

The Struggle for Workers' Rights in Namibia

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Abbreviations

AEA	Agricultural Employers' Association
AGOA	Africa Growth and Opportunity Act
COSATU	Congress of South African Trade Unions
EPZ	Export Processing Zone
FDI	Foreign Direct Investment
GRN	Government of the Republic of Namibia
ICU	Industrial and Commercial Workers Union
ILO	International Labour Organisation
LAC	Labour Advisory Council
LaRRI	Labour Resource and Research Institute
NALF	Namibia Agricultural Labour Forum
MANWU	Metal and Allied Namibian Workers Union
MoL	Ministry of Labour
MUN	Mineworkers Union of Namibia
MTI	Ministry of Trade and Industry
NANSO	Namibia National Students Organisation
NAMCOL	Namibia College of Open Learning
NAFAU	Namibia Food and Allied Workers Union
NAFWU	Namibia Farmworkers Union
NCAS	Namibia Child Activities Survey
NDAWU	Namibia Domestic and Allied Workers Union
NUNW	National Union of Namibian Workers
ODC	Offshore Development Company
SACU	Southern African Customs Union
SWANLA	South West Africa Native Labour Association
SWAPO	South West Africa People's Organisation of Namibia
TCL	Tsumeb Corporation Limited
TUCNA	Trade Union Congress of Namibia
TNC	Transnational Corporation
UNIA	Universal Negro Improvement Association
USA	United States of America

Introduction and acknowledgements

After 16 years of independence, the Namibian labour movement faces a host of challenges, including high levels of unemployment, poor wages and working conditions for vulnerable workers, a lack of interest in trade unions among young workers, divisions within the labour movement, casualisation of jobs and the political role of trade unions.

At the end of April 2006, the country's largest trade union federation, the National Union of Namibian Workers (NUNW), will hold its much-anticipated fourth national congress during which some of these issues will be discussed. Workers expect that this congress will chart a way forward.

The release of this booklet coincides with the congress and highlights some of the struggles that Namibian workers had to wage to overcome discrimination and violations of their basic rights. Examples are presented from the colonial period as well as the years after independence. We hope that this booklet will contribute to keeping the memories of workers' struggles alive. It is our wish that it will also help Namibian workers and their unions to draw inspiration from past struggles and enable them to draw lessons for the future.

The principal author of this booklet is Herbert Jauch while Ntwala Mwilima contributed most of the case studies. The booklet draws on many of LaRRI's reports and publications over the last few years. Zilaoneka Kaduma drew the cartoons and did the lay-out.

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Chapter 1: Namibia's workers' rights history

Namibian workers had to endure harsh colonial labour practices, first under the German colonial administration (1884 - 1914) and then under the South African apartheid regime (1915 – 1989). The Germans not only dispossessed Namibians of their land but also recruited black men to work on their farms. After the discovery of diamonds and other minerals, workers mainly from the north of the country were recruited to work on the mines under the notorious contract labour system. Black women on the other hand had to work the fields, raise their families and took up jobs as domestic servants on white-owned farms and in private urban homes. Thus jobs in Namibia were categorised along racial and gender lines from the early days of colonialism.

Before independence, Namibia (previously known by its colonial name of Southwest Africa) had no single, comprehensive labour act. Namibia was regarded as a fifth province of South Africa whose apartheid regime extended its laws to Namibia. Lazarus Sakaria, organiser of the Metal and Allied Namibia Workers Union (MANWU) remembers:

“During the colonial days, no black was supposed to be called a worker, blacks were only helpers of workers, who were the whites. As a result, the ‘helpers’ could not speak about workers’ issues”.

Black workers carried out most of the physical work while whites occupied all higher positions and exercised almost unlimited control over workers. Employers (mostly white) decided on the punishment they wanted to subject their workers to. Black workers on the other hand could not seek recourse under the law mainly because of the discriminatory laws at that time, but also because they had no access to lawyers, and because of the inherent anti-worker bias of public institutions.

Prior to the enactment of independent Namibia's Labour Act in 1992, a wide range of South African laws regulated labour in Namibia. The major act affecting industrial relations in Namibia was the Wage and Industrial Conciliation Ordinance No. 35 of 1952. Domestic, farm and public service workers were not covered by this Ordinance. Its provisions reflected the power imbalance between workers and employers, rather than encouraging formal collective bargaining. Under this and other colonial laws, asserting and protecting workers' rights, organising trade unions, and challenging the power of management were very difficult. While in theory the right to strike existed, striking workers had no protection against dismissals and no right to picket at the employer's premises.

It was only in 1978 that black workers were included within the framework of labour legislation and covered by the definition of an “employee”. This enabled them for the first time to legally form and join trade unions. However, they could

still be prosecuted under the colonial anti-terrorism laws and trade unions were not allowed to have any affiliation with political movements.

In 1986, a new law, the Conditions of Employment Act (No. 12 of 1986) was passed, which covered a range of matters concerning basic conditions of employment. However, certain categories of workers such as farm and domestic workers were again excluded from the legislation. This Act was an improvement over previous legislation, although certain aspects such as unfair labour practices were still not covered. Under the Conditions of Employment 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 it had no visible impact on industrial relations. None of the colonial labour laws provided for the establishment of a separate Labour Court to deal with contravention of existing labour legislation or other labour related matters.

Despite the lack of legal protection, Namibian workers have a long history of bitter struggle for their rights. Cronje noted as far back as 1979 that: *"Industrial action by black workers in defence of their rights has a long history in Namibia, despite the great risks to individuals and their families, inherent in a confrontation with the authorities. While being denied the right to organise themselves into trade unions, workers were united by their common oppression and, in the case of migrants from the north, their hatred of the demeaning contract. Strikes or threatened stoppages have occurred throughout the colonial period, although poorly documented or virtually ignored by the white population. As early as December 1893, workers went on strike at a mine operated in by the South West Africa Company at Gross Otavi. An account of the events... revealed that workers from different tribal groups joined together to make it effective."*

The general strike of 1971-72¹

Despite the difficulties in gaining access to official records and the open anti-workers bias of the accounts of most (white) writers at the time, there are several records of workers' strikes and defiance against the injustices of the colonial apartheid rule. The most significant workers strike in Namibia was probably the general strike of 1971-72 which involved over 13 500 migrant workers who rose against the system of pass laws and migrant labour. It shook the colonial regime and brought the plight of black Namibian workers to the attention of the outside world. The strike involved over 13 000 migrant workers and received unprecedented support from the black Namibians. It lasted from 13 December 1971 until 20 January 1972, brought the mining industry to a halt and seriously affected farming, commerce as well as communications and transport systems. It demonstrated the potential of workers to take organised action in defence of their rights.

¹ This section is based on the books by Bauer (1998), Cronje (1979) and Peltola (1995).

What caused the strike?

The general strike was triggered by the oppressive political and economic conditions that Namibian workers, especially the migrant workers from the north, were facing. Migrant workers were examined and classified by the South West Africa Native Labour Association (SWANLA) and then sent to employers on farms, in the mines and fishing industry on a contract basis. Breaking a contract was a criminal offence and workers were not allowed to bring their families with them. They had to stay under appalling conditions in the so-called "single-sex hostels". The general strike was politically motivated and expressed long-standing grievances against the contract labour system. In addition, there were three key events that contributed to the strike:

- 21 June 1971: The International Court of Justice declared South Africa's occupation of Namibia as illegal.
- 30 June 1971: Two of the largest churches in Namibia sent an open letter to the South African Prime minister complaining about South Africa's failure to uphold human rights in Namibia as declared by the UN in 1948.
- 15 November 1971: The Bantu Commissioner Jan de Wet denied the church leaders' statement and described the contract labour system as "voluntary".

These developments fuelled workers' anger against the continued colonial occupation, racial discrimination and the inhuman treatment of contract workers. Although the strike was not planned and organised by a trade union, it was supported by student activists in the north who had been expelled from schools due to their political activities. After their expulsion, these young SWAPO activists moved south, joining workers in Windhoek, Walvis Bay and elsewhere. They linked the workers' resentment of the contract labour system to political demands for liberation.

