workers on the shop floor to the Government's economic objectives. They were also intended as watchdogs (with an open-ended brief) to safeguard what the party regarded as the public interest.<sup>32</sup>

In many instances all these institutions co-exist not only with formal collective bargaining arrangements, but among themselves as well. Their jurisdictions in practice often overlap as well as do their personnel.<sup>33</sup> Nevertheless, their core activities are distinct from collective bargaining both in its traditional received setting and as restructured under the legislation.

One other institution, the tripartite Consultative Council for Labour and Productivity should also be mentioned here. Its introduction outside the Act's framework was intended to encourage collaboration in support of collective bargaining.<sup>34</sup> It was initially overshadowed by joint industrial Councils. Although the joint Councils have largely achieved the aim of centralising the process of collective bargaining to the industry level (See Table 4, P 148, above), they have not really achieved the aim of tripartite consultation. As a result the government seems to have decided to give the Council a more formal role in the proposed legal reforms which we shall presently discuss in Chapter Nine.<sup>35</sup> Under the proposals, the Council would be one of the most important institutions in industrial relations with a clear role. It would

also meet regularly unlike under current arrangements when the Council is only convened whenever the need arises.

#### 5.D. Impact of Restructured Collective Bargaining

The restructuring of collective bargaining under the legislation was clearly more economic in its objectives than political. By creating compulsory procedures and new institutions to police them, the government hoped trade unions and their members would take a more positive approach towards the conduct of industrial relations. Changed attitudes would reduce industrial conflict and hold wages down, among other major aims. Two of the important yardsticks with which to measure the impact of restructured collective bargaining are, therefore, the new dispute settlement procedures and incomes policy, in particular their effect on industrial action, productivity and wages. In the following Chapters Six and Seven, we try to assess the progress in these respects.

For our present purpose it will suffice to observe that the experience of collective bargaining has to date not drastically altered trade union attitudes. There is no evidence to suggest that state regulated bargaining procedures and agreements have checked trade union autonomy. There have been no fundamental change of attitudes at the work place as such. The legislation has, however, had some effect, some of which has been positive both in terms of state and union perceptions. Other changes are not easy to categorise.

In general, trade unions, once they got over the initial suspicion of government intentions, willingly complied with statutory procedures.<sup>36</sup> They particularly welcomed the introduction of compulsory trade union recognition procedures. As a result of the new provisions, unions in most sectors were accorded recognition

more easily. The agricultural industry, traditionally the most difficult sector in which to organise unions, is a case in point. Easier union recognition in turn increased most unions' credibility with the rank and file. The increase in union membership since 1974 can be partly explained in terms of such credibility.<sup>37</sup>

Beyond recognition the statutory procedures in part guaranteed unions some success in securing better wages and conditions for their members. Employers for their part have generally welcomed legally binding procedures for their certainty, even though they are still reluctant to resort to adjudication where they think unions are in breach of their obligations.<sup>38</sup> Although most employers are reluctant to enter into court proceedings where collective agreement infringements are in issue, the existence of such legally binding obligations nevertheless enables them to put pressure on unions during negotiations. As successive annual reports of the Zambia Federation of Employers (the ZFE) indicate, many employers are quick to remind employees and unions alike that they have followed both the "letter and the spirit" of agreements entered into when collective disputes arise.<sup>39</sup>

The impact of the 1971 provisions in other areas in relation to incorporation is less certain. Nevertheless there have been changes. Although the conduct of collective bargaining has not drastically changed, the focus has somewhat been modified from the received practice. Prior to the introduction of the new arrangements, for instance, collective agreements were not as detailed. Since 1974 however, agreements have progressively become more detailed in response to their binding nature.<sup>40</sup> Collective agreements today are likely to spell out in detail such matters regulated under statutes as the contract of employment, redundancy, medical disablement entitlements and summary dismissal.<sup>41</sup>

Other than such modifications in the focus of agreements, two other common changes may be pointed out. The first relates to the

introduction of disciplinary codes as part of collective agreements. The 1985 agreement between the Hotel and Catering Association on the one hand, and the Catering Workers Union of Zambia on the other, for instance provides:

"The union acknowledges that it is the function of the employer to maintain order, discipline and efficiency and that it may be necessary to discharge, dismiss, suspend or otherwise penalise for proper cause, in accordance with the agreed statement of disciplinary rules for the industry, provided that disciplinary action shall be made known to the union and may be subject to discussion."

The clause is followed by detailed offences and penalties. A typical collective agreement (see Appendix IV) now focuses more on matters of discipline. Every agreement we examined had an elaborate disciplinary code. In spite of such changes, however, there is no evidence that the general scope of managerial prerogatives has been enhanced. Neither has it been curtailed.

#### 5.E. Conclusion

To the extent that the reforms in collective bargaining have strengthened trade unions and increased certainty in industrial relations, it can be argued that a certain measure of incorporation has been attained. For the strategy of incorporation was not entirely designed to manipulate and control unions, let alone weaken them in every respect. In certain respects there has been a genuine desire to strengthen union structures, as we have seen in Chapter Four, so that they can really be representative of their members and act as effective agencies of government policy.

On three major fronts, the reduction of industrial conflict, higher productivity and wages control, there is no evidence that the restructuring of collective bargaining has yielded any clear results. On the contrary such evidence as is available (see

Chapters Six, Seven and Eight below), seems to suggest that government policy has not been successful.

It is not without significance, as we shall see in Chapter Nine, that the economy, the raison d'être of the entire incorporation strategy continues to decline with negative consequences for government aims.

NOTES TO CHAPTER FIVE

- 1 Kahn-Freund O, in Flanders and Clegg (Eds), 1954, op cit, P 66.
- 2 For a contemporary statement of characteristic features of the British industrial relations system with under-developed countries in mind, see Turner M A, "Wage Trends, Wage Policies, and Collective Bargaining: The Problems of Under-Developed Countries", Occasional Paper No 6, (University of Cambridge, Department of Applied Economics, 1966), P 26.
- 3 Ordinances Nos 23 and 24, 1949; Successively amended, revised and re-enacted as Acts of the Zambian Parliament in 1965, and later repealed by the Industrial Relations Act, 1971, (the IRA, 1971).
- 4 The Industrial Relations Act, 1971, Section 84 amended by Sections 5 and 6, Industrial Relations (Amendment) Act No 13 of 1983. The Court, however, retained its power with respect to agreements concluded before 1 May 1983.
- 5 Section 100, Industrial Relations Act, 1971. Henceforth all section references are to the IRA 1971, unless indicated otherwise.
- 6 Section 111
- 7 Section 81
- 8 Section 83, Industrial Relations (Amendment) Act, 1983 of recognition agreements, above.
- 9 Section 84.
- 10 Ibid
- 11 Ibid
- 12 Industrial Relations (Amendment) Act, 1983, Section 85
- 13 Ibid, Section 84.



- 14 For a recent authoritative restatement of the legal position of collective agreements under English/and British Law, see Lord Wedderburn, The Worker and the Law, (Middlesex: Penguin Books, Third Edition, 1986), P 318 ff.
- 15 Kalula E (Project Leader), Zambia Labour Relations Project Survey, Lusaka: University of Zambia Library Special Collections, 1983). (Hereinafter ZLR project findings)
- 16 Royal Commission on Trade Unions and Employers' Associations (The Donovan Commission), 1965-68, Report (Cmd 3623, London: HMSO, 1968).
- 17 Schmidt C T, "An Independent View" in Zambia Federation of Employers' National Industrial Relations Workshop, (Lusaka, 1978), P 62.
- 18 Cf. Collective agreements for 1985 for the Banking Industry on the one hand and the Copper Mining Industry on the other, (Government Gazette Nos 1050 and 1051, Lusaka, 1985).
- 19 Schmidt, 1978, op cit, P 69.
- 20 Manyema C, "Zambian Labour Legislation: A Draftsman's Observation" 1975, 1, 1, Some Aspects of Zambian Labour Relations, P 56.
- 21 Schmidt, 1978, op cit, P 69.
- 22 Industrial Relations Act, 1971, Section 82, as amended by the Industrial Relations (Amendment) Act, 1983, Section 4.
- 23 Section 79
- 24 Section 80
- 25 [1978] ZICR, 1.
- 26 Schmidt, 1978, op cit, P 70
- 27 ZLR Project findings op cit, personal communications.
- 28 Ibid
- 29 The cases involved the Agricultural Industry (Nakambala Sugar Estates), and the Motor Trades Association in 1978, Schmidt, 1978, op cit, P 71. No similar case has been reported since.
- 30 The Livingstone Conference Report, 1967, op cit.
- 31 Ibid
- 32 Fincham et al, 1979, op cit, P 219

- 33 ZLR Project findings, op cit.
- 34 Malauni V J, "Zambia" in Whittaker J, (ed) Industrial Relations, International Perspectives No 3, (Sydney: International Training Institute, 1982), P 10.
- 35 "Industrial Relations Bill, 1984" discussed in Chapter Nine, below.
- 36 Common comment by trade unionists interviewed at various periods, for instance interviews with ZCTU officials.
- 37 See Table 3, P 129.
- 38 Interview, ZFE Executive Secretary, Geneva: 10 June, 1986.
- 39 ZFE Annual Reports, 1979, 1982, 1985 (Lusaka: 1980, 1983, 1986 respectively).
- 40 Cf for instance, agreements between the Chamber of Mines and the Northern Rhodesia African Mineworkers' Union in 1963 on the one hand, and the Zambia Consolidated Copper Mines and the Mineworkers' Union of Zambia in 1983 on the other hand.
- 41 Such matters are mostly regulated by the Employment Act and the Workmen's Compensation Act, among other legislation concerned with "floor rights".
- 42 Clause 31, Joint Industrial Council Collective Agreement between the Hotel and Catering Association (representing employers) and the Hotel and Catering Workers' Union of Zambia (representing workers), Government Gazette No 180, 1985, (Lusaka: Government Printer, 1985). (See Appendix IV).

CHAPTER SIX

## INDUSTRIAL CONFLICT AND DISPUTE SETTLEMENT PROCEDURES

6.A. Introduction

The adoption of the trade union incorporation strategy as the basis of post-independence labour policy in Zambia was to a certain extent a response to deteriorating industrial relations characterised by frequent labour unrest and the breakdown of dispute settlement procedures. As Gilmore put it, "Strike-torn industrial relations ... led the country into some revolutionary thinking to solve its problems."<sup>1</sup> Although the majority of industrial disputes during the period before the Industrial Relations Act, 1974, came into force, were local disputes, usually small and limited in their effect, (also usually settled through the Labour Department's intervention), there were a number of major disputes between 1964 and 1972, which affected key sectors of the economy.

While the specific nature and causes of industrial action varied a great deal, the underlying general cause was the existence of serious labour grievances and expectations after independence coupled with the growing power of wage labour in urban areas. As we have noted in Chapter Four, self-government raised workers' expectations of higher wages and better working conditions. Such expectations were summed up by one miner in the now famous submission to the Brown Commission of Inquiry in 1966: "We are underpaid. We have waited very patiently. We work harder in most dangerous places. We want to live a better life ...."<sup>2</sup>

The miners were among the first to demonstrate their power, creating a major dispute in 1966. This dispute which led to the Brown Commission of Inquiry, challenged the government at a crucial time.<sup>3</sup> Other sectors of the economy soon followed the miners' example. In 1965, 1968 and 1970 railway workers were also engaged in three major stoppages. Similarly, Local Government workers and teachers were engaged in industrial action across the country in 1968 and 1970 respectively. In 1972, 1980 and more recently in 1985, the government was again faced with major industrial action in the public sector.<sup>4</sup>

As Table 6 below (PP 179 & 180) indicates the man-days lost over the years were considerable. It is also notable that most of the disputes contravened formal grievance procedures. It was unclear whether the breakdown in procedures was due to "employees' ignorance of formal procedures or to the inadequacies of both union leaders and management".<sup>5</sup> Nevertheless as in other areas of labour policy which we have studied, the Government's approach became increasingly interventionist and regulatory. The Government's attitude towards industrial action was particularly authoritarian. Although no military action to quell strikes was ever taken (a threat in the face of labour unrest was only made once<sup>6</sup>), the State resorted increasingly to emergency powers under Public Security legislation to control the situation. The government regularly used Section 27 of the Preservation of Public Security Act to extend the definition of essential services and so prohibit industrial action in an increasing range of sectors.<sup>7</sup> In 1967, the haulage of goods by road transport services, in 1968 the railways, and in 1970 the teaching service<sup>8</sup> were all declared to be essential services in the face of labour unrest. In spite of this further extension of essential services however, the government rarely used its powers to prosecute the workers involved.

As in other areas of labour policy examined in this Study, it is evident that the Government's approach between 1964 and the enactment of the Industrial Relations Act, 1971 (which came into force in 1974) was more ad hoc than deliberate. The provisions concerning industrial action and dispute settlement procedures in the 1971 legislation, however, marked a departure from that approach. The Act introduced further restrictions on industrial action and introduced a wider definition of essential services.<sup>9</sup> In Section 3 of the Act, "essential service" is defined to mean:

- "(a) any service relating to the generation, supply or distribution of electricity;
- (b) any fire brigade or fire service;
- (c) any sewerage, rubbish disposal or other sanitation service;
- (d) any health, hospital or ambulance service;
- (e) any service relating to the supply or distribution of water;
- (f) any service relating to the production, supply, delivery or distribution of food or fuel;
- (g) mining, including any service required for the working of a mine;
- (h) any communication service;
- (i) any transport service, and any service relating to the repair and maintenance or to the driving, loading and unloading, of a vehicle for use in the transport service;
- (j) any road, railway, bridge, ferry, pontoon, airfield, harbour or dock;
- (k) any other service or facility, whether or not of a kind similar to the foregoing, declared by the President to be a necessary service for the purposes of and under the Preservation of Public Security Regulations or any other regulations or enactment replacing the same."

Although the right to strike was preserved, a mandatory collective dispute settlement procedure was laid down which makes legal strikes difficult if not impossible. The most significant innovation was the introduction of compulsory arbitration under the Industrial Relations Court. The Act gives the Court powers to make binding decisions in both individual and collective disputes to the exclusion of ordinary Courts in many instances. Initially, the Court also had the power to approve and vary collective agreements, thereby giving it considerable power in economic matters. (See P 171 and note 44, below).

In this Chapter we shall examine the key features of the 1971 legislative reforms concerning industrial conflict and dispute settlement procedures. We shall also assess the impact of government strategy in that respect. First, however, we shall briefly examine the law and policy in this area during the period from independence to 1974 when the Industrial Relations Act came into force.

#### 6.B. Dispute Settlement Procedures in the Period

Prior to the Industrial Relations Act, 1971 coming into force, in April 1974, collective dispute settlement procedures and the right to industrial action were governed by the Trade Unions and Trade Disputes Act and the Industrial Conciliation Act.<sup>10</sup> Save for the changes made to the Trade Unions and Trade Disputes Act (see Chapter Five above), the operative provisions of the two laws remained intact from the colonial period. The major feature of the legislation was the voluntary nature of conciliation, akin to the British situation at the time of their enactment in 1949.

The Industrial Conciliation Act empowered the Minister of Labour to appoint a conciliator or a conciliation board on the application of interested employers or employees.<sup>11</sup> In certain circumstances,

depending on the gravity of the dispute, the Minister could appoint a board of inquiry.<sup>12</sup> In the latter instance the board was entitled to investigate the dispute and make appropriate recommendations to the Minister and not the parties.

In addition to or in lieu of the above, and with the consent of the parties involved, the Minister could refer the subject of a trade dispute to an arbitration tribunal mutually agreed upon between the parties, or, failing agreement, appointed by the Minister. Such arbitration could consist of a sole arbitrator; an arbitrator assisted by one or more assessors nominated by employers and an equal number nominated by employees; or one or more arbitrators nominated by employers, an equal number nominated by employees, and an independent chairman appointed by the Minister.<sup>13</sup>

In the light of later procedures under the 1971 Act, it is important to emphasise that the powers of conciliators and conciliation boards were limited to argument and persuasion. They had no power to compel parties even to discuss the dispute in question. Similarly, although the decisions of the sole arbitrator or arbitration tribunals were binding on the parties, that was due to a voluntary prior undertaking. Arbitration itself was voluntary in the first place and no party could be compelled to submit to it without its consent.

#### 6.B.1 Industrial Action

In Chapter Three we noted that one of the fundamental principles derived from the British experience on which immediate post-independence legislation was based, was the freedom to withdraw labour. In part the immunity given to unions to protect

them from the consequences of the common law rules relating to the restraint of trade and conspiracy was in recognition of the freedom to strike.<sup>14</sup> Yet the freedom to strike was subject to the exhaustion of dispute settlement procedures once entered into.

Moreover, there were other significant restrictions on the freedom to strike. As we have noted above the government tended to resort to public security legislation to check industrial action. Industrial action was also prohibited in essential services by virtue of Section 27 of the Trade Unions and Trade Disputes Act which made it an offence to hinder or interfere with the carrying out of those services. The onus of proof in those instances to show "just cause or excuse" rested upon the accused. Similarly, by virtue of Section 28 of the same Act, "wilful and malicious breach of contract, knowing or having reasonable cause to believe that the probable consequence, either alone or in combination with others, (was) to endanger human life or cause serious bodily injury or expose valuable property to destruction or serious injury" was an offence.

Given the Government's tendency to progressively extend the range of essential services the restrictions on the freedom to strike were considerable. It is perhaps not surprising that the majority of strikes after independence, even before the enactment of the 1971 legislation, were "wildcat" strikes in contravention of normal procedures. Despite this widespread incidence of unofficial and often "unconstitutional" strikes which a trade union report once attributed to employees' ignorance of formal grievance procedures and the inadequacies of both union leaders and management, among other reasons,<sup>15</sup> legislation prior to 1974 left some scope for legal and constitutional industrial action.



### 6.C. Post - 1974 Dispute Settlement Procedures

As we have noted above, the machinery for the prevention and settlement of trade disputes up to 1974 under the Trade Unions and Trade Disputes Act and the Industrial Conciliation Act provided for voluntary conciliation and arbitration. Under the arrangements the Department of Labour was an active participant normally intervening to offer to conciliate on an informal basis. Mediation services were also available to the parties through labour officers from the Department. In fact the majority of grievances and disputes were settled by the Department's intervention. Consequently only a minority went to formal conciliation and arbitration.<sup>16</sup>

The changes made by the Industrial Relations Act, 1971 in respect of dispute settlement were among the most radical legislative reforms in the Government's incorporation strategy. The effect of the provisions was to introduce compulsory conciliation and arbitration. The impact of government strategy in industrial conflict and dispute settlement, largely depends on the reforms contained in Parts IX and X of the Act. It is, therefore, necessary to examine the provisions in some detail. We first proceed by looking at the various stages of collective dispute settlement envisaged under the Act and then the role, function and the powers of the Industrial Relations Court.

#### 6.C.1 Collective Dispute Settlement Procedures

Under the Act a collective dispute as defined in Section 3<sup>17</sup> only arises when one party has made a demand in writing to the other party with a copy sent to the labour officer (termed proper officer under the Act), and the second party has failed to reply within fourteen days, has rejected the demand or has failed to make a

counter offer. Alternatively, a dispute will be deemed to exist if the parties have held at least one meeting with a view to negotiating a settlement of the dispute, but have failed to reach settlement on all or some of the matters at issue between them.<sup>18</sup> Once a dispute has arisen the parties are obliged to inform the Ministry through the proper officer. The proper officer then attempts to mediate.<sup>19</sup> Where a settlement is reached through mediation, it has to be reduced to writing and a copy sent to the Minister who in turn forwards it, with his comments, to the Industrial Relations Court for approval. If the Court approves, subject to the requirement that the settlement should not be contrary to any written law in force or to public policy, the award becomes final and binding upon the parties for such a period as the Court may specify.<sup>20</sup>

Where the parties are unable to reach a settlement through mediation, a report has to be made to the Minister who has to appoint a conciliator or a board of conciliation comprising a chairman and not less than two, but not more than four other members to conciliate in the dispute.<sup>21</sup> Alternatively, if the parties so request, and the Labour Commissioner so recommends, the Minister may refer the dispute directly to the Court thereby bypassing the conciliation stage.<sup>22</sup> Where a dispute is referred to the Court without going through the process of conciliation, the Court can use its discretion to either make a final and binding decision, as in all other matters, or to refer it back to the Minister with such directions to him as it may deem necessary and conducive to the process of conciliation between the parties.<sup>23</sup> If on the other hand, the dispute at this stage goes through conciliation and is settled, the terms are reduced to writing and forwarded to the Court through the Ministry. Subject to the requirements of any written law or public policy the Court may vary or confirm the terms and inform the parties of its decision through the Minister.<sup>24</sup>

Where the parties fail to reach a settlement through conciliation, the Minister has to refer the dispute to the Court for a final and binding decision.<sup>25</sup>

At every stage of this procedure the Ministry through the Labour Department has wide supervisory powers. Failure to submit or to observe procedural requirements is subject to penal sanctions.<sup>26</sup> There is also a maximum period specified for every stage of the process. Moreover, the statute provides that all procedures have to be exhausted before industrial action can be taken.<sup>27</sup> In practice, therefore, lawful strike action is hardly possible. In assessing the effectiveness of the procedures, we should bear in mind that the procedures and the court have been intended as a "strike-alternative."<sup>28</sup>

#### 6.C.2 The Industrial Relations Court

An equally innovative feature of the 1971 legislative regime is the Industrial Relations Court set up under Part X. The Court was conceived with a central role both in the settlement of dispute procedures, as we have seen above, and the control of industrial conflict. The Court's role, functions and powers are best appreciated by examining the provisions concerning it in some detail.

