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LOCATING TRIPARTITE NEGOTIATIONS WITHIN LABOUR LAW IN ZIMBABWE

THULANI SHEILA MAKAMURE^{1*} AND TAWANDA ZINYAMA²

ABSTRACT

Over the past decades, lawmakers have been overhauling the welfare programme of employment security that has become a central node of attention within labour law discourse in Zimbabwe. Against this background, the purpose of this article is to bring to the fore the understanding that the respect to the rights of the workers is an integral justificatory ideal for labour law that can only become possible through tripartism. The only existing tripartite United Nations agency, the International Labour Organisation has helped to bring together governments, employers, and workers of all 187-member states to set down international accepted labour standards. Since its formation, the organisation has done a lot in achieving the goal of a decent working environment in a globalised world economy. The article demonstrates that, tripartism is not about one group or body overriding the other, it is not about superiority or who demonstrates more power than the other through the social dialogue process. It is all about open negotiations that help to advance the creation of a decent working environment that provide people a stake in lasting peace, prosperity and progress. The article highlights the importance of the

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interplay between the role of government and the workers and the rate to which the parties have successfully addressed the problems and solutions necessary to curb a common gap in labour law. The primary issue addressed throughout the article points to a comparative analysis on whether tripartite negotiations have yielded positive results in labour law. The article then argues that social dialogue is an instrument in promoting democracy and good governance. Therefore, tripartism becomes the most powerful tool of dealing with common labour security issues that other bodies and partners might have failed to resolve.

Keywords: social dialogue, tripartite negotiations, statutory instrument, repression, constitution, employment security.

INTRODUCTION

The Tripartite Negotiation Forum has remained an ineffective standalone orphan forum that its actions remain relatively low, curtailed with slow recommendation and policy implementation, worsened by strong politicisation of the whole negotiation forum. Policy considerations surrounding labour law has evolved significantly to improve fragile relationships between the employer and the worker. There is an existing inherent struggle imbalance between the employer, the workers organisations and governments to effectively have consensus *ad idem* in matters relating to labour. Because the minds of the three tripartite partners can never meet, it is hard to successfully have fruitful negotiations that can address modern day labour grievances. The International Labour Organisation, being the principal organisation to oversee the welfare of workers has set internationally accepted labour standards that member states are obliged to follow. The common phenomenon is that member states should agree that every individual regardless of gender, race, colour, origin, and tribe have an inherent right to employment security. International conventions have been implemented to lay a map of guidance on how best the relationship of the worker and the employer can successfully be achieved. It is important to note that, the prevailing system of incorporation of international law in domestic law, either monist or dualist, influences the way in that international labour instruments can be used in and by domestic courts. It has been argued that dualist systems carry an advantage over monist systems due to their application of

common law not embodied in statute but instead evolved by interpretation in the courts (Layton, 2006).

Zimbabwe has made strides in trying to ratify and domesticate international labour conventions that at its core lies the doctrine of tripartism. It would be argued that the only way towards achieving transnational or regional labour standards in Zimbabwe is to ensure that measures are put in place to ensure international labour standards are carefully met and to the effect that such standards or policy considerations are made possible through tripartite negotiations. Consequently, the international labour organisation drafted the tripartite Declaration principles that guides member states towards the negotiating forum. The aim of the tripartite declaration principles is to encourage the positive contribution that multinational enterprises can make to economic and social progress and to minimise and resolve the difficulties to which their various operations may give rise (Tripartite Declarations Principles, 1977).

Zimbabwe has done a lot in meeting international labour standards. Lawmakers have made efforts in coming up with the Tripartite negotiating Forum Act of 2019 as read together with the Labour Amendment Act No 11 of 2023 that seek to address labour matters for the advancement of social and economic progress. The article highlights the importance of tripartite negotiations as an engine towards labour law development. The article further demonstrates the meaning of *tripartite -plus* in the labour arena, that means tripartite parties choose to open the dialogue to other relevant actors in society. The article makes an overall analysis on the extent on how several players in Zimbabwe have successfully managed to negotiate to resolve important economic and social issues. Labour organisations such as the Zimbabwe Federation of Trade Unions (ZFTU), Zimbabwe Congress of Trade Unions (ZCTU), Zimbabwe Teachers Association (ZIMTA), APEX Council, as the leading players in the labour sector have been instrumental in shaping and changing the look of the employment relationship. The findings of the article, then suggest recommendations on the best available route to follow in pursuit of social justice at the workplace and discuss the role that social dialogue can play in driving socio-economic recovery and growth in Zimbabwe.