The strike occurred largely spontaneous under the slogan "Odalate naiteke" (lets break the wire). It began in Windhoek on 13 December 1971. About 6000 workers refused to go to work and stayed in their hostels in the Katutura township. They demanded higher wages and an end to the contract labour system. During the next few days, 3 600 workers in Walvis Bay joined the strike. It then spread throughout the country and about 13 500 workers participated (about 25% of all migrant workers) bringing 11 mines and 23 other workplaces to a standstill. Some estimates put the number of striking workers as high as 20 000. The striking workers decided to go back to "Ovamboland" (Northern Namibia) and to work on their land to increase their crop production and become independent of wage labour for white employers. Workers also boycotted the SWANLA offices and refused to take up new contracts.

When the striking workers were deported back to "Ovamboland", they engaged in running battles with the "security forces". Angry workers destroyed about 80 km of the border fence with Angola and attacked collaborators with the colonial

regime. The deported workers formed a "Contract Committee" and a mass meeting of striking workers approved a pamphlet setting out their demands:

- ◆ The abolition of the contract labour system and freedom for workers to choose their own employment without police interference
- ◆ The right to live with their families
- ◆ Payment of salaries according to merit and according to the work done regardless of the person's colour
- ◆ Abolition of the pass law system
- ◆ Workers wanted to be paid enough to buy their own food and pay for their own transport (instead of being dependent on employers hand-outs)
- ◆ Establishment of employment bureaus in the 'homelands' and in all towns with free advertising of vacancies to enable workers to look for jobs of their choice
- ◆ Creation of new jobs by the government

The response by the state

The state responded with a dual strategy. It attempted to replace striking workers with scab labour from the southern and central regions of Namibia. The state also resorted to increased oppression and brought in additional police and army from South Africa to suppress the uprising. A state of emergency was declared in "Ovamboland", which was only partially relaxed in late 1977. The workers hostels in Windhoek's Katutura township were put under siege by the police and detention camps were set up all over "Ovamboland" for those detained (and tortured) under emergency regulations.

The South African regime consulted with the colonial SWA administration, homeland administrations, employers and SWANLA. It then presented minor changes to the system as its response to the workers' demands. These changes included the abolition of SWANLA, which was replaced by labour bureaus to be run by the 'homeland' governments in the northern regions. New contracts were set up, setting out minimum wages, working hours, overtime, free food, accommodation and medical treatment. Workers also won the right to unpaid and paid leave. The new contracts could be terminated by either party and medical classification was abolished. However, pass laws were still enforced and workers still lived in compounds under very poor conditions with their families still being unable to accompany them. The basic features of the contract system thus still remained.

Employers were no longer responsible for transporting workers and they formed employers' committees to ensure uniformity of wages and to eliminate competition for labour. The striking workers lacked the organisational capacity to take the strike further but the general strike was a tremendous source of inspiration for the battles workers were to fight in the years to come.

The impact of the strike

The greatest impact of the 1971-72 strike was the increased militancy and confidence among black workers. They had sent a signal that there would no longer be “business as usual” and that they regarded their strike as part of the wider struggle against colonial occupation and for national liberation. The general strike resulted in some (although largely cosmetic) improvements in working conditions and in the first public acknowledgement (by parts of business and the colonial state) of the need for trade unions for black workers. Some companies set up liaison committees to consult with their workers. Some employers even supported the establishment of trade unions as bodies that they could negotiate with. Pressure to allow for the formation of trade unions also came from the ILO and the colonial administration had to acknowledge that the plight of Namibian workers could no longer be ignored.

On the other hand, the colonial regime intensified its oppression, especially in the northern regions. Workers' anger erupted on several occasions and in 1972, migrant workers destroyed more than 4 000 beds in the Katutura workers compound in protest against the ongoing oppression and exploitation.

The general strike set in motion a contradictory process of labour and political reforms alongside intensified war and repression. In 1976, for example, new and even tougher "security laws" were passed and the emergency regulations were extended to the Kavango and Caprivi regions in northeastern Namibia. A “shoot to kill” order was given from most areas of "Ovamboland” where arbitrary arrests, detentions and torture had become the “security forces” way of operation. On the other hand, the colonial regime used a strategy of labour and political reforms (e.g. the formal end of wage discrimination on the basis of colour and the adoption of the principle of equal pay for equal work) to appease the popular rebellion. In 1978, the interim government (officially known as "Transitional Government of National Unity"), which had no public support and legitimacy, changed the 1952 Wage and Industrial Conciliation Ordinance to expand the definition of "employees" to include black workers. As mentioned earlier, this was the first time that black Namibian workers could legally form and join trade unions. They were however, still prohibited from affiliating to political movements.

The emergence of trade unions

The first trade union in Namibia was a branch of the South African Industrial and Commercial Workers Union (ICU), which sent an organiser to Namibia's southern coastal town of Luderitz. The union recruited mostly “coloured” workers and its attempts to organise workers were met with suppression by the colonial administration. At the same time, Marcus Garvey's Universal Negro Improvement Association (UNIA) began operating in Luderitz, demanding better wages and living conditions for black workers.

The second serious attempt to form trade unions took place in 1949 when the South African Food and Canning Workers Union (FCWU) began to organise the canning factories in Luderitz. Thousands of workers went on strike in 1952 and 1953 but they were violently crushed by employers and the colonial state. Several more attempts to establish trade unions took place but it was not until the mid-1980s that permanent industrial unions emerged. At that time, several industrial unions were launched under the umbrella of the National Union of Namibian Workers (NUNW). These unions played a decisive role in mobilising workers against discrimination and oppression and contributed to the achievement of Namibia's independence in 1990.ⁱ

The country's largest trade union federation is the National Union of Namibian Workers (NUNW), which played a prominent role during the liberation struggle and in the public policy debates after independence. Its history is in many ways similar to that of Congress of South African Trade Unions (COSATU), as both played a critical role in terms of mass mobilisation during the liberation struggle. The NUNW unions linked the struggle at the workplace with the broader struggle for political independence and formed links with other social and political organisations such as the Namibia National Students Organisation (NANSO) and SWAPO. The NUNW understood its role as that of a social movement, which could not address workers issues separately from those affecting the broader community. Exploitation at the workplace was thus linked to the broader struggle against racial and political oppression.

The Finnish trade unionist and supporter of Namibia's liberation struggle Pekka Peltola (1995) noted that the class struggle waged by workers was seen as one and the same as the liberation struggle of SWAPO. However, as Namibian academic Kaire Mbuende (1986) pointed out, "the level of political consciousness of the African working class is determined, among other things, by the type of industry in which they are employed and by the nature of the wider urban environment in which they live." Political and class-consciousness thus was highest in places where workers were concentrated in hostels where they could share their experiences. This explains why the first and strongest unions emerged in the mining and fishing industries.

Namibian trade unions organise in all sectors of the economy including domestic and farm workers. The overall unionisation rate achieved (according to the figures supplied by trade unions) stands at about 50% - which is high by international standards. However, unionisation rates vary greatly between the well-organised public and mining sectors (about 80% unionisation) and the difficult financial and domestic workers sectors (about 20% unionisation).

Today, the Namibian labour movement consists of over 20 trade unions, most of which belong to one of the country's two trade union federations: the 70 000 member strong National Union of Namibian Workers (NUNW), or the Trade Union Congress of Namibia (TUCNA) which represents about 40 000 workers.

In addition, there are several unaffiliated industrial unions. The main dividing line between the rival trade union federations is the question of political affiliation as the NUNW has maintained its affiliation with the ruling SWAPO party while the other unions are opposed to this party political link.

