



International Confederation of Free Trade Unions



THE CHALLENGE OF TRADE UNION RIGHTS IN AFRICA

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"The Challenge of Trade Union Rights in Africa" was prepared as a discussion paper for the ICFTU-AFRO Conference on Trade Union Rights in Africa which took place on 27 - 30 September 1994 in Cotonou (Benin). It was attended by participants from 27 African national centres, African ITS representatives, ICFTU affiliates from industrialized countries, the Organisation of African Unity, the ILO, Amnesty International and the Benin Commission on Human Rights.

To complement this presentation of the difficulties facing Africa's trade unions today, the conference conclusions are also included.

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TRADE UNION RIGHTS IN AFRICA

Introduction

A purely academic observer would probably find significant cause for optimism about the evolution of the trade union rights situation in Africa in the 1990's, and about the observance of human rights more generally. The continent has lived under the sign of democratization since the beginning of the decade, and the extent of political transformation has been unprecedented and astonishing.

Since 1989, at least 25 African nations have adopted entirely new constitutions or major constitutional reforms. To them may be added those countries - for so long an isolated minority - which already operated pluralist democratic systems and those, more numerous, which are still engaged in processes of transition and reform.

The free and democratic elections in South Africa in April, and Nelson Mandela's assumption of the Presidency marked a truly historic forward step. The abolition of the apartheid system was in large measure the work of the country's non-racial trade union movement. But if the last mile of the marathon struggle against apartheid has been successfully completed, the fight to eradicate its legacy will have to go on. And as President Mandela has warned, "*It is disconcerting that as the era of apartheid in South Africa draws to a close, it seems to be exploding elsewhere*".

What has this tidal wave of change meant for African workers, and respect of their trade union rights? The answer lies deeper than the surface evidence to be found in the mass of new legislative and constitutional texts that have come recently into force. It has to be sought in an examination of actual practice in Africa, and the realities of the situations in which trade unions act not only to defend their basic rights, but also to exercise them effectively. This paper tries to address those realities and to highlight the major problems and challenges concerning trade union rights on the continent.

One word of caution, as a preface to this regional analysis of trade union rights: Trade union rights are universal, and their universality is under attack by those who want to see them weakened. The ICFTU has consistently opposed all those who have argued that trade union rights, defined in ILO Conventions, should be applied differently, or not at all, depending upon the social and economic system, culture, or level of development of the country concerned. Africa has not been untouched by such arguments, but it is encouraging that they have receded greatly as the process of political change has progressed.

The 1991 BFTU/ICFTU Panafrican Conference on Democracy, Development, and the Defence of Human and Trade Union Rights underlined that respect of basic rights constitutes a pre-condition and not an obstacle to development. Acceptance of that proposition has gained ground substantially in Africa at the same time as it has come under sharp attack, notably in Asia. This is despite the all too obvious fact that Africa's development crisis is acute. But it has to be addressed by policies which get to grips with its real causes - which lie in Africa and outside - and not by a misguided or opportunist calling into question of those rights which have to be a cornerstone of development.

Trade Union Rights and Economic Crisis

Democratization has not brought instant prosperity to Africa. Nor has it generally reversed the decline in economic and social conditions or the growing poverty that continues to afflict many countries. Does this painful experience invalidate the idea that democracy, good and honest government, and respect of human rights are keys to successful development, and that it is time to look for new (or go back to old) solutions?

The answer must be no. But the advocates of human rights and democracy have to do more than produce theoretical justification of the benefits they can bring. They, more than others, are aware that the popular discontent that brought an end to the old one party regimes across Africa originated in their failure to meet the basic material needs of their peoples as much as in their lack of political legitimacy. Democratic systems may face corresponding pressures if they show themselves incapable of meeting the demands and expectations of those who are suffering.

Is democracy delivering the goods in Africa, and is it even in a position to do so? The evidence, to date, is not encouraging. In its 1994 World Labour Report, the ILO underlines the gravity of *the crisis that has been proceeding for almost two decades in Africa*, bringing a 10% per capita fall in output in the period 1973-92, and what it estimates as a generalized fall in real minimum wages of between 50 and 70%. More worryingly still, it concludes that:

"In Sub-Saharan Africa, there are very few indicators to suggest that, in the near future, any major reversal will take place of the persistent fall in formal employment and wages and the extended overall informalization of their economies".