##### 6.C.2(a) Composition, Status and Procedure

In accordance with Section 96 (2) (3) (4) and (5), the Court consists of the Chairman and his Deputy appointed by the President of the Republic from persons who are either judges of the High Court or are qualified to be such. Besides the Chairman and his Deputy, the

President also appoints two other members or such greater number as he may prescribe. To date the Court has consisted of four judges, including the Chairman and his Deputy. In addition to the substantive judges, the Minister has power to nominate an even number of assessors of up to fourteen.<sup>29</sup> The Act further prescribes that half of the number of assessors shall be the representatives of employers and the other half shall consist of representatives of employees. In any one case, the Chairman is empowered to call upon two of such assessors, one from each side, to sit with the Court. While the Court is free to take the assessors' opinions into consideration in making its decision, it is not bound to conform to their opinions.<sup>30</sup>

Three members or any greater uneven number as the Chairman may direct constitute a quorum for the hearing of any matter before the Court.<sup>31</sup> An interlocutory matter may, however, be heard by a single judge under Rule 34 of the Court's rules, 1974.<sup>32</sup> The determination of interlocutory matters would, therefore, appear to be in keeping with ordinary judicial practice whereby such matters are usually dealt with by a single judge in Chambers. Other than in matters of an interlocutory nature, decisions of the Court are by majority opinion of the members sitting.<sup>33</sup>

The Act vested the Chairman with the power to make rules by which proceedings of the Court are governed.<sup>34</sup> The current rules were accordingly made in 1974.<sup>35</sup> Subject to the provisions of the Act and its rules, the Court has power to regulate its own procedure. It has been said that the Court's approach in that respect has been greatly influenced by the attitude taken by the President of the defunct National Industrial Relations Court in England, Lord Donaldson, currently Master of the Rolls. Lord Donaldson is said to have been inclined to avoid unnecessary formality and encouraged parties to meet informally to discuss the best method of procedure.<sup>36</sup> This approach seems to be in keeping with the spirit of Section 101(2) which exempts the Court from being bound by rules

of evidence in Civil or Criminal procedures. Instead the chief function of the Court is "to do substantial justice between the parties before it" (emphasis given).<sup>36</sup>

The status and constitutional position of the Court in relation to ordinary Courts has not been without controversy, both among commentators and in labour relations circles, including the unions. It has been argued on the one hand that the requirement that members of the Court be either High Court judges or those qualified to be such, coupled with the nature of its powers clearly give it the status of the High Court. It has been emphasised in this respect that the Court is vested with the power to make final and binding decisions in matters brought before it.<sup>37</sup>

On the other hand it has been argued that Parliament could never have intended to create a parallel system of adjudication outside the ultimate supervision of the Supreme Court. In that respect it has been suggested that the "final and binding nature" of the Court's decisions must be restricted to the merits of any individual case to the extent that it is within the authority of the Court. It is conceivable that a situation might arise where the Court could exceed its authority, mis-use its powers or there might be a matter of fraud. In such a situation appeal would go to other Courts, on procedural grounds at least.<sup>38</sup> As we have seen in Chapter One some critics have gone as far as suggesting that the Court is unconstitutional.<sup>39</sup>

These arguments were brought before the High Court in the case of The Zambia National Provident Fund Board Versus The Attorney General and Others.<sup>40</sup> The case was an appeal against a decision of the Industrial Relations Court. The applicant sought a writ of certiorari, arguing that: (1) the Industrial Relations Court was an inferior court to the High Court; (2) it was not part of the Zambian judiciary; and (3) the ouster clause contained in the Industrial Relations Act, 1971, to the effect that its decisions

were final and binding<sup>41</sup> could not take away from the High Court its Supervisory jurisdiction over lower courts; and the decision in question was wrong both in law and in fact.

In effect what was challenged was not only the final and binding nature of the Court's decisions, but its constitutionality. After reviewing a number of English cases, including a Privy Council decision on certiorari,<sup>42</sup> Judge Sakala concluded that the Industrial Relations Act was intended to exclude the power of the High Court to issue orders of certiorari against the decisions of the Industrial Relations Court for the purpose of quashing them. In the event, the consideration of the application on the merits was made unnecessary. The judge, however, urged the authorities to review the situation, in particular Section 101(3) to avoid any possible instances of injustice. The government has, however, not taken any action so far. The High Court's decision has further diminished the Industrial Relations Court's role in the settlement of industrial disputes. It has not endeared it to employers and trade unions who were already reluctant to resort to it to resolve collective disputes. Coupled with the Court's own decision to restrict its jurisdiction which we discuss presently, the Court's role in the incorporation strategy has become even more marginal.

#### 6.C.2(b) Jurisdiction and Powers

The Court's jurisdiction and powers under the Act are relatively wide for a court of its kind. By virtue of Section 98 the Court has jurisdiction and power to inquire into and make awards and decisions in collective disputes and any matters relating to industrial relations which may be brought before it; to interpret the terms of awards and agreements; to commit and to punish for contempt any person who disobeys or unlawfully refuses to carry out or be bound by an order made against him by the Court under the

Act. It can also perform such acts and carry out such duties as may be prescribed under the Act or any other written law. It can, moreover, generally inquire into and adjudicate upon any matter affecting the rights, obligations and privileges of employees, employers and representative organisations.

In addition to the above, the Court's rules give it power to direct that any person not already a party to proceedings be added as a party, to issue directions as to the future conduct of proceedings; to administer interrogatories; to compel the attendance of witnesses, and the production of documents.<sup>43</sup> Until 1983, the Court also had the power to examine and approve collective agreements. The function was, however, transferred to the Prices and Incomes Commission following the enactment of the Industrial Relations (Amendment Act), 1983.<sup>44</sup> Prior to the transfer, the Court approved a total of 384 collective agreements. It still retains the power of approval in relation to recognition agreements.<sup>45</sup>

The Act also gives the Court a role in the formation and establishment of trade unions and employers' organisations. It has appellate jurisdiction where an applicant is aggrieved by the refusal of the Labour Commissioner in respect of registration or cancellation of a trade union or an employer's organisation.<sup>46</sup> The Court is also seized of original jurisdiction to grant injunctions, in appropriate cases, prohibiting officials of a trade union or an employer's organisation from holding office or dealing with the respective organisation's funds.<sup>47</sup> Under Section 28, the ZCTU is authorised to adjudicate upon trade union jurisdiction disputes as to which of them have the exclusive right to represent specified employees. The Court has appellate jurisdiction in cases of appeal from a decision of the Congress in such instances. Alternatively, where there has been no adjudication by the Congress, the Court can be seized of original jurisdiction in such matters.<sup>48</sup>

Another important jurisdiction of the Court concerns complaints. A complaint can be brought to the Court in the case of an irregularity in the election of any person to any office in a representative body. Where the Court is satisfied that an irregularity has taken place, it has the power to declare such an election null and void and order a new election.<sup>49</sup> Similarly, the Court can receive applications with a view to determining who should hold any office in a trade union, the Congress, an employers' association or the Federation of Employers. The Court has power to make a declaration on that behalf. In that respect any person who acts or purports to act contrary to such a declaration shall be liable for an offence under Section 99(3). Such an offence would not prejudice any contempt proceedings to which such a person could be additionally liable.<sup>50</sup>

Probably the most important power of the Court under the Act, as initially perceived by workers, is that relating to dismissals. Where an employee has reasonable cause to believe that his services have been terminated or that he has suffered any other penalty or disadvantage on the grounds of his race, colour, sex, marital status, religion, political opinion or affiliation, tribal extraction or social status or any other ground prejudicial to his rights, he may lay a complaint before the Court. Where the Court finds in favour, it has the power to grant such remedy as it may deem fit, including reinstatement or compensation for loss of employment.<sup>51</sup>

As Table 5 (P 173) shows, the Court exercised its jurisdiction from 1974 to 1983 in varying degrees. For the first three years the Court's work was dominated by the approval of recognition agreements. Thereafter, other issues such as the approval of collective agreements, complaints and applications increased and fluctuated in their frequency. Collective disputes and appeals were the least frequent throughout the period, totalling 10 and 27 respectively.



TABLE 5  
ACTIVITIES OF THE INDUSTRIAL RELATIONS COURT  
UP TO 31 DECEMBER 1983

| Year  | Collective Agreement | Recognition Agreement | Complaint | Applications | Appeals | Collective Dispute | Total |
|-------|----------------------|-----------------------|-----------|--------------|---------|--------------------|-------|
| 1974  | -                    | 36                    | -         | -            | -       | -                  | 36    |
| 1975  | 22                   | 54                    | 3         | -            | 2       | 2                  | 81    |
| 1976  | 21                   | 34                    | 4         | -            | 11      | -                  | 70    |
| 1977  | 18                   | 10                    | 5         | -            | 2       | -                  | 35    |
| 1978  | 26                   | 14                    | -         | 2            | 2       | -                  | 45    |
| 1979  | 31                   | 19                    | 28        | 94           | 2       | 2                  | 176   |
| 1980  | 83                   | 23                    | 32        | 82           | 3       | 1                  | 224   |
| 1981  | 97                   | 18                    | 60        | 93           | 3       | 1                  | 172   |
| 1982  | 47                   | 21                    | 69        | 52           | -       | 2                  | 123   |
| 1983  | 29                   | 30                    | 68        | 22           | 2       | 2                  | 153   |
| TOTAL | 384                  | 260                   | 269       | 345          | 27      | 10                 | 1215  |

SOURCE: Ministry of Labour and Social Services, Annual Report, 1981 (Government Printer, Lusaka, 1985)

In 1983 the Court made decisions that have led to a notable decrease in the number of applications (that is to say cases brought to the Court mainly by individuals) before it.<sup>52</sup> In two cases, A T Ndulo Versus Indeco Ltd., and Paul Mbewa Versus Bulk Carriers of Zambia.<sup>53</sup> the Court held that except for specified Sections of the Act, the Court's jurisdiction is in the main confined to group rights, obligations, privileges and disputes in contrast to individual rights. Prior to the decisions, as Table 5 indicates, the Court entertained and dealt with individual cases (applications) filed under Section 98(g) of the Act. The subsection gives the Court the jurisdiction to "generally inquire into and adjudicate upon any matter affecting the rights, obligations and privileges of employees, employers and representative organisations . . . .".

What led the Court to adopt this restrictive interpretation of its jurisdiction after almost ten years of operation is not clear. It has been speculated that the Court's reaction may have been influenced by attitudes in the legal profession and employers' organisations exemplified by the challenge against its jurisdiction in the case of The Zambia National Provident Fund Board which we have mentioned above.<sup>54</sup> On the other hand, it is widely known that the Court has been undermanned for a long time. It has, therefore, been exploring ways of reducing its workload.<sup>55</sup> There was no indication of the motivation for the decision in the case record. Whether in fact the decrease in individual applications will lead to a corresponding increase in collective dispute cases, to suit the incorporation strategy of closer control and regulation of industrial relations, remains to be seen. What seems to be clear is that the lessening of the Court's role in dispute settlement lessens the state's ability to regulate industrial relations in keeping with the incorporation strategy.

### 6.C.3 Industrial Action and Dispute Settlement Machinery

Industrial conflict in the form of labour unrest was one of the major concerns when the government set out to devise the current trade union incorporation strategy. It is clear from the provisions concerning dispute settlement that we have examined above, that the policy behind them was geared towards the control of industrial conflict. The immediate way this was done was to make use of the establishment of the dispute settlement machinery as a justification for a restriction on the right to strike. Thus, under Section 116 of the Act industrial action is unlawful where the underlying dispute has been referred to conciliation or to the Court. A brief outline of strike policy and procedures under the Act is, therefore, useful in appreciating government strategy.

Under the general scheme of the Act regulating industrial conflict, the right to strike or lock-out is not entirely extinguished. On the contrary, the right to strike seems to be implied in one of the key provisions that define employees' rights.<sup>56</sup> Whether in fact industrial action is lawful, however, depends on the interpretation of several provisions, circumstances and procedures under the Act. The key provision in this respect is Section 116. The provision prohibits industrial action in a number of respects. Firstly, industrial action is prohibited unless it is in contemplation or furtherance of a collective dispute in which the respective employer or employee is a party. This in effect prohibits any secondary action.<sup>57</sup> Section 116 also prohibits industrial action where not authorised by a strike ballot taken in the manner provided by the Constitution of a trade union.<sup>58</sup> These prohibitions are subject to penalties, including penalties for persons who incite the contravention of the same.<sup>59</sup> Finally, industrial action, even when it is in contemplation of a primary collective dispute, or authorised by a ballot, is prohibited

if conciliation is in progress or if it has been referred to the Industrial Relations Court for a decision.<sup>60</sup>

The only time during which a strike may be lawful under the Act, therefore, is at or from the point when a dispute is declared until the time the dispute is referred to conciliation.<sup>61</sup> There are two additional constraints on industrial action under Zambian law. First, Zambia has been under a state of national emergency ever since the Rhodesian Unilateral Declaration of Independence in 1965.<sup>62</sup> Although the Rhodesian problem has long been settled, the extraordinary powers vested in the President have not been revoked. Those powers enable the President to take action against any activity deemed to be detrimental to the interests of national security, health and safety. Although such power has not been used against strikes per se, it has been frequently used to detain recalcitrant trade union leaders.

Moreover, there are two further constraints. Under Section 117 of the Act, industrial action in essential services is prohibited. As we noted above, the range of services included in the category has been progressively extended over the years.<sup>63</sup> In addition, the list is progressively extended and may be further extended by a Presidential decree under the Public Security Regulations. Until recently the power was rarely used. It was, however, used in 1985 in response to a wave of strikes. In January 1985 a Presidential decree was issued banning stoppages in hospitals.<sup>64</sup>

It is, therefore, clear that a combination of the legal and procedural requirements under the Act, including essential services restrictions, coupled with national emergency and public security legislation has greatly reduced the scope of legal and constitutional industrial action. Yet this has not reduced the incidence of industrial action. It has simply meant that the majority of strikes that have taken place since the Act came into effect have been illegal, continuing the trend that was prevalent in the 1960's and early 1970's before the Act came into force.<sup>65</sup>

#### 6.D. The Effectiveness of Policy

There are two major grounds on which the effectiveness of government policy in this area can be assessed. The first is the extent to which parties have resorted to the new procedures for the settlement of disputes, particularly the Industrial Relations Court. Secondly, the effectiveness of government policy can be measured by assessing the impact of the Act on industrial action. Both elements are of course intertwined, but they can be examined separately.

##### 6.D.1 Resort to Procedures

An examination of the experience under the new dispute settlement procedures reveals several relevant trends. During the Court's first three years of operation, that is to say between 1974 - 76, it was mostly occupied with the examination and approval of recognition agreements, and later collective agreements.<sup>66</sup> The Court's work in that respect does not provide us with an objective basis on which to assess the attitude of parties to its role. The Court's jurisdiction in respect of recognition and collective agreements was based on a statutory duty placed upon all parties engaged in collective bargaining.<sup>67</sup>

Of the cases adjudicated during the period, the largest proportion were concerned with disputes arising out of the Working Parties which were charged with the responsibility of forming Works Councils in qualifying undertakings.<sup>68</sup> Although such cases have to be considered in assessing the overall impact of the new provisions, they are best regarded as contributing to the success of workers' participation arrangements which we deal with in Chapter Eight.

The next largest proportion of cases before the Court in later years, particularly between 1979 and 1982, was concerned with individual grievances, mostly concerning dismissals. While this group of cases provides a valid basis for assessment, one major factor has to be borne in mind. Individual workers' resort to the Court was initially fuelled by widespread optimism that the Court would be more sympathetic to their problems.<sup>69</sup> The Court also provided a quicker resolution of such cases than ordinary courts in civil proceedings. As we have seen the number of such cases has since declined. In fact there are reports which suggest that even before the Court restricted its jurisdiction, some workers, especially in professional categories, tended to prefer to sue their employers before ordinary courts.<sup>70</sup>

#### 6.D.2 Extent of Industrial Action

Trends in industrial action probably provide a more definite basis on which to assess the impact of government policy. The available statistics, (see Table 6 PP 179 and 180), unfortunately, are too incomplete to provide an objective basis on which to provide a clear judgement. Between 1964 and 1972, that is to say before the new controls on industrial action came into effect, the pattern was one of great variation. For instance, the number of working days lost in 1964 was much higher, at 125,738 than the following year when it dropped to 22,493. In 1966, mainly due to a prolonged miners' strike that year, that figure shot up to 579,406. It then came down sharply in 1967 (46,088), 1968 (65,898) and then rose sharply again in 1970 due to prolonged strikes by teachers and railwaymen. In 1971 the number of man days lost came down drastically to 18,894 and rose again in 1972 (30,8674).

Similarly, looking at post-Act years, the figures available, do not indicate any definite trend. In 1979, 79,896 man days were lost, a

TABLE 6  
INDUSTRIAL STOPPAGES

SOURCES: ANNUAL REPORTS, LABOUR DEPARTMENT; YEARBOOKS OF LABOUR STATISTICS (ILO); MONTHLY DIGEST OF STATISTICS

| Year | Number Number of<br>of Workers Man Days<br>Disputes Involved Lost |                  | Number of Disputes Over |                       |              |                  |
|------|---|------------------|-------------------------|-----------------------|--------------|------------------|
|      | No  | Man Days<br>Lost | Wage Demands            | Collective Agreements | Other Issues |                  |
|      | No  | Man Days<br>Lost | No                      | Man Days<br>Lost      | No           | Man Days<br>Lost |
| 1964 | 151   | 31,000           | 125,738                 | -                     | -            | -                |
| 1965 | 114   | 10,000           | 22,493                  | -                     | -            | -                |
| 1966 | 241   | 307,000          | 579,406                 | -                     | -            | -                |
| 1967 | 222   | 24,000           | 46,088                  | -                     | -            | -                |
| 1968 | 206   | 31,000           | 65,898                  | -                     | -            | -                |
| 1969 | 159   | 16,944           | 21,069                  | -                     | -            | -                |
| 1970 | 128   | 17,040           | 122,951                 | 103,638               | -            | 21,679           |
| 1971 | 127   | 14,964           | 18,894                  | 4,528                 | -            | 14,366           |
| 1972 | 74  | 10,453           | 20,874                  | 11,860                | -            | 8,994            |
| 1973 | 68  | 9,892            | 6,453                   | -                     | -            | -                |
| 1974 | 55  | 7,725            | 38,334                  | -                     | -            | -                |
| 1975 | 78  | 17,121           | 51,003                  | -                     | -            | -                |
| 1976 | 59  | 5,619            | 6,527                   | -                     | -            | -                |
| 1977 | 51  | 9,166            | 15,990                  | -                     | -            | -                |
| 1978 | 50  | 42,067           | 297,330                 | -                     | -            | -                |
| 1979 | 44  | 10,846           | 42,916                  | -                     | -            | -                |





figure that dramatically increased to 556,408 in 1981 due to several prolonged strikes during that year. The figure fell again sharply in 1982 to 7,702. It is, however, significant that the figures for 1984 show a sharp rise over those of 1982 and 1983. There were sharp rises in the number of disputes, 507 (compared to 54 in 1983); the number of workers involved, 27,750 (compared to 9,217 in 1983); and the number of working days lost, 31,382 (compared to 8,170 in 1983). These figures are probably a result of the worsening economic decline as mentioned in Chapter One and further discussed in Chapter Nine. They underline the economic imperatives of the trade union incorporation strategy. Although figures are not yet available for 1985, 1986 and 1987, indications are that a substantially higher number of man days will have been lost due to successive waves of strikes.<sup>71</sup>

Equally variable have been the figures of disputes and the number of workers involved, as is apparent from the same table.

What seems to be a more definite trend, and one that has not been officially recorded so far, is the continuing high number of "wildcat" strikes.<sup>72</sup> Such strikes tend to be both illegal (that is to say in contravention of the procedures and requirements of the Act) and unconstitutional (that is to say, in contravention of union constitutions). They also tend to be unofficial, that is to say, not approved by the union hierarchy.<sup>73</sup> In so far as the purpose of the dispute settlement machinery alone and other elements of Sections 116 and 117 of the Act was to reduce industrial action, it is difficult to see any hint of success. These methods of control were notable failures. Yet, the failure was not only partly due to the failure of procedures to function. There was also a failure of the unions to control the membership. Thus, most of the strikes were illegal as well as unconstitutional and unofficial.

One observation which we made in respect of the overall nature of government policy in Chapter Two needs to be emphasised here. There has been a certain continuity in government policy comparable to the approach before independence. The 1971 Act merely continued the government tendency of severely circumscribing the right to strike in practice by "emergency" action and the introduction of long lists of 'essential services' in which strikes are illegal. As Davies has noted, this was a cardinal feature of Colonial trade union control.<sup>74</sup> The post-colonial State in Zambia has made it part and parcel of its incorporation strategy.

The basis for the above policy, as during the colonial period, was economic. The closer regulation of dispute settlement procedures, in particular the introduction of compulsory procedures, was intended to reduce the frequency of strikes which tend to have negative economic effects. Although dispute trends have not been as definite during the overall period under consideration, they increased out of proportion for the last year (1984) for which figures are available. It is also significant that the upward trend is thought to have continued in recent years.<sup>75</sup> Judged against this background, therefore, the incorporation strategy in this area has not been successful.

## NOTES TO CHAPTER SIX

- 1 Gilmore H, "Industrial Democracy in Zambia", (June 1977), 28, 6, Labor Law Journal, P 380
- 2 Report of the Commission of Inquiry into the Mining Industry 1966 (Brown Commission) (Lusaka: Government Printer 1966), P 12.
3. Ibid
- 4 Sunday Times of Zambia. 23 April 1972.
- 5 The Mwendapole Report, 1972, op cit, P 20.
- 6 In 1967, the then Acting President, the late Simon Kapwepwe threatened striking Local Government workers with military action. Gertzel in Damachi, 1979, op cit, P 357.
- 7 For a recent discussion of essential services and the range of sectors to which they apply see Kalula, 1985, op cit.
- 8 Labour Department, Annual Reports 1967, 1968 and 1970 respectively. For a recent extension see Government Gazette, Notice No 273 of 1985, Lusaka, 11 March 1985.
- 9 See Section 116 discussed below. Initial and subsequent jurisdictions of the Court are considered below.
- 10 Trade Unions and Trades Disputes Act, and Industrial Conciliation Act, Chapters 507 and 508 of The Laws of Zambia respectively. Repealed by the Industrial Relations Act, No 36 of 1971.
- 11 Section 3, Industrial Conciliation Act, op cit.
- 12 Ibid. Section 12. A Board of Inquiry has to be distinguished from a Commission of Inquiry under the Commissions of Inquiry Act, which can be appointed by the President and is designed for specific situations not restricted to industrial relations matters. It was under the latter that both the Brown Commission for the Mining Industry, 1966 and the Whelan for the Civil Service, 1966, op cit, were appointed.
- 13 Section 5, Industrial Conciliation Act, op cit.

- 14 Section 3, 23, 25 and 26 of the Trades Unions and Trades Disputes Act.
- 15 The Mwendapole Report, 1972, op cit, P. 20.
- 16 This is apparent from successive Annual Reports of the Department. See, for instance, Annual Reports for 1966, 1968, 1973. See also Malauni V J, Ministry of Labour and Social Services: Organisation and Functions of the Department of Labour (Lusaka: Department of Labour, 1973) simco.
- 17 Section 3 defines a "collective dispute" as: a dispute between an employer, or organisation representing employers, on the one hand, and employees, or an organisation representing employees, on the other hand, relating to terms and conditions of, or affecting the employment of such employees: Provided that such a collective dispute shall be deemed to exist only in the circumstances set out in Section eighty-nine.
- Cf the wider definition of a trade dispute under Section 2 of the Trades Unions and Trades Disputes Act.
- 18 Section 89. All references hereinafter to the Industrial Relations Act, 1971, unless otherwise indicated.
- 19 Section 91
- 20 Section 92
- 21 Section 93(1)(2)
- 22 Section 93(3)
- 23 Section 93(6)
- 24 Section 94
- 25 Section 95
- 26 See for instance Sections 91(3); 95(8)(9); 116 2(c)
- 27 For instance: the 'other party' has until fourteen days to respond to claims and demands before a dispute is deemed to exist, Section 89(4); the proper officer has seven days to commence his mediation efforts once a dispute has arisen, Section 91(b); the Minister has fourteen days to report a settlement reached by conciliation to the Court, Section 92(4); the conciliator or conciliation board has to report the settlement reached within seven days, Section 94(2)

- 28 Schmidt C T, "Zambian Industrial Relations - Four years under the new law - Preliminary Comments and Observations," in Proceedings of the Zambia Federation of Employers' National Industrial Relations Workshop, (Lusaka: ZFE, 26-28 July, 1978), P 75. See also Gertzel, 1979, op cit, P 141.
- 29 Section 96(7)
- 30 Section 96(8)
- 31 Ibid 96(6)
- 32 Statutory Instrument No 206 of 1974
- 33 Section 96(9)
- 34 Section 101
- 35 Statutory Instrument No 206 of 1974 op cit
- 36 Dasai V, (First Deputy Chairman of the Court) "Role of the Industrial Relations Court in Zambia", (1975), 1, 1, Some Aspects of Zambian Labour Relations, op cit, P 73. The Court was also influenced by the Industrial Court in Kenya, ibid, cf Musch D J, "The Kenya Industrial Court", (1972), 2, 4, East Africa Law Journal, P 266; Cocker S, "The Industrial Court and Labour Relations in Kenya", (1972), 2, 4, East Africa Law Journal, P 157; Ghai D, "Industrial Court in Kenya: An Economic Analysis", Discussion Paper No 73, (Nairobi: Institute for Development Studies, University College, circa 1973).
- 37 Interviews: Chairman and Deputy Chairman, Officials of the Ministries of Labour and Legal Affairs, 11, 16, 17 December 1975 respectively.
- 38 See for example, Schmidt, 1978, op cit, P 75
- 39 Mwashota R K, et al, "Constitutional Law and Its Impact on the Status and Jurisdiction of the Zambian Industrial Relations Court: A Case Study of the Usurpation of Judicial Power by the Legislature." (Unpublished Paper, circa 1980)
- 40 Selected Judgments, 1983/HP/433.
- 41 Section 101(3) provides: "An award or decision of the Court on any matter otherwise falling within its sole jurisdiction shall be final and binding upon the parties thereto and on any parties affected thereby, and such award or decision shall not be questioned in any proceedings or court."