Chapter 2: Workers rights after independence

The achievement of independence in 1990 had a tremendous impact on the labour movement and required a re-definition of the role that trade unions wanted to play. The function of political mobilisation, which had taken centre stage before independence, was taken over by SWAPO whose leadership returned to Namibia in 1989 and became the Government with independence. Given the close structural links between the NUNW unions and SWAPO as well as the fact that most union leaders played a prominent role in the party as well, there was a widespread expectation among workers that the SWAPO government would be a workers' government. However, once in power the SWAPO government maintained the predominantly capitalist structure of the economy while introducing the notion of social partnership in labour relations. Trade unions were expected to define a new role within this framework and although the NUNW had previously called for more radical changes, it accepted the new framework with little resistance.

Namibia's new constitution was adopted in 1990. While it referred to human rights in general, it made 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 in parliament. The Namibian Government tried to balance the interests of workers on the one hand and those of the employers on the other within the Act. During the 1989 election campaign, SWAPO had promised workers minimum wage legislation as well as paid maternity leave. However, paid maternity leave was only introduced in 1994 as part of the Social Security Act while no minimum wages have been set to date. The only minimum wage agreements in force were those reached between employers and trade unions on an industry-wide basis in the construction industry, the security industry and the agricultural sector. Vulnerable workers like domestic workers and attendants of petrol stations are still not covered by national minimum wage regulations while the minimum wages for security guards were set at only N\$ 25.00 (US\$ 4.1²) for a 12-hour shift.

The Labour Act of 1992

Compared with the colonial legislation, the Labour Act (No 6 of 1992) was a major step forward for Namibian workers. It made an attempt to improve the basic conditions of employment of workers. For example, the maximum weekly working hours have been reduced to 45, with the exception of security guards who may work up to a maximum of 60 hours per week. Overtime has been increased from the past 1,33 times the ordinary wage to 1,5 times the ordinary wage. For work on Sundays and public holidays, employers must pay double or one-half times the ordinary wage and provide the same time off the following week. Night work, which is defined as working between 20:00 and 07:00, is

² The exchange rate between the US\$ and the NS\$ stood at about 1 – 6 in April 2006

prohibited for employees younger than 18 years of age and pregnant women eight weeks before and eight weeks after birth. In addition, employers have to pay at least an additional 6 percent of ordinary wages to their employees who carry out night work.

Working conditions for farm and domestic workers, as well as other employees who, because of the nature of their work, have to reside on the premises of their employers, have also been improved. In these cases, the employer must provide workers with housing, including sanitary and water facilities. Farm workers' dependants are also supposed to be provided with housing.

All workers are entitled to 24 consecutive days of paid annual leave. In case of retrenchment, severance pay of at least one week's wages for each year of service must be granted. Women workers who have worked for at least one year for the same employer are entitled to 12 weeks of maternity leave. Maternity leave is currently paid for through the Social Security Scheme, which provides for 80% of the woman's basic salary during maternity leave. However, the maximum amount is currently N\$ 2 400 per month (US\$ 400) which is less than what many women earn.

Unlike in the past, workers can only be dismissed for a good reason ("valid and fair") and such dismissals must be carried out in a fair way ("in compliance with a fair procedure"). In other words, an employer must hold a hearing to establish the case against the worker. Such a hearing must be presided over by an impartial person, and the worker must be given a chance to state his/her case. The Act prohibits employers to discipline or dismiss their workers for giving information to the Ministry of Labour (or any of the bodies established by the Act). It is also illegal to dismiss a worker for belonging to a trade union, or because of his/her sex, race, colour, ethnic origin or political opinion. If a worker feels that he/she has been unfairly dismissed, the worker may challenge the dismissal in a district labour court and that ruling may be appealed against in the Labour Court. If a dismissal is challenged in the courts, the employer has to show that the dismissal was indeed fair.

The procedure is however different for collective dismissals or retrenchments. In such cases, the employer must notify workers (or their trade union) of the planned retrenchment and the reasons for it. The Labour Commissioner must also be notified. Employers who fail to comply with these provisions face stiff penalties: a fine of N\$ 4, 000 or up to 12 months imprisonment or both. Unlike in the past, employers are now required to provide employees with certificates of employment at the end of their employment contracts or when such contracts are terminated.

The right to organise and collective bargaining

The Labour Act of 1992 also entrenched basic organisational rights for trade unions. Unions need to first register with the Office of the Labour Commissioner, which then issues a certificate of registration. Affiliation to any political party or

movement is not a ground on which they can be refused registration. Once trade unions have been registered, they are accorded certain rights. These include, amongst others, the right:

- to lodge complaints with the Labour Court or District Labour Courts
- to seek recognition as an exclusive bargaining agent and to negotiate with an employer and enter into a collective agreement,
- to enter company premises to conduct union business or to recruit union members,
- to have union membership fees collected by employers who have to deduct them from members' wages,
- to report disputes to the Labour Commissioner,
- to form a federation of trade unions and to participate in its activities,
- to affiliate with or participate in the activities of any international workers' organisation, and
- to have workplace union representatives.

Trade unions have the right to be recognised as exclusive bargaining agents if they represent the majority of employees in the bargaining unit. These rights paved the way for the recognition of the majority unions as the bargaining agents of workers. Recognised unions have the obligation to negotiate on conditions of employment not only for their members but also for all other employees in the bargaining unit. Due to the entrenched right of freedom of association, workers are not obliged to join a union even though they benefit from the collective bargaining carried out by trade unions. This has led to demands by unions for the introduction of "agency fees" to be paid by "free riders" (workers who benefit from the unions' negotiations work without making a contribution to the union).

The TCL strike of 1996³

Despite the political and legal changes after independence, labour relations remained tense at several workplaces. The most dramatic example was the strike at the TCL copper mine in Tsumeb, northern Namibia. Workers there had experienced a long history of exploitation and repression, which paved the way for the 1996 strike. The first major TCL strike occurred in 1987, a year after the formation of the Mineworkers Union of Namibia (MUN). It was a protest not only against the poor salaries but also against the inhuman hostel conditions that mineworkers had to endure. Coupled with this, workers experienced ongoing racism and tensions, which continued to build until the strike in 1996.

The strike virtually brought all operations at the three TCL mines to a complete standstill. It was triggered by the refusal of TCL management to grant salary increases and to meet other demands relating to improved conditions of work at the TCL mines. Initially, the workers demanded a salary increase of 25%. They also demanded that there be an improvement of allowances such as standby allowances, acting allowances, and special paid leave. TCL was at that stage

³ This section is based on Karuombe (2002).

offering a mere 1% salary increase. During the negotiation process a number of the workers' demands were reduced or even dropped from the agenda. It was becoming clear that TCL was negotiating in bad faith and that an amicable solution to the situation was unlikely due to the company's attitude. The MUN delegation, therefore, declared a dispute with TCL on 16 July 1996. The union's demands were the following:

- A. Wages: MUN demanded that the basic monthly wages of members in grades A1 to B2 be increased with 14.5%. TCL was at this stage offering a 7% increase.
- B. Standby Allowance: MUN demanded an increase from 4 hours to 6 hours pay each week a member is on standby.
- C. Special paid leave: MUN demanded 8 days special paid leave for all union officials and shop stewards to attend union activities.
- D. Implementation date: The union wanted the wage agreement to be reached to be implemented as from 1st July 1996.

Negotiations in late July 1996 could not bridge the deadlock and this led to the establishment of the Conciliation Board on 2nd August 1996. None of the company directors turned for the conciliation meeting. Mr. A.R De Beer who was nominated by the company directors to negotiate on their behalf offered 7% salary increase. According to the former general secretary Peter Naholo: "*It was either 7% or nothing*".

This frustrated the representatives of MUN as Naholo recalls: "*I personally remember pointing to Mr. De Beer and telling him that if he should ever allow the strike to take place at TCL, TCL won't be the same again, even you (Mr. De Beer) will not be the same again. This is exactly what I told Mr. De Beer right in his face. In return he responded in rage and said to me: are you threatening me?*"

At the time when the Conciliation Board met on 15 August 1996 the demands for wage increases and their implementation were unresolved. The MUN in an attempt to induce TCL to improve its offer of 7% lowered its demand from 14.5% to 13.5%. However, the TCL managers and directors refused to compromise and the Conciliation Board dissolved which paved the way for a strike.