The view from the IMF and World Bank is, predictably, different. In a June 1994 publication they claim that:

"The experience of the successful reformers in Africa shows that adjustment is the first, unavoidable step to restoring growth and improving living standards.... In sum, there is no doubt that consistent and unfettered implementation of adjustment policies will improve the outlook for growth".

Which is to say that what is needed is more of the same. Commenting on the social aspects of January's CFA franc devaluation, the same publication says that:

“The new strategy should have a positive impact on the real incomes of most of the population and should contribute to reducing poverty as well as social and regional disparities over the medium term... (it) should also benefit wage earners”.

In discussing reasons why structural adjustment programmes in Africa have produced what are, in their own estimation, disappointing results, the IMF and World Bank cite the problems posed by social fragmentation and political instability. What they apparently fail to recognize, however, is that the programmes, like the draconian devaluation of the CFA franc, have themselves contributed to major social dislocation and upheaval.

There is a rapidly growing list of examples of how adjustment policies, and the CFA devaluation have led directly to trade union rights violations, or to conditions of such severity that the exercise of those rights becomes a virtual impossibility. The most widespread problem is in situations in which pressures to reduce public expenditure have brought unilateral reductions in the collectively agreed wages of public employees, or quite simply have led to the non-payment of wages for periods of several months.

Such breaches of collective agreements are, in themselves, serious rights violations. But what is perhaps even more alarming are the situations of acute conflict that they have provoked, and the acts of repression that have followed. The case of Cameroon is a clear example. The CSTC's general strike call in December 1993 in protest against unilateral cuts of up to 70% in public sector pay, and non-payment of wages brought an immediate reaction from the government including detention of trade union leaders, and all pervasive harassment and intimidation, culminating in the removal from office of CSTC General Secretary Luis Sombes in a government orchestrated manoeuvre involving occupation of the CSTC premises on 9 May and Sombes' temporary imprisonment.

In Niger, the USTN launched a series of general strikes in March, April, and May 1994 initially in support of demands for pay increases to offset the effects of the CFA franc devaluation and in opposition to restrictions of the right to strike in the public service, and subsequently for the payment of wages. The arrest of four USTN leaders in the lead-up to one strike led to the convening of indefinite general strike action in June.

Even graver consequences followed from the non-payment of public sector wages in Chad, for periods extending to 13 months, and from the long-term strike called by the UST in response. Against a background of serious deterioration in the overall human rights situation and mass dismissal of strikers, the Government made public incitements to violence against union leaders,. At least three trade union leaders were murdered in 1993.

In other examples, a general strike convened by trade union centres in Benin to call for compensatory wage increases in the wake of the CFA franc devaluation was banned by

the Minister of the Interior at the end of January 1994. In Gabon a national strike in February concerning the effects of the devaluation resulted in mass arrests. The police intervened and surrounded the headquarters of the USTC, Central African Republic on 27 April 1993 when a protest demonstration was to be held against the non-payment of wages for eight months.

These cases illustrate how ill-considered adjustment policies, imposed on working people have led to gross violations of trade union rights, brought countries to the point of economic and social breakdown, and fragile democracies to the brink of destruction. Their effects are often so far-reaching that they render the outcomes of normal industrial relations practices marginal, or meaningless.

A further example of the impact of structural adjustment policies on trade union rights is in Zimbabwe. If less dramatic, it is equally worthy of note because it could signal the arrival in Africa of a type of abuse that has proved very destructive in other regions. The 1992 Amendment to the 1985 Labour Relations Act, passed within the framework of the country's structural adjustment programme, strengthens significantly the role of workers' committees which may be set up at enterprise level. In particular, these committees are able to negotiate direct agreements with employers thus overriding established industry-wide negotiation machinery, and marginalizing trade unions. This development was mirrored by the announcement by the Government of Malawi in September 1993 that in the absence of trade unions, workers should channel grievance through Joint Consultative Councils to be established at workplaces.