- 42 Cases referred to: Rex v Chancellor of St Edmundsbury and Ipswich Diocese, Ex parte White [1948] 1 K.B. 195; Certiorari to An Ecclesiastical Court [1947] 83 L.Q.R. 208; Paalman v Keepers and Governors of Harrow School [1978] 1 W.L.R. 736; South East Asia Fire Bricks v Non Metallic Union [1980] 2 All E.R. 689.

English Common Law is applicable to Zambia subject to local statutes. English Law (Extent of Application Act), chapter 3, section 2(a).

- 43 Industrial Relations Court Rules, 32, 36, 40, 41 and Section 104 of the Act respectively.
- 44 Industrial Relations (Amendments) Act No 13, 1983 transferred this power to the Prices and Incomes Commission. The Court, however, retained the power to examine and approve agreements concluded before 1 May 1983, Section 6
- 45 Section 112(3)
- 46 Sections 10 and 37, and Industrial Relations Court Rules 13 - 19 (hereinafter - Rules).
- 47 Sections 17 and 44, and Rules 3 - 7
- 48 Section 28 Rules 13 - 19, 28 and 29
- 49 Section 120
- 50 Section 99
- 51 Section 114
- 52 Labour Department, Annual Report, 1983, op cit, P 23.
- 53 [1983] ZICR, 12 and 17 respectively.
- 54 Personal Interview: Roger Chongwe, former member of the Court, London, 10 April 1987.
- 55 Personal Interview: Mrs Justice Lombe Chibesakunda, formerly Chairperson of the Court, 12 October 1983.
- 56 Section 4, in particular 2(d) (iii)
- 57 Section 116 (1) (a)
- 58 Section 116 (2) (a)
- 59 Section 116 (3) and (4)
- 60 Section 116 (1) (b)

- 61 Sections 89, 91 and 93.
- 62 Preservation of Public Security Act, Chapter 106 of the Laws of Zambia and Regulations made thereunder.
- 63 Government Gazette Notice No 273, 1985, op cit; Kalula 1985, op cit.
- 64 See report, "Industrial Action sparks off government restrictions on trade unions," (1985), 2, Social and Labour Bulletin, P 233
- 65 As late as July 1984 it was reported that there had only been two legal strikes since independence, see Sunday Times of Zambia, 26 July 1984, quoting President Kaunda.
- 66 [1975-78], ZICR, op cit
- 67 Sections 81, 83 and 84 (prior to Amendment No 13 of 1983) and Sections 111 and 112.
- 68 Arising out of Works Councils provisions in Part VII considered in Chapter Eight, below.
- 69 Schmidt, 1978, op cit
- 70 No statistics are available on this trend. By 1985 the unions' attitude towards the court seemed to have drastically changed. In one major case the unions preferred to sue the Ministry of Labour before the ordinary courts rather than the Industrial Relations Court, (1985), 2, Labour and Social Bulletin, op cit.
- 71 Ibid
- 72 President Kaunda's assertion, op cit. This was later confirmed by the Minister of Labour, Series of Interviews, Geneva, June 1986.
- 73 Both the ZCTU Chairman and several union leaders we spoke to confirmed this trend, Series of Interviews, Geneva, June, 1986.
- 74 Davies I, 1966, op cit, P. 42
- 75 Labour Department, Annual Report, 1983, op cit.

## CHAPTER SEVEN

### PRICES AND INCOMES POLICY

#### 7.A Introduction

The search for an effective prices and incomes policy has been a key element of incorporation both as a logical extension of collective bargaining restructuring under the Industrial Relations Act, 1971, and also as part of the wider national development strategy. The underlying problems experienced in Zambia in this respect have been similar to those of other developing countries that Turner chronicled in the late 1960's which have been also highlighted by other writers in more recent years.<sup>1</sup> Similarly, the search for solutions has been heavily influenced by the International Labour Organisation's approach characterised by a desire to place emphasis on the development of trade unions and collective bargaining as part of its international labour standard setting.<sup>2</sup> As in other areas of Zambian development however, prices and incomes policy has been dominated by problems of the dual nature of the economy. The economy continues to be characterised by a modern sector built around the copper industry which co-exists with the traditional sector. One is urban and mainly based on wage employment while the other is rural and based on subsistence agriculture. The result is an acute urban - rural imbalance with the relative prosperity of the modern over the rural sector. The imbalance, however, is not restricted to the rural - urban gap, it also extends to other areas of Zambian social and economic life. Critical among such other disparities is that between the highest and lowest paid wage earners. Such disparities have tended to determine the major issues of prices and incomes policy in Zambia.



Four major issues of differentials have dominated wage determination in Zambia at various stages since independence: the differentials between the earnings of expatriates and local workers; those between rural and urban incomes; those between earnings in different sectors; and those between the earnings of skilled and unskilled workers, or clerical and manual workers.<sup>3</sup> The last category of differentials corresponds, to a large extent, to the differential between salaries and wages.<sup>4</sup> Of these differentials that between expatriates and local pay scales is largely of historical significance now. It has ceased to exert any notable influence on Zambian wages bargaining. Expatriates in the labour force have steadily declined making it less likely that the issue will ever again impinge on local wage determination.

In spite of the fact that wage employment accounts for only 20 to 25 per cent of total employment in Zambia, the disproportionate pre-occupation with wage issues is understandable. Wage incomes account for as much as 75 per cent of total labour incomes in Zambia and data is both more accurate and more detailed in the modern wage sector.

Incomes control attempts have, therefore, been concerned with the wage differentials in varying degrees. Indeed, the concern to control the trade union role in wage determination has been a major motivation for the Government's attempts at incorporation.

In this Chapter we discuss some of the major issues of prices and incomes policy as a feature of incorporation. We start with a summary of some historical developments and then proceed to analyse various stages of attempts to formulate an effective incomes policy. We also examine the institutional and legal frameworks of current policy before concluding with an assessment of this area of the incorporation strategy.

### 7.B The Pre-Incomes Policy Era

Current attempts to formulate an effective incomes policy can be traced back to 1961. The year marked the acceptance by major employment sectors of the principle of African advancement into the full range of jobs occupied by European workers. In spite of the fact that collective bargaining, including wage bargaining had been a feature of African trade unionism since the late 1940's it was not until 1961 that some sectors, notably the Rhodesia Railways, opened its European categories of employment to Africans. Later in that year the European and African Sections of the Civil Service were combined into a non-racial local civil service even though nothing was done to bring the wages of the former European and African jobs into one common scale.

Further developments followed in the mining industry with the appointment of the Morison Commission of Enquiry<sup>5</sup> appointed to consider the industry's pay structure beyond "job fragmentation"<sup>6</sup> which up to then had been the bench mark of African advancement in the mines. The Morison Commission sought to create a non-racial pay scale throughout the mining industry by recommending the raising of African wages by a constant proportion throughout the pay structure, but not entirely closing the gap between the African and European pay scales. It was, therefore, not until 1964, at independence, that a truly uniform non-racial wage and employment structure was created. That came with the Hadov Salaries Commission<sup>7</sup> which reviewed Civil Service salaries. The Commission proposed to create a single scale out of four different ones based on race or the date of employment by awarding a sizeable pay increase to the lower-paid civil servants. It also recommended reducing the salaries for the former "European" jobs having taken account of the "requirements of the local employment market."

The rapid turnover of expatriate workers, especially after the dissolution of the Federation of Rhodesia and Nyasaland created

a problem which justified a recourse to a dual wage structure with the introduction of a different pay scale for expatriates as an inducement. The idea of expatriate inducement first took root in the mining sector where employers were most concerned to stem the loss of skilled expatriate labour. However, the differentials resulting from the 1964 wage settlement in that industry did not have any recognisable rationale to explain the considerable variation between local and expatriate pay scales.<sup>8</sup> Labour unrest among the ranks of African workers inevitably followed the perception of continuing inequality.

In 1966 the government responded with the appointment of another Commission of Enquiry under the Chairmanship of Roland Brown, then Tanzania's Attorney-General.<sup>9</sup> The Commission was instructed to examine the disparities between the expatriates' and local conditions of service in the mining industry. Although the Commission recommended formalising the Hadow formula of a single basic scale with allowances for expatriate workers, it found it difficult to decide what factors should determine the basic pay scale. The existing expatriate scale based on the inducement factor was rejected because it would be excessively inflationary and because it was seen to be based on an inappropriate notion of privilege intended to maintain a "European way of life." It was also felt that the effect of collective bargaining in the past had been to introduce wide-spread anomalies into the scale.<sup>10</sup>

The local scale on the other hand was also rejected as a basis, in the words of the Commission, because,

"it deliberately undervalues the skill of the African workers. It has been built from established points on the scale of African wages by a process of job evaluation, without reference to European rates for the same or similar work. The European miners were able to secure for themselves high wages because industrial skill in Zambia was scarce. It is still scarce and will remain so for many years to come. Its value to the employer does not depend on race or colour, but by isolating African wages from any connection with

European wages the mining companies appear .... to have devalued the skill which Africans can acquire now for the first time.<sup>11</sup>

In the end the Brown Commission recommended a 22 per cent wage increase to be applied uniformly throughout the African scale. The choice of 22 per cent was arbitrary, influenced less by any scientific calculations than what Fry termed the "correct" relationship of the new to the old scales.<sup>12</sup> It also stemmed from the Commission's belief that the mining industry was in,

"a situation which must be put right if there is to be any chance of industrial peace. Weighing in the balance the importance of the industry on which the development of Zambia ultimately depends, we have felt justified in recommending, as part of a new settlement, a general increase in wages which might otherwise be regarded as excessive in terms of the growth rate of the economy as a whole."<sup>13</sup>

The Brown Commission was soon followed by the Whelan Civil Service Salaries Commission<sup>14</sup> which again clearly emphasized the mining industry as the leader in setting the pace of policy review in the area of wages as in other areas of industrial relations. The Whelan Commission's particular task was to take into account wage awards in other fields and to tackle the disparity between lower and higher civil service salaries. The Whelan Commission followed the Brown Commission by awarding an average pay increase of 22 per cent, but weighted in favour of the lower-paid who received a 25 per cent increase while those on higher incomes only received an increase of 15 per cent. Of significance was the Commission's proposal to end differentials between rural and urban civil services pay scales, thereby virtually doubling the lowest paid rural civil servants' pay.

The effect of the Whelan recommendations affected other sectors resulting in wage increases of 20 to 25 per cent. Most sectors also followed Whelan's example in ending rural - urban pay differentials.

The major achievement of efforts at wage determination up to 1969 which we have briefly reviewed here was the attainment of unified wage scales in all major employment sectors. This was true of both differentials between expatriate and local basic scales (discounting the inducement element), and those between the urban and rural areas. There was no apparent concerted incomes, let alone prices policy on the part of the government. Government action was more of a reaction to address some of the anomalies created during the colonial period and also due to the need to pacify industrial relations. At this period there was no design to use incomes policy as a tool of incorporation, that as we shall presently see, came later.

#### 7.C The Era of Incomes Policy

Attempts to regulate wages especially in the private sector go back to 1948 with the adoption of the Minimum Wages, Wages Councils and Conditions of Employment Ordinance. The government at independence retained the principal provisions of the law which until recently remained the legislative basis for wage fixing and for determination of minimum wage rates by Wages Councils and Wages Boards.<sup>15</sup> The major concern of the government at independence was to replace the racially-oriented Wages Councils and Wages Boards with non-racial bodies. It was also concerned with the establishment of minimum wages to remove gross inequalities and raise the wages of the lowest paid African workers, for whom no statutory minimum wages and conditions of employment had been set.

The next incomes policy initiative did not occur until 1965. In that year the first attempt was made to bridge the gap between urban and rural incomes under the Transitional National Development plan in 1965. The plan sought to reverse the current development trend of rural - urban migration through a policy of monetisation of agriculture and a reduction in the rural-urban disparities. It

was followed by the First Development Plan, 1966-70. The latter added employment objectives anticipated to benefit rural areas. Although three wage rounds can be discerned in the first decade of independence, 1963-64, 1966-67 and 1970-71, built around wage reviews we have looked at above, no attempt was, however, made to introduce a comprehensive incomes and prices policy until 1969.<sup>16</sup>

#### 7.C.1 The First Turner Report

By 1969 it was apparent that the Brown Commission of Inquiry, which increased miners' wages by 22 per cent for African ranks on the grounds of "the need to remove every vestige of racial discrimination" in the mining industry, had resulted in a widespread wages spiral. It was felt that the wage increases were not only fuelling inflation but widening the gap between urban and rural incomes and reducing the number of new jobs in the process.

In April 1969, the government, therefore, sought the assistance of the United Nations Development Programme and the International Labour Organisation in designing an incomes policy that would provide a basis for equitable income distribution, restrain price increases and stimulate productivity and employment. In its request the government explained.

"... although increases in real wages have been on average very considerable since independence, they have been unevenly distributed between different groups of workers, so that some injustices may have resulted, and there are probably a number of inequities and anomalies in the wage structure. In particular, the gains from development are not very equitably distributed <sup>as</sup> between the urban population and the rural population."<sup>17</sup>

The government was also concerned with the inflationary effect of rising wages. It was, therefore,

"anxious that future increases in wages and other incomes should take place in an orderly fashion related to the increase in the capacity of our economy, so that any danger of an inflationary spiral be averted."

The Government's first incomes policy was an ad hoc one announced in August 1969 while the UNDP/ILO Experts Mission, led by Professor Turner of the University of Cambridge's Department of Applied Economics, was studying the issue of wages and prices as requested. A temporary wage freeze and a limit of 5 per cent for annual wage increases was imposed.<sup>18</sup>

Government fears were apparently borne out by Turner's report which diagnosed the problem as the failure of wage increases to be matched by corresponding increases in productivity. He observed, for instance, that

"employees (are) usually paid a fixed monthly wage or salary without regard to their personal performances and very many employees are on lengthy incremental scales by which they receive an automatic annual pay increase simply for getting a year older."<sup>19</sup>

In his view,

"any proposal for an improvement in wages or conditions should, therefore, be accompanied by concrete, detailed and effective proposals to improve efficiency - for instance, by adopting satisfactory output standards, eliminating absenteeism or excessive overtime working, reducing waste or damage, and so on."<sup>20</sup>

His report recommended that wherever possible simple "payment by results", "piece rate" or "incentive" systems should be adopted. Specifically, the first Turner Report related wages and wage increases to productivity with a maximum of 5 per cent ceiling on annual wage increases. Price control was to be established through a Prices Board. Similarly, rural incomes were to be increased through increased productivity.

While some observers were critical of Turner's conclusions, especially those on productivity, the government was enthusiastic about the Report, primarily the recommendation to introduce wages and incomes control.<sup>21</sup> A National Convention held in Kitwe in December 1969 accepted the Report as

"providing (us) with an excellent base from which to start when dealing with the difficult job of establishing our incomes, wages and prices policy."<sup>22</sup>

President Kaunda was particularly captivated by Turner's contention that colonial labour discipline "had broken down and nothing had taken its place" and that falling productivity was the source of the relative poverty of rural areas. He told the Convention:

"I agree with this view. Almost three years ago, in fact, in addressing the National Convention on the Four-Year Development Plan ... I stated that, 'clearly the only lasting solution to this problem ... (of rural-urban inequality) must be to raise the level of incomes in the rural areas. And this itself can only come about through the achievement of higher productivity.'<sup>23</sup>

Although the Convention generally welcomed the Report and approved incomes guidelines which set a norm of five per cent increase in wages and salaries (provided they were matched by increases in productivity), Turner's recommendations on the machinery for the implementation of the policy were rejected. His proposal that a central agency for wages, prices and productivity to administer controls be set up was rejected on "administrative and practical grounds." Instead the government approved the establishment of a Consumer Prices Board to enforce price controls. A proposed Prices and Incomes Commission would (along with an Industrial Relations Court to be established) administer wages and incomes guidelines.

There was one notable follow-up to the first Turner Report, the appointment of the O'Riordan Commission to report on Public Service salaries. The Commission had been given a number of potentially



far-reaching terms of reference. They included the restricting of pay increases within the five per cent policy norm; the need to attract people to work in rural areas; the modification of the system of housing subsidies; the consideration of Zambian wages in relation to those of neighbouring friendly states; and the need to establish some relationship between the Civil Service and parastatal salary scales.

The report was regarded as disappointing.<sup>24</sup> It merely recommended increases within the incomes policy norm. No mention was made of wage levels in neighbouring countries. Although it recommended action to bring conditions in parastatal and local government into line with those in central government, no action was taken to implement the recommendation.

As for the need to attract civil servants to rural areas, a system of national prices for commodities was recommended for consideration as a means of bringing rural and urban costs of living more into line with one another. In response, while the government felt,

"some sympathy for public servants serving in rural areas, their position is no more difficult than that of the general population in those areas. The Government's view is that public servants should be required to work at any station in Zambia without compensation for the situation existing at that station."<sup>25</sup>

In 1970 the Prices Board was set up, but hardly functioned. By 1972 with the resignation of its chairman, it had become defunct. Although provision for the establishment of the Industrial Relations Court, with power to approve wage clauses in collective agreements in line with government policy, was made under the Industrial Relations Act, 1971, it was not until 1974 that the Court became functional. Even the Court made no attempt to exercise its power in that regard until the role was later assumed

by the new Prices and Incomes Commission established in 1979. The major reason for the Court's failure to assume its role as the custodian of "the Government's declared policy on Prices and Incomes" was partly due to the apparent lack of such a policy.<sup>26</sup>

By 1975 it was apparent that there was no effective machinery to implement Turner's recommendations. No ministerial power to enforce the policy as announced in 1969 had been given under Statute.<sup>27</sup> Although in 1972 the government felt that its wages and incomes policy "continued to be partially observed...."<sup>28</sup>, by 1975 the Manakawe Commission, reporting on Civil Service salaries, concluded that Zambia ".... has no Wages and Incomes Policy."<sup>29</sup> The sharply rising cost of living after 1970 made it more difficult for employers to resist trade union demands for wage increases. The five per cent pay norm was, therefore, invariably ignored by parties to collective bargaining, including those in the State sector.

#### 7.C.2 The Second Turner Report

The second major attempt to devise an effective incomes and prices policy was made in 1978 with the Commissioning of the Second Turner Report.<sup>30</sup> It came amid a rapid decline in the economic prospects in the face of the Zambian currency's devaluation, falling copper prices, rising inflation and increasing trade union demands for a living wage based on an objectively set poverty datum line.<sup>31</sup>

The terms of reference for Turner's second mission were similar to those of his first mission. Emphasis was placed on the need to develop an equitable distribution of income, especially the reduction of income differentials between urban and rural areas, modern and traditional, and manufacturing and agricultural sectors. The reduction and subsequent control of the rate of price increases

was also sought. The request for technical assistance also specifically referred to the need to take account of the country's development objectives, a factor which was merely implied in the first request in 1969.

Turner recommended a three-phase approach. The first phase to last from May 1978 to July 1979 was to consist of a flat rate increase in wages of six kwacha per month which in effect would represent a five per cent increase in the national wages bill. That was to be followed by the second phase from August 1979 which would allow for increments of up to a maximum of 131 kwacha per annum. In addition a cost of living component and productivity-oriented increases were to be allowed during the phase. During the second phase, studies on incomes and prices with a view to determining a national minimum wage would be conducted. Phase III would see the introduction of a national minimum wage while containing the major components of Phase II. Further studies would be undertaken aimed at establishing a national earnings structure that would reflect the nation's development objectives.

Legislation to establish new institutions to implement these measures was also recommended as a matter of urgency. A new Prices and Incomes Commission and a Consultative Council on Prices and Incomes were to be constituted on a statutory basis. The latter was to consist of representatives from the ruling party, the ZCTU and the ZPE and other interested groups under the chairmanship of the Prime Minister. The Commission would comprise an executive board with a full time chairman and two deputies. The Board would also have representatives from the Ministries of Finance, Labour, Commerce, Industry, the National Commission for Development Planning and the Cabinet Office. The Commission was also to consist of a full-time professional secretariat of economists, statisticians, accountants and other experts in industrial relations and law.

The comprehensive recommendations for new incomes policy institutions were clearly an attempt to address what was thought to be the major reason for the failure of the first recommendations, the lack of an effective implementation machinery.

The two bodies, the Council and the Commission, would be semi-autonomous entities under the office of the Prime Minister. The Council would meet at least twice a year to review policy and receive recommendations and draft annual reports for the Commission. The Commission would assume full executive powers which were entrusted to many Government Ministries and other agencies relating to wages, salaries and incomes. It would also absorb the department of price control. While the power of the government to validate collective agreements would remain substantially unchanged, the Commission would provide it with policy guidelines on incomes and prices policy.

The government accepted the Report as "providing a suitable basis for devising medium and long term policies" on incomes and wages. The trade unions while welcoming the tripartite elements (they gave evidence to the mission of experts and were more closely consulted unlike in 1969) especially in the structure of the proposed Consultative Council, nevertheless rejected the ceiling placed on wage increases as irrational in the face of the escalating cost of living.<sup>32</sup>

The government went ahead and created the Commission in 1979. Until the enabling legislation of 1981,<sup>33</sup> the Chairman was its sole employee and it had no permanent office until 1980.

### 7.C.3 Institutional and Legal Framework of Incomes Policy

With the Prices and Incomes Commission Act, 1981, the institutional and legal framework of the second major attempt at formulating an

effective incomes policy was established.