Realising that a strike was pending, TCL started with a number of scare tactics. A confidential document was drawn up which outlined how the company would prevent the strike from taking place. The document barred the media from entering the mines and also instructed relevant officers to change the pad-locks of the main entrances to the mines. The TCL management had no clue that the document was leaked to the striking workers and thought that they would succeed in their plans. Eino Ntinda recalls: "*That document helped us a lot. We worked out our counter-moves according to that document and they all worked*".

Secondly, TCL started to tell government that the strike was undesirable, as it would send wrong signals that can scare off potential investors. Angered by this attitude, the former deputy Labour Minister John Shaetonhodi responded by stating that *“investors do not come here because there is no strike at TCL. They come here because the government has created favourable conditions for investment. Investors will come, whether there is a strike at TCL or not”*.

TCL then started to threaten that they were going to close the kitchen. Meanwhile, the MUN had set up its strike fund and availed close to N\$ 500 000 to assist striking workers and their families. To many people, the strike that started on 22 August 1996 initially looked like any other strike in Namibia after independence - a strike that would last only for a few days. The TCL management believed that it would not take place – and if it did, that it would not last long. To the workers themselves, however, this was the beginning of the *“Mother of all Battles.”* According to John Nekundi: *“The strike was a test for who is more powerful. TCL wanted to show MUN that they are more powerful. The workers decided that enough is enough, TCL had to give in to their demands or face the consequences”*. It was an opportunity that they had been waiting for - a chance, for them to effect change at TCL, to break the chains of exploitation that they had experienced for so many years.

What started like a wage dispute between TCL and the MUN became an opportunity for the workers to look at the company as a whole. What emerged was a long history of exploitation, racial discrimination, unfair labour practices and disregard for human rights. Many ugly events, rooted in the company’s discriminatory apartheid policies started to surface. For example, a general safety rule in the TCL’s Smelter Safety Manual read: *“Blacks are not permitted to operate a valve or a switch unless under the direct supervision of White power plant personnel”*. Such discriminatory policies and practices resulted in the former labour minister, the late Moses Garoeb saying: *“Only heartless people can do such things to other human beings. TCL is like a snake whose head must be crushed”*.

Ashamed of all the revelations, the TCL management issued a press statement in which they denied that the safety manual was being applied. The company argued that it was only applicable during the 1960s and 1970s when apartheid laws and job reservations were the order of the day. However, this argument did not convince workers whose experiences told them otherwise.

TCL was also humiliated when its managing director, Tony de Beer was found lying to the former Prime Minister Hage Geingob during the final mediation talks. The TCL management wanted striking employees to go on unpaid leave until late December 1996 or January 1997. The MUN objected to this, saying that TCL had already arranged paid leave for white employees who did not take part in the strike. De Beer denied this, saying that there was no such arrangement. After a long and heated argument with the Prime Minister, the MUN pulled out a letter,

signed by de Beer himself, to show that the MD was hiding the truth. When the Prime Minister asked him why he was lying, de Beer's face turned red visibly shaken by the letter, which he thought the union leadership would never have access to.

TCL still did not want to negotiate in good faith. It even withdrew its 7% wage increase offer saying that they first needed to assess the effects of the strike on the mining operations. This angered a number of sister trade unions of the MUN. The former president of the NUNW, Ponhele Ya France called on Goldfields Namibia "to pack up and go" and asked government to withdraw the company's mining license. NAFAU's former general secretary, Cuana Angula threatened that his union would call for a massive industrial action against TCL, if the company did not meet the workers' demands. MUN also received a great deal of material and moral support from other sister unions as well as business people, and local church leaders in Tsumeb.

Left with no choice and pressured by the government, TCL had to give in. After three days of mediation under the chairpersonship of the former Prime Minister, the company agreed to a 10,5% wage increase backdated to 15 July 1996. The strike cost TCL more than N\$ 100 million (US\$ 16,6 million) in lost profits. The image of TCL as well as that of Goldfields was tarnished both at home and abroad. The MUN insisted on an investigation into the racial and discriminatory practices of TCL, which was granted. The investigation headed by senior government officials started and MUN called on the investigators to undertake a thorough probe and come up with tangible recommendations.

The strike was a major turning point for the company. Addressing the workers after the strike the managing director said: *"I believe, and maybe it is partly my fault, that we need to communicate. TCL cannot afford another strike as big as this one. We need to communicate with the unions, if not on weekly basis, then on a monthly basis, to try and solve as many problems as we can. I believe there was a lack of communication, may be on both sides but I believe this is one big lesson we have been taught"*.

However, the company hit back when Goldfields South Africa applied for the liquidation of the TCL mines after the strike. TCL was placed under provisional liquidation on 29 April 1998, which resulted in the retrenchments of about 2000 workers who were only given their payouts as required by law. An important lesson emerged out of the TCL strike, which was summarised by MUN's Jacob Nghifindaka: *'When you mismanage and misuse workers there will be a time when workers will reach a point of no return. No matter what it is going to cost them, workers will be determined to fight for what is right. One of the days, like they did at TCL, workers will say that enough is enough, we are not going to tolerate it any more'*.

The new Labour Act (2004)

During the late 1990s, the Ministry of Labour in collaboration with the tripartite Labour Advisory Council (LAC) worked on amendments to the Labour Act of 1992. Initially, the amendments focussed on improving the dispute resolution system, but as the process unfolded, it became evident that other aspects of the Labour Act also needed attention. Firstly, it was clear that the Labour Act of 1992 was drafted in a legal language that made it very difficult to understand for non-lawyers. Consequently, Cabinet instructed the Minister of Labour to redraft the Labour Act into “plain language”.

Secondly, the suggested dispute prevention and resolution system were cumbersome and time-consuming. The Act was therefore changed to provide for conciliation and arbitration as the main methods to resolve disputes. Thirdly, the social partners had suggested, and agreed on some other amendments to the Act. In the end, all the amendments together became so substantial that it was decided to redraft the whole Labour Act. The resultant new Labour Act accommodates the new dispute prevention and resolution system, the agreed amendments and it is written in “plain language” to make it more accessible. After being debated in parliament several times, the Act was finally passed at the end of 2004 and will be implemented in the second half of 2006.

Some of the key changes in the new Labour Act are the following:

The dispute resolution system of the 1992 Labour Act has several weaknesses. It is an adversarial dispute resolution system, which fuels confrontation instead of conciliation. The system is also too bureaucratic and legalistic with very slow reaction times. Due to its adversarial nature, the system undermines the process of collective bargaining in good faith and therefore perpetuates distrust and the winner-loser concept.

Another important concern is the effectiveness of district labour courts, which have lost credibility due to severe backlogs. This is further compounded by the difficulty in implementing orders and decisions of district labour courts. The early involvement of third parties such as lawyers, labour consultants and the police have also complicated procedures, delay resolutions and provoke violence. Procedures of dispute resolutions as provided for in the Labour Act, are followed merely to ultimately engage in legal strikes and lockouts. In addition, interim orders given by the Labour Court (on the basis of urgency) are often fuelling the conflict and increase the risk of violence.

The new Labour Act therefore introduces a new dispute prevention and resolution system that will:

- recognise if not promote agreed dispute prevention and dispute resolution procedures at the workplace and in industry;
- be accessible, simple and quick i.e. user friendly;

- apply to all labour disputes but be sufficiently flexible to deal with the different nature of some disputes;
- be non-adversarial in its process as far as possible and accordingly conciliation should be a compulsory step in all disputes;
- be equitable;
- be of high quality and yet cost effective;
- be appropriately resourced;
- be impartial, legitimate independent and accountable;
- promote the representation and involvement of trade unions and employers organisations as 'social partners'
- promote industrial justice
- promote agreed solution rather than imposed solutions; and
- promote finality.

