

# Namibia's changing labour relations

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As Namibia is about to celebrate her first 20 years of independence, the occasion provides an opportunity to review some of the achievements and shortcomings regarding democratisation and socio-economic development. This article examines the changes in labour relations that have taken place during the past 2 decades.

## **Colonial labour relations**

As is widely known and acknowledged, labour relations before independence were characterised by open hostilities and conflicts. Local and foreign companies in colonial Namibia usually saw workers and their trade unions as a threat and did everything in their power to keep them at bay. Frequently the police was called in to break up strikes and trade union activists found themselves in and out of jail or had to flee into exile. There was a direct link between business and the colonial authorities who regarded the workers' movement as a threat to the political status quo. The Namibian labour movement was highly politicised and linked the struggle at the workplace to the broader struggle for liberation and independence.

Before independence, a wide range of legislation regulated labour in Namibia. The major act affecting industrial relations in Namibia was South Africa's Wage and Industrial Conciliation Ordinance No. 35 of 1952. Domestic, farm and public service workers were all excluded from this legislation. It was only in 1978 that black workers were included within the framework of the legislation and were allowed to form registered trade unions for the first time. Despite this legal provision, workers could still be prosecuted for union activities as Ordinance No. 35 reflected the general imbalance between workers and employers, rather than encouraging formal collective bargaining. Under this and other colonial legislation, asserting and protecting workers' rights, organising trade unions, and challenging the autonomy and prerogative of management were very difficult. While in theory the right to lawful strike existed, striking workers had no protection against dismissal and no right to picket at employer premises.

The conditions of Employment Act No. 12 of 1986 covered a range of matters concerning basic conditions of employment, although again certain categories of workers were excluded from the legislation. Under this Act, labour inspectors were appointed to deal with complaints of workers although a shortage of personnel and cumbersome enforcement procedures hampered their effectiveness. According to the National Labour Council Act of 1986, a tripartite Labour Council, with members appointed by the government, was to be set up to advise government on labour related matters but had no visible impact on industrial relations.

## **Workers' expectations at independence**

At independence in 1990, Namibian workers expected that the SWAPO-led government would introduce a new Labour Act to replace the oppressive colonial legislation and practices. The new independence constitution of 1990 refers to human rights in general but makes no reference to worker rights as such. SWAPO argued at the time that, as a new government with limited control over the economy, it was not in a position to guarantee such rights. It was not until November 1992 that the Labour Act was passed through Parliament. Government's efforts to balance the interests of the workers on the one hand and those of the employers on the other caused the delay in passing the Act.

### **The Labour Act of 1992**

The overall aim of the new law was to replace the colonial labour relations system and replace it with a new system of "social partnership" governed by the Labour Act of 1992. Tripartite consultations and collective bargaining were seen as critical for the implementation of this new labour dispensation. The government envisaged an improvement in the living and working conditions of Namibian workers to be brought about by a combination of successful economic policies and successful trade union engagement with the private sector. The government defined its own role merely as that of a "referee," trying to create a level (and enabling) playing field for collective bargaining between business and labour.

A few decades earlier, in post-war Western Europe, social partnership had been introduced as a class compromise, granting workers improved living and working conditions in return for acceptance of the capitalist mode of production and industrial peace. Namibia's version of social partnership, however, was essentially a reward by the SWAPO government for its working class base that had played a decisive role in ensuring the election victory of 1989. Social partnership did not represent a move towards granting labour a "special" status in the post-independence dispensation. The consultative process leading to the formulation of the Labour Act, for example, was driven by government as the dominant partner, which decided on the scope of the consultations. Unlike in a corporatist, institutionalised arrangement – such as in the classical cases of post-war, social democratic Sweden and Germany – where capital, labour and state jointly formulate socio-economic policies, social partnership in Namibia never took the form of a joint decision-making process.

Although the Labour Act of 1992 constituted a significant improvement compared with the previous colonial labour legislation, it was a compromise between the conflicting interests of capital and labour. It extended its coverage to all workers, including domestic workers, farm workers and the public service. The new law encouraged collective bargaining, entrenched basic workers' and trade union rights, set out the procedures for legal strikes and provided protections against unfair labour practices. However, the Act fell short of some of the expectations of trade unions, which felt that employers had unduly influenced the law through "behind the scenes" lobbying. The Act did not make provision for minimum wages (as SWAPO had promised in its 1989 election manifesto) and it did not guarantee paid maternity leave. Payment during maternity leave was only introduced with the Social Security Act of 1996. Other key demands of trade unions that were not accommodated in the 1992 Labour Act were the 40-hour working week and 21 days of annual leave for all workers.