The legislation was based on the detailed recommendations of the Turner Report in many respects.<sup>34</sup> The Commission has wide-ranging functions.<sup>35</sup> It is charged with formulating and recommending for approval of the government, a comprehensive prices and incomes policy. Once approved it has to supervise the execution and implementation of the policy. It can also recommend, for approval of the government, minimum and maximum wage levels and conditions of service, and supervise and execute the same once approved. It can investigate and report to the government particular cases or general issues likely to affect current or future prices and incomes policy. It can also determine price levels for any controlled goods, services, products or commodities, including price levels of agricultural produce and livestock. It supervises the administration and implementation of price control. In addition to these functions the Minister may direct the Commission to do all such things as he deems necessary in order to give effect to approved policy on prices and incomes. Contrary to Turner's recommendations, the Commission was also given the exclusive power to examine and ratify collective agreements, a function earlier given to the Industrial Relations Court under the 1971 legislation.<sup>36</sup>

Similarly, the provisions relating to the Consultative Council are broadly identical to the recommendations in the Report both in terms of composition and function.<sup>37</sup> In addition to government representatives, those of the unions and employers, the Council also consists of nominees of ZIMCO, the nationalised sector's holding company, the Zambia Industrial and Commercial Association, the Zambia Commercial Farmers' Bureau, the Consumers' Protection Association and the Co-operative Federation. The Council's principal function is to consider and comment on matters relating to prices and incomes policy referred to it by the Commission. This is apparently significant as the power of initiative is left

to the Commission. The Council may, however, require the Commission to investigate particular cases or general issues likely to affect current or future policy. In urgent cases the Council can direct the Commission to formulate policy for government approval designed to deal with any particular situation.

It is premature to assess the potential of the Commission and the Council at this stage, but it is a matter of record that it has so far made no appreciable impact on incomes and prices policy.<sup>38</sup> The new regime was really put into effect only by 1986. It continues to be short-staffed, particularly of the professional staff clearly envisaged as vital to its work by Turner. Its role may well be in opposition to IMF requirements for less government and public agencies' control over the economy. In the wake of the foreign exchange auction system which the Zambian Government was compelled to adopt in 1986, the IMF spelt out its hostility to price control measures, a key element to the implementation machinery as conceived under Turner.<sup>39</sup> Above all, the trade unions continue to insist on free collective bargaining until such a time as the government can control the cost of living.<sup>40</sup> In the absence of any comprehensive policy to match wage increases with those of prices, it will be difficult to influence wage and price trends in the current framework.

#### 7.D Conclusion

It is apparent from the above brief examination of government attempts to devise an effective incomes and prices policy that the search for such a policy has been part of the strategy of incorporation. By seeking to restrain wage increases in line with its development goals of closing the gap between urban and rural areas, traditional and modern sectors, and also between high and low incomes groups, the government has sought to incorporate labour into its economic strategy. The government strategy moreover

becomes clearer if the restructuring of collective bargaining and regulation by law is taken into account. Taken together the regulation of collective bargaining and attempts to impose an incomes policy constitute the main economic elements of trade union incorporation.

The available evidence, however, suggests that incomes policy as a weapon of incorporation, as elsewhere in Africa where it has been tried, has so far failed to make a positive impact.<sup>41</sup> Government policy failed in part because of a discernible lack of balance between the desire to control wages and the ability to control prices. Government strategies in the 1970's were also largely negative due to union opposition to wage control. Take the following instances: in 1971 when the Teachers' Union members went on strike in pursuit of better wages and conditions, the government responded by detaining several of the leaders. Similar measures were taken against 15 miners' leaders when they protested against the O'Riordan Commission's attempts to equate them to lower paid sectors in 1970. Although attempts to incorporate labour have fallen short of complete integration attempted in Tanzania, the Zambian Government has nevertheless resorted to the incorporation of individual union leaders to influence union attitudes.<sup>42</sup>

It is significant that as early as 1971 the government itself acknowledged that:

"from its inception the (incomes) policy was handicapped by the non-existence of an effective enforcement machinery, and the workers', employers' as well as Government commitment to its successful implementation has lacked the fervour and enthusiasm with which it can be launched."<sup>43</sup>

In spite of recent attempts culminating in the establishment of the Commission, the above observation continues to be largely valid.

Of all the areas which have been targets of government incorporation efforts this has undoubtedly been the most problematic. Such attempts as we have seen designed to limit wage increases have not been matched by any effective machinery to control prices. Recent attempts to use the Commission received a set back with the withdrawal of aid by the Swedish International Development Agency. The Agency had earlier pledged assistance to fund the Commission in its work. That pledge was, however, withdrawn when it was discovered that such funding would be used for price control.<sup>44</sup>



NOTES FOR CHAPTER SEVEN

- 1 Turner H A, "Wage Trends, Wage Policies and Collective Bargaining: The Problems of Under-Developed Countries", Occasional Paper No 6, University of Cambridge Department of Applied Economics, 1966. Among more recent assessments see Iwuji E C, "Wage Structure in Developing Countries: A comparative study of six English-speaking African countries", (April 1980), 5, 2, Labour and Society, P 151.
- 2 ILO policy in this respect is based on the Minimum Wage Convention, 1928, later annunciated specifically for Under-Developed Countries in 1947, Convention on Social Policy in Non-Metropolitan Territories and further developed in subsequent standards such as the Right to Organise and Collective Bargaining Convention, 1949 and the Labour Clauses in Public Contracts Convention, 1949.
- 3 For more elaborate discussions of such issues, see inter alia, Knight J B, "Wages and Zambia's Economic Development" in Elliott C (ed), Constraints on the Economic Development of Zambia, (Nairobi: Oxford University Press, 1971); Fry J, Employment and Income Distribution in an African Economy, (London: Croom Helm, 1979); Daniel P, Africanisation, Nationalisation and Inequality: Mining Labour and Copperbelt in Zambian Development, (Cambridge: Cambridge University Press, 1979).
- 4 Fry J, "Issues in Wage Determination", Seminar Paper, (Department of Economics, University of Zambia, circa 1972).
- 5 Report of the Commission Appointed to Inquire into the Mining Industry in Northern Rhodesia, (Lusaka: Government Printer, 1962) - "The Morison Commission".
- 6 "Job fragmentation" as applied in the mining industry in Zambia in the 1950's and 1960's occurred when the work formerly performed by one worker (European) was divided so that it could be undertaken by a larger number of (African) workers. Each African worker, therefore, performed only a fragment of the work performed by a European worker in the former situation. In that way, semi-skilled workers could replace workers with greater skill. The formula was employed as part of progressive African advancement in the industry.

- 7 Commission Appointed to Review the Salaries and Conditions of Service of the Northern Rhodesia Public and Teaching Services, and the Northern Rhodesia Army and Air Force. (Lusaka: Government Printer, 1964) - "The Radow Commission".
- 8 Fry, circa 1972, op cit, P 12.
- 9 Commission of Enquiry into the Mining Industry, 1966 - "The Brown Commission", (Lusaka: Government Printer, 1967).
- 10 Ibid, 1966 Report, Para 112.
- 11 Ibid, Para 114.
- 12 Fry, circa 1972, op cit, P 13.
- 13 Brown Commission Report, op cit, Para 117.
- 14 Report of the Commission Appointed to Enquire into the Civil Service Salary Structure, "The Whelan Commission" (Lusaka: Government Printer, 1967).
- 15 The law was replaced by the Prices and Incomes Commission Act, (No 19), 1981.
- 16 Gartzel in Damachi et al, 1979, op cit, P 336
- 17 Report to the Government of Zambia on Incomes, Wages and Prices in Zambia: Policy and Machinery - "The First Turner Report", (Lusaka: Government Printer, 1969) P 1.
- 18 Towards Complete Independence, (Government Printer, Lusaka 1969) pp. 43 - 46, 52 - 58. This was coupled with a ban on unofficial strikes.
- 19 "The First Turner Report", para 27, P 15
- 20 Ibid, para 53, P 26
- 21 See, for instance, Fry J, 1979, op cit, P 159
- 22 Report of the Second National Convention on Rural Development, Incomes, Wages and Prices in Zambia, Policy and Machinery, (Lusaka: Government Printer, 1970) P 9
- 23 Ibid

- 24 Fry, circa 1972, op cit, P 17.
- 25 Government Report No 1 of 1971, Report of the Commission Appointed to Review the Salaries, Salary Structure and Conditions of Service of the Zambian Public Service. (Lusaka: Government Printer, May 1971), P 9, Para 23.
- 26 Schmidt C T, "Works Councils in Zambia: A Preliminary Assessment After the First Year of Implementation", 1979, 5th World Congress of the International Industrial Relations Association. (Paris: 3 - 7 September, 1979).
- 27 Labour Department Annual Report, 1970, para 28
- 28 Labour Department Annual Report, 1972, P 5
- 29 Report of the Commission of Inquiry into the Salaries, Structures and Conditions of Service. - "The Nwanakatwe Report", (Lusaka: Government Printer, 1975).
- 30 UNDP/ILO, A Second Report on Incomes, Wages and Prices in Zambia. - "Second Turner Report", (Lusaka: Government Printer, 1975)
- 31 ZCTU, Report of the Secretary-General to the 4th Quadrennial Congress. (Kitwe, 1978) P 12
- 32 ZCTU, Report of the Secretary-General to the 5th Quadrennial Congress. (Kitwe, 1982) P 19
- 33 Act No. 9 of 1981, op cit
- 34 Parts II and IV of No. 9 of 1981
- 35 Functions and powers set out in Section 10
- 36 Industrial Relations (Amendment) Act, 1983, Section 1(l)(g), cf collective agreements made before May 1983 over which the Industrial Relations Court retains the power to examine and approve, op cit, Chapter Five, P 142.
- 37 Sections 20 and 21 respectively
- 38 News from Zambia, No 458
- 39 African Review, 1986, op cit.
- 40 F Chiluba, ZCTU Chairman, Geneva, Personal Interview, Geneva, 26 June 1986. See also various reports in News from Zambia.

- 41 For a recent examination of a number of African countries' experiences, see Fashoyin T, Income and Inflation in Nigeria (New York: Longmans, 1986), Chapter 7
- 42 Chapter 5, above
- 43 Labour Department Annual Report. 1971, p 1.
- 44 News From Zambia. No 458, op cit.

## CHAPTER EIGHT

### WORKERS' PARTICIPATION

#### 8.A Introduction

Among the areas we have identified in this study as being central to the Government's strategy of labour incorporation, the introduction of workers' participation in the form of works councils is the most radical. Whereas incorporation in other areas has more or less been channelled through the institutional framework of trade unions, the introduction of works councils at places of work has been aimed at the incorporation of workers more directly from the shop floor. The law relating to works councils takes account of trade unions where they exist, as will be apparent presently, but it is clear that institutionally organised labour has not been as central to incorporation. Government policy has been more concerned with the rank and file.

It should be noted from the outset that works councils were not the first forms of workers' representation at the work place, nor are they the only 'participative arrangements' aimed at influencing managerial decisions. Apart from trade union representation, well in excess of 50 per cent of the work force, there are several other major forums of worker-management consultation and communication. Party Committees of the ruling United National Independence Party have been the most prominent of the alternative and largely ad hoc arrangements. Party Committees mainly act as political watchdogs in places of work although there have been many instances of intervention in specific grievances in the past. In recent years,

however, they have tended to be more concerned with "public issue disputes", those perceived by the party hierarchy as affecting or likely to affect the national interest.<sup>1</sup>

One other forum is that of works committees which goes as far back as the early 1950's. Works committees were the precursor to works councils introduced as they were as forums through which employers and workers could discuss issues of common interest. They are today mostly concerned with works rules and procedures.<sup>2</sup>

Another forum, that of boardroom representations through the ZCTU along the lines of the Bullock recommendations, was introduced in 1983. President Kaunda announced that in order to "expedite the implementation of workers' participation through the management of economic crisis", the government had decided to appoint ZCTU representatives to the ZIMCO main board and those of its subsidiaries.<sup>3</sup> This form of workers' participation was a relatively brief experience. By the end of 1986 the ZCTU had decided to withdraw from the scheme. They felt that unions' representation on the board placed an unacceptable burden of accountability on the shoulders of trade union leaders without a corresponding capacity to really influence decisions, particularly those with serious economic implications for working people.<sup>4</sup>

We are concerned in this study with works councils as part of the trade union incorporation strategy. Works Councils have been viewed as the main vehicle for putting into practice in the industrial sphere Zambia's political philosophy of "participatory democracy".<sup>5</sup> In terms of development objectives works councils have provided the "productionist" element of incorporation, seeking to provide an effective mechanism for incorporating workers in undertakings and increase productivity. Works councils differ from the other forms of consultation in that not only have they been legislated for, but also because they are a relatively more comprehensive form of workers' representation. Except for trade unions, the other forms of workers' representation at places of

work are not statutory and where they co-exist with works councils, they are invariably more ad hoc in the way they operate.<sup>6</sup>

The Provisions relating to works councils are contained in Part VII of the Industrial Relations Act, 1971. It will be recalled that most of the provisions of the Industrial Relations Act, 1971, came into force in 1974, Part VII was delayed for another two years, coming into force only in May 1976. There then followed an introductory phase which lasted until the end of 1977 during which unions, workers and management were instructed as to their duties and rights in workers' participation. The first works councils did not, therefore, come into operation until the beginning of 1978. By the end of 1984, however, well over 200 works councils had been formed in as many firms in all the major sectors of the economy. The majority are in the public sector which, following successive nationalisation in the 1970's, is far bigger than the private sector. Many large private companies however, including multinationals, do have active works councils.<sup>7</sup>

In this Chapter we examine the nature and scope of the legal provisions relating to works councils and how they have operated to date. It is not our intention to provide an exhaustive discussion of workers' participation and its theoretical underpinnings. There is a wealth of literature analysing various approaches to industrial democracy and various experiences, particularly those of developing countries.<sup>8</sup> In Zambia, workers' participation has since its introduction received a lot of attention from scholars and commentators. In addition to our own field work<sup>9</sup>, we have taken account of a number of reports, research and case studies in assessing the impact of works councils (see Appendix V).<sup>10</sup> Our main concern here, however, is to analyse the practical impact of works councils in the light of the policy of incorporation.

### 8.8 Historical Perspectives

The idea of workers' participation in Zambia can be traced as far back as the early 1950's. At the height of the nationalist movement's struggle for independence vague ideas about industrial democracy were often mentioned as part of the anticipated platform of post-independence reforms. At that stage it was probably more of a ploy to augment African miners' support, particularly during the struggle against the introduction of the British Central African Federation of Rhodesia and Nyasaland by the Colonial Office in 1953. The idea re-emerged after independence during a period characterised by both a high frequency of unofficial strikes and some major nationwide stoppages.<sup>11</sup> As we have noted in Chapter Six, the precise factors that gave rise to heightened industrial conflict during the immediate post-independence period have been a matter of considerable debate. There is little doubt, however, that increased industrial conflict occurred against a background of high expectations among workers prompted by the attainment of independence.<sup>12</sup>

The Government's response, mainly based on presidential initiative, was the start of what we have identified as the strategy of incorporation. This as we have seen, began with the appointment of a number of key trade union leaders to government posts. It was followed by presidential initiatives in negotiating for radical changes in industrial relations such as joint Industrial Councils outside the mining industry. Presidential initiative has been most apparent in the case of workers' participation. The Industrial Relations Act, 1971 in general and the provision on works councils in particular, were worked out by presidential advisers and only at a very advanced stage were they referred to the parliamentary draftsman. Neither the Cabinet nor the Ministry of Labour was involved in any significant way.<sup>13</sup> Moreover, unlike other parts of the Act, the administration of provisions on works councils was made the responsibility of the Department of Industrial Participatory Democracy created in 1975, and initially within the President's Office.<sup>14</sup> The power to enact subsidiary legislation



concerning the operation of works councils was similarly given to the President whereas the responsibility to frame statutory instruments for the rest of the Act, was vested in the Minister of Labour in accordance with the usual practice.<sup>15</sup> Workers' participation has, therefore, been regarded by the President as a key aspect of the incorporation strategy.

Incorporation of individual trade union leaders into government was later followed by a programme of seminars and conventions designed to pave the way for a radical labour code and an incomes policy. Some of the forums are now a matter of national record. They included the Livingstone Labour Conference of 1967, and the Kitwe National Conventions of 1967 and 1969.<sup>16</sup> The government also turned to the International Labour Office to boost its case, in particular in support of the view that economic necessity demanded a programme of high productivity, of which workers' participation was seen as a key element, and an effective incomes and prices policy. As we have seen in Chapter Seven, the Turner reports and the two Jobs and Skills Programme for Africa (JASFA) reports of 1975 and 1981 were clear attempts to utilise the ILO's authority in support of the Government's arguments.

The first concrete step towards the introduction of workers' participation in Zambia was taken at the 1967 Tripartite Labour Conference in Livingstone where it was resolved to set up works councils and strengthen works committees where they already existed. The President later outlined the guidelines for the establishment of works councils at the Second National Convention in Kitwe in December 1969. At that stage he was more concerned with the philosophical and moral considerations which had prompted the government to think of a radical change in the country's entire labour legislation. He characterised the Government's intention as an attempt to transform the social structure of Zambian industry. Workers' participation was to be a key feature of structural changes that would attack traditional management prerogatives and other aspects of the industrial relations system as it existed. The President's vision was to change managerial leadership in

economic tasks to the role similar to that played by the hallowed Zambian traditional institution of the village headman. It was to be a search for shop floor relations similar to village consensus and participation in the making of decisions, a form of the "African palaver."<sup>17</sup>

The reaction to the proposals from the business community was predictable. Business managers had great misgivings about any workers' representation outside the existing framework of collective bargaining, considered by some of them as disruptive enough already.<sup>18</sup> In contrast, the response of workers was generally enthusiastic, welcoming any changes that would potentially increase their say and, therefore, their power on the shop-floor. While publicly welcoming the proposals, trade union leaders were privately more ambivalent and cautious. They were suspicious of any designs that might encroach upon and weaken the unions' institutional power.<sup>19</sup>

It has been suggested that employers, particularly the powerful Commercial Farmers' lobby, were more hostile to the proposals when it was discovered that the intention initially was to introduce works councils more on the lines of the Yugoslav type workers' self-management than that of Western countries.<sup>20</sup> As a result, as Quesby has asserted, what subsequently emerged had less resemblance to the early designs in both form and content. The Bill's provisions on works councils were definitely closer to the West German system of Co-determination than the Yugoslav self-management model.<sup>21</sup> The business community's suspicions had earlier been heightened by the tone of the President in outlining the proposals at the Second National Convention:

"The purpose of the Works Councils will be to provide machinery within the undertaking for the participation of the workers in management decisions. In certain clearly defined areas, which have been traditionally regarded as so-called 'management prerogatives' decisions will only be taken with the participation of the Works Councils"<sup>22</sup> (emphasis given)

The business community's reaction was clearly not lost on the government. Introducing the Bill in the National Assembly, the Minister of Labour gave assurances that there would be no attempt to sweep away the traditional structure of industrial management:

"Some people have gone to the extent of labelling the idea as Communist-inspired. I do not accept this line of thinking which is so obviously based on a misunderstanding. We are not establishing workers' councils, but works councils ... there is no intention to punish anyone, there is no intention to grab the power of management and place it in the hands of workers."<sup>23</sup> (emphasis given)

In spite of government assurances, misgivings persisted which were said to be largely responsible for the delay in the implementation of the legislation when it was enacted.<sup>24</sup> As we have indicated above, provisions relating to works councils were delayed a further two years and did not come into force until 1976.<sup>23</sup> When they came into operation ministers gave the impression they did so on an experimental basis. The President's office consequently supervised their implementation at the beginning.

#### 8.C Institutional and Legislative Framework of Workers' Participation

There are two elements that form the framework of Zambian workers' participation. One is institutional and the other legislative. The main institutional framework for the implementation of workers' participation is provided by the Department of Industrial Participatory democracy. The department, initially part of the President's Office, reflecting presidential initiative which was instrumental in the introduction of workers' participation, was later transferred to the Prime Minister's Office. Then in 1985, it was made part of the Ministry of Labour and Social Services. As we shall presently suggest, the latter change is not without significance for the department's role in the implementation of workers' participation.

The department was given a number of tasks to ensure the introduction and then the progressive development of works councils.<sup>25</sup> It was to draw up a programme of work which initially involved the selection of a few firms on an experimental basis. It was also charged with the task of carrying out "research on the economics of participatory democracy" and comparative study of industrial democracy schemes in other countries. The latter resulted in extensive study tours of Yugoslavia and West Germany between 1975 and 1976.

After the initial setting up of works councils, the department was to constantly review the programme and make recommendations from time to time on how to improve the effectiveness of works councils, including recommendations for appropriate changes in the law. It also has the task of monitoring the work of individual councils to ensure that they are run in accordance with the ruling party's philosophy of Zambian Humanism. The department is also responsible for continuing education to inform workers and the public at large about the objectives of workers' participation.

The extent to which the department has been effective in carrying out these tasks is unclear. The department itself has admitted that there have been unusual difficulties in its work, not least the problem of credibility.<sup>26</sup> One of the greatest problems has been the lack of understanding by the majority of workers and the public of the concept of industrial democracy, a problem which the department has said is due to insufficient national education.<sup>27</sup>

The legislative framework is, as we have indicated above, set out in Part VIII of the Industrial Relations Act, 1971. We now proceed to outline some of the main features of the regime.

### 8.C.1 Formation and Composition of Works Councils

The Act requires the setting up of works councils in every undertaking employing more than one hundred permanent employees.<sup>28</sup> It was originally envisaged that this figure would be at least as low as twenty-five.<sup>29</sup> It has been speculated that the modification was due to the intention to establish works councils on an experimental basis and also due to intense pressure from the agricultural lobby who wished to be excluded from the provisions of the Act.<sup>30</sup>

Although the provisions of the Act are applicable to both commercial and public undertakings, including local authorities, the President has the power to exempt any undertakings or class of employees from the operation of all or any part of Part VII.<sup>31</sup> Although the power of exemption has been used sparingly (to date only the Army, the Police, certain government departments and domestic servants, are exempt), the requirement that only the category of the term "eligible employees" qualify to participate in works councils has severely limited the scope of works councils. As defined in Section 3 of the Act "eligible employee" excludes those serving a trial period, casual or seasonal employees, the latter is a common feature of agricultural work. Members of management are also excluded. The latest records available show that there are 360,500 people in wage employment spread across about nine major industries. Of these about 34,820 are employed in agriculture, hunting, forestry and fishing. About 25 per cent (8,705) of those employed in agriculture and related sectors are seasonal workers. Roughly 10 per cent of wage earners are domestic servants. Another 27,345 are in the Army, the Police, management and other categories excluded from the effect of the provisions on works councils. Taking the undertakings that employ less than one hundred workers into account the exclusion of certain categories of employees has in practice, therefore, meant that 20 per cent (72,100) of the country's wage labour force is outside the scope of the provisions on works councils.<sup>32</sup>

The formation of works councils is preceded by that of working parties comprising of four representatives each of both management and workers. The working party's first major task is to classify employees into management and eligible categories. They also set the size of the council (which must be between 3 and 15, but most are in fact between 12 and 15 as they tend to be formed in larger firms), receive nominations and conduct the first elections by secret ballot. The councils consist of two-thirds workers and one-third management. Whereas worker representatives are elected, those of management are appointed by senior management. Candidates and electors have to be eligible employees.

Councils draw up their own rules and elect their own officers. They are required to report to a general meeting of eligible employees only once a year. It has been frequently observed that such reporting is not frequent enough to maintain effective communication between councils and workers they represent. In our research we did find, however, that union meetings and those of other institutions at the work place are usually taken advantage of to report on councils' work.