Codes of good practice will be used to guide employers and employees in the exercise of their rights and duties. These codes are not merely informative – conciliators, arbitrators and courts must take them into account in determining any dispute.

The new Act will also strengthen of the role of the LAC. It is envisaged that tripartite involvement in the dispute prevention and resolution system be deepened by permitting the LAC to make recommendations on the appointment of Labour Court judges, the Labour Commissioner and the Deputy Labour Commissioner. It is important for the legitimacy of the Labour courts to have support from the social partners, particularly when they often have to intervene in highly charged disputes.

The past years have shown that the use of overburdened magistrate's courts to handle labour disputes has not worked - the courts are by their nature adversarial, prone to technicalities and delay. The new Labour Act of 2004 therefore states that:

- All disputes of interest and of rights (except for the limited and exceptional disputes that go to the Labour Court) are to be referred to the Labour Commissioner directly or indirectly through the district labour offices. This will allow administratively for the labour inspectorate to process the dispute and to engage in informal conciliation.
- The Commissioner will appoint a conciliator to conciliate the dispute although some disputes might go directly to arbitration. The conciliator may conduct the conciliation at any place. Costs permitting, the conciliator will come to the dispute rather than the disputants to the conciliator. The use of part-time conciliators will be possible.

The conciliator first attempts to conciliate the dispute. If the conciliator succeeds, a written settlement report will be issued. If the conciliator fails, the dispute may be referred to arbitration (if it is a rights dispute or an essential service dispute or

if there is agreement between the parties to refer the dispute to arbitration). Otherwise, the parties can resort to lawful industrial action (strike or lock-out) to settle disputes of interests.

In the case of a dispute of interests (for example over wages and benefits), the conciliator:

- may give an advisory award if he/she believes it will enhance the prospects of settlement or if the parties agree;
- remains with the dispute and may summon the parties to conciliation after industrial action has commenced. The idea is that the conciliator remains involved until the dispute is settled.

ILO core conventions

After independence, the Namibian government ratified the ILO core conventions on freedom of association and the right to organise (Convention No. 87), on the right to organise and collective bargaining (No. 98), on forced labour (No. 105), on minimum age (No. 138), on discrimination in employment and occupation (No. 111) and on the worst forms of child labour (No. 182). These provisions are accommodated in the Namibian constitution, the Labour Act of 1992 and the new Labour Act of 2004. However, the convention on equal remuneration (No. 100) has not yet been ratified because some of Namibia's laws are not in compliance with this convention. The Social Security Act, for example, currently provides for only 80% of women's salaries to be covered during maternity leave and the Public Service Act regards married couples as a family unit that can only qualify for one housing loan. A married woman thus would not be able to get a housing loan if her husband has already taken out one. The Namibian government wants to first amend the relevant laws before ratifying Convention 100.

Namibia's Labour Advisory Council (LAC) suggested that Namibia should ratify the convention to make sure that the national laws will be adjusted speedily. However, the Namibian government indicated that it first wanted to ensure full payment during maternity leave (as set out in the new Labour Act of 2004) before ratifying Convention 100.

Despite these national and international legal commitments, violations of labour rights and practices such as child labour still occur in Namibia. The experiences of domestic and farm workers, for example, have shown that even basic rights enshrined in Namibian legislation, such as the right to organise, are compromised by the socio-economic circumstances that some workers are still facing. The following chapters examine some of these issues.

Chapter 3: Discrimination

Apartheid legacies in the labour market

The legacies of the South African apartheid policies in Namibia are visible in all spheres of society. It is thus not surprising that at independence, most white males and in some instances white females enjoyed most privileges that apartheid had to offer, while black working class women found themselves at the bottom of the hierarchy.

The apartheid system also created a particular gender, race and class distinction. In the labour market, the system found expression in the positions that certain members of this racially divided society could occupy. Apartheid provided for a hierarchy of 'order' in the job market. Whites occupied positions of decision-making, "coloureds" were concentrated in administrative and crafts jobs while black Namibians were mostly manual labourers. There was thus a significant overlap of class and race stratification.

The imprints of the migrant labour system also have had profound consequence for the Namibian labour market at independence. The system of job segregation resulted in huge pay inequities. Most black male workers were employed in the mining and farming sector where they held positions in the lower ranks while whites had almost complete control over supervisory and management positions. In 1987, white miners earned an average of 24 times more than their black colleagues.

Black women had even lower status in this hierarchy. Black women occupied - and still occupy - some of the lowest paid jobs in the labour market. Women workers are concentrated in food and beverages sectors, commerce and the retail sectors. These sectors use women workers on a casual, part-time, seasonal, piecework and sub-contracted basis. They are thus not entitled to benefits such as housing and medical aid, for example.

After independence the SWAPO Government faced the formidable task of transforming an ethnically fragmented, extremely imbalanced and gender-biased society, into a unified state with a more equitable socio-economic structure.

Affirmative action was portrayed as the instrument to redress the imbalances of the past. Article 23(2) of the Namibian Constitution empowered parliament to enact legislation aimed at redressing "social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices". Provision was also made for a balanced restructuring of the civil service.

In the Namibian context, affirmative action was expected to contribute to the following:

- Firstly, to make institutions representative of the country's population.

- Secondly, to effect a change in institutional cultures which were shaped by racist practices during colonial rule.
- Thirdly, to bring about socio-economic redistribution.

To change institutional cultures, it is not enough to merely change the colour of employees. Instead, it will be required that new appointees actively work towards changing the prevailing institutional culture to accommodate cultural diversity. It might thus be necessary to appoint people with the desired social and political conviction to effect change.

Affirmative action in the civil service

After independence, the Namibian government implemented affirmative action in several areas. The management level of colonial civil service had been completely dominated by white men and the new government could not simply replace the “old” civil servants with new ones because article 141 of the Constitution guaranteed all civil servants their jobs. However, the government wanted to “level the playing field” and give equal opportunities to all Namibians. The government’s aim was to make the civil service more representative of the country’s population.

The Public Service Commission was given the task to achieve this aim. It therefore decided that blacks (including “coloureds”) and women should be given preference whenever appointments, promotions and transfers take place in the civil service. As most Namibians could not gain experience in the colonial civil service, the Commission also decided to relax the experience requirements. However, only people with the necessary qualifications were considered for appointments and promotions.

Six years after independence, in March 1996, about 70% of the management posts in the civil service were held by people from disadvantaged groups. Most of them were black men (52%) and only 13% were black women. These figures indicate that affirmative action made the civil service more representative of the country’s population but women (especially black women) continue to be under-represented at higher levels. They account for about 20% of senior managers in the public service today.

The process of change in the private sector was much slower and, by 1998, the government passed the Affirmative Action (Employment) Act to direct the process.

The Act sets out its aim as follows:

“To achieve equal opportunity in employment in accordance with Article 10 and article 23 of the Namibian Constitution; to provide for the establishment of the Employment Equity Commission; to redress through appropriate affirmative action plans the conditions of disadvantage in employment experienced by persons in designated groups arising from past discriminatory laws and practices; to institute procedures to contribute

towards the elimination of discrimination in employment; and to provide for matters incidental thereto.” (Affirmative Action (Employment) Act, 1998: 2).

The Act was passed in parliament in September 1998 and came into operation in August 1999. Private companies, state owned enterprises and public sector institutions with 50 or more staff members were identified as “relevant employers” and had to prepare three year affirmative action plans by August 2000 and February 2001. The first cycle of affirmative action plans was completed in 2004 and the Labour Resource and Research Institute (LaRRI) undertook an impact assessment for the Employment Equity Commission (EEC). Some of the findings of the study were:

There were few changes at management level between 2000 and 2004. Most companies argued that they were not able to find sufficiently qualified and experienced people from “designated groups”(Black Namibians, women and people with disabilities). White men are still the dominant group at senior management level although their share of middle management posts declined to below 40%. More significant changes occurred in the specialised/skilled/supervisory job category where black men increased their share to over 40%. Black women also increased their share in this category but are still substantially under-represented. The job categories covering skilled, semi-skilled and unskilled workers are dominated by black men.