CONCEPTUAL FRAMEWORK

At the heart of the international labour organisation objectives lie social dialogue and tripartism. The article adopts different theories that include the Convergence

theory adopted by Weinberg, (1969), Marx theory of industrial labour relations and the pluralist worker and employer theory. According to the convergence theory as expounded by Weinberg social dialogue typically results in positive long-term results that correspond to the collective bargaining agreements. It is argued that social dialogue is increasingly seen as an instrument to promote democracy and good governance (Hermans, 2016). In a bid to understand labour relations between an employer and the employee, Marx through the confrontational theory expressed the view that employees are led by employers who consistently exploit servants to maximize profits. Unknowingly workers can become part of a process in that they are expropriated from property (Bugra, 2008). Karl Marx further asserts that the way to escape from a capitalist society is to enhance and facilitate negotiations with the worker, employer, and other players. These theories have helped in argument that, tripartite negotiations are the existing remedy to cure the wound of a servant who should be bitter for his master. The conceptual framework has helped the researcher into making a comparative analysis on what other organisations have understood the term ‘tripartite’.

According to the definition of the International Labour Organisation, social dialogue includes all types of negotiations, consultations and information sharing among representatives of governments, social partners or between social partners on issues of common interest relating to economic and social policy (ILO, 2013). There is an already growing consensus that tripartism is an inevitable pillar for sustainable development, such process that however requires the minds of interested parties to meet without pressure or influence to address and provide labour law solutions for it promotes the wings of good governance.

METHODOLOGY

The article used various sources that include, but not strictly limited to, already published literature from the international labour organisation and its bodies. To achieve the object of the article, the research findings were informed by primary and secondary data collection (Kenneth & Bailey, 1994). Therefore, in a bid to come up with a good design for the study, plenty of time was spent in the collection of data to gain appropriate results since insufficient and inaccurate data prevents assuring the accuracy of findings (Kabir, 2016). Because primary data are original and are used collectively for highest efficiency the researchers for the article, who

have many years of practical experience and knowledge in labour law and social dialogues have made the research easier. The article used secondary data that resulted in a thorough analysis of government's pieces of legislation that advance tripartism. Information was then collected from leading labour organisations who annually report on the prevailing labour issues, such as the Zimbabwe Congress for Trade Unions, Zimbabwe Federation for Trade Unions and Apex Council for Public Service Association. The major goal for obtaining information from these labour organisations, sometimes called workers organisations is to understand the degree to which Zimbabwe has managed to have successful social dialogues and the challenges that that are faced by the organisations. For quite some time, different researchers have written interesting piece of works on different subjects but ignore the position of the law with regards to the subject.

LITERATURE REVIEW

Tripartite negotiations undoubtedly contribute to sustainable development, inclusiveness, accountability and good governance. The article adopts a theoretical review of literature that its purpose is to develop a body of literature that openly establishes a contrarian viewpoint. This has helped the article to establish what theory already exists, the relationships between them, the degree of the existence of the theories and to develop new terminology (Cook & Marincic, 2014). The time when the research was designed, the Labour Amendment Act of 2023 was in the process of amendment, but in part it clearly gave prospects of success in addressing existing labour questions. The article has been divided into three key major parts, literature relating to employment security, social protection and its approaches, literature relating to tripartite negotiations and social dialogues and literature relating to existing piece of legislation guiding labour law in Zimbabwe.

In the context of this article, social protection is a key pillar of decent work, reduces inequality and increases resilience among workers. Firstly, this has helped in arguing that social protection or employment security is a human right and is defined as a set of policies and programmes designed to reduce poverty (LEDRIZ Report, 2021). It is now common cause that, social protection policies developed through social dialogue help people and communities cope with pandemics and crises. Secondly, the article has used different literature from the international labour organisation with regards to the understanding of tripartite negotiations. According to the ILO,

Tripartite negotiations are those negotiations that promote inclusiveness between groups to identify problems, provide solutions and reach a mutual decision for the betterment of good governance (ILO Tripartite Declaration Principles, 2016). Finally, in order to establish a solid review of literature, the article made use of existing literature within the labour law, already published articles and journals by labour organisations that helped to create a solid review of literature.