While the Malawian example came against a background of democratic breakthrough, rather than structural adjustment, both it and the Zimbabwe case are evidence of attempts to by-pass trade unions through parallel organizations subject to employer or government control. The parallel with the phenomenon of "*solidarismo*" which has decimated some trade unions in Central America is striking, and it is a development that needs to be kept under the closest scrutiny.

Mauritius is one African economy which can boast full employment and an impressive growth record in recent years. Nevertheless, its Government published draft legislation in May 1994 in the form of a Trade Unions and Labour Relations Bill. The Minister of Labour explained that "*with the creation of the World Trade Organization, labour relations will require a new dimension in the changing economic, technological and social environment*". Whatever view may be taken of the Minister's analysis, it is clear from the contents of the Bill, which if enacted would severely limit the right to strike in particular, that he regards changing economic circumstances as requiring, or justifying curtailment of trade union freedoms. That fact should not be eclipsed by the Government's wholly unfounded claim that its Bill has the endorsement of the ILO

Mauritius also stands as a model for the introduction of Export Processing Zones (EPZs) in Africa. Their apparent success is being imitated, with EPZ's now in operation or being planned in 16 African countries, although nowhere are they yet on the scale of the Mauritian zones with their 90,000 strong workforce. It isn't clear that Burundi's 1992

initiative to declare the whole country an EPZ has actually led to anything concrete. If EPZ's do become a significant feature in African economies they will pose new challenges to the exercise of trade union rights. This is because in some cases, different and more restrictive legislation is applied in them than prevails in the rest of the country. A number of governments are granting labour law exemptions to attract investment to the zones. But greater problems generally arise from the practical difficulties that trade unions have in gaining access to and operating in EPZ's even when there are no additional legal obstacles. In Mauritius organization rates in the zones are at about 10%, as compared to 30% nationally. Elsewhere in the world EPZ's are frequently touted as "*union free*".

In some countries, the World Bank and IMF have taken an even more direct role in intervening with labour legislation. Many structural adjustment programmes contain references to increasing "labour flexibility". Accordingly, the World Bank has provided academic experts to advise on reform of labour legislation. This has taken place in several countries including Mali, Madagascar and Senegal. There has been no reference to the ILO in this process; the academics concerned have used their own methods of work, in some cases consulting trade unions and other times not. In Senegal, recommendations were made for easier recruitment and dismissal of workers and changes to arbitration procedures and strike legislation. These proposals were strongly opposed by the trade unions and as a result have been blocked in the national assembly of Senegal.

What Role for Unions in African Society?

The interaction of democratization and economic crisis, and hence of unprecedented opportunity and acute problems, highlight some important general questions about the role of trade unions in African society and the exercise of the rights they have fought hard to win.

Trade union rights violations in the region remain widespread and acute. Their detailed nature is discussed in the following sections. The general point to be made at this stage, however, is that the process of democratization is far from complete, and in some cases has not even begun. This has obvious consequences for the role of unions in the countries concerned.

The holding of elections, even with the participation of several parties has not always been a sufficient guarantee of a true expression of the popular will. Moreover, some processes of transition have become blocked, often through the obstructionism of incumbent dictators whose vision of democratization goes no further than the devising of new mechanisms to legitimate their continued tenure of power. Such situations are particularly volatile and have led to some of the most extreme, violent and large scale violations of basic human rights.

It is salutary to recall that some African countries are so deeply caught up in civil conflict that the practice of trade union and indeed all human rights is simply impossible. The genocidal slaughter that has engulfed Rwanda since the killing of President

Habyarimana, and his Burundian counterpart in April represents one of the most horrifying situations of modern times. It has shocked world opinion, and yet the international community has proved incapable of acting effectively to bring the killing to a stop or relief to survivors. Elsewhere, in Angola, Liberia, and Somalia in particular, armed confrontation has destroyed the basic fabric of society. Algeria appears dangerously near full-scale conflict as the violence that has already claimed the lives of UGTA leaders escalates.