## **The Labour Act of 2007**

After several years of intense and at times heated debates, Namibia's new Labour Act (Act 11 of 2007) was finally passed and signed into law. The process of reforming independent Namibia's first Labour Act (Act 6 of 1992) started already in the late 1990s and took the form of discussions within the tripartite Labour Advisory Council. It was then decided that instead of merely amending the 1992 Act, a completely new Labour Act should be drafted. This resulted in the Labour Act of 2004 (Act 15 of 2004), which was passed in parliament, signed into law but never fully implemented. Government, employers, unions and the ILO identified several shortcomings in the 2004 Act. As a result, debate continued and a new Labour Bill was drafted and tabled in Parliament in 2007. After being passed and signed into law, this Bill became the Labour Act (Act 11 of 2007) and sets the framework for Namibia's labour relations and working conditions for the years to come.

Given the different interests and perspectives at play, it is hardly surprising that it was impossible to reach consensus on all aspects of the new law. Employers on the one hand and trade unions on the other represent very different constituencies with different interests. Thus employers and workers will welcome some parts of the new Labour Act while being critical of others. However, large sections of the new Labour Act were agreed to by consensus such as the ones introducing a new system of dispute prevention and resolution. All parties (unions, employers and government alike) expect the new system to result in a better and faster resolution of industrial disputes.

The experiences in the first 17 years of independence have shown that it is very expensive and time-consuming to resolve disputes through the courts. This is the main reason for the introduction of a comprehensive system of mediation and arbitration. Some unions, however, expressed concern that the administrative requirements for a legal strike might become too time-consuming and thus prevent workers from using strikes effectively to support their demands. Unions were also unhappy that no tenure rights for farm workers were introduced and that the police and prison services were excluded from the provisions of the new Labour Act. On the other hand, trade unions welcome the improved basic conditions of employment such as increased annual leave, improved maternity leave provisions and the introduction of compassionate leave. Trade unions also welcomed Article 128 of the new Labour Act, which outlaws labour hire companies.

### **Social partnership?**

Overall, post-independence labour legislation and the role played by the Ministry of Labour and Social Welfare constituted a significant improvement for labour, but the new laws also served to reduce worker militancy by shifting the emphasis away from workplace struggles to negotiations between union leaders and management. Bargaining issues in Namibia were (and still are) narrowly defined and usually deal with conditions of employment only. The trade unions' main function was thus narrowed to being the representative of workers in a tripartite arrangement. Thus the observation made by Bergene that the class compromise in post-war Europe led to "the embourgeoisement and de-radicalisation of workers, and the de-politicisation of trade

unions” might be applicable to Namibia to some extent. Trade union militancy certainly declined after independence although there was no material base to co-opt the working class as a whole. Instead, improvement of living and working conditions through collective bargaining only benefited the well-organised industrial workers like those in the mining and fishing industries as well as those in the public service, while the vast majority of the working class – the unemployed, informal sector workers, casual workers, domestic workers, etc. – did not benefit from collective bargaining and thus still experience high levels of poverty. Even in sectors where minimum wages were formally introduced, like those for farm workers and security guards in 2003 and 2005, workers remained exposed to highly exploitative practices.

### **The threat of unemployment**

Despite improved legislation and the Ministry of Labour’s commitment to social partnership and fair labour relations, most Namibian workers are confronted with serious challenges today. Unemployment has reached over 50% and this undermines workers’ bargaining position as employers use the desperation for jobs to their own advantage. The idea of a “social partnership” can only work if the parties involved are in a similar position regarding power and dependency on each other. In a scenario of mass unemployment and low wage levels for the vast majority of Namibia’s working people, “social partnership” cannot be implemented successfully. Thus a new economic policy of job creation on a large scale coupled with the adherence to “decent work” as proposed by the Ministry of Labour and the International Labour Organisation (ILO) will require the political will of the Namibian government as a whole. The Ministry of Labour on its own will not be able to ensure fair and decent working conditions if the issue of mass unemployment is not addressed as a matter of extreme urgency.

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