People with disabilities are hardly employed by “relevant employers” and there are only very few organisations that took concrete steps to accommodate them.

Very few employers embarked on affirmative action programmes before they were forced to by law. There was thus no voluntary adoption of the policy and AA should remain a legal requirement for the years to come. There is broad agreement that the currently identified people from designated groups should be the direct beneficiaries of AA in the workplace. There is, however, a need to pay more attention to black women and people with disabilities.

Although most organisations have their own affirmative action policies, most staff members are not aware of them. Consultations between management and staff are often ceremonial and do not lead to a process of meaningful discussion. As a result, affirmative action is seen as management-driven at most workplaces.

Education and training, as well as recruitment and promotion of people from designated groups were the most common measures taken in the implementation of the policy. Far less consideration has been given to questions of removing employment barriers and changing institutional cultures. To a large extent the policy seems to be driven by the need “to get the numbers right” which poses the threat of the policy leading to tokenism and “window-dressing”.

There is competition for skilled people from designated groups. Some companies sent staff members for further studies but after completion they were recruited by competitors who offered better salaries and benefits. This practice is likely to

undermine genuine attempts to provide ongoing development opportunities for staff members from designated groups.

Although managers, shop stewards and workers identified numerous challenges that occurred during the implementation of affirmative action (such as finding suitable people from designated groups; whites resisting change; ignorance among staff members and bad management attitudes), the policy has also achieved some encouraging results. It created opportunities for people from previously disadvantaged groups; achieved some progress towards a more “balanced workforce”; improved communications, labour relations and the morale at work as well as opportunities for training and development.

Affirmative action is an important policy for Namibia and will need to be continued for the foreseeable future. The implementation should entail the intensification of skills development and a more genuine and thorough consultation process at workplaces. Shop stewards and members of affirmative action committees in particular need to be involved in the design and implementation of AA programmes at the workplace.

Affirmative action does not necessarily eradicate socio-economic inequalities. Instead, inequalities may merely be shifted from the basis of race, ethnicity or gender to the basis of class. Affirmative action may promote the redistribution of opportunities in favour of previously disadvantaged groups, but it is not the principal mechanism to redistribute wealth or to overcome poverty. Supplementary measures have to be taken to tackle the broader socio-economic inequalities that characterise Namibia.

Affirmative action in agriculture, local government and fishing

Other areas where some affirmative action policies were implemented included the “Affirmative Loan Scheme” to support communal farmers who wanted to buy land in a commercial farming area. The scheme is administered by the Agricultural Bank of Namibia, which offers loans at low interest rates are given to initially full-time communal farmers and now to part-time farmers from “previously disadvantaged groups”. Many beneficiaries are now part-time farmers who occupy prominent full-time positions in the public or private sector.

Gender-based affirmative action was implemented through the Local Authorities Act of 1992, which provided for a quota for women on the candidate lists of political parties. In municipal or town councils with up to 10 members, all political parties had to nominate at least 2 women while at least 3 women had to be nominated for councils with more than 10 members. This quota system had a positive effect on women's representation. All parties nominated more women than required by law. Out of the 362 elected councillors, 114 (or 31,5 %) were women. This is a much higher representation of women than in the National Council, the regional councils and the National Assembly.

The Sea Fisheries Act of 1992 paves the way for the application of affirmative action in the allocation of fishing quotas. The Act empowers the Ministry of Fisheries and Marine Resources to apply affirmative action when fishing quotas are allocated. Quotas can be given to people who have been disadvantaged in the past. However, this is only one of the aspects to be considered when quotas are given, as applicants have to meet many other conditions.

Results

During the first few years of independence, affirmative action in Namibia has been successful in bringing about a more representative civil service. Quotas for women in the local government elections of 1992 have contributed to a far better representation of women than is the case in the National Assembly and the National Council. However, Namibia still has a long way to go before the country can claim to have “levelled the playing field”. Women – especially black women - are still largely excluded from better-paid jobs and decision-making. Affirmative action in Namibia has also not addressed socio-economic inequalities and the country is still characterised by a huge gap in the distribution of wealth and income.

There is also a trend towards ethnic identification and some politicians even called for the allocation of positions and bursaries on an ethnic basis. Such proposals signal a warning that affirmative action must be implemented and seen as a transparent and fair process. Otherwise the policy might have the unintended side effect of entrenching and deepening ethnic division.

Chapter 4: Case Studies

Organising the difficult sectors: Agricultural and domestic workers

Domestic and agricultural workers in Namibia continue to be among the most impoverished and marginalized Namibians. According to the “Kameeta Commission” (officially known as the Presidential Commission on labour-related matters affecting agricultural and domestic employees in Namibia), there is a widespread perception among farm and domestic workers alike that Namibia’s achievement of Independence has done little to improve their lives. The commission observed that: *“At present, there remains some continuity with the colonial past in the day-to-day workings of commercial farms and domestic homes in Namibia. Authority is still largely centred in the person of the farmer or employer, and the paternalistic doctrine of baasskap⁴ retains a degree of currency on Namibian farms and household”*.

The Commission's report further stated that: *“The Commission has noted that there is a lack of proper collective bargaining within the agricultural and domestic sectors due to the weakness of both the workers’ and employers’ organisations. It was further noted that the need for comprehensive consultations exists between the said partners on a range of issues such as the working and living conditions of agricultural and domestic employees.”*

The report therefore recommended that: *“a national agricultural employment forum as well as a national domestic employment forum should be established. Such fora should be composed of an equal number of employee and employer representatives, chaired by a government representative, to discuss, negotiate and determine conditions of employment and related matters of concern to the respective employee groups.”*

One of the innovative strategies of the Namibia Farmworkers Union (NAFWU) was to expose, through the media, the violations of the Labour Act and the inhuman treatment to which farmers subjected their workers. Another successful step was to organise farm workers on big commercial farms to force their management to engage into negotiations with NAFWU and to publicise agreements widely. This increased the pressure on other farmers to start negotiating with the union.

A breakthrough was achieved when the Agricultural Employers’ Association (AEA), NAFWU and the Ministry of Labour (as facilitator) launched the Namibian Agricultural Labour Forum (NALF) on 5th July 2001. All three organisations have equal representation on the forum. The forum aims to provide a platform for

⁴ “Mastership”, “dominance”, “control”

dialogue and debate and will thereby increase understanding and relations across all levels within the agricultural sector. The forum is also expected to develop good labour practices and to collectively promote a sound labour relations culture in the agricultural sector. The forum advises the Ministry of Labour and particularly the LAC on matters related to the agricultural labour sector. The forum also seeks co-operation with other regional and international agricultural labour organisations. Lastly, the forum assists with the creation of a conducive environment in which the living standards of the rural population can be raised through employment creation, better training and education opportunities and hence an improvement in agricultural labour productivity.

Towards the end of 2002, NAFWU reached a national minimum wage agreement for farm workers after negotiations with the Namibia Agricultural Union (NAU), which represents commercial (mostly white) farmers, and the Namibia National Farmers Union (NNFU), which represents communal (black) farmers. The agreement came into effect in 2003 and provided for a minimum wage of N\$ 429 (US\$ 71,50) per month for full-time farm workers in addition to food and accommodation that the employer has to provide.

The fact that farm and domestic workers are usually living with their employers makes them less accessible for trade unions. Farmers and employers of domestic workers are often reluctant to allow trade unions access to their private spheres such as homes and farms. Secondly, as Alfred Angula, NAFWU's general secretary pointed out:

“Farm [and domestic] workers, because of their high illiteracy rates are closed out to social issues such as trade unions or even their rights and privileges which are contained in the Labour Act and other labour legislation.”