The number of entrenched dictatorships that have been entirely unaffected by the winds of democratic change are now few indeed. Sudan, Libya, and Equatorial Guinea remain the outlaws, whose regimes do not permit any type of independent trade union activity. Beyond these, however, trade unions frequently have to operate in the context of serious denials of basic civil liberties which go beyond, or are independent of, the shortcomings of election processes themselves. The prevalence of the rule of law, and the effectiveness of basic judicial guarantees is essential to the practice of trade union rights, and of all human rights. The situation is particularly serious when, far from protecting trade unionists undertaking their legitimate work, the police or other security forces take the lead in repression. Lesotho provides an example, where the draconian provisions of the Internal Security Act provided the pretext for extreme and arbitrary brutality in breaking-up meetings and demonstrations, detaining numerous trade unionists and their leaders, and intimidating workers engaged in disputes.

The saga of the Kenyan Government's attempt to remove the legitimate leadership of COTU and to install its own placement is classic confirmation of the critical importance of an independent judiciary. In the Kenyan case, as in Africa generally, the performance of the judiciary was mixed. The High Court notably failed to nullify the improper action of the Registrar of Trade Unions in registering the minority leadership, and it was only after repeated applications to the Court of Appeal and to the Attorney General that the legitimate leadership was restored. Nevertheless, the whole process took seven months, was expensive, and must leave serious doubts about the impartiality of the Kenyan judiciary in respect of charges still pending against the COTU General Secretary.

The other area of general civil liberties which is of particular significance for trade unions is freedom of expression. The frequency with which newspaper, radio, and television journalists are subject to restrictions and reprisals by African Governments is alarming testimony to the limits of their tolerance of criticism and free speech. And where the Government exerts direct control over the media they are in a position to prevent trade unions from communicating their views and are able to present information in a distorted or outrightly false manner. The CSTC Cameroon has been a particular victim of both types of media manipulation, while Moroccan trade union leaders have been imprisoned for exercising their right to free expression.

While the scope of their activities is always likely to be dependent on the overall human rights situation in their countries, trade unions which are free of direct control by government - and the major change of the 1990's in Africa is that they are much more numerous than in the past - are faced with some critically important decisions concerning

their relations with government and, under conditions of pluralism, with such other parties as are active.

Decisions concerning the political activities of trade unions have particular significance at the present moment in Africa's development. They have been major, and often decisive, political actors in the democratization process, and continue to be so where it is not complete. At the time of writing, Nigerian oil workers' leaders, Frank Kokoro is detained as a result of his union's stand for respect of the outcome of democratic elections, and large scale strike action continues. And where multi-party systems have been installed, unions now face the complex task of defining their relationships with political parties and the extent of their involvement in the political arena. The difficulties involved in this process must be especially apparent in those countries in which, for much of their history, trade unions have been subordinate adjuncts of the single ruling party.

The point of departure must be clear recognition of the right of trade unions to undertake political activity and to support, and form relationships with, parties if they choose freely to do so. Thus legislative bans or restrictions on trade unions' political involvement, such as those existing in Chad, Liberia, Nigeria, and Swaziland, violate the right of trade unions to decide on, and undertake their programmes freely. At the same time, while recognizing that industrial action taken in regard to general social and economic policy issues - as distinct from those concerning direct occupational matters - are protected by the guarantees on the right to strike provided by its Convention No. 87, the ILO has made it clear that strikes undertaken for purely political purposes fall outside the scope of its protection of the right to freedom of association. In practice, the distinction may be hard to make, since recent African experience has seen many strikes where pro-democracy components have stood side by side with others.

An important statement of principles concerning the relationship of trade unions with political parties is contained in the resolution adopted by the 1952 ILO Conference concerning the independence of the trade union movement. In its key paragraph, the resolution states that:

"When trade unions in accordance with national law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country".

The crucial point is that trade unions' political work should never jeopardize their autonomy of action, regardless of the nature of the government in power, nor the principle that their members, and they alone, decide union policy, free of interference from any external source. It is no more acceptable for unions to become the passive instruments of

political parties, or of individual politicians under pluralist democracies than it is under single-party regimes.