HISTORICAL BACKGROUND OF TRIPARTITE NEGOTIATIONS IN ZIMBABWE.

After Zimbabwe attained its independence, the new government had one goal that was to get away with past policies that were pyramid blocks to the progression of labour security. The government soon after independence pledged its commitment to abide by the constitution, abiding to ILO principle of tripartism and international labour conventions. During the period, employers went one step further in prioritising the development of trade unions for the development of worker participation (Riddel, 1987). The new government was in a hurry to improve wages and working conditions of black workers especially in commercial agriculture and domestic service, realising. It would take some time before trade unions could play a strong role in wage setting. As a result, the government introduced the Minimum wages Act (Kanyenze, 1993). It can generally be argued that the weakened relationship between government and trade unions over time has been the driving factor in slowing down economies. It is either one body is not willing to comply with the demands from the other that hostile relationship is a stab to at the back to the workers. The introduction of the Minimum wages Act allowed the minister responsible for labour to put a parameter for expected reasonable minimum wages for workers. Throughout the years of weakened relationship between government and workers organisations, the government was criticised for legislation that restricted workers unions from collective bargaining. It is either the government is in total control of the negotiations, or the unions are expelled from the table that such a move raised a question for human rights violation.

The argument was that as long unions were not allowed to fully become involved in collective bargaining, workers were not induced to join trade unions (Schiphorst, 1993). But slowly, tripartite collective bargaining with governmental parameters was to give way to bipartite negotiations (Makanya & Schiphorst, 1993). It cannot

be gainsaid that, both sectors that are instrumental in improving the welfare of workers were reluctant and failed to negotiate that led one body criticising another. It remained a matter of one body exposing another weakness, thus falling short to the principles and demands allowed as per international labour conventions.

In the first years after independence, employers felt unable to influence governmental wage setting (Herbst, 1990). Such failure to enable the government to improve the working environment through advancement of tripartism created poor working conditions of all time. Criticism was also voiced regarding the lack of involvement of the rank-and-file membership in the exercise. Already in 1988, a finger was pointed at the "fundamentally undemocratic nature of the union movement" that impaired the union functioning in wage negotiations. This created an overall viewpoint that collective job action in Zimbabwe has always been restricted, an issue further worsened by trade unionists ending up in the political field. Generally, any move by a labour union in addressing genuine labour issues is taken as a threatening move by the government that automatically derails the principle of tripartism from having positive results.

THE KADOMA DECLARATION: TOWARDS POSITIVE TRIPARTISM

The Kadoma declaration is one of the celebrated tripartite negotiation forum Zimbabwe has ever experienced. At its meeting on 20 Aug 2001, the Tripartite Negotiating Forum (TNF) noted that it was desirable to address the totality of the macro-economic problems including the country's risk factors facing Zimbabwe (Kadoma Declaration, 2001). The negotiation forum noted significant issues that required solutions that include lack of patriotism, insecurity in the labour sector, lack of political tolerance, high unemployment, lack of meaningful response to positive government, labour and business policy initiatives. This is because, poverty generally has melted down the economy iron bar that in turn has led to socio – economic crimes. The Kadoma declaration laid down solutions that were to identify empowerment opportunities for workers and creation of good working conditions with trade unions. It cannot be gainsaid that, the fragile relationship between trade unions as workers representatives and government has for long been the most reported hostile existing relationship of all time.

The Kadoma declaration that was signed by government representatives, business representatives and labour representatives concluded in tandem that the poor service delivery, poverty, corruption and lack of policy initiatives have been something that had dragged off the country's economy. Any move to address this resulted in a negotiating forum concluding to solve the standing challenges through solid support of implementation of agreed national policies, depoliticisation of the workplace and generally improve the welfare of the workers. A negotiation panel without addressing to the country's risk factors is irrelevant and its existence remains solely for gaining a 'negotiation title'. Years after the declaration, there seemed to be light in addressing the challenges in the labour sector, but it would be observed that no form of authority can topple a poisoned or manipulated set of policies. In simple, the recommendations proffered as per the Kadoma declaration has not been fruitful. This have further been worsened by Draconian laws that have been enacted by the government that analysts argue that it's a deliberate move of protection to continue its hold on power. This is because, the Movement for Democratic Change was born out of the labour movement and government maintains an uneasy relationship with the main trade union federation the Zimbabwe Congress for Trade Unions (ZCTU), (Zimbabwe Liberators platform, Aug 2002, Professional Audit of the public order and security Act). Any move by a worker's organisation to genuinely address the cause of the workers have for long never been entertained by the government. On 8 August 2004, the police proceeded to disrupt a ZCTU public gathering initially holding that it was unlawful (Standard 8 August 2004).