#### 8.C.2 Objectives and Powers

The Act states that there are two main objectives of works councils:

- " (a) to promote and maintain the effective participation of workers in the affairs of the undertaking;
- (b) to secure the mutual co-operation of workers, management and trade unions in the undertaking in the interest of industrial peace, improved working conditions, greater efficiency and productivity."<sup>33</sup>  
(emphasis given)

The Act attempts to achieve the above objectives by giving three types of powers to works councils. Firstly, there are issues over which councils have a power of veto. Secondly, there are issues

over which councils must be consulted by management and, thirdly, there are those over which councils can only be informed after decisions have been taken.

The veto powers set out in Section 72 require councils to approve management decisions on "matter(s) of policy in the field of personnel management and industrial relations." This category includes decisions concerning recruitment, assessment of salaries, transfers between undertakings owned by the same employer, and employees' safety at work.

Three observations can be briefly made concerning the veto power. What amounts to policy or not has not always been easy to determine.<sup>34</sup> It is notable that some of the subjects in this category are traditionally those of collective bargaining. They raise the potential of conflict between councils and unions where they exist together. It is, therefore, significant that most of the works councillors interviewed in our Survey claimed there had been no notable conflict in this area.<sup>35</sup> That could be partly explained by the fact that in many sectors where councils have been set up, trade unions tended to be already well established and most councillors to be "union people". In such sectors it is not unusual for workers to serve in several capacities as works councillors, shop stewards and members of works committees. Many councillors and unionists, therefore, tend to see their work as complementary.

At least one critic has asserted that the wording of the provision relating to the councils' veto places the initiative in the hands of management.<sup>36</sup> Almost invariably, managements make decisions leaving councils either to approve or veto them. The danger in the context of workshop relations is obvious. Works councillors in their desire to be co-operative and win management's confidence may appear to be too acquiescent to the rank and file. On the other hand, where they wish to be assertive they may appear obstructive in exercising the power of veto. Management's tendency to take the initiative was clearly apparent in the leading case in this area

concerning a disputed transfer which came before the Industrial Relations Court.<sup>37</sup> Although the case was decided on different grounds (veto powers were not operative during the first year of the life of the works councils),<sup>38</sup> the management's initiative in the first place gave them the upper hand.

The second category of councils' powers provides them with the right to be consulted about medical facilities for workers, housing and pension schemes and such amenities as canteens and recreational facilities. It is notable that decisions in this area usually involve financial expenditure on the part of the undertaking. At best councils are, therefore, in practice confined to giving suggestions to management concerning welfare facilities of the employees. Management are not obliged to act on these suggestions.<sup>39</sup> This is also an area prone to demarcation disputes with unions should councils choose to be more vocal when consulted.<sup>40</sup>

The third category of the right to information for councils reveals the true nature of the incorporation strategy in general. In many of his pronouncements, President Kaunda has emphasized his vision of a humanist "man-centred society" in which the worker would play a key role in participating in decision-making, particularly economic decisions that determine his standard of living. Coupled with the policy of decentralisation in economic planning (a matter which has received equally strong emphasis in recent years<sup>41</sup>) it could be thought that the area of "investment policy, financial control, distribution of profits, economic planning, job evaluation, wages policy and the appointment of senior management" would have been a key one vis-a-vis participation rights. Instead, Section 71 merely gives councils the right to be "informed forthwith". It can, therefore, be argued, that the Government's intention was not to give workers any real power through participation, but merely the appearance of involvement in decision-making.

In addition to these three powers, the Act provides councils with a "watchdog" function. Under Section 74 councils are required to



inform management at once if there is any reason to believe that management has contravened the Act or any other written law, a collective agreement, works agreement or works rule in any way. Once informed, management must investigate the alleged contravention and remedy any errors. Where a particular council is not satisfied as to the remedial action taken, it must report the matter to the trade union, if it exists, which has to negotiate a settlement with management. Where no trade union exists, or a settlement cannot be reached, the matter goes to the Industrial Relations Court, which as in other matters under the Act, gives a final and binding decision. On the face of it, this provision is intended to avoid the alienation of trade unions as during the formation of the council when unions have the power to approve or disapprove candidates for council elections. The provision further requires the union to give its reasons in writing where it rejects a candidate's nomination. The aggrieved candidate has the right of appeal to the Industrial Relations Court.<sup>42</sup> The aim of the provision appears to be to involve union participation at a superficial level.

The councils' duty to act as watchdogs is liable to be rendered meaningless in practice by the secrecy provision, however.<sup>43</sup> Council deliberations, in particular information concerning the "financial affairs of any undertaking or any manufacturing or commercial secrets or working processes thereof" acquired by councillors must not be divulged to outsiders. Worker councillors are, therefore, prevented from consulting outside experts to assist in interpreting the information given by management. The importance of outside expertise for effective participation is of paramount importance in a situation where the general level of education of most councillors is grossly inadequate.<sup>44</sup> Besides, the obligation relating to secrecy as defined under Section 76, seems to be too broad. As Weiss has pointed out, almost all information in an enterprise is more or less related to financial matters. The borderline between information to be disclosed and that to be kept secret does not seem sufficiently clear. That this area is prone to conflict was apparent from our survey.

Many councillors interviewed tended to treat all aspects of councils' work as confidential. They, therefore, usually sought assurances from the outset that they would remain anonymous. Almost all those interviewed, including members of management, did not seem certain as to what constituted information for disclosure and that of a confidential nature.<sup>45</sup>

#### 8.D The Impact of Workers' Participation

Any attempt to make an assessment of how works councils have fared in practice and, therefore, to judge the success or failure of this aspect of the Government's policy of incorporation has to be a cautious one. In spite of the fact that this area of the incorporation strategy has attracted most attention, works councils have been in operation for less than ten years. Compared to other institutions under the Industrial Relations Act, 1971, councils have had a shorter life. The brevity of the experience of workers' participation cannot be overemphasised. Compared to other countries' experience the Zambian experience is too recent to provide a basis of any firm conclusions. The experience is still at an early evolutionary stage.

In spite of the short time that works councils have existed however, there is enough material to enable us to make a tentative assessment of the experience as part of the incorporation strategy.<sup>47</sup> The assessment is best made by examining the parties and other institutions' reaction to the arrangements. In the following pages we briefly examine the attitudes of workers, councillors, trade unions, employers and business community and government officials. From these we conclude what the impact of the experience has been to date and its significance for the general policy of labour incorporation. We first proceed, however, by looking at one major structural limitation in the form of another law, company law.<sup>48</sup>

### 8.D.1 Company Law and Workers' Participation

Company law in Zambia has tended to place a structural limitation on the scope of works councils in practice. Current company law on which business management ultimately rests provides for the internal rules of the firm to be framed in a manner considered to be in the best interest of investors, and owners of capital. Those rules do not take account of workers as representatives of company interests except as labour contractors. As a mere factor in the production process, workers' interests are not necessarily compatible to those of investors in the present company law arrangements.

The restrictions imposed by capital ownership are as basically true for private firms as for state business organisations. In spite of the economic reforms of the late 1960's and early 1970's that extended public ownership through nationalisation, most state-owned enterprises are still joint-stock companies, not only with powerful minority share-holders, but also increasingly charged to operate on strict business lines. With the progressive removal of state subsidies due to the current economic decline and the IMP's economic management supervision, the 'business factor' in management is stronger than ever.

Private management methods apart, Company law itself is more outdated than is generally realised. As one learned critic rightly observed:

"The Companies Act, a verbatim copy of the English Companies Act of 1908 (the hey-day of laissez-faire capitalism) has not, since it was made law in Zambia by the British South Africa Company (who first ruled Zambia under a Royal Charter).... been consolidated or amended substantially."<sup>49</sup>

The President himself has long been aware of the situation. In 1969 he said steps were being taken to amend the Act in order to establish the legal right of workers to representation. He

acknowledged, however, that it was a complicated process and that amendment would take some time.<sup>50</sup>

In spite of the earlier intention, no changes have so far been accomplished. A committee was set up to review the structure of a company, but because of strong opposition from the legal profession and the business community, and the absence of the necessary expertise in the Attorney-General's chambers, nothing came out of it. The only real attempt to change the status quo, mainly due to unions' pressure, was the announcement in January 1983, that major state companies would have union representatives on their boards. There is no evidence that union representation on the board, during the time it lasted, made any significant difference.<sup>51</sup>

#### 8.D.2 Workers' Attitudes

There seems little doubt from the institutional structure of workers' participation as we have set it out above, that the intention of the government was to appeal to workers beyond formal union organisation and thereby incorporate them directly. Workers' attitudes and reactions to the works councils' experience is, therefore, a crucial factor in assessing the impact of government policy.

The workers themselves were initially enthusiastic about the introduction of works councils.<sup>52</sup> This enthusiasm was largely based on the expectation that councils would provide a more effective channel (where unions were not as effective) or the only channel for workers collectively to express their grievances, (where unions were not acting as formal representatives). Workers hoped that works councils would lead to better wages and conditions of work. Indications are now that they have been generally disappointed by what they see as the negligible achievements of the system. Although most are still supportive of works councils and

generally see them as making efforts on their behalf, they complain of the inadequacy of communication with them.<sup>53</sup> In some instances, notably among miners, workers feel their unions were generally more representative of their aspirations. Unions were seen as making genuine attempts to obtain workers' views and to keep them informed of developments.<sup>54</sup>

It seems clear from the studies so far conducted that workers tend to view councils as having the same role as that of unions and to measure their accomplishments by the same yardstick. They perceive no change in management attitudes and are apparently no more attached to their undertakings on account of the works council's role. On the contrary, a considerable number of workers tended to regard councils as not accountable to them and, therefore, more susceptible to manipulation by management.<sup>55</sup>

#### B.D.3 Works Councillors' Attitudes

Although most councillors felt participation had not achieved as much as they had hoped for, they were less critical of the experience. Many felt the experience was still evolving and it was, therefore, too early to make any conclusive judgement.<sup>56</sup>

There were marked differences in attitudes between councillors in the public sector and those in private firms (also between smaller and larger undertakings), especially over allegations of victimisation and managements obstruction in the course of their work.<sup>57</sup>

Similarly, councillors' attitudes towards jurisdictional conflicts with other institutions such as unions and party committees also depended on whether the same councillors also served in the other bodies.<sup>58</sup>

A limited number felt that as councillors they had become more appreciative of their firms' problems from discussions with management and the information furnished by them. Others felt communication with the rank and file was hindered by the veil of secrecy under Section 76.<sup>59</sup> Although most councillors felt they had made some contribution to the welfare of their undertakings and fellow workers, few saw themselves as decisive factors in management decisions.<sup>60</sup>

Although many councillors appeared to gloss over the issue of whether they appreciated the more complex problems discussed in council meetings, it was found that the level of education of many councillors was such that it affected their participation. Many were inadequately literate in English to make any effective contributions to councils' deliberations which are conducted in English.<sup>61</sup> This was in spite of the fact that most councillors tended to be the more educated workers and more ambitious for upward mobility in their work.

#### B.D.4 Trade Union Perceptions

Although trade unionists have always publicly welcomed workers participation in principle, they have nevertheless been suspicious of government intentions. Congress leaders in particular have barely disguised their hostility to what they see as attempts on the part of the government to alienate the rank and file from the labour leadership through various policies.<sup>62</sup> A number of national union leaders now tend to take the ZCTU's position that workers' participation on its own is rather irrelevant unless it is conceived within a framework that gives the labour movement the right to participate effectively in the formulation of the overall economic and social policy of the country at large. This is the attitude that before 1983 persuaded the ZCTU to seek boardroom representation in preference to works councils.<sup>63</sup>

Many unionists polled, including those at the branch level, were suspicious of councils' jurisdiction.<sup>64</sup> Although earlier fears of conflicts between works councils and local union officials have not been justified generally, the suspicion has not disappeared. Unions' suspicions seemed to be encouraged by ILO reservations, especially those of the Workers' Relations Department, that see current arrangements as tending to weaken tripartite structures at the national, industrial and shop-floor levels.<sup>65</sup>

Many branch union officials are nevertheless members of works councils in the firms they work for. Not surprisingly such unionists tended to see councils as complementary to the unions' traditional role as "the extended arm of trade unions", as Kahn-Freund once put it.<sup>65a</sup> Although some disputes between works councils and union branches have been reported,<sup>66</sup> these tended to arise out of lack of information concerning their respective jurisdictions. In some cases successful efforts have been made to co-ordinate the various organisations' activities.<sup>67</sup>

#### 8.D.5 Employers' and Business Community's Attitudes

As in the case of workers, our research and some other studies sought to assess the attitudes of various groups among employers and the business community towards workers' participation and works councils in particular. Some of the major groups thus investigated included the Zambian Federation of Employers, (the ZFE), (the main employers' organisation), the Zambian Industrial and Commercial Organisation (the main representative of the business community at large), the Commercial Farmers Union and individual managers both from the public and private sectors.

At the time the councils were introduced the majority of employers, especially large firms and multinationals, did accept the measure of participation that the Act would bring in spite of their

misgivings.<sup>68</sup> This attitude was in part due to the fact that they had been influential in watering down the proposals from the Yugoslav type structure earlier conceived by presidential advisers to that closer to the West German model of co-determination.<sup>69</sup>

Soon after the provisions on works councils came into force in May 1976, they were followed in December 1977 with a Presidential Commission on Equity Participation, to consider workers' equity participation. Although the report of the Commission has never been published, it is known that it met with concerted opposition from all sections of the employers and business community.<sup>70</sup> Although it is thought that the Commission cautiously recommended worker equity participation as long as it gave no managerial rights, the attempt to extend workers participation through the granting of equity to employees served to rally the support of the business community towards what were perceived as more moderate works council provisions. Thus in general there has been a widespread acceptance of a more guarded development of works councils.

The farmers' lobby continues to be adamant that the time is not yet ripe for workers' participation in the agricultural sector. In their submission to the Equity Commission, the Farmers' Employers' Association contended:

"The majority of workers in the agricultural industry are not disciplined. The industry should be allowed to organise itself better, raise productivity to feed the nation and produce surplus for export before it can afford to raise wages and introduce bonuses and lastly participation."<sup>71</sup>

The farmers' opposition to any form of workers' participation was more of an exception than the general rule. Most managers have been re-assuring to investors both as regards the security of capital and profits. This does not, however, indicate that works councils in their present form have been accepted by the employers and business community in every aspect. Weiss, for instance,



reported that in some cases management in both private and public sectors were still less positive towards councils. In certain instances management did not accept councillors as legitimate representatives of employees.<sup>72</sup> The private attitudes within the ZFE circles were particularly striking. In public the organisation was very supportive of councils urging their members to co-operate fully. In private, however, the ZFE is known to regard councils more as an experiment than a permanent institution of the Zambian industrial relations system. They have expressed serious concern as to the negative effect some councils are said to have on tripartite structures and collective bargaining.<sup>73</sup>

The employers' and business community also have significant reservations about this aspect of incorporation. In other aspects of the incorporation strategy they have been enthusiastic about attempts to reform the system. Although management in the public sector tend to have fewer reservations, (indirectly at the insistence of ministers), it is significant that some, especially those in manufacturing are not enthusiastic.<sup>74</sup>

#### B.D.6 Attitudes within the Government

Although the Ministry of Labour and Social Services claims works councils have "contributed significantly in the maintenance of industrial tranquillity", it also acknowledges that "for various reasons (some) employers continued to thwart the effectiveness of councils and in some incidents arbitrarily interfered with the smooth functioning of councils."<sup>75</sup> Similarly, as we have seen above, the Department of Industrial Participatory Democracy has admitted that the implementation of the workers' participation programme has not been without difficulties.<sup>76</sup> In spite of the absence of any details from the government about the exact extent of works councils' contribution to its industrial relations policy, it seems clear that not all objectives have been accomplished.

Moreover, there seem to be doubts within the government, if not about the idea of workers' participation itself, about its structure. One of the most striking findings of our research was the lack of a uniform response to works councils within the government itself. The Ministry of Labour resented the fact that proposals concerning the councils were worked out by presidential advisers with little consultation with the Ministry. The matter was further aggravated by the creation of a separate department, firstly in the office of the President and later in the office of the Prime Minister to implement the programme. Ministry officials have always regarded the department's personnel as "political amateurs" who know little about industrial relations. They have tended to be sympathetic to ZFE and ZCTU reservations and suspicions, particularly the claim that councils have tended to meddle in issues best left to collective bargaining.

Similarly, the Attorney-General's chambers which was also excluded from the framing of the legislation until the last moment has also locked down upon works councils provisions as rather extra-legal, more part of the political agenda than law. It is thought, for instance, that the department was reluctant to defend the Industrial Relations Court's position as part of the legal system in the case we have discussed in Chapter Six.<sup>77</sup>

Some presidential advisers and the Department of Industrial Participatory Democracy on the other hand have long regarded the present form of works councils as a transition towards fuller workers' participation. They continue to press for more fundamental changes in other laws, including company law to allow for a more effective form of workers' participation. To this end the Department has drafted several bills designed to widen the scope of works councils.<sup>78</sup> The Department is also known to lean towards Grozdanic's approach based on the Yugoslav model rather than Weiss' West German model. It is significant that Grozdanic

has undertaken pilot projects on works councils in several firms designed to serve as a springboard for a wider scope of the system.<sup>79</sup>

The fact that the Ministry managed to take over the running of the Department from the Prime Minister's Office in 1985<sup>80</sup> may well prove to be important in shaping the direction of workers' participation in the future.

#### 8.E Conclusion:

Workers' participation through works councils has been a central feature of the state's strategy of labour incorporation particularly in the efforts to raise productivity and appeal to working people directly. Yet, in trying to assess the success or otherwise of government policy in this area, it is necessary to bear in mind that workers participation is a relatively new experience. In spite of that fact that this area of incorporation has received more attention from scholars and commentators than any other, its full parameters are still not completely defined. This latter point has been repeatedly emphasized in several official reviews of the system, including those of the ILO. The same view is further implied by the Government's desire to improve the effectiveness of workers' participation by looking closely at other experiences.

At best, therefore, any assessment at this stage can only be a tentative one. However, from the instances and materials examined, and other sources consulted, it is possible to advance a general view of the experience. There is little doubt that the introduction of works councils, particularly to non-unionised sectors opened up new channels of communication between management and the shop floor. It is the opening up and widening of the scope

of existing channels that may well have a more positive effect on Zambian industrial relations in the long run.

There is, however, no evidence at this stage that there has been any dramatic change in the attitudes of workers. At best works councils have been welcome as a forum (in some firms the only forum) for addressing grievances collectively. The trade union leadership for their part, continue to be suspicious of government intentions in introducing works councils. Workers' participation, while being accepted in principle, has neither exerted any further control on unions nor persuaded them of the need to have a completely identical view of industrial relations with that of the state. Indeed the most significant finding of our research was that all the three groups of workers involved, shop floor workers, worker councillors and trade union officials refuse to give up their autonomy in favour of wholesale support of government labour policy or management objectives. While subscribing to a vague broad identity of interests between government policy and their aspirations, incorporation at the expense of autonomy such as conceived by the state has been rejected.

Similarly, there is no indication that management and the business community regard works councils as having improved relations with the shop-floor. The business community in general continues to be cautious and even sceptical about workers' participation. Above all, there is no evidence that the major objectives of increased productivity and the lessening of industrial conflict have been attained as a result of workers' participation.

In short, there has been no re-alignment of forces and attitudes in keeping with the state's design of labour incorporation.

NOTES TO CHAPTER EIGHT

- 1 Zambia Labour Relations Project findings (hereinafter ZLRP) 1983, op cit.
- 2 Ibid
- 3 Times of Zambia and Zambia Daily Mail, 14 January, 1983
- 4 News From Zambia, No 471, 14 December, 1986.
- 5 For an elaborate account of 'political participatory democracy' in Zambia see Ollawa P E, Participatory Democracy in Zambia: The Political Economy of National Development, (Ilfracombe, Devon: Arthur H Stockwell Ltd, 1979).
- 6 ZLRP, op cit.
- 7 Ibid.
- 8 Among many works and reports on industrial democracy and workers' participation in various countries, some of which have provided us with a useful background, see, Poole, M, Workers' Participation in Industry, (London: Routledge, 1975); Mapolu H (ed), Workers and Management in Tanzania, (Dar-es-Salaam: Tanzania Publishing House, 1976); Report of the Committee of Enquiry on Industrial Democracy, Chairman Lord Sullock, Department of Trade, (London: HMSO, 1977); Sturathal A, Workers' Councils, (Cambridge: Harvard University Press, 1964); International Institute for Labour Studies, Workers' Participation in Management Series: Case Study No 4 Germany: No 3 Yugoslavia, Fogarty M E, "Co-determination and Company Structure in Germany", (1964), 2, 1, British Journal of Industrial Relations, P 79; Schregle J, Workers' Participation in Decisions within Undertakings, (Jan - Feb 1976), CXIII International Labour Review, P 1, International Research Project on Workers' Self-Management and Participation in Developing Countries, 1983, various case studies, (University of Belgrade, Yugoslavia under the direction of Professor S Grozdanic).
- 9 ZLRP, op cit.
- 10 See also other works cited in the following notes.
- 11 See especially Monthly Digest of Statistics for 1965-6 and 1974-6 (Lusaka: Government Central Statistics Office). In 1965, 1966, 1967 and 1968 they were reported to be 114, 241, 222 and 206 respectively, compared to 55, 78 and 59 for 1974, 1975 and 1976 respectively. See also Chapter Six, above.

- 12 Fincham R and Zulu G, (1980), 5, 2, Labour and Society, P 171, at P 173.
- 13 Quemby, 1975, op cit, P 85.
- 14 After considerable inter-departmental controversy, the Industrial Participatory Democracy Department (the IPD) has now been made a department within the Ministry of Labour taking it away from the Prime Minister's Office. The change is seen partly as being in deference to the current Minister, U G Mwila, who was initially in charge of workers' participation in the President's Office when the idea was first mooted. Interview with Minister of Labour and Social Services, Geneva, June 1986, and other personal sources.
- 15 Industrial Relations Act, 1971, Section 78 (hereinafter IRA, 1971). All references hereinafter to the Act unless indicated otherwise.
- 16 The Livingstone Labour Conference, 1967, op cit; National Convention on the Four-Year Development Plan, Kitwe, 1967 (Lusaka: Government Printer, 1967); Report of the Second National Convention on Rural Development, Income, Wages and Prices in Zambia, Kitwe, 1969, (Lusaka: Government Printer, 1969).
- 17 This premise had earlier been explored by the President in Humanism in Zambia and a guide to its implementation, 1968, op cit, Clause IV.
- 18 Quemby, 1975, op cit.
- 19 Zambian Daily Mail Interviews, 23 March 1970.
- 20 Quemby, 1975, op cit.
- 21 Ibid.
- 22 Report of the Second National Convention, Kitwe, 1969, op cit, P 22.
- 23 Zambian Hansard, (Reports of the Proceedings of the National Assembly), Cols 235 and 255, (30 November 1971).
- 24 Quemby, 1975, op cit.
- 25 Departmental objectives as set out in Annual Reports, for instance, 1982, (Lusaka: Government Printer, 1983), P 2.
- 26 Personal Interview, IPD Department Director, 15 January 1983, Lusaka.
- 27 IPD Department, Annual Report, 1982, op cit, P 2.

## 28 Section 55

29 Draft Bill No 2, P 23, Clause 1, (Ministry of Legal Affairs, Lusaka, 1970). As many as three drafts of the bill may have been produced between 1970-71, Quamby, 1975, op cit, P 87; Several tripartite workshops of industrial democracy have consistently called for the limit to be lowered to 25. See, for instance Reports of Symposia on Industrial Participatory Democracy, 1974, 1978, 1975 (Lusaka: Government Printer,); See also various proposed amendments of the Ministry of Labour and the Department of Industrial Participatory Democracy.