These considerations are particularly relevant in the movement away from imposed state-sponsored union monopolies to conditions in which trade union pluralism is possible, which characterizes the situation in many African countries. The ICFTU has consistently underlined the advantages of trade union unity, while insisting on the possibility of trade union pluralism, if workers freely choose it. Clearly though, the fragmentation of some trade union movements following the lifting of monopoly-by-law conditions is a very serious problem which in extreme cases can undermine effective union activity entirely. Zaire is a case in point, where those with little genuine concern for the interests of working people have hi-jacked trade union structures as vehicles to advance their own ambitions.

Despite the damage inflicted in such circumstances, they do not provide an argument for a return to the old, discredited system of legislated unity. Rather, they require unions, not only to re-examine their relations with political parties and to enjoy effective protection against interference, but also to reflect on their relations with each other in increasingly common situations in which more than one centre is active in a country.

There is nothing wrong in situations in which trade union centres, competing for members, or with different perspectives on social, economic and occupational issues, enter into debate or public dispute with each other. But there are serious dangers if such conflicts become so sharp and so pervasive that their prosecution comes to submerge the pursuit of the proper objectives of trade unions in representing the interests of African workers in an undoubtedly harsh and hostile environment. Governments will certainly not be slow to exploit such inter-union rivalries.

It is probably not surprising that unions in some African countries have sometimes found it difficult to come to terms with each others existence, and that this has made unity of action by them an exception rather than the rule. Newly-created organizations may resent what they regard as the continuing privileges of centres that previously enjoyed monopoly status while the latter, conversely, may regard these recently formed centres as constituting little more than a thinly-veiled attack on their established organizational structures. Mutual suspicions can be intensified by the political affiliations of the unions concerned.

Conflict can also arise in this context over the distribution of the assets of trade unions that formerly enjoyed monopoly status, among others that come into being in situations of pluralism. Nevertheless, these have in fact been less frequent than in Central and Eastern Europe, despite the potentially aggravating factor that in Africa the old monopolies have generally remained in existence with the same name, and sometimes the same leaders. The fact that the patrimony involved is generally less extensive in Africa may be an explanation. Two complaints from African trade unions have been submitted to the ILO concerning this type of situation in respect of Cape Verde and Togo, and have been dealt with according to the principle that government involvement should aim

primarily at promoting an agreed settlement between the unions concerned which enables them to operate on an equal footing.

Exercise of trade unions rights in conditions of democracy requires of independent and democratic trade unions recognition and acceptance of each others right to exist and to operate freely. Such acceptance is a key to preventing or rectifying harmful fragmentation. But this effort by unions needs to be matched by a corresponding understanding by governments of the role that trade unions should play as partners in society. It is regrettable, and extremely harmful, that such understanding has frequently been lacking, including when the governments concerned have been fairly elected. Even they may find it difficult to break with past habits and the general expectation that the decisions they take should obtain unquestioning acceptance from subservient trade unions. Unless this mind-frame is broken, the independent policies of trade unions risk to be interpreted by governments as potentially subversive actions, with the intention of paving the way to a change of government, when they are generally doing no more than exercising their legitimate rights. This path leads to confrontation, and in the worst cases to repression. The likelihood of it being followed is compounded by the extent to which governments themselves are constrained by economic crisis and by the external demands of structural adjustment programmes and devaluation.

Exercising Trade Unions Rights: Organizing, Bargaining, Striking

The Organizing Challenge

It is a commonplace that if workers are prevented from organizing, or choose not to, all other trade union rights become an irrelevancy. In recent years, the focus of attention concerning the right to organize in Africa has shifted away from the problems posed by enforced union monopolies as their legal foundations have been removed in one country after another. Some of the more deeply entrenched monopoly systems, such as those in Ethiopia, Mauritania, and the Seychelles were brought to an end in 1993, as were others in Cameroon, Djibouti, and Gabon in 1992, and Angola, the Congo, Guinea-Bissau, Mozambique, Rwanda, Togo, and Zambia the year before that. The simple act of removing offensive legislation in this area will not of itself necessarily bring full respect of organizing rights. Moreover, a number of countries still retain legislation which allows only one national centre to operate, as is the case in Egypt, Ghana, Kenya, Nigeria, Tanzania, and Uganda. Paradoxically, many of the centres concerned have shown themselves to be effective and independent representatives of workers, and courageous advocates of democracy. Monopoly status cannot always be equated with subordination to government.