Another example is that security agents abducted Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) leader Obert Masaraure in January 2018. Masaraure claimed the agents ordered him to strip off his clothes and shoes, and then they beat him with whips while they forced him to roll around in mud and interrogated him about union activities, such as encouraging persons to participate in the January 14-16, 2018, demonstrations. The attackers abandoned him in a remote area on a winter night, with substantial injuries and no clothing (Zimbabwe Human Rights Report, 2019). Human rights are inviolable, sacred and the right to have a decent working environment is a right that the government should always respect. Nevertheless, the government did not always respect workers' right to form or join unions, strike, and bargain collectively. The major reason for such stumbling blocks by the government is the historical background in Zimbabwe's political arena that previously saw

labour movements and representatives ending up in building a political journey. In 2019, the parliament of Zimbabwe enacted a legislation establishing the Tripartite Negotiating Forum (TNF) to formalise dialogue efforts among government, labour leaders, and employers to discuss social and economic policy and address demands (Zimbabwe Human rights Report, 2019). Discussions concluded with different bodies with divergent minds has left some discussions to effectively be of no importance. The ZCTU stated the TNF did little to address its demands for wage increases and labour law reform, and the government showed little progress in supporting workers 'protections, fairness, and peaceful resolution of labour disputes (Zimbabwe Human rights Report, 2019). It is now common because that government has consistently either monitored trade or labour unions activity or disrupted such meetings that at the end of the end does not conform to the tripartite principles for good governance.

LANDMARK OF THE CONSTITUTION OF ZIMBABWE, LABOUR RIGHTS AND COLLECTIVE BARGAINING.

After the historical 2008 disputed elections in Zimbabwe, the legislature had one objective that was to review the existing laws something that ushered lawmakers in drafting a new constitution in 2013. The Constitution of Zimbabwe is the supreme law of the land and any other law inconsistent with it is deemed invalid to the extent of such inconsistency (Constitution of Zimbabwe, 2013). In the event that there is a conflict between the constitution and other statutory instruments and Acts of Parliament, it is trite that the constitution overrides other laws. Chapter 4 of the Declaration of Rights and Freedoms as per the constitution has embodied a notable number of labour rights that among others include, freedom from forced labour, right to collective action, collective bargaining, freedom of assembly and association and right to dignity. It can widely be stated that because Zimbabwe is a member of International Labour Organisation and has ratified major labour conventions that saw the right to collective bargaining and right to strike being enshrined in the Zimbabwean constitution.

Section 65 has become an important provision within labour law parameters as it provides for protection of the worker, employer and their environment. The provision states that, — Every person has the right to fair and safe labour practices

and standards and to be paid a fair and reasonable wage, Except for members of the security services, every person has the right to form and join trade unions and employee or employers' organisations of their choice, and to participate in the lawful activities of those unions and organisations Except for members of the security services, every employee has the right to participate in collective job action, including the right to strike, sit in, withdraw their labour and to take other similar concerted action, but a law may restrict the exercise of this right to maintain essential services, Every employee is entitled to just, equitable and satisfactory conditions of work, Except for members of the security services, every employee, employer, trade union, and employee or employer's organisation has the right to engage in collective bargaining, organise; and form and join federations of such unions and organisations, Women and men have a right to equal remuneration for similar work ...|(Constitution of Zimbabwe, 2013).

This is an important provision of employment security in Zimbabwe's jurisprudence. It however can be noted that, there is an inseparable relationship between collective bargaining and freedom of association. It was the pure intention by lawmakers who drafted the 2013 constitution to incorporate international conventions such as, the Forced Labour Convention of 1930 that seek in abolition of all forms of forced labour, the Right to Organise and Collective bargaining convention of 1949 and the Promotional for Occupational Safety and Health Convention of 2006. These international conventions have been domesticated to promote social justice in the workplace. The international labour organisation, a body that was created in 1919 as part of the Versailles treaty has spent many years in reviewing, reconsidering on laying a map on the best way to employment security. Article 2 of the Convention on the Promotion of Collective Bargaining 1981 (No .154) defines collective bargaining as such extending to all negotiations that take place between an employer, a group of employers or one or more employer's organisations. This convention was solely drafted to determine working conditions in the employment sector with the mandate of regulating relations between employers and workers. What the constitution of Zimbabwe has done is to promote the principles and advance the objectives of these conventions.