30 Quamby, 1975, op cit.

## 31 Section 54

32 About 25 per cent of agricultural workers are seasonal employees. see P 217, above.

## 33 Section 69

34 ZLRP, op cit.

35 Grosdanic S and Weiss M, Technical Memoranda to the Government of Zambia on the Functioning of the Works Councils System - two separate reports, (Geneva: ILO Expert Mission Reports, 1983).

36 Fincham and Zulu, 1980, op cit, P 171.

37 Roan Copper Mines (Luanshya Division) v Works Council [1975-78], ZICR, 57.

## 38 Section 72(4)

39 Industrial Participatory Democracy Department (IPD) Survey, (unpublished, 1977).

## 40 Section 70

41 The Decentralisation policy is clearly reflected in the Local Administration Act 1980, (No 15 of 1980).

## 42 Section 59.

## 43 Section 76.

44 IPD Survey, 1977, op cit. Weiss has also noted this shortcoming in his report, 1983, op cit, P 10.

45 ZLRP, op cit.

46 Other researchers have noted this limitation in the length of the experience. Fincham et al, 1980, Weiss, 1983, Grosdanic, 1983, op cit.

- 47 Among other sources, Industrial Participatory Democracy Department annual reports; Tripartite workshops in Industrial Democracy in Zambia, 1976, 1977, 1981 and 1982; the ZLRP, op cit; Reports of ILO Expert Missions 1978, 1983, op cit, and our interviews with government officials, works councilors, trade unionists and employers' representatives provide ample material. We have also benefited from Fincham's privity of the evidence submitted to the Commission on Equity Participation, 1977, whose report has never been published and the insight provided by the ILO internal memoranda on the subject. Fincham et al, 1980, op cit.
- 48 For a more elaborate account of issues in this respect, see Craig J T, "Workers' Participation in Corporate Management" (1975), 1, Some Aspects of Zambian Labour Relations, P 105.
- 49 Lisimba M, "Business Law and Economic Change" in (1978), 1, Enterprise, P 1.
- 50 Second National Convention Report, Kitwa, 1969, op cit, P 21. See also the Special Assistant to the President's (in charge Industrial Democracy) comments expressing the view that Company law was "an obstacle to industrial democracy", Fincham et al, 1980, op cit.
- 51 The ZCTU withdrew union representation from the boards of ZIMCO and its subsidiaries in 1986, News From Zambia, No 471, 14 December, 1986.
- 52 Interview, IPD Department Director, op cit. ZLRP op cit.
- 53 ZLRP ibid.
- 54 Fincham et al, 1980, op cit.
- 55 IPD Annual Report 1978, op cit. Statistical breakdown as reported by Fincham et al, 1980, op cit.
- 56 IPD Report, 1978, op cit.
- 57 ZLRP, 1983, op cit.
- 58 Cf. Weiss, 1983, op cit, and IPD, 1978, op cit.
- 59 Weiss, 1983, op cit, P 9.
- 60 ZLRP interviews, 1983.
- 61 Weiss, 1983, op cit, P 10.
- 62 Personal Interview, N Zimba, ZCTU, General Secretary, Geneva, June 1986.



- 63 Ibid
- 64 ZLRP interviews, 1981.
- 65 These reservations on the part of ILO officials have of course not been publicly expressed. They are nevertheless clear from internal memos and interviews. Asked why the ILO has repeatedly provided the Zambian Government with technical assistance to further the aims of workers' participation in spite of their reservations, some officials insisted that the Office's duty in accepting requests for technical assistance was purely to advise on the practical functioning of works councils as devised. The Office had no mandate to advise a member state on the desirability of such arrangements, personal interviews, various ILO officials (anonymity requested), Geneva, 1984-86.
- 65a Kahn-Freund O, "Labour Law and Industrial Relations in Great Britain and West Germany" in Wedderburn K M, et al, Labour Law and Industrial Relations: Building on Kahn-Freund (Oxford: Clarendon Press, 1983), P.6.
- 66 Weiss, 1983, op cit, P 8.
- 67 Cf. Weiss's view that such conflict seems to be due to councils' tendency to assume the role of negotiating bodies in some cases attempting to amend collective agreements, *ibid.*
- 68 Finchan et al, 1980, op cit.
- 69 Quesby, 1975, op cit.
- 70 Finchan et al, 1980, P 182
- 71 *Ibid.*
- 72 Weiss, op cit, P 10
- 73 ZLRP supplemented by later interviews, Geneva, 1985 and 1986
- 74 ZLRP, op cit.
- 75 Annual Report, 1983, P 8
- 76 Annual Report, 1982, op cit, P 2
- 77 ZNPF v Attorney-General and others, Selected Judgement of Zambia, 1983/HP/433.
- 78 See for instance, Mission Reports and appendices, 1983, op cit.

- 79 The Cold Storage Board of Zambia and Refined Oil Products, Case Studies, Appendices to Grosdanic's Report, 1983, op cit.
- 80 Personal Interview, Labour Commissioner, Geneva, 11 June 1986.

## CHAPTER NINE

### TRADE UNION INCORPORATION IN ZAMBIA;

#### SUMMARY AND CONCLUSIONS

##### 9.A Trade Union Incorporation Through Law

This thesis has been primarily concerned with an analysis of the use of law in the development of labour policy in post-colonial Zambia. From its inception the Zambian state perceived labour, particularly organised labour, as a strategic factor in its development policy. It, therefore, set out to devise ways and means of incorporating labour to enhance its development objectives and chose labour legislation, particularly the Industrial Relations Act, 1971, as a key instrument in the Government's strategy.

As we noted in Chapter One, our analytical approach in this study has been influenced by two broad traditions of legal scholarship that recognise the importance of contextual non-legal factors. As in many other developing countries of the Third World, the policy of incorporation in Zambia was an attempt to use law in support of development objectives. Problems of development clearly influenced the perception of the role of legislation. There is little doubt the state was ready to use legislation as an instrument to legitimize state policy. Law was not regarded "as an institution apart from or above other social phenomena"<sup>1</sup>. On the contrary, as we suggested at the beginning of this study, it was assumed that the law was less autonomous in an essentially 'volatile' developing polity. In Zambia, as in other developing countries, the law has been only one factor interwoven with other factors in a wider social and economic fabric. In particular, the law has been used

as part of the State's response to the economic imperatives of development.

As is apparent from the preceding chapters, labour legislation in Zambia has been used both for the roles of "reform" and for that of "restriction".<sup>2</sup> It can be said, on the one hand, that the enactment of protective legislation during the first phase of incorporation attempts (Chapter Four) and the provisions conferring recognition and collective bargaining rights on trade unions (Chapter Five) amounted to reform as they created new rights for workers and trade unions. Similarly, the provisions on workers' participation that we have examined in Chapter Eight can also be seen in this light. On the other hand, the Industrial Relations Act, 1971's provisions on industrial conflict and dispute settlement procedures (Chapter Six), and the prices and incomes legislation (Chapter Seven) are essentially restrictive in character as they limit trade unions' and employers' freedom of action. These roles are essentially a continuation of labour policy during colonial times. As we have seen in Chapter Three, African trade unions were essentially a creation of the statute, unlike their British counterparts. In that respect the enactment of the 1949 trade unions and industrial conciliation legislation which gave African workers the right to organise trade unions and bargain collectively clearly amounted to reform. In contrast, the legislative changes of the late 1950's mainly due to bad industrial relations on the Copperbelt, an unfavourable economic climate and the subsequent demands for changes (PP 99 et seq) were restrictive. The development of trade unions and the attainment of the measure of autonomy they had at independence owed as much to the law as to their struggle against economic and social injustices. The Post-Colonial State, therefore, merely adapted past techniques to a different set of economic imperatives.

It is true that under the colonial regime the European experience, particularly British experience, was a major source of policy initiatives. Moreover there was further European influence on the Zambian decision to attempt incorporation through law. The underlying principles of the Zambian legislation of 1971 also

appear to have been influenced by the Heath Government's Industrial Relations Act, 1971. To a certain extent, therefore, the Zambian experience has been an attempt to "impose the law" in similar ways as chronicled by leading commentators on the British experience between 1971 - 74.<sup>3</sup> It is significant that the Chief Parliamentary draftsman of the Zambian legislation, Leo Barron, was clearly attracted to the principles enshrined in the English Act. He was very interested in modifying those principles for effective use suitable for a developing country.<sup>4</sup>

In spite of the obvious European origins of Zambian policy, however, it would be wrong to consider it merely as a crude attempt at institutional transfer and adaptation. The Zambian experience is more of an African experience, a response to the problems of an emergent state in search of development. It is for this reason that we have avoided any over-simplistic comparison with European developments and the European debate on Corporatism.

In this concluding Chapter we first look at the effects of the incorporation strategy in key areas. We then consider the limitations of and constraints in the use of law to attain incorporation objectives and the proposed abandonment of the strategy.

#### 9.B The Effects of Incorporation

We can summarise the effects of the incorporation strategy under four headings: its impact on trade unions, the restructuring of collective bargaining (including incomes policy), industrial conflict and workers' participation. We briefly consider each in turn in the following pages.

##### 9.B.1 Trade Unions and Incorporation

Ultimately the success or failure of government policy in Zambia depends on organised labour's response to it. Trade unionism in Zambia grew, in part at least, from demands for a measure of

autonomy at places of work.<sup>5</sup> By independence, workers' autonomy had emerged as an integral part of the country's industrial relations system. The pattern of work place relations was based on what we have referred to as British Voluntarism. That notion in Zambia enshrined basic British trade union principles albeit within certain legislative and administrative restrictions. Thus though there was visible state intervention in contrast to the metropolitan situation in Britain, minimum interference remained the basic philosophy of the colonial government policy and no radical attempts were made to restructure the system drastically. The metropolitan system of industrial relations was still the ideal, despite the fact that it was not fully realised. The atmosphere, especially in the period just before self-government, was such that African trade unions were able to attain a certain measure of autonomy. By independence, a number of unions, led by the Mineworkers' union, had in fact attained a large measure of functional autonomy.

The emergence of African nationalism of course resulted in the development of a broad identity of interests between unions and nationalist political parties. There was, however, no "class alliance against colonialism" on the lines claimed elsewhere in Africa.<sup>6</sup> Indeed there was occasional conflict between labour and nationalist tactics, especially in the early 1950's, with trade unions insisting that the industrial sphere was their domaine réservé. Such conflict was a quest for autonomy on the part of trade unions who were primarily motivated by a desire to retain their freedom of action in the industrial sphere in order to maximise their members' benefits.

The new Zambian State resisted the trade unions' insistence on autonomy from the start. Indeed, attempts were progressively made to design a strategy which would persuade organised labour to align itself with the state's conception of national development and integration. The labour movement's continued preoccupation with its members' interests may, therefore, be construed as the clearest response by the unions to the government's strategy of incorporation. In that respect it has to be seen as a reassertion

of the received traditional western-type trade union autonomy. In other respects, however, trade union response has not been uniform. Rather it has varied in terms of leadership levels and different measures. Trade union response has also been affected by various developments in state - union relations and the performance of the economy.

Two broad observations can be made on the trade unions' general response to policy innovations between the period 1964 to date. There have been indications that the trade union movement has accepted overall government authority.<sup>7</sup> This can be deduced from the willingness to co-operate with officially created agencies like the ZCTU. It will be recalled that when the Congress was created in 1965 and affiliation of unions was still voluntary, most unions including the miners in spite of their initial reservations, affiliated and accepted the Congress' authority. The centralisation of power through the ZCTU has also been accepted in the field of workers' education. The focus of workers' education has in part followed state defined goals.

We should not, however, read too much into union response in these areas. For many unions, especially smaller and financially insolvent ones, affiliation to the ZCTU and the assurance of check-off facilities was a life-line they could hardly reject. Similarly, co-operation in other areas was, at least in part, due to government reciprocity. After 1973 for instance, the government greatly expanded union representation on various policy-making organisations of the state, including the National Council of the ruling party.

In contrast to the acceptance of the overall government political authority in the formulation of national goals, however, the trade union leadership has continued to defend and has largely preserved its organisational autonomy. In spite of increased financial supervision by the state which has led to increased dependence by some unions, continuing incorporation of and occasional detentions of some union leaders, the trade union movement in general continues to assert its independence.

## 9.B.1(a) The ZCTU's Role

The role of the ZCTU as the main agency of state - union relations calls for a brief comment. There is little doubt that both the 1965 and the 1971 legislation envisaged a key role for the Congress, which, through frequent trade union leadership incorporation, the government could direct. Up to about 1981, it was apparent that the state had succeeded reasonably well in utilising the ZCTU as the main channel for the communication of its policies to the unions. A subsequent change in the Congress' leadership and a renewal by the ruling party of its efforts to control unions more directly seems to have changed the situation.<sup>8</sup> Moreover, the deterioration of the economy in recent years has meant that government policies, particularly in relation to wages and incomes, have become increasingly indefensible. The ZCTU leadership, therefore, has increasingly become the focus of resistance to government policies, including some provisions of the Industrial Relations Act, 1971.<sup>9</sup> One notable development has been the ZCTU leadership's reluctance to participate in the work of some state-sponsored organisations which formulate policy. Instead, they seem to be demanding fuller and more concrete participation, including the right to influence decisions. Announcing the withdrawal of the ZCTU from the board of the Zambia Industrial and Mining Corporation (ZIMCO) in 1987, the holding corporation of state companies, Chairman Chiluba said he did not wish the trade union movement to be associated with "escalating redundancies and prices."<sup>10</sup> The miners' leader has similarly warned the government that his union will cease co-operating unless rising prices and redundancies can be stemmed.<sup>11</sup> In spite of the enactment of the Employment (Special Provisions) Act, 1985, which prohibited employers from declaring employees redundant without the Ministry of Labour's permission, redundancies continue to grow at massive rates.

As for the response of the rank and file, indications are that whilst yielding to the government's political authority and broadly supporting it in line with the national trade union leadership, incorporation continues to be resisted in many respects.<sup>12</sup>



To fully assess the practical impact of the incorporation strategy upon the trade union movement in Zambia, however, we must look at three other areas; all targets of the 1971 reform; the restructuring of collective bargaining (including the introduction of statutory incomes policy), industrial conflict and dispute settlement procedures, and workers' participation.

### 9.B.2 Restructuring Collective Bargaining and Incomes Policy

#### (a) Institutional Changes

One of the major elements of the incorporation strategy was to restructure the key institutions of the industrial relations system. Thus, the creation and progressive strengthening of the ZCTU was complemented by attempts to restructure collective bargaining and dispute settlement. Finally, works councils were introduced. To aid the restructuring process two new key institutions were created., the Industrial Relations Court and, later, the Prices and Incomes Commission.

The latter institution as we saw in Chapter Seven has never really established itself and its future role is a matter for speculation. The Industrial Relations Court has fared better, but not as well as earlier expected. It has failed to emerge as the ultimate and authoritative arbiter of collective disputes that the government expected. It has developed little meaningful jurisprudence. Employers have been reluctant to resort to it to resolve industrial relations disputes, preferring instead traditional arrangements. Trade unions continue to be suspicious of its role, resorting to it only in aid of works councils and individual members' cases. The bulk of the cases, therefore, have been demarcation disputes concerning the classification of employees into management or eligible employees for the purposes of works councils. The rest of the cases have been individual grievances, mainly dismissals. The Court's most effective role was before the amendment of the Industrial Relations Act in 1983 when it had the power to

approve both recognition and collective agreements. In 1983 however, its power to approve collective agreements was transferred to the Prices and Incomes Commission. Its powers concerning recognition agreements are now largely routine, following patterns established long before the legislation was passed.

It therefore appears that two of the legislation's key institutions have thus far failed to make any meaningful contribution to the incorporation strategy. In addition to the above institutional changes, the Industrial Relations Act, 1971 created a compulsory system of collective bargaining with legally binding agreements. As we have mentioned in Chapter Five, collective bargaining has to be conducted according to procedures laid down by law. Similarly, collective agreements must contain certain statutory clauses, chief among them the Government's declared norm on prices and incomes. Although there are indications that the system has introduced collective bargaining to certain sectors where it was absent before, and stabilised procedures in many others, statutory regulation has not achieved its main objective. It has not stemmed unlawful industrial action, as we shall see presently.

One other major aim of collective bargaining restructuring under the incorporation strategy was to introduce an effective prices and incomes policy and enforcement machinery. The 1983 amendment to the Industrial Relations Act, 1971 which gave a revamped Prices and Incomes Commission the power to approve both recognition and substantive agreements was the latest of many efforts previously made before. As part of the effort, foreign aid was sought to fund the activities of the Commission. Such aid was secured from the Swedish International Development Agency in 1987. As we have seen in Chapter Seven, the Agency withdrew its pledge of assistance when it was discovered that it was intended to be used mainly to impose price controls. In spite of continuing efforts the lack of

resources has seriously hindered the Commission's work and it still has to formulate a comprehensive prices and incomes policy.

### 9.B.3 Industrial Conflict

The control of industrial conflict was one of the major concerns of the government when it set out to devise an effective incorporation strategy.<sup>13</sup> It is clear from the provisions concerning dispute settlement under the 1971 Act that the aim behind them was to reduce industrial unrest to acceptable levels. This seems to be the case particularly with the establishment of the Industrial Relations Court and compulsory procedures. Trends in industrial disputes, therefore, provide a credible basis for assessing the impact of the law.

Although neither government nor ILO statistics on industrial disputes make any clear distinction between collective disputes and individual grievances, they nevertheless provide figures concerning the number of industrial disputes, the number of workers involved and the number of man-days lost.<sup>14</sup> We may, therefore, derive from the figures the possible effect of the provisions designed to curtail industrial unrest. Of course, levels of industrial disputes are affected by numerous other factors, and indeed some of these factors might be far more decisive than the effect of the law.

On average, the figures show that there were many more industrial stoppages from Independence to 1974, when the 1971 Act came into force, than in the period between 1975 and 1983. Except for the years 1980 and 1981, industrial disputes during post-1974 years were consistently below 100 for each year. The high number of disputes recorded for 1980 (121) and 1981 (156) can be accounted for by several major disruptions during these years. In spite of the average decline in the overall number of disputes during the

latter period, however, the yearly number of disputes is not definitive. Thus, although the number of stoppages steadily declined up until 1979, they started to rise again in 1983. The number of stoppages sharply rose to 507 in 1984 (Cf. 54 in 1983).

Similarly, the number of workers involved in stoppages was on average higher for the period prior to 1974 than for the period after. The figures concerning the number of workers involved in disputes for the period 1975 to 1983 are, however, even less definite than those concerning the actual number of disputes. A total of 17,121 workers were involved in stoppages in 1975. That figure declined to 5,619 in 1976, and increased to 9,166 in 1977. In 1978 the number shot up sharply to 42,067 in spite of the fact that the actual number of disputes had declined from 51 in 1977 to 50. In 1979, the number fell to 10,846. Leaving the years 1980 and 1981 aside on account of major disputes during that period, the figures fell to 9,217 in 1983, but sharply rose to 27,750 in 1984. There was little change in terms of the numbers of wage-earners during the period examined. The significance of this factor is, therefore, negligible.

The figures of man-days lost similarly do not provide any better guidance. Although the man-days lost during the period 1975 - 1983 were, as in other categories examined, on average lower than for the earlier period, there is no apparently conclusive trend. In 1975, 51,003 man-days were lost. The figures fell sharply to 6,527 in 1976 and then more than doubled to 15,990 in 1977. They rose more sharply still to 197,330 in 1978. The figure for 1979 at 42,916 was relatively high if we take into account that the actual number of stoppages (44) had fallen from the previous year. The years 1980 and 1981 apart, the figures for 1982 fell drastically to 7,702, but rose slightly again to 8,170 in 1983. In 1984 the figures rose sharply to 31,382. From the statistics examined, it is difficult to be definite about the impact of legislative provisions concerning industrial disputes by merely looking at the

figures in terms of the number of disputes recorded, the number of workers involved and the number of man-days lost. What is more significant is the fact that "wildcat strikes" have continued unabated in spite of the restrictive procedures concerning industrial action under the Act.<sup>15</sup> Most such strikes tend to be both illegal (that is to say in contravention of procedural requirements of the Act) and unconstitutional under the unions' own rules. They also tend to be unofficial - not recommended or approved by the union hierarchy. It is noteworthy that the law has had no apparent effect on this trend. The problem of illegal strikes means that one of the major objectives of the Industrial Relations Act, 1971, the reduction of industrial disputes, has not been achieved. The imposition of strict procedures concerning collective disputes has had no positive impact. Although the union hierarchy tends to take account of the legal requirements in this area, if only to avoid the penalties, the rank and file are hardly influenced by such considerations. To the extent that unions' advice is frequently ignored, incorporation has, therefore, not succeeded.

#### 9.B.4 Workers' Participation

Equally important in the assessment of government policy is workers' participation. Works councils continue to be central to the government strategy of incorporation, as is evident from repeated requests for ILO technical assistance with a view to increasing their effectiveness.<sup>16</sup> However, it cannot be over-emphasised that it is too recent an experience to yield any definitive conclusions. It will be recalled that Part VII of the Act concerning works councils did not become officially operative until 1976. Except for a few instances, it took several years after 1976 for works councils to be introduced in many sectors. The government itself regards it more as experimental, and debate about the most suitable model continues within its ranks. Any assessment in respect of that impact of workers' participation has, therefore, to be regarded as even more tentative than for other areas discussed.

There is little doubt that the introduction of works councils, including some sectors not fully unionised, opened up new channels of communication. In the long term, works councils may well have a positive effect on industrial relations. There is, however, no evidence at this stage that there has been any dramatic change in the attitudes of management and workers. At best, works councils have been welcomed as a forum, in some firms the only forum, for addressing grievances collectively. Works councils were of course not intended for addressing grievances per se. Whereas management attitudes have been mixed, the business community continues to be suspicious of the concept of workers' participation in spite of the fact that it has had no significant impact on managerial prerogatives.<sup>17</sup> Whilst having accepted works councils in principle, trade unions continue to be suspicious of government intentions. Works councils have in certain cases encroached on traditional areas of collective bargaining, but it has not been to the extent that unions initially feared. Whether the transfer of the department responsible for workers' participation to the Ministry of Labour and Social Services, (further away from Presidential initiative which has been the mark of developments to date), has any significance remains to be seen.

#### 9.C. Incorporation and the Law: Limitations and Constraints

The failure of legal reform to induce change in support of development objectives in the Third World is common. Reasons for the failure vary. Some scholars of law and development have ascribed the law's failure to the contradiction between what are perceived as "authoritarian legal orders and the participatory imperatives of development."<sup>18</sup> Myrdal explained what he termed 'soft development' in terms of,

"A general lack of social discipline in underdeveloped countries, signified by many weaknesses: deficiencies in their legislation and, in particular, in law observance and enforcement; lack of obedience to rules and directives handed down to public officials on various levels; frequent collusion of these officials with powerful persons or groups

of persons whose conduct they should regulate; and, at bottom, a general inclination of people in all strata to resist public controls and their implementation. Also within the concept of the soft state is corruption, a phenomenon which seems to be generally on the increase in undeveloped countries."<sup>19</sup>

It can be said that similar factors have been at play in the Zambian situation.