This evolution has meant that the actual performance of African trade unions in recruiting and representing workers is being subjected to closer, and not infrequently, hostile scrutiny. The movement's critics, anxious to see its influence minimized, are quick

to point to low rates of union density. Organized labour, they point out, is generally confined to the formal sector where wages are paid and employment contracts prevail, and is frequently concentrated in the public sector. Since a very high percentage of the population of most African nations continues to be engaged in traditional agricultural activities and a growing proportion of the urban workforce (61% according to a recent ILO study) is in the informal sector, the overall representativeness of trade unions is, unsurprisingly, low. Moreover, their members seem to constitute a distinct and relatively well-off section of society.

This type of analysis is seldom innocent in intent. But it does raise fundamental questions to which trade unions themselves need to respond concerning their application of the right to organize. What, in the first instance, are the real horizons of trade unions' organizing ambitions? Are they set by the frontiers of formal employment, or do they encompass also the larger informal and rural sectors? If the more restrictive option is preferred, unions will need to face up to the threat to their existing membership bases which result from the projected continued growth of informal, at the expense of formal, employment and of deep cutbacks in the generally well organized public sector. But if they set themselves the more ambitious project, considerable efforts have to be made to devise effective organizing strategies for areas in which unions throughout the world have little experience.

This all important challenge comes at a moment when some unions are still struggling to adjust to the conditions brought about by their newly acquired independence. Dependence on government made it impossible for unions to represent workers interests properly, but the material support that often came with it was certainly valuable in maintaining financial viability and operational structures. More often than not the umbilical cord has now been broken; the compulsory check-off systems put in place by governments to ensure that all workers paid contributions to the CSC in the Congo, to COSYGA in Gabon, and to the CNTT in Togo have been removed. The obverse of hard won freedoms is the reality that unions are subjected to the disciplines of representing the interests of their existing members, and recruiting new ones in order to secure the financial resources upon which their continued strength and existence depends.

On top of these difficulties comes the persistence of serious legal restrictions on the right to organize. Foremost among these is the widespread denial of freedom of association to workers in the public sector which, in addition to being a flagrant breach of the right of all workers without distinction whatsoever, to establish and join unions of their own choosing, hits trade unions precisely where their recruitment potential is often highest.

Of the many examples that could be cited, that of the Union of Kenya Civil Servants is one of the most extreme. The 70,000 strong union was banned by Presidential decision in July 1980, allegedly because it had "over-indulged in politics". Although the President announced in May 1992 the lifting of the ban, this was revoked by him two years later. The only comment by the Labour Minister on the prospects of civil servants regaining their rights, made at a meeting with PSI and COTU representatives at the end of

May 1994 was that the President "*might change his mind*". Other countries denying or restricting the right to organize to their public service employees are Botswana, Burkina Faso, Cameroon, Chad, Ethiopia, the Gambia, Ghana, Liberia, and Malawi. Ugandan civil servants regained that right in July last year. Though much less common, other categories of workers may also be victims of bans on trade unionism as is the case for those considered to be working in "*essential services*" in Burkina Faso and Nigeria.

Other serious obstacles to exercise of the right to organize, and to participate actively in trade union work are to be found where there are no adequate protections against anti-union discrimination and victimization. In a large number of African countries legislation in this area is too weak or non-existent, and even where provisions might seem satisfactory on paper, the means or the will to enforce them may be missing.

One particularly serious case is Morocco where, in the absence of legal protections, workers who attempt to organize or who strike in support of their demands are routinely harassed and dismissed by their employers. The response of the authorities is frequently violent police intervention against trade unionists and the arrest and imprisonment of their leaders. The UMT reported the arrest of 96 of its members in this type of circumstance in 1993 alone. At this year's International Labour Conference, the Government promised the imminent introduction of protective legislation. But, as one delegate remarked, it had been saying that since 1987.

Getting to the Bargaining Table

Workers join trade unions primarily in the expectation that they will represent their interests through collective bargaining to improve their terms and conditions of employment. Where collective bargaining does not take place a basic rationale and incentive to organize disappears too.