The existence of international labour conventions, the Constitution or Acts of Parliament relating to labour remain insignificant so long the government, employer

and workers organisations maintain the —superiority power mantra“. This in simple terms refers to one body being in control over the other or regard it as superior over the other or remains a matter of power or authority showcase among the three tripartite partners. It can openly be argued that the existence of superiority power mantra within the three branches, that the employer, government, and workers organisations have been the core driving factor towards ineffectual tripartism in Zimbabwe. Article 3 of the of the ILO convention no 87, establishes the right to workers and employers to form and join organisations. Section 65 of the constitution then reinforces the same move as it provides for the right to form, join and participate in the activities of trade unions and employers. Zimbabwean laws are very clear, they guarantee for the promotion of tripartism, however the issue that has led to ineffective tripartism is a political factor than a legal one. This has left section 65 of the Constitution of Zimbabwe and other provisions in the Labour Amendment Act to be of no value as long labour activists are taken as threat to the existing government.

AN ANALYSIS OF THE LABOUR AMENDMENT ACT, NO 11 OF 2023 AND THE TRIPARTITE NEGOTIATION FORUM ACT OF 2019 IN STRENGTHENING THE DOCTRINE OF TRIPARTISM

The only modern-day remedy to avoid mounting pressure, insecurity among the partners is by creation of a solid negotiation forum free from political pressure economic crises, that might have arisen due to insecurity within tripartite partners is by creation of a solid negotiation forum that will be free from political pressure. In low- and middleincome countries, social dialogue is playing a key role in promoting a transition to democratic, more equitable and sustainable political and economic systems (Grimshaw & Tavora, 2017). The ILO is promoting a social dialogue approach to crises response, particularly in fragmented societies where social dialogue can contribute towards reconciliation and confidence building (Hermans, 2016). The Tripartite Negotiation Forum was born during socio -economic crises that required urgent need between tripartite partners to heal an acrimonious toxic relationship. Within such a backdrop of a broken relationship between labour unions and government, a call from different labour movements and unions were put in place that saw the enactment of the Tripartite Negotiation Forum Act in June 2019. Although in the year 2017, through a bill, the political and economy environment proved lack of trust, transparency, accountability and oneness.

The Tripartite Negotiation Forum is defined by the TNF Act of 2019, as a platform for social dialogue and negotiations over socio – economic issues involving tripartite partners. The Act defined tripartite partners as those that include, government, organised business and organised labour. Section 3 of the Act establishes the functions of the negotiation forum that includes to consult and negotiate over social and economic issues, negotiate social contracts, foster cooperation, follow up and monitor the implementation of agreements, negotiate Zimbabwean labour law in line with constitution of Zimbabwe. While the 2019 labour force and child labour survey indicated that informal employment accounted for 75% of total employment by the fourth quarter of 2021, it had risen to 86% (ZCTU Report, 2023). Despite significant measures to establish a negotiation forum that was to be a person at law, capable to sue and be sued, the Act has done sorely nothing in improving the welfare of the workers and to effectively negotiate a contract of improvement. Two years from 2019, saw the pronouncement of the Labour Bill in 2021 that sought to amend the Labour Act Chapter 28:01 and align it with the constitution of Zimbabwe and obliges with the international labour standards. The labour movement notes a displeasure at the Amendment that is a threat to a decent working environment (ZCTU Report, 2023, An Analysis to the Labour Amendment no 11 Act of 2023).

The major concern that has seen labour unionists showing displeasure to the labour amendment is its failure to address the problem of criminalisation of legitimate strikes. The Labour Amendment Act of 2023 criminalises the right to strike and further promotes a jail term of 1-5 years imprisonment. However, the wording of section 65 of the Constitution is clear that, every person has the right to collective action and such strikes should be those that are legitimate and confines within the territory of the law. The labour Act of 2023 is therefore ultra vires the constitution (ZCTU Report, 2023). Not only has it departed from the clear objectives of the constitution, but it has also further confronted the international conventions and the tripartite declaration principles. Article 1 of the ILO Convention 105, para 955 states that penal sanctions should not be imposed on any worker for participating in peaceful strikes (ILO Convention no 105). It can still be argued that there is no harm in criminalisation of unlawful strikes. It is to the view of the police service to analyse a certain strike on whether it can be deemed to be unlawful or peaceful, thus the

provision in the Labour Amendment act of 2023 was drafted in bona fide to promote good governance. This can remain a contestation issue of law.