However, it would be too simplistic to characterise all the shortcomings of the incorporation policy as due purely to the failure of law as such to bring about the changes legislated for. As we have indicated in the introduction and at the beginning of this Chapter, the role of the law was never conceived of as an autonomous process. Rather it was viewed largely in instrumental terms as an attempt to legitimise policy choices based on economic, political and other pertinent considerations.

Economic factors, chief among others, therefore, deserve close attention in assessing the overall impact of government policy, including the role of the law in the past, and prospects for future policy.

The path to labour incorporation was started upon during a decade of relative affluence in Zambia. Strong economic performance stemming from good copper prices positively affected such critical indicators as employment, wages and balance of trade at cetera. In 1973 when attempts to incorporate trade unions began in earnest, labour was in a relatively strong bargaining position. The legal reforms and consequent restructuring of trade unions and labour relations of the immediate post-independence period put unions in a better position to insist on their autonomy. Favourable changes in the law such as the institution of due check-off facilities for most unions improved finances which in turn positively affected the organisation of union affairs. Similarly, in spite of state superintendence over ZCTU affairs, the strengthening of the Central labour organisation resulted in the better representation of union

objectives vis-a-vis employers, including government agencies. Indeed the second phase of government strategy that we have discussed earlier in the study was in part a response to labour's strong position, perceived as disproportionate to its numbers in relation to other groups in society. Successive attempts to devise a more equitable incomes policy that we have seen, for instance, was one such manifestation of the above perception.

In relation to the policy's impact and future prospects, it can, therefore, be argued that the relatively better economic times which tended to strengthen the unions' capacity to maintain their autonomy were a major constraint on the government efforts of incorporation, including the effect of labour legislation. Alternatively, the relatively better economic times prior to 1981 enabled the government to have recourse to more resources to implement the strategy. As we shall presently see, less reliance on external resources may well have given the government more independence and the political will to see its policies through. The introduction of the one-party state and the subsequent proscription of institutional opposition in 1973 may well have enhanced government attempts to overcome unions' resistance. The 1980's have seen the Mining industry, which made Zambia one of the richest and fastest-growing economies in black Africa, in a "vicious spiral of decline which has been the primary cause of the country's economic crisis."<sup>20</sup> The foreign debt had by 1985 already reached 2.8 billion US dollars. Debt servicing alone now takes about 50 per cent of export earnings. Inflation is running at over 50 per cent as well. The ZCCM, reputed to be one of the highest-cost copper producers, has been closing down mines in an attempt to restructure the industry. The result has been massive redundancies and more unemployment.<sup>21</sup>

In order to try and halt the decline the government has come to rely more heavily on external resources. In 1985 it accepted harsh IMF measures in order to attract external funding. The measures



included inter alia, the introduction of a foreign exchange auctioning system resulting in an effective devaluation of the Zambian currency of about 70 per cent, the removal of subsidies on food essentials and cut-backs in government expenditure across the board. It was said to be one of the most severe economic reform programmes in Africa.<sup>22</sup> However, the hardships imposed by the programme came to threaten the political and social order of the country. It resulted in widespread urban riots and loss of life.

In the face of civil unrest the government sought to defuse the situation by restoring subsidies and breaking with the IMF early in 1987.<sup>23</sup> In spite of the institution of a locally formulated economic recovery programme, however, the country continues to rely heavily on external aid to finance many of its programmes. Moreover, there appears to be no prospect of economic recovery in the short-term. Unemployment and the cost of living have continued to rise. As the unions' bargaining position has been weakened, the union leadership has sought to rally the political support of the rest of the population. Such attempts have resulted in government censure. Earlier in the year, for instance, the ZCTU leaders' passports were confiscated and a number of unionists detained.<sup>24</sup>

On the face of it, a weakened labour movement might well enhance the prospects of the proposed "integration" policy if the government chooses to go ahead with it. However, there is no guarantee in that respect. The government now has little resources to fund its attempts at fresh policy initiatives. The government has in the past sought external aid to consolidate and expand existing programmes. This is true of the workers' participation programme for which assistance has been given by the ILO, the Federal Republic of Germany and Yugoslavia, among other donors. The dangers of relying on external resources to advance incorporation policies were, however, recently shown by the case of the Prices and Incomes Commission which we have mentioned above. In 1987 the government had sought and secured a funding pledge from the Swedish

International Development Agency. The Agency withdrew its pledge of assistance when it discovered that the major use of the funding sought was to impose price controls. In the face of further opposition from other aid donors, President Kaunda announced towards the end of 1987 that the government would be reviewing the exchange rate and price controls before the next budget.<sup>25</sup>

9.D. The Abandonment of Incorporation as a  
Government Strategy: Prospects

In 1984 the government announced plans to reform the current law and replace the Industrial Relations Act, 1971, with a more radical one.<sup>26</sup> The effect of the proposed changes would be to shift the balance away from the current incorporation strategy towards the further integration of trade unions into the political process. This is apparent from a number of major changes proposed, some of which we refer to presently.

Any assessment of the future prospects and developments concerning the present labour policy is inevitably speculative. Nevertheless, it is useful to describe some of the proposed reforms both as evidence that the government has judged incorporation by law to be an unsuccessful strategy and to indicate the alternative strategy that the government is contemplating adopting.

The most radical departure from present policy would be the proposals to transform trade unions into "mass movements". The document containing the proposed reforms states:

"The constitution of every trade union shall declare that the trade union shall be a mass movement of the party and as such shall accept the declared policies, objectives, aspirations and programmes of the party and that no person shall be qualified to be elected or appointed to any office <sup>in</sup> the trade union unless he is a member of the party ....  
(emphasis added)

The exact significance of the concept "mass movement" is not clear. Its practical effect is, however, patently clear. Taken together with the requirement of party membership for trade union officers it would amount to making trade unions and the ZZCTU in particular, integral wings of the ruling party, the United National Independence Party (the UNIP) on the same lines as the Women's and Youth Leagues.<sup>28</sup> Attempts to make the trade union movement an integral part of the ruling party's hierarchy are not new. Trade unions have always resisted the idea in favour of complete autonomy. In 1973 the matter appeared to have been resolved, with the ruling party accepting the nominal seating of the ZCTU on the National Council without affecting organised labour's autonomy.<sup>29</sup> Another important innovation would be the further extension of ministerial powers over the conduct of union affairs. The proposed law would give the minister responsible the discretion to dissolve any trade union on the grounds that it has "failed to carry out its objects adequately, or is conducting its affairs in a manner inimical to the interests of the party or to the security of the state ...."<sup>30</sup> This power would be coupled with the right of the minister to appoint other persons in place of elected officers on similar grounds to those empowering him to dissolve a trade union.<sup>31</sup>

Similarly, the proposed Act would increase ministerial powers of supervision over the unions' financial affairs, including the appointment of outside accountants and auditors. In the case of misuse of union funds, the government would have the power to suspend and dismiss guilty officers and appoint replacements.<sup>32</sup>

Two other proposed changes which seem to have the support of both employers and unions must be briefly mentioned here.<sup>33</sup> It is proposed that a tripartite consultative council and a workers' education board be established.<sup>34</sup> The former would have all three social partners represented and seems to be in response to the International Labour Organisation's (the ILO) Convention No 144

which Zambia had ratified, and Recommendation No 152. The Workers' Education Board would, in addition to the social partners, have representatives of "institutions and organisations interested in furthering workers' education as the Minister may from time to time determine."<sup>35</sup>

It is now more than three years since the proposed reforms were first announced. As we have mentioned earlier, the President resurrected the issue of 'total incorporation' on Labour Day in 1986. A new Committee to study ways of integrating the ZCTU into the ruling party as one of its wings was appointed. By the end of February, 1988 the Committee had yet to report and no proposals have been presented to Parliament for legislative action. It seems that not only are trade unions and employers hostile to most of the proposals, (the reforms would, *mutatis mutandis*, apply to employers' organisations as well), but there are also serious disagreements between the government and the ruling party hierarchy on some of the proposals.<sup>36</sup> The ILO is said to be equally dismayed by the reform package. They are concerned that the reforms would further reduce the prospects of the Country's ratification of 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 they have been pressing the government to ratify for a number of years.<sup>37</sup>

The ILO's opposition to the proposed reforms is significant. The government has sometimes in the past relied on the implicit support of the Organisation to persuade trade unions to co-operate with some aspects of its policy. This was apparent, for instance, from the Government's attempts to devise successive Prices and Incomes policies which we have discussed in Chapter Seven. Limited ILO support has also been given to the Workers' Participation Programmes. In both instances the ILO has been readily forthcoming with technical assistance. It has also been known to intervene in order to mediate disputes between the government and the ZCTU.

Not only would the enactment of the proposals into law make the prospects of ratifying the above ILO conventions more remote, it would also raise the possibility of undermining Zambia's international treaty obligations in other areas.

It would also appear that Zambia would be in breach of its obligations under other international human rights treaties. Zambia has acceded to various United National Instruments on human rights, including the International Covenant on Civic and Political Rights and its Optional Protocol. It has also ratified the Charter on Human and Peoples' Rights adopted by the Organisation of African Unity.<sup>38</sup> For a country that has always claimed moral leadership in matters of human rights, especially in Southern Africa, such breaches would be a serious blow to its international standing. Perhaps more significantly, some of the proposed provisions would be open to challenge as being in contravention of fundamental rights under the Zambian Constitution, particularly those concerning discrimination and freedom of association.<sup>39</sup>

The proposed reforms are, therefore, unlikely to be more effective than present policy, judging by the trade unions' reaction to date. Nevertheless, it should be borne in mind, that were such a policy to come into being, trade union autonomy would be severely curtailed. Trade unions would be a constituent element of the state machinery. The effectiveness of government policy would then have to be judged more in terms of its impact on worker attitudes than institutional trade union responses.

All this is speculation. What is quite clear is that the Government's decision to attempt a new approach to the control of the trade union movement is a further open acknowledgement that from their point of view, their incorporation through law strategy has failed.

Of course, to the extent that the new institutions that have been created during the period have a progressive influence in shaping the labour relations system, the law has played an important role in the formulation of policy. It is clear, however, that the fundamental determinants remain social and political and above all, economic.

NOTES TO CHAPTER NINE

- 1 Weakes B, et al, Industrial Relations and the Limits of Law: The Industrial Effects of the Industrial Relations Act, 1971. (Oxford: Basil Blackwell, 1971).
- 2 For similar perceptions on the role of labour legislation in the British Context, see Wedderburn K W, et al (eds), Labour Law and Industrial Relations: Building on Kahn-Freund, (Oxford: Clarendon Press, 1983), various places, especially Chapters 2, 3 and 6.
- 3 See, inter alia, Weakes, et al, 1971, op cit. Thomson A W J, and Engleman S R, 1975, op cit.
- 4 The late Leo Barron, later Deputy Chief Justice of Zambia and Zimbabwe, Personal Communication, circa 1975.
- 5 Fincham et al in Turok, 1979, op cit, P 214.
- 6 Ibid
- 7 Gupta in Tordoff, 1974, op cit, P 317.
- 8 For an account of the first major incident which led to the detention of ZCTU leaders, see Kalula, 1985, op cit, P 599.
- 9 ILO, (1985), 2, Social and Labour Bulletin, P 233.
- 10 Times of Zambia, 8 April 1986.
- 11 Ibid.
- 12 Gupta in Tordoff, 1984, op cit, P 317.
- 13 Gilmore, 1977, op cit, P 380.
- 14 Ministry of Labour and Social Services Annual Reports and ILO Yearbooks of Statistics, 1964 - 83, op cit.
- 15 Government sources.
- 16 Weiss, 1983, op cit, Grozdanic, 1983, op cit, and Kalombo J F, "Case Study on the ROP (1975) Ltd", Research Report, (Lusaka: Industrial Participatory Democracy Department, 1986).
- 17 Zambia Labour Relations Project (ZLMP), 1983, op cit.
- 18 Seidman, The State, Law and Development, 1978, op cit, P 468.

- 19 Myrdal G, 'The "Soft State" in Underdeveloped Countries', (1968), 15, UCLA Law Review, P 1120.
- 20 Africa Review, 1987. (Saffron Walden: World of Information, 1986), P 253.
- 21 Ibid.
- 22 Ibid.
- 23 Africa Review, 1987, op cit, P 254.
- 24 The Guardian, 12 November 1987.
- 25 News From Zambia, No 458, 15 - 27 October 1987.
- 26 See document entitled "The Industrial Relations Act, 1984" (Ministry of Legal Affairs, Lusaka, 1983). The status of the document is still somewhat in doubt. In spite of the fact that it was drafted by the Parliamentary Draftsman's Office and signed by the Attorney-General, the government has always maintained that it was intended to be no more than a layman's draft intended to facilitate internal government discussion, for instance, per F S Hapunda, formerly Minister of Labour and Social Services, personal interview, 18 June 1985, Geneva.
- 27 Clauses 16 and 35, "Industrial Relations Act, 1984", *ibid*. Subsequent references to the document's clauses unless otherwise indicated.
- 28 Article 59 (1)(a) and (b) of the UNIP Constitution. The ZCTU alleged as much in their opposition to the proposed changes, "Zambia Congress Trade Unions' Reactions to the Proposed Industrial Relations Act, 1984", (Kitwe: ZCTU Secretariat, 1984), P 3.
- 29 ZCTU, op cit, P 4.
- 30 Clause 14
- 31 Clause 23
- 32 Clauses 22 - 26, 41 - 42.
- 33 ZCTU, op cit, PP 45 - 46.
- 34 Parts XI and XII
- 35 Clause 131.



- 36 The Ministry of Labour's reservations concerning the likely adverse effects some of the proposals could have on industrial relations are well known within government circles, Personal Communications.
- 37 Personal Communications from ILO Officials, Geneva, 1985. The author was privy to the ILO's Freedom of Association Branch's informal reaction to the proposals and advice given to the ZCTU in July, 1985.
- 38 Kalula, 1985, op cit.
- 39 For instance, Articles 23 and 25 of the Zambian Constitution. For a strong argument in that respect see ZCTU, 1984, op cit. pp 15 - 16.

APPENDIX I

A. INTERVIEW QUESTION GUIDELINE

1. Trade Union and Workers role and activity.

Nature and extent of trade union influence?

What role for trade unions?

How effective trade unions as spokesmen for labour?

How effective trade union administration?

The 'right' to strike?

Frequency of involvement in industrial action?

Attitude towards essential services?

Effects of industrial action?

Causes of industrial action?

How effective machinery for settlement of disputes?

Relationship between trade unions and other bodies, eg Works Councils, Ministry of Labour, employers association, etc?

Effect of law and government action on workers and trade union activities?

Changes in management attitudes since Independence/Industrial Relations Act, 1971/unionisation?

2. Collective Bargaining Procedures

How familiar with nature/contents of collective agreements?

Impact of collective agreements on management/trade union relations/ shop-floor relations?

How binding in practice: collective bargaining procedures/collective agreements?

Attitude to changes in collective agreements made by the Industrial Relations Court/involvement?

Impact of Joint Industrial Councils?

Statutory system fair deal?

3. Statutory Prices and Incomes Regulations (interviews conducted before Prices and Incomes Commission in effect).  
How familiar with current ad hoc government policy on prices and incomes?

How effective Minimum Wages Boards and Councils?

Wage levels/differentials/productivity/cost of living?

In favour of prospective Prices and Incomes Commission?

How fair representation of workers/unions/employers/public representatives on Commission?

What prospects proposed Commission?

4. Dispute Settlement Procedures

Internal arrangements: grievance and dispute settlement - how effective?

How often recourse to statutory procedures?

How effective union intervention?

How effective Ministry of Labour intervention?

Management attitudes to dispute settlement since Independence/Industrial Relations Act?

Role of Industrial Relations Court: How fair, effective, speedy?

Effect of Industrial Relations Court decisions?

How familiar with statutory procedures: workers/trade unionists/work councillors/immediate shop-floor management?

5. Industrial Democracy

How familiar with workers' participation arrangements?

Workers/management/union/Government attitudes towards Works Councils?

How effective/impact on industrial relations:  
shop-floor/management-union/union-Government/productivity?

Relationship of Works Councils with other bodies:  
unions/employers' associations?

How effective workers' representation and accountability?

Works Councils' administration: Industrial Participatory  
Democracy Department and other agencies - Ministry of  
Labour/Industrial Relations Court/unions/management/employers'  
association/ rank and file workers?

Any need/what changes/why?

6. General attitudes to current labour policy and possible changes

How familiar with current overall government policy?

What attitudes to overall/particular policy?

Compare before and after Industrial Relations Act, 1971? How  
important role of law on industrial relations?

What changes preferred?

What attitudes towards role of  
government/employers/unions/rank and file workers?

What attitude towards closer relationship between unions and  
ruling party/government direction?

What likely affect proposed changes in state-union relations?

B. SAMPLE OF CATEGORIES INTERVIEWED

i Shop-floor workers - selected sectors in Lusaka.

- ii Trade unionists - Officers of selected branch and national unions, the ZCTU. Also interviewed union representatives on statutory and voluntary national bodies (eg Minimum Wages Boards and Councils and Joint Industrial Councils).

Employers - this category included selected classes of management personnel, including shop floor supervisors, personnel managers, officers of employers' associations, officers of the Zambia Federation of Employers, and employer representatives on statutory bodies.

Government and related agencies - including successive Ministers of Labour, Ministry of Labour officials, officials of the Industrial Relations Court, Industrial Participatory Democracy Officials and Minimum Wages Boards and Councils' personnel.

ILO officials - both at Headquarters in Geneva and Area Office in Lusaka.

Works Councillors - representatives of both management and workers on workers councils of selected firms.

Private individuals - of recognised expertise and those historically involved in labour matters.

## APPENDIX II

### ZAMBIA: A COUNTRY PROFILE

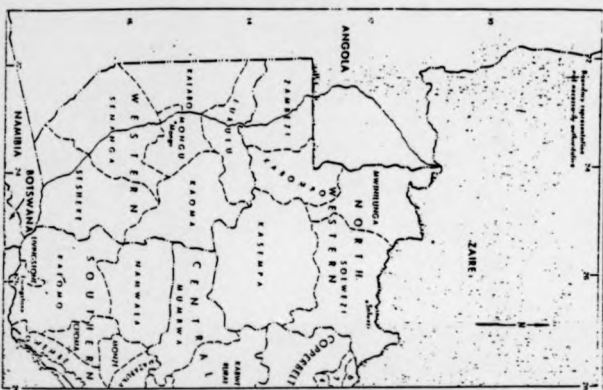
#### A. Geographical Position

The Republic of Zambia occupies 752,614 square km. The country is part of the Central African plateau stretching from the River Zambezi in the South-West to the tip of Lake Tanganyika in the North-East. It is land-locked, bounded by Tanzania in the North, Malawi in the East, Mozambique in the South-East, Angola in the West, Namibia in the South-West and Zimbabwe in the South (see Map 1).

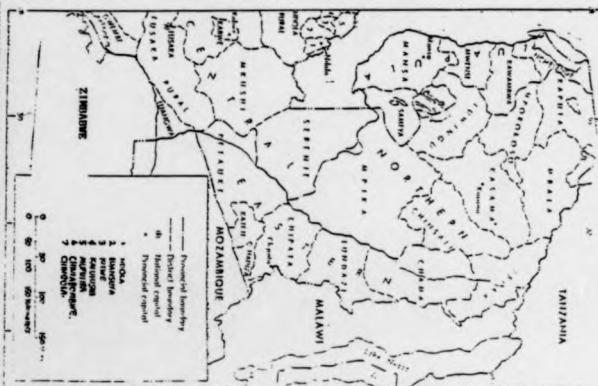
#### B. The Economy

Zambia has a mixed economy dominated by parastatal companies in all sectors except agricultural production.

Mining accounts for about 95 per cent of total foreign exchange earnings (copper alone accounts for up to 90 per cent), but its contribution to the Gross Domestic Product (the GDP) has fallen, from over 30 per cent in the early 1970's to between 10 - 20 per cent in the years since. This has been mainly due to the slump in world copper prices, coupled with declining ore grades and increasing input costs. To reduce costs and improve efficiency, two of the major state-owned mining companies were merged in 1982 to form the Zambia Consolidated Copper Mines Ltd (ZCCM), which is now one of the largest conglomerates in the World. Other major minerals extracted are cobalt (World's second largest producer), zinc and lead.



MAP 1. MAJOR ADMINISTRATIVE DIVISIONS AND GEO-POLITICAL LOCATION



Industry contributes about 18 per cent to the GDP and employs over 10 per cent of the total labour-force. The manufacturing sector is primarily based on processing of imported raw materials, with over one-third of output consisting of processed foods and beverages. Other major products include textiles and rubber, chemical and metal products. The bulk of the sector is in the hands of the largely state-owned Industrial Development Corporation (INDECO) group, but several private enterprises are also significant. Lack of available foreign exchange for imports of raw materials is the major constraint. Government policy has shifted towards the development of non-traditional exports and import substitution, including increased production of inputs for the expanding agricultural sector.

Agriculture contributes less than 20 per cent to the GDP and accounts for only 1 per cent of export earnings, but it is the main source of employment of over 50 per cent of the population. Major food crops include maize, cassava, sorghum and millet. Main cash crops include tobacco, cotton, sunflower, sugar-cane and ground nuts.

Hydro-electricity and coal are the major sources of domestically produced energy, together they provide 80 per cent of energy requirements. The remainder is made up of imported petroleum, some of which is locally refined. Some hydro-electricity is exported to neighbouring countries.

The balance of payments is largely determined by world copper prices. The general fall in copper prices and rising oil imports have resulted in balance of trade deficits in recent years. The main imports are machinery and transport equipment (typically 35 per cent of the total value), crude petroleum (25 per cent), basic manufactures (22 per cent), and chemicals (13 per cent). The main exports are copper (typically 90 per cent), cobalt (4 per cent), and zinc (2 per cent).



### C. Population and Social Indicators

By the end of 1985 the population was estimated at 6,500,000. The country is one of the most urbanised in Africa owing to the intensive development of copper mining. It is now estimated that over 40 per cent of the population are urban dwellers. Over 60 per cent of the urban population live on the Copperbelt. Rural densities vary from fewer than two per square kilometre to fifty or more in a few locations. The population is denser in commercial and agricultural areas of the "line of rail" and far South-East and where fishing supplements agriculture as in the upper Zambezi plain and lakes and marshes of the North-East.

There are more than seventy-two officially recognised ethnic groups, each with its own dialect or language. None is politically or economically predominant. English is the official language and has become increasingly important. Seven official vernaculars are recognised, among them Bemba in the North-East and the Copperbelt, Nyanja (Cewa) in the East and central cities like Lusaka and Kabwe, Lozi in the West and Livingstone, and Tonga in the South.

Approximately half the population profess christianity, roughly one-half to two-thirds of which are Roman Catholics, the rest being of various protestant and independent denominations. The remainder practice traditional African religions.

There has been a great expansion in education and the rate of literacy since independence. In spite of the expansion, however, the aim of universal free primary education has yet to be achieved and relatively few go beyond lower secondary levels, let alone to higher institutions of learning. There is one university with two campuses at Lusaka and Ndola with over 5,000 students enrolled. The government has progressively tried to provide universal medical and social services in both urban and rural areas. There are urban hospitals, large rural hospitals and a flying doctor service for

remote areas. In spite of such attempts, services fall far short of the population's needs. Major health problems include chronic illness, such as malaria, schistosomiasis, and dietary deficiency as well as acute diseases, such as measles, typhoid and dysentery.