Collective bargaining is in principle a voluntarist process engaged in by employers and trade unions of their free will. The ILO says that the right to collective bargaining means that employers should recognize representative trade unions but not that there is an obligation on either party to bargain. The role that governments should properly play in bargaining is not always easy to define. On the one hand, ILO Convention No. 98 requires them *to encourage and promote the full development and utilization of machinery for voluntary negotiation*. On the other, direct government intervention in bargaining processes can lead to serious abuse.

Historically, governments have generally been closely involved in the operation of collective bargaining in Africa, particularly but not exclusively because much of it takes place in the public sector where they participate as the employer. In any event, negotiated settlements in this sector, together with the terms decreed by the government in the considerable number of cases where it sets public employee wages unilaterally, frequently play a highly influential, if not determining, role in private sector bargaining outcomes.

Such situations may not pose problems to trade unions, so long as the persuasive effects of public sector agreements do not spill over into outright government interference in private sector settlements. However, this is often the case. While the practice in Botswana of indexing private sector increases to those agreed in the public sector has been discontinued, many governments reserve for themselves the right to reject, modify, or annul agreements at their discretion, generally on the grounds that they conflict with the national interest - as defined by them. Such situations prevail in Chad, Egypt, Kenya, Libya, Tanzania, and Zimbabwe.

Serious as these violations of the right to collective bargaining certainly are, they are overshadowed by a still greater threat which arises in situations where employers, and more particularly governments, fail to abide by, or unilaterally overturn, collectively-agreed terms of employment. Unilateral pay cuts of up to 70%, the non-payment of wages for prolonged periods, and the decimation of the real value of agreed pay consequent on the CFA franc devaluation, make a nonsense of the concept of collective bargaining as a significant factor in determining workers' living standards.

A further development which may have an important impact on collective bargaining in Africa is the tendency of the state, often under pressure from structural adjustment programmes to withdraw from certain areas of economic activity and regulation. That would be likely to result in a weakening of collective bargaining through the shrinking of the public sector, but, logically, could also reduce the extent of illegitimate interference in bargaining elsewhere.

An issue which has had little pertinence in Africa in the past, but which may now need to be confronted with increasing frequency, concerns the designation of bargaining rights when more than one union is present in a given unit. Problems in this type of situation have already been encountered in Cape Verde and in Côte d'Ivoire, and satisfactory solutions to them depend upon impartial mechanisms for the objective assessment of the representativeness of the organizations involved. Without these, the way may be open to serious acts of discrimination and favouritism by employers which, in turn, can all too easily damage inter-union relations and cooperation.

The Last Recourse : The Right to Strike

"DINAFET has given up on strikes", the President of Zaire's civil service union recently told the ICFTU. *"It has no effect on the men in power"*. Clearly, he saw the limited use of strikes in a situation of such social, economic and political breakdown as exists in Zaire that any agreed settlement would most probably have no chance of being implemented. But independently of their effectiveness, African trade unions have placed considerable importance on their freedom to exercise the right to strike, a right, the very existence of which is under strong attack at international level.

It has already been pointed out that strikes of a purely political nature fall outside the coverage of protections offered by ILO Conventions. Nevertheless, strikes with a very marked political content have been a central feature of development in the region, some of

them having been of critical importance in processes of democratization. The struggle led by the UNTM in Mali in 1990 and early 1991 was one remarkable example, and others are still taking place in countries such as Nigeria and Togo where political transition is still taking place. In practice, however, it is usually very difficult to separate the political from the social and economic content of strikes, even though governments are often eager to slap a political label on strike action as a justification of repression.

Strike action remains the most visible form of union activity, and the context in which societies generally become most strongly aware of unions. Inconvenience caused to the public, together with propaganda presenting strikes as damaging and motivated by selfishness, mean that unions are often subject to criticism for what can be seen as an imposition on the rights of others rather than an exercise of their own rights. But, the reality is that while trade unions do not exist to go on strike, and spend considerable time and effort trying to avert industrial conflict, they must always retain the right to resort to work stoppages when there is need. Respect of the right to strike is critical to the right to collective bargaining, because it is the knowledge of possible recourse to the withdrawal of labour that provides the necessary context and balance for genuine negotiations.