DISCUSSION

Efforts of tripartism in Zimbabwe have been shrouded by institutional and strong political blockbusters that has corresponded to poor performance of the Tripartite Negotiation Forum. Since Zimbabwe attained its independence, several steps have been taken by successive governments to put in place several consultative committees, bodies and unions to fast forward tripartite and bipartite consultations. The Zimbabwe Congress for Trade Unions (ZCTU) continued to rise in the 1990s despite the efforts of the Economic Structural development programme (ESAP) and state repression (Sachikonye & Matombo, 2010). The period 1999- 2000 was destined to be a turning point in the fortunes of the labour movement (Ranger, 2004). Such a period was marred with great insecurity from labour organisations and the government that further weakened the already slippery relationship (Musarurwa & Nzombe, 1989). The culmination of the rise of the ZCTU that was led by Morgan Tsvangirai caused a historical stir that saw him regarded as threat to their government leadership, surprisingly in 2000, he had already stolen the limelight in the political arena that saw the formation of the Movement for Democratic Change. It is during this period that the ZCTU was viewed as an enemy of the state and the historical tensions persisted that made tripartite negotiations impossible (Alexander, 2000).

The only strategy by the government was to establish a new labour centre under the control of the ruling party that a union would participate actively in the maintenance of stable industrial relations (Saunders, 2001). The strategy worked that resulted in the creation of the so-called pro-ZANU PF trade union, in the name of the Zimbabwe Federation for Trade Unions. To avoid history repeating itself and formation of many oppositions political parties that had the capacity to challenge it, the government enacted repressive laws to consolidate its continued hold on power. Instead of focusing on depoliticising the economic environment, fight corruption, and respect labour rights, African governments have showcased excessive effort in putting illegal measures to strengthen their continued stay on power. After 1999, the central motivation by the ZCTU in seeking a landmark political journey was due to consistent lack of progress on tripartite negotiations that had proved to be barren.

The relationship with the three tripartite partners has remained unequal and hostile (Alexander & McGregor, 2014).

As stated earlier, social dialogue is seen as an instrument in promoting good governance and democracy. The International Labour Organisation has carefully argued that a successful dialogue structure and process has the potential to resolve important economic and social issues, encourage good governance, and advance social and industrial peace and stability (Buckley & Casale, 2006). For long, social dialogue has made it possible for countries in disputes or labour crises to find ways out. Zimbabwe has officially created a culture of violence to address grievances than consultations and negotiations. In 2015, the Supreme Court delivered what was called a controversial judgement in the case of Nyamande vs Zuva Petroleum Pvt (ltd) that allowed either party to terminate an employment contract on notice. It was argued that the requirement for notices in terminating lawful contracts was a stab at the back that later saw employers unceremoniously terminating contracts. Despite spirited several efforts from labour movements in showing displeasure after the judgement that created another dimension in employment labour law, the efforts however remain null by virtue of judicial precedence. Strictly, the court cannot be regarded as having erred at law in bringing such a judgement that had repel effects on employees. This is because law is law regardless of its moral content. Although one may argue that such a kind of law is unjust or bad, it however remains law (Madhuku, 2010).

It can carefully be argued that there seem to be pyramids standing in the process of positive tripartism, consultations and negotiations. One such pyramid is the existence of the Maintenance of public Order Act (MOPA) that is in violation of free conduct of tripartite negotiations. On September 13, 2006, close to 130 members of the mass trade union organization, the Zimbabwe Congress of Trade Unions (ZCTU) were arrested during peaceful demonstrations throughout the country against poor working conditions and government's economic and political policies (Human Rights Watch, 2006). The ordinary people are hindered from lawfully and peacefully addressing their working conditions because there is a law that restricts them. This surely confronts the process of effective tripartism. Section 25 of the repealed POSA Act as read together with section 7 of the Maintenance of Public Order Act (Chapter 11:23) has placed unreasonable requirements to conduct

consultations and negotiations. The requirements allow for notices to demonstrations and public meetings, information for the purpose of the gathering, the time, duration of the gathering, place where the gathering is to be held, the anticipated number of participants, the exact number of participants and complete route, number of vehicles and the time for the end of the gathering. The Act has raised several human rights issues that include violations to freedom of association, freedom of expression accompanied with violations to human dignity through torture and degrading inhuman treatment by police officers. On 16 November 2018, seven members of the ZCTU, including the Secretary General Japhet Moyo and ZCTU President Peter Mutasa appeared in court facing charges of disruption of public order (Mahove, 2019), The inexcusable reasons and ill argument that the existence of the Maintenance of Public Order Act is to ensure peace and order should not be countenanced.