#### Sources

Data for the above profile have been drawn from various sources including Economic Reports by the National Commission for Development Planning and the European Economic Commission Delegation in Zambia; Kaplan I (ed) Zambia: A Country Profile (Washington DC: American University, 3rd edition, 1983); African Review, (Essex: Saffron Walden, 1986 and 1987); Africa South of the Sahara, (London: Europa Publications, 15th edition, 1986).

APPENDIX III

Major events concerning or connected to developments in labour policy between 1945 and 1963 include:

- 1946 - William Comrie, British trade union officer, arrives to assist in the "orderly formation" of African trade unions.
- 1947 - First African trade union, the Shop Assistants Union, formed on the Copperbelt.
- 1947/48 Abortive negotiations on African advancement in the mining industry.
- 1948 - Commission appointed to inquire into the advancement of Africans in the mining industry.
  - Federation of Welfare societies reconstituted as the African National Congress. First nationalist movement.
- 1949 - Northern Rhodesia African Mineworkers Union formed on the Copperbelt.
  - The Trade Unions and Trade Disputes Ordinance and the Industrial Conciliation Ordinance passed.
- 1952 - African miners strike over increased wage demands. Led to the Gullebaud Arbitration.
  - Commission appointed to review the salary structure of the Civil Service.
- 1953 - Gullebaud Arbitration over African miners' wage demands. Wage increase awarded to all African miners' work groups.
- 1953 May, ANC campaign against the introduction of the Federation collapses mainly for lack of union support.
- 1953 August, The Federation established.
- 1953 - Mines African Staff Association (MASA) formed to cater for African senior workers. Recognised as an official negotiating body in 1955 after African status on the mines.

- 1954 February/July, Four party talks (mining companies, NRMU, MRAMU, and MASA) over African advancement. Unsuccessful.
- 1954 - Copper prices begin rising at the London Metal Exchange. Results in corresponding rises in European Workers' bonuses peaking in 1956.
- 1954 November, Tension over African advancement. Mining companies give NRMWU six months' notice of abrogation of collective agreement. Notice suspended six weeks over signs of agreement.
- 1954 - Board of Inquiry into African advancement in the mining industry. The Second Forster Inquiry.
- 1955 - 3 January. Nine week African miners strike begins.
- NRMU ballot on African advancement into low grade European jobs. 60 per cent in favour. Ballot re-affirmed later in the year after African strike, but with smaller majority.
- 1955 - July. NRMWU agrees with Anglo-American to transfer 24 jobs categories to Africans. Subject to NRMWU veto.
- Government publishes a restrictive Trade Unions and Trade Disputes Bill. Later withdrawn after union opposition.
- 1956 - Summer. African miners' rolling strikes.
- Commission of Inquiry, Branigan Commission, into unrest in the mining industry.
- Trade Union Bill published with similar restrictions to that withdrawn in 1955.
- 1957 - Restrictive Amendment Bill passed.
- NRMWU irregular stoppages.
- Commission, Honeyman Commission, to inquire into stoppages in the mining industry.
- Another Trade Union Amendment Bill with further restrictions published.
- Report of the Committee on Trade Testing and Apprenticeship for Africans.
- 1958 - Restrictive Trade Union Bill passed.

- 1958 - Autumn. Stoppages by NRAMU.
  - Zambia African Nationalist Congress formed to challenge "moderate" ANC.
- 1959 - ZANC banned, UNIP formed in its place.
  - New Federal Constitution and Election.
  - Apprenticeship opened to Africans in some crafts.
  - NRAMU allow joint council representation on the mines.
- 1960 - Monckton Commission over African opposition to the Federation.
  - Federal Review Conference. Ends in deadlock.
- 1962 - Renewed industrial unrest.
  - Morison Commission appointed to inquire into the Mining Industry.
  - NR general elections. African majority under coalition.
- 1963 - Whelan Commission of Inquiry into the unrest on the Copperbelt.
  - 31 December, Federation dissolved.

APPENDIX IV

TYPICAL INDUSTRY-WIDE COLLECTIVE AGREEMENT  
UNDER THE INDUSTRIAL RELATIONS, 1971, ACT  
AS AMENDED IN 1983

GAZETTE NOTICE NO 180 OF 1985

THE INDUSTRIAL RELATIONS (AMENDMENT) ACT, 1983 (Section 4(d))

Joint Council Collective Agreement between the Hotel and Catering Association of Zambia and the Hotel Catering Workers' Union of Zambia.

IT IS HEREBY NOTIFIED for public information that a Joint Council Collective Agreement has been concluded by the parties named above and the terms of which are appended hereunder.

Any person affected by this Joint Council Collective Agreement and who objects to any of the terms thereof may, not later than thirty days from the date of publication of this notice, make representations in writing, to the Secretary, Prices and Incomes Commission, PO Box 30707, Lusaka, stating his/her objections to the said Joint Council Collective Agreement.

Secretary  
Prices and Incomes Commission.

COLLECTIVE AGREEMENT

THIS AGREEMENT IS MADE on 4th January, 1985, between the Hotel and Catering Association of Zambia, whose registered office is at the Showgrounds, Great East Road, Lusaka (hereinafter called 'the Association'), of the first part and the Hotel and Catering Workers' Union of Zambia, whose head office is situated at Cha Cha Cha Road, Lusaka (hereinafter called 'the Union'), of the other part.

Now it is hereby agreed as follows:

1. Engagement and Probation

- (a) Every candidate shall complete a Company's application for employment.

- (b) A probationary period of three months shall be served and in this case either party may terminate employment within twenty-four hours or pay in lieu thereof, without assigning any reason therefor. The Company, however, reserves the right to extend the probationary period for not more than three additional months with the written agreement of the Works Council. (emphasis given)
- (c) A graded worker shall be paid the basic rate for the job during the probationary period. Past experience and training in the hotel industry shall be taken into account at the time of engagement.
- (d) At all times the employer reserves the right to require an employee to submit himself/herself to a medical examination; such examination shall be at the expense of the employer. No prospective employee shall be engaged without first being pronounced medically fit for employment.

## 2. Contract of Service

The contract of employment shall be a monthly contract unless otherwise specified by the Company in writing.

## 3. Redundancy

- (a) Where, through force of circumstances, it is necessary to reduce staff, the employer will negotiate with the Union and the Works Council (emphasis given) taking into account the following factors in deciding which of his employees are to be declared redundant: capacity; efficiency; length of service; diligence; loyalty; and health.
- (b) The employer shall follow the provisions of the Employment Act and the Industrial Relations Act. (emphasis given)
- (c) Formal notice of termination of employment, or pay in lieu and redundancy payment shall be as follows:

| <u>Length of Service</u> | <u>Notice</u> | <u>Payment</u>                                       |
|--------------------------|---------------|--|
| From 6 months to 1 year  | 1 month       | 1 month  |
| 1 year to 3 years        | 1 month       | 2 months   |
| 3 years to 5 years       | 1 month       | 2½ months  |
| Over 5 years             | 1 month       | 1 month's salary for each year of completed service. |

## 4. Retirement

The normal retirement age shall be 55 years for men and 50 years for women. Employees wishing to retire before the above stated period shall do so after rendering a continuous service of twenty years with the same employer. Application for longer service may be considered at the discretion of the employer, and if approved, due retirement benefits will be paid at the request of the employee.

## (a) Retirement Benefits.

- (i) A retiring employee as defined in Clause 4 above, having at least 5 years' service shall be entitled to retirement benefits as follows, in addition to statutory benefits:

| <u>Length of Service</u> | <u>Payment</u>   |
|--------------------------|--|
| 5 - 9 years              | Fifteen days' salary for each completed year of service.     |
| 10 - 19 years            | Twenty days' salary for each completed year of service.      |
| 20 years and above       | Twenty-five days' salary for each completed year of service. |

- (ii) If an employee is discharged on medical grounds or dies, he/she or the heirs shall receive whatever retirement benefits the deceased would have been entitled to had he/she retired on that date, in addition to any other entitlements due to the late employee.
- (iii) If an employee is discharged on disciplinary grounds, he shall receive whatever retirement benefits he has accumulated except in the case of summary dismissal.
- (iv) Retirement benefits shall not be paid if the employee is entitled to benefits under a Company's Pension Scheme.
- (b) If an employee resigns of his own accord after the qualifying period of five years, and if he has not been involved in a serious breach of Company discipline calling for summary dismissal, the employer shall pay benefits as if the employee had retired.



## 5. Medical Disablement Discharge

- (a) When an employee is unable to continue employment for medical reasons as defined by a certified medical practitioner or as a result of disablement caused at work, he shall receive a termination payment as follows, in addition to any statutory benefits due:

| <u>Length of Service</u> | <u>Payment</u>   |
|--------------------------|--|
| 6 months and upwards     | One month's salary for each completed year of service. |

- (b) Workers claiming benefits under Clause 4 will not be entitled to claim under Clause 5 and vice versa.

## 6. Redeployment

As a measure to raise efficiency it is hereby agreed that it may be necessary to redeploy employees within the organisation, due to change in the nature of work. Such workers shall be given retraining where possible to keep up their skills.

## 7. Notices

- (a) Where an employer is required to serve an employee with a written notice relating to the terms and conditions of employment, or termination of employment or occupation by the employee of any employer's property, such notice shall be deemed to have been properly served if it has been handed to the employee or delivered to his last known place of abode or posted on any board permanently kept by the employer for the purpose of communication of information to employees.
- (b) Where an employee is required to serve any written notice on the employer relating to the terms and conditions of his employment or termination of his employment, such notice shall be deemed to have been properly served if it has been handed to the Company's Personnel Officer or the employee's Supervisor.

## 8. Basic Salary

- (a) Wage rates shall be as negotiated and agreed between the Union and the Association and shall be part of this Agreement. Provided always that the employer shall be at liberty to pay wages at higher rates at his sole discretion, in cases of outstanding ability.

- (b) During the period of the present Collective Agreement the wages/salaries as set out in Schedule A attached shall apply and shall be payable by the last working day of each calendar month. These wages/salaries have been adjusted by increases as negotiated for and agreed upon by the Association and the Union as follows:

(Wage figures omitted)

- (c) Those employees already employed and receiving the minimum basic salary/wage or above as per previous Collective Agreement, will be awarded an increment for 1985 and 1986 as per grade table in sub-clause (b) hereof. The increases are on basic wage/salary only.

9. Promotion

Promotion from one grade to another is entirely at the discretion of the employer. On being promoted, the employee shall receive the minimum basic for the new grade plus 15 per cent. A policy of internal promotion will be followed where possible.

10. Demotion

No change.

11. Leave

- (a) No change.

- (b) Special leave - special leave will be granted upon written application and supported evidence in the event of the following:

(i) Death of a spouse, father, mother and own child - fourteen days.

(ii) No change.

(iii) No change.

- (d) Maternity Leave

(i) Every female employee who has completed at least six months of continuous service with the company from the date of first engagement shall be entitled to ninety working days maternity leave on full pay, maternity leave benefits will only be claimed once in every twenty four months.

(ii) No change.

(iii)

- (e)
- (f) No change.
- (g) Sick Leave

Subject to the provisions of Section 54(2) of Employment Act, an employee who according to the judgement of a registered physician or medical institution designated by the employer is unable to execute his work by reason of sickness or an accident, shall on producing a medical certificate be granted paid sick leave as follows:

- (i) During the probationary period after completing one month's continuous service up to a maximum of twenty six working days on full pay and further eight weeks on half pay.
  - (ii) For permanent employee - a maximum of 78 working days on full pay and further sixteen weeks on half pay.
  - (iii) No change.
  - (iv)
- 12. No change.
  - 13. No change.
  - 14. No change.
  - 15. No change.
  - 16. No change.
  - 17. Shift Differential
 

Employees required to work a full shift between the hours of 22.00 and 08.00 hours shall be paid their basic rate plus 25 per cent of their basic rate of pay.
  - 18. No change.
  - 19. No change.
  - 20. Working Hours and Overtime
    - (a) A normal working week shall not exceed fifty-four hours spread over six days, with one hour's rest period per day.
    - (b) Overtime shall be reduced to a minimum. However, all employees shall work overtime when called upon to do so.

- (i) Employees requested to work overtime shall do so and the employer shall pay two times the basic hourly rate for the number of hours worked by the employee.
  - (ii) The employer may grant time off in lieu of payment for overtime worked except in the case of public holidays.
- (c) Overtime shall not be paid until full normal weekly working hours have been worked, excluding public holidays.
- (d) The provisions of this clause shall not apply to a watchman, unless Clause (b) is invoked.

21. Service Charge

- (a) Employees covered by this Agreement shall be paid a service charge where applicable twice every month as part of their total emoluments or whichever the employer and Works Council (emphasis given) shall decide and agree upon.
- (b) Those workers on training outside the establishment shall be paid a service charge as provided for under Clause 21(a).

22. Housing Allowance and House Rent

- (a) The Company accepts the responsibility to house those of its employees who are entitled to be housed under the provisions of this Agreement, but in the event that the Company is unable to provide suitable housing it shall pay to the employees concerned, housing allowances of K15 per month to all grades of employees with effect from 1st January 1985, and K20 per month with effect from 1st January 1986.
- (b) Where an employee in receipt of a monthly salary of K100 is provided with housing, the employer may deduct an amount not exceeding 10 per cent of basic salary to recover the cost of rent for high-cost, 8 per cent for medium-cost and 6 per cent for low-cost housing.

23. Acting Allowance

- (a) An employee who is temporarily required to perform a job with a higher grade of pay than his substantive post for any continuous period of fifteen days or more shall receive an acting allowance equivalent to two thirds the difference between his substantive basic rate of pay and the minimum basic rate of pay of the grade on which he is acting.

- (b) In the event of acting towards substantive appointment in a new grade continuously for three months, the employee shall receive the wages of his new grade, or if unsuccessful in his new job, he shall revert to his old grade and rate of pay.

24. Free Rations

- (a) To all employees required to do a nine hours' shift during the day time, the employer shall provide free food or other rations that may be provided at his discretion; provided that such food shall be taken by the employee during the nine hours' shift; and should be consumed on the premises.
- (b) Where an employer does not have facilities in which to provide free rations, he shall (in agreement with the Union) pay an employee a sum of K2.50 for each working day completed, in lieu of rations.

25. Protective Clothing

- (a) The employer shall from time to time provide protective clothing or uniform to the employee according to the requirement of their jobs. Employees shall be obliged to wear such protective clothing or uniforms as designated by the employer. New issues of such items shall be made only on producing old ones. Any such items lost or damaged through the fault of the employee shall be paid for by the employee, on a pro rata basis in accordance with the assessed value of the article and its life expectancy.
- (b) Where protective clothing is provided the employer shall be responsible for its laundry.

26. Loans

It is agreed by both parties that it is in the interest of employees and the employer that all employees remain free from debt as far as possible and that in this connection the facility for loans and salary advances should be used sparingly and the loans and salary advances so obtained shall be used properly. The employer will continue to give consideration to assisting employees provided that the Company has the ability to meet such requests.

27. Annual Leave - Travel Allowance

An employee will receive a fixed amount of K20 when proceeding on leave and this figure will not accumulate. Where through the interests of the employer the employee

is allowed to commute leave days such an employee shall not be entitled to the above stated travel allowance.

28. Funeral Assistance

- (a) In the event of the death of an employee, spouse and own child, the employer shall provide the following:
- (i) Funeral grant of K75;
  - (ii) Standard coffin;
  - (iii) Transport for employee's mourners to and from cemetery; and
  - (iv) 50 kg of mealie meal.
- (b) On submission of a death certificate in the event of the death of a worker's own father or mother, the employer shall provide a grant of K50.

29. Change of Ownership of Business or Enterprise

In the event of change of ownership of business or enterprise the current employer shall pay accrued benefits in accordance with Clause 4(a) (i), in addition to statutory payments due.

30. Disturbance Allowance

- (a) It is agreed that employees may be transferred from one station to another and that upon being so transferred, the employer shall be responsible for moving the worker's own household and personal effects.
- (b) Employees on transfer from one station to another will be paid a disturbance allowance as follows:
- (i) Single - K50
  - (ii) Married - K75.

31. Discipline

- (a) Policy - The Union acknowledges that it is the function of the employer to maintain order, discipline and efficiency and that it may be necessary to discharge, dismiss, suspend or otherwise penalise employees for proper cause, in accordance with the agreed statement of disciplinary policy for the industry, provided that disciplinary action shall be made known to the Union and may be subject to discussion.
- (b) Suspension - The employer reserves the right to suspend an employee from employment with or without pay for a maximum of thirty days, depending on the gravity of the offence. The employer shall have the discretion to

extend the suspension subject to the agreement by the Works Council. (emphasis given) If after the completion of the investigations the employee is cleared, he or she shall be entitled to full pay for the period of suspension.

- (c) Code of Discipline - it is hereby agreed that the code of discipline provides for the following penalties in regard to relevant breach of discipline:

Offence - Three late-comings of ten minutes and above within thirty days period.

Penalties:

- 1st Breach - written warning.
- 2nd Breach - written warning.
- 3rd Breach - Final written warning.
- 4th Breach - Discharge.

Offence - Absent from work without permission for a period of less than five consecutive days.

Penalties:

- 1st Breach - written warning and loss of pay.
- 2nd Breach - Final written warning and suspension without pay for up to seven days.
- 3rd Breach - Discharge.

Offence - Absent from work without permission for five or more consecutive days (deemed as desertion).

Penalty:

- 1st Breach - Summary dismissal.

Offence - Lack of efficiency, leaving work station without permission, negligence, disturbing fellow workers, or failure to comply with Company instructions communicated to him in writing.

Penalties:

- 1st Breach - written warning
- 2nd Breach - Final written warning
- 3rd Breach - Discharge.

Offence - Insulting, threatening, violating safety rules, sleeping on duty, unauthorised Press statements, petty theft of K5 or less and soliciting assistance or influence outside the terms of grievance procedures:

Penalties:

- 1st Breach - written warning with suspension without pay for not more than thirty days.
- 2nd Breach - Discharge.

Offence - Drunkenness on duty, fighting a co-worker on the work premises, without causing disruption, as evidenced by a Supervisor and two witnesses, one of whom should be a workers' representative wherever possible.

Penalty:  
1st Breach - Discharge.

Offence - Theft, fraud, forgery at work, malicious damage to employer's property, drunkenness on duty and causing disruption as evidenced by a Supervisor and two witnesses one of whom should be a workers' representative wherever possible, riotous behaviour at work place, refusal to obey lawful instructions, starting or provoking a fight with customers or co-workers in a public area of work premises.

Penalty:  
1st Breach - Summary dismissal.

Offence - Gross negligence.

Penalty:  
1st Breach - Summary dismissal.

Offence - Using or attempting to use services provided by the establishment for customers or serving any member of the staff or providing him/her with facilities provided by the establishment for customers without authority from the management.

Penalties:  
1st Breach - Final written warning and suspension without pay for not more than thirty days.  
2nd Breach - Discharge.

- (d) Expiry of Warning Period - Where the employee is given written warning for any offence the warning shall stand for a period of two years unless otherwise stated. Should he in this period commit no offence the warning will lapse.

### 32. Effective Date and Duration of Agreement

It is hereby agreed that this Joint Collective Agreement is effective from 1st January 1985, and shall remain binding on both parties for two years up to 31st December 1986, inclusive, except for the clause dealing with wages which may be amended annually by mutual agreement on the basis of Government's wage policy changes (emphasis given) from time to time. Neither party may vary or rescind any part of this



Agreement unless such variation, addition or deletion is accepted by the other party in writing and is ratified by the Prices and Incomes Commission (emphasis given) or such other body as may from time to time be responsible for ratification of Collective Agreements.

In the event that it becomes necessary to amend parts of the Agreement the party proposing such an amendment shall give the other party two weeks' notice in writing, detailing the nature of the amendment being proposed. The other party shall be obliged to respond to the proposals within two weeks; and no longer than two weeks from the date of such reply, parties shall meet to discuss the proposed change or amendment.

This Agreement replaces the one signed on 9th December 1982, and published as Gazette Notice No 513 of 1983.

Signed and witnessed this 4th day of January 1985.

For and on behalf of the Hotel and Catering Association of Zambia;

For and on behalf of the Hotel and Catering Workers' Union of Zambia;

Schedule A  
Grade Classification - Category of Employees

(Omitted)

APPENDIX V

LIST OF MAJOR REPORTS, RESEARCH AND CASE STUDIES ON WORKERS' PARTICIPATION IN ZAMBIA CONSULTED.

- Department of Industrial Participatory Democracy, Reports of National Symposium and Workshop on Industrial Participatory Democracy. (Held at the President's Citizenship College, Kabwe, 1976 and 1977), (Lusaka: Government Printer, 1976, 1977).
- Department of Industrial Participatory Democracy, Report of Special Commission on Workers' Participation in Equity, appointed 1977 (unpublished circa, 1978).
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- Department of Industrial Participatory Democracy, Findings of Departmental Survey on Workers' Participation, (unpublished, circa 1980).
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Kester G, Industrial Participatory Democracy and Trade Unions: Report of an Exploratory Study in Zambia, (The Hague: Institute of Social Studies, 1984).

Kalombo J F, Hambulo R, Nyanqwa P, (Consultant: Grosdanic S), "Case Study on the ROP (1975) Ltd, Ndola", Second Phase Case Studies, International Research Project on Workers' Self-Management and Participation as a Factor of Social Change and Economic Progress in Developing Countries, (Lusaka: Industrial Participatory Democracy Department, 1984).

LIST OF ABBREVIATIONS

|           |  |
|-----------|--|
| ANC       | African National Congress (of South Africa)                    |
| BSA       | British South Africa Company                                   |
| CGT       | General Confederation of Trade Unions                          |
| CISB      | Copper Industry Service Bureau                                 |
| GDP       | Gross Domestic Product   |
| GNP       | Gross National Product   |
| ICFTU     | International Confederation of Free Trade Unions               |
| IFCTU     | International Federation of Christian Trade Unions             |
| IILS      | International Institute for Labour Studies                     |
| ILO       | International Labour Office/Organisation                       |
| ILR       | International Labour Review                                    |
| IMF       | International Monetary Fund                                    |
| INDECO    | Industrial Development Corporation                             |
| IPD       | Industrial Participatory Democracy Department                  |
| IRA, 1971 | Industrial Relations Act, 1971                                 |
| LEGCO     | Legislative Council  |
| MUZ       | Mineworkers' Union of Zambia                                   |
| NCIWU     | National Commercial and Industrial Workers' Union              |
| MUBEGW    | National Union of Building, Engineering and General<br>Workers |
| NRAMU     | Northern Rhodesia African Mineworkers' Union                   |
| NRMWU     | Northern Rhodesia Mineworkers' Union                           |
| RRAMU     | Rhodesia Railways African Workers' Union                       |
| TUC       | Trades Union Congress (British)                                |
| UNIP      | United National Independence Party                             |
| ZCCM      | Zambia Consolidated Copper Mines                               |
| ZCTU      | Zambia Congress of Trade Unions                                |
| ZFE       | Zambia Federation of Employers                                 |
| ZICR      | Zambia Industrial Case Reports                                 |
| ZIMCO     | Zambia Industrial and Mining Corporation                       |
| ZLRP      | Zambia Labour Relations Project                                |

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