In formal terms, the right to strike appears to be guaranteed in the constitutions or legislation of the large majority of African countries, with general prohibitions existing in few countries, notably Equatorial Guinea, Libya, Somalia, and Sudan, and formally at least in Chad and in Liberia. However, the situation is in practice very different and more often than not there are serious obstacles to the convening of legal stoppages.

In an alarmingly wide range of countries, legislation, while respecting the right to strike in theory, requires such complicated and prolonged preconditions for calling a legal strike that they become impossible in practice. In extreme cases, the possibility of imposing compulsory arbitration, either at the request of just one party to a dispute, or at the discretion of the government, makes the situation equivalent to a general strike ban. In others, the procedures that have to be followed are so unreasonable as to make it practically impossible for unions to use legal strikes as an effective means of advancing workers' interests.

The list of such situations is long indeed. It includes Nigeria, Botswana, the Central African Republic, the Congo, Côte d'Ivoire, Egypt, Gabon, the Gambia, Ghana, Kenya, Lesotho, Mauritania, Mauritius (if draft legislation is adopted), Zaire, Zambia, and Zimbabwe.

The result of this type of abuse is that trade unions frequently go ahead and undertake strikes without fulfilling onerous legal requirements. The question then is, does it really matter if restrictions on the right to strike exist in law, so long as they are effectively ignored in practice? And, it should be recognized that the extent of the non-application of legislation is sometimes remarkable. It is reported, for example, that none of the strikes in Ghana or in Lesotho since independence have been legal. Similarly, most or all of the stoppages that took place in Algeria, Tanzania or Zambia in 1993 were outside the law.

There are two reasons why such situations are cause for concern. Firstly they discredit the rule of law, and mean that the countries concerned do not have appropriate mechanisms for the ordered mediation and settlement of disputes. Where conflict cannot be institutionalized in this way it can take on increasingly serious and damaging dimensions. Probably of more direct concern to trade unions, is the fact that once they act illegally, they place themselves beyond the reach of whatever protections the law may afford to those organizing and participating in strikes, and are hence at the mercy of discretionary retribution by employers and government. The fact that they may not always choose to exercise that discretion, for reasons of expediency or of principle, in no way detracts from the dangers of such situations.

Those dangers have been all too well illustrated in Zimbabwe where the government has made use of a different, but also widespread device for making a strike illegal, through the use of its power to declare any sector *essential* and hence subject to a strike ban. This resulted in the dismissal of 6,000 striking railway workers at the beginning of 1993 and a threat to the very existence of the union concerned. While most of the strikers were later reinstated following judicial findings in their favour, renewed large scale suspensions, dismissals of strikers and arrest of strike leaders took place in the university and post and telecommunication sectors at the end of 1993 and beginning of 1994.

These are not isolated examples. Other serious examples of victimization of strikers - both through legal and extra-judicial means - could be cited in Lesotho, Morocco, Tanzania and Togo, among others. A minimum requirement to combat such abuses, which can be particularly vicious in their consequences for the workers affected, is that legal protection against acts of anti-union discrimination should be in place, should be effective, and should extend to legitimate strike activity. The fact of the matter is that this condition is far from being met in much of Africa, and far too often workers who exercise their right to strike do so in the knowledge that they are placing their jobs and livelihoods on the line.

A Final Comment: The Way Ahead

The enduring task that the ICFTU shares with African trade unions of ensuring full respect of all trade union rights remains a major challenge and priority. Despite the radical changes and major gains of recent years it is far from complete, and as some problems recede others appear in new or more acute forms. But the full extent of the challenge goes beyond the establishment of conditions in which these rights are formally observed to the question of how to improve the capacity of trade unions to exercise them effectively, so that they truly act as full partners in putting genuinely democratic societies on the path of sustained and just development.

Without any prejudice to the universal character of their rights, the fact remains that certain of the conditions prevailing in Africa pose particular difficulties for trade

unions trying to exercise them. The African trade union movement has shown determination, resilience and courage in overcoming those obstacles, and it will need to draw on all of those qualities in the years ahead.

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