Angula further indicated that the co-operation the union receives from the Ministry of Labour, particularly from labour inspectors, does not meet the union's expectations. Labour inspectors, unlike trade union officials have the right to enter, without appointment, the premises of employers and do spot-checks on the working and living conditions and treatment of workers. This, however, hardly happens on farms.

The current gap that exists between the provisions of the Labour Act and the practice on the ground can be partly blamed on the inadequacy on the part of labour inspectors. When workers are to be laid off, labour inspectors are more concerned about severance packages instead of trying to mediate and secure the continued employment of the farm workers concerned. NAFWU on the other hand, faces a dilemma. Employers are continually threatening to reduce their workforce if government and the unions are exerting pressure on them and the union is engaged in struggle with farmers who dump their farm workers on the side of the road after many years of service. Namibian laws still do not provide

farm workers with any tenure rights despite demands from trade unions to effect such changes.

Domestic workers

The Namibian Domestic and Allied Workers Union (NDAWU) was formed in 1990 to respond to the exploitation suffered by domestic workers. These include sexual harassment, low salaries, summary dismissals, lack of benefits, etc. The problem of organising individual domestic workers is a lack of access to their workplaces and high levels of intimidation. This could be solved if union officials had the same rights and powers as those of the labour inspectors to enter workplaces and talk to their members.

One of the strategies NDAWU adopted is to use the radio. The organisation reaches its members by making use of the different radio stations to educate its members as well as teaching the broader public about the kind of services NDAWU offers. Another equally important strategy is to meet domestic workers at the various bus stops where they catch the bus to and from work. Unionists make use of this time to recruit new members. Domestic workers also use the time to launch their complaints against their employers, which otherwise would not have been brought to the union's attention. NDAWU then contacts the employers to have the problems and complaints resolved.

NDAWU also uses the bus stops in the morning and in the afternoon to distribute education leaflets and any other relevant information for domestic workers. Union officials have to work irregular hours in order to organise workers in this sector. Unionists for instance have no choice but to agree to speak and organise domestic workers at funerals and weddings. "We are deprived of privacy and leisure time because of the very nature of the sector we are organising," explained NDAWU's former national organiser Moses Gowaseb.

Domestic workers are particularly difficult to organise because of their low literacy rates and inaccessibility to unions. Due to their low salaries, their union membership fees of 1% often amount to only N\$ 3 (US\$ 0,50) per month. "Unlike other unions, we do not even receive these contributions regularly because of the lack of stop order facilities with employers" explained the national organiser.

The case of Namibia's domestic workers shows how difficult it often is to translate legal provisions into practice. According to the Social Security Act of 1994, for example, all workers who are employed for more than 2 days a week are entitled to membership of the Social Security Fund. This gives members, particularly women who constitute the majority of domestic workers, the benefit of getting 80% of their monthly salary for a period of three months during maternity leave. They are also entitled to sick leave and death benefits. Most domestic workers, however, do not enjoy these benefits, mainly because employers have reduced their worker's weekly working days to two or less. Some employ several domestic workers each for no longer than two days. The new Labour Act will now

try to curb this abuse by providing for compulsory social security membership for all employees, no matter how many days per week they work.

Although domestic workers (like all other workers) are legally protected against unfair dismissals, arbitrary retrenchments are widespread among domestic workers. Most of their employers still hire and fire at will, set conditions or employment unilaterally and exploit the vulnerable position that domestic workers are in.

In instances where the union wants to fight against the exploitation of domestic workers, the lack of a written job description makes its task extremely difficult. Employers therefore increase their demands in terms of what they want workers to do without increasing the wages accordingly. In the words of the union's national organiser: "When challenged with this, employers would say that if the workers is no more interested in the job than she can go so that I can recruit somebody who is willing to do the job."

In 2003, NDAWU had to cease its operations due to a lack of funds. The Namibia Farmworkers Union (NAFWU) has taken over the task of organising domestic workers but the union will need support to be successful under very trying circumstances.

Foreign investors in Namibia: The case of Ramatex ⁵

In 2001, the Ministry of Trade and Industry announced that it has succeeded to snatch up a N\$ 1 billion (U.S.\$ 143 million) project ahead of South Africa and Madagascar, which had also been considered as an investment location by the Malaysian textile company Ramatex. This was achieved by offering even greater concessions - above those granted to other EPZ companies. Drawing in the parastatals providing water and electricity (Namwater and Nampower) as well as the Windhoek municipality, the Ministry put together an incentive package which included subsidised water and electricity, a 99-year tax exemption on land use as well as over N\$ 100 million (U.S.\$ 14,3 million) to prepare the site including the setting up of electricity, water and sewage infrastructure. This was justified on the grounds that the company would create over 10 000 jobs. The plant turns cotton into fabrics and the Namibian government hopes that in future local cotton producers will be able to supply the required cotton. Currently all cotton is imported - duty free. Ramtexas' decision to locate production in Southern Africa is believed to be motivated by aim to benefit from the Africa Growth and Opportunity Act (AGOA) which allows for duty free exports to the USA.

The Ramatex case is a classical example of SADC countries competing with each other in the race to the bottom for foreign investment. In Namibia, it was however portrayed as a major success. The former Trade and Industry Minister

⁵ This section is based on the booklet by Jauch and Shindondola 2003.

announced that negotiations and compromise was “the name of the game in business” which had won Namibia a billion dollar manufacturing plant.

Who is Ramatex?

Ramatex Berhad was established in 1982 as Gimmill Industrial (M) Sdn., a small textile manufacturing plant in Batu Pahat, Malaysia. The Ramatex Group, as it is now known today, expanded vertically from dyeing and knitting mills into yarn manufacturing in 1989 and continued its growth into finishing fabrics and printing in 1992. On November 12, 1996, the Ramatex Group was officially listed on the Kuala Lumpur Stock Exchange in Malaysia. Ramatex is the undisputed leader in the Malaysian textile industry. Today members of the Ma Family who originally set up the business are still the majority shareholders, owning 59 percent. They also still play an active management role.

The company produces fabric and garments for Nike, Adidas, Puma, Otto Versand, Target, Wal-Mart and Sears Woolworth. Ramatex' subsidiary Tai Wah penetrated the international market in 1982, producing branded apparels for European buyers under names such as Adidas, Christian Dior, Ralph Lauren, Nike and Halmode.

With a turnover of about US\$200 million a year, the Ramatex group currently operates from three major manufacturing facilities in Malaysia, China and Namibia. The Malaysian facility mainly caters for the export quota markets, whereas products manufactured in China are mainly aimed at the Chinese domestic market and non-quota customers. The production in Namibia serves the US market under AGOA but Ramatex plans to shift production to China.

Early conflicts

From the onset, the Ramatex operations in Namibia were characterised by controversies. Tensions already arose when thousands of job seekers lined up for jobs at Ramatex in early 2002. Female trainees were issued letters instructing them to take pregnancy tests (at their own costs) in line with “company policy”. Workers also complained that Ramatex was only interested in young women workers up to 25 years of age. They said that the company also did not want to employ tall and fat workers. Workers complained that Ramatex trainers had slapped them on their head, pinched them and insulted them for making mistakes.

In June 2002, Ramatex made headlines again as several workers suffered from skin rashes and swollen hands. They called on government to bring in independent doctors to investigate the causes of their illness. Workers believed that the rashes were a reaction to the dust and cotton particles in the factory but were told to leave their jobs if they felt they had allergic reactions. Workers further complained that they could not consult health practitioners during work time, as Ramatex would deduct the money for the day and issue them with warning letters. The workers wanted the Ministry of Labour to compel the

company to provide protective masks and gloves and to send labour inspectors to the factory.

Workers were also unhappy that they did not receive N\$ 750 a month as the company had promised but only N\$ 480 a month. To make matters worse, workers were told that due to a shortage of materials caused by a delay in the delivery of containers, production workers would be laid off for a week and not receive any payment during that time.