CONCLUSION

The article has demonstrated that the Tripartite Negotiating Forum Act, 2019 (Act No. 3 of 2019) was published with the Government Gazette on 4th June 2019 and came into effect from that date. Among much else, a useful addition to the process of changing labour laws results from the insertion of new paragraph (f) into subsection (3) of section 3 (‘Establishment and functions of the TNF’) which now stipulates that the functions of the Forum shall include ‘to consult and negotiate Zimbabwe labour laws in line with the Constitution and other international best practices’.

The political landscape in Zimbabwe has been tumultuous with the decades of disputed elections, culture of violence, poor policy implementation, pervasive corruption that has negatively caused the erosion of tripartism. Mistrust, insecurity and conflation of partisan politics and reluctance in policy implementation are central to ineffective social dialogue. The tripartite process requires the government to take a lead to the dialogue, but such centrality does not mean the government should override other tripartite partners. In low and middle economy countries, tripartite agreements have brought together governments, industry and trade unions, employers towards robust effort to improve workers welfare.

Zimbabwe attained its independence in 1980, and the new government had a duty to review labour laws with the goal of black empowerment in a country that was clothed with white superiority and pervasive racism. Since independence the government has placed several politicised advisory and consultative bodies that never addressed real labour grievances. By the end of 1999, tensions between government and trade unions had escalated leading to historical countrywide strikes. The year 2001 saw business organisations, government, and workers organisations draft the Kadoma Declaration towards a shared national economic and social vision. The declaration noted quite a few challenges that include corruption, delay in policy implementation, political intolerance and severe human rights violations. The tripartite negotiation forum successfully agreed to fight corruption, depoliticising economic activity, towards timeous implementation of labour policies. The major goal for the tripartite negotiation forum is to identify and deal with all macroeconomic issues, negotiate and recommend. The Kadoma Declaration of 2001 was drafted and never signed, only performed in the era of the government of national unity in 2008. The tripartite negotiation process is a nonstarter, it is either one party is not willing to negotiate or vice versa. A once stable relationship between the government and trade unions evaporated in the early years of 1990 when former unions started to challenge repressive government policies. That created a toxic relationship that worsened when the Zimbabwe congress for trade unions (ZCTU) members formed a pro-labour movement called the Movement for Democratic Change. The government then adopted a non-negotiation principle to further consolidate its hold on power thereby ignoring pertinent labour issues.

Scenes from different labour movements celebrated the promulgation of the Tripartite Negotiation Forum Act of 2019 that was a one step ahead in pushing the principle of tripartism. Despite the enactment of the law governing tripartite negotiations, the law has done nothing to address everyday labour issues and improve the working conditions. The article has however argued that the question to improvement of working conditions is not the purpose of the law, it is a political question. The lawmakers never erred in drafting a law that was to guide the process of negotiation, but working conditions are subject to improvement not by law but by negotiations. The article then finds that no meaningful tripartite negotiations have been concluded by tripartite partners.

For all the three partners to collectively improve labour relations there is need for the creation of a new culture of cooperation and unity free from outside influence for the betterment of national interests. The private sector should assist in building the capacity of workers, improve, maintain and adopt international working standards and employ progressive practices to improve the welfare of workers.

When the private sector puts measures, it would then be the duty of the government to create an enabling environment, develop a common understanding to the challenges and commit to dialogue with other players be it political or private sector. There is an existing interval that has made the tripartite negotiation forum an ineffectual sharp less forum with no capacity of genuine force and effectiveness. The process of successful tripartism is not a labour question, ours is a political question that require a common understanding, creation of a culture of cooperation and togetherness. If all the three tripartite partners can fully concur that social dialogue is a tested barometer, that has proved to be concrete in bringing key principles of social and economic development then the negotiation process can be inevitable.

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