The Namibia Food and Allied Workers Union (NAFAU), which had been refused access to the company premises, also raised concerns about the working conditions at Ramatex, the unfair recruitment procedures and the controversy surrounding the disclosure of the environmental impact assessment. The company once again denied all allegations and continued to refuse NAFAU access to workers - even during lunchtime. The union then held meetings with workers outside the factory premises to inform them about their rights.

In August 2002, and again in April 2003, thousands of Ramatex workers downed tools in protest over poor wages and conditions of service. The Ramatex management closed the factory for two weeks and threatened to eliminate the “architects” of the wildcat strike. When the factory re-opened its doors on 28 April, Ramatex wanted to fire 600 workers whom they accused of “masterminding” the strike. After negotiations between the company, NAFAU and the Labour Commissioner during which Ramatex was (once again) reminded about Namibia's labour laws, workers were issued with new contracts. The company also accepted that all accused workers would have to be given fair hearings.

Ramatex workers continued to experience hardships. Selma explained:

“I was trained for just two weeks. We used to get N\$ 30 per week. After that we came to Ramatex and we were told we have to undergo training again for another three months still at N\$3.00 per hour and we were told that after training we will get promoted but it is still the same amount.... We work the same hours everyday. If you are tired you are told to go home and never to come back again. If you miss work on Saturday and Sunday, you are just told to go home or you get fired depending on the number of warnings. If you just miss work on Saturday and Sunday, the moment the Chinese supervisor see you he or she will only talk to the Filipino in the office, they will then tell you, ‘go office, sign warning.’”

Florence added:

“Sometimes I spend three months without seeing my children. The problem is that I have to work from 7 in the morning until 7:30 in the evening so that I can earn little bit more... We work everyday, from the

first day of the month to the last day. If you do not work overtime during the week, they will not allow you to work overtime over the weekend, because they know only by working overtime can one make a bit of money.”

According to Hilma:

“Sometimes you work so hard, you are expecting to get a commission, because we were told that if you reach a certain production level, you qualify for commission. End of the month comes and no commission. Sometimes the agreement was that you will get 85 cents per T-shirt, but when the commission appears on the pay slip the addition is 1c. Imagine what one will do with a cent? I do not know how they count because even if you count, you will never be able to understand how they arrived at the 1 cent.”

Rosa expressed her anger:

“There is a problem if you want to take leave, the manager has to give you forms to sign. Even if your mother has passed away and you want to take days off, the manager will ask you: ‘why your mother die?’ If you go it will be risky, because you won’t be paid for those days when you are absent or they will fire you when you come back. Yes, he is the one who asks people: ‘why your mothers die?’ He asks that in my ears, Even if you bring the death certificate it won’t help. But one just has to take the risk; you will be a fool to miss your mother’s funeral because of Ramatex. Whichever way it will be unpaid leave whether death or hospital.”

Conflicts and even physical attacks between the Chinese supervisors and the Namibian workers also take place as Josephine explains:

“I was using a broom and a Chinese worker wanted the broom that I was using, I told him that he should wait until I finished. He grabbed the broom from me and hit me with it and kicked the bucket of water that I was using. I then went and told our Malaysian Manager about the issue and she was not helpful. Then I went to another one, and he spoke to another manager...He didn’t want to listen, he only pushed the door in his face and he told me that I should go and open a case with the police, because they don’t want to talk about the issue. I did go to the police and the Chinese worker was arrested and it created havoc at the factory when he was taken into custody. They were saying that Namibians are very dangerous. Since then I have been having problems with our supervisor here, because apparently I should not have reported the assault. I was in pain when he hit me, and I was crying that day and I think they might fire me any day because of that.”

Asian Workers

There are several thousand Asian workers employed at the Ramatex factory in Windhoek. They are from China, the Philippines, Malaysia and Bangladesh. Most of the Chinese and Filipinos are housed in hostels within the Ramatex complex and earn basic salaries of about US\$ 200 – 400 which is significantly higher than those paid to Namibian workers.

A case of human trafficking coupled with extreme exploitation occurred between July and October 2004, when Ramatex imported over 400 Bangladeshi workers through international labour brokers. These workers were cramped into a single house in Windhoek under atrocious conditions. When their plight was brought to the public's attention through the Namibian media and trade unions, the majority of the Bangladeshi workers were quickly deported without receiving any compensation for the hardships they had to endure. Many had to pay US\$ 3000 (N\$ 18 000) to their "agent" (labour broker) to get the work contracts in Namibia. They had to sell their belongings back home to raise that money and would have had to work for at least 18 months to recover the fee. They had hoped that at the end of their contract they would make some savings but when they were deported after only 3-4 months in Namibia, they had to return empty handed.

Problems at Ramatex continue, as workers never received any wage increases since the company started operating in 2001. Despite the recognition agreement with NAFAU, Ramatex simply refuses to increase wages and instead threatens with relocation. In 2005, the company closed one of its subsidiaries and retrenched almost 1 500 workers. The future of the remaining workers is uncertain.

Rossing Uranium

Rio Tinto Zinc, a British company owning the majority of shares and the Namibian government, jointly owns Rossing. The Rossing mine has been in operation for about 30 years. The company violated UN resolutions, which had demanded an end to the plunder of Namibia's natural resources before independence. Zakarias and Mike have been working at the mine for 23 and 28 years respectively and are both long-standing members of the Mineworkers Union of Namibia (MUN). They work for 8.25 hour per day from Monday to Friday. Work performed during weekend is considered as overtime. Overtime is performed on a voluntary basis using a schedule that is drafted at least a month in advance because there is a high demand for overtime work by many workers so that they can earn extra money. Rossing provides its employees with benefits such as pension, bonus, housing, medical and social security.

Today, workers have the freedom to join and become members of a trade union. Zakarias and Mike point out that things have changed drastically since independence. Before independence, management discouraged and even

victimized workers for being members of trade unions. Mike said: *“Unions were not recognized during those days and so all union activities were carried out after hours. The union did not have a recognition agreement with the company until after independence. Eventually after independence, with the introduction of the new labour law, workers obtained the right to belong to unions.”*

There were several strikes at the mine. The issues that led to the strikes were salary increases, unfair dismissal and discrimination. There were fewer strikes since the company and the union signed a recognition agreement. The strikes concerning salary increments and unfair dismissals were solved amicably. The good labour relations that had been cultivated by the union and the company over the years are the main reason why there are so few strikes now. The union and the company managed to solve most of their disputes without utilizing assistance from outside.

However, there are still some problems that Rossing workers experience. Zakarias explained his problems with a new foreman: *“If you want to ask for sick leave, then you may not be allowed to take this leave. Workers are mistreated in departments where there are no strong shop stewards. Sometimes, the foreman refuses shop stewards the right to report back to their members”.*

Workers also experience problems with regards to promotions. More than 70% of the people working for Rossing have been employed by the mine for more than 25 years and are mostly black people. They have become experts in their jobs and have a lot of experience. Mike explains: *“The problem that I have observed is that instead of developing the workers who have been working at Rossing for a long time and promoting black employees, the company is employing white people on higher salaries. The white people who get employed by the company get their training from the people who have been working at the mine for a long time whose salaries are less than those of the white people they are training. In most cases, these people only have university degrees with no experience, but still get paid higher salaries.”*

Another problem is the disparities in salaries between black and white employees doing the same kind of job with the same qualifications. This problem was identified three years ago by the union and a dispute was declared with the company with regards to salary abnormalities. Experts were brought in to come and assess the salary scales of the workers here at the mine. The experts confirmed that there were salary abnormalities and advised the company to change their salary scales. The union then negotiated with the company and reached an agreement of a 46% increase. Afterwards, the company came up with other salary structures, which meant a return of the salary disparities. The union is thus negotiating again and hopes to reach an agreement soon.

Arandis Services

Arandis Services is a sub-contracting company, which renders mining services to the Rossing mine. The company is involved in activities such as boiler making, rubber lining, building, carpentry and interior decorating, fitting and turning. The company has been in operation since 1990 and was formed by some of the former managers of the Rossing mine. Most of the workers of Arandis Services are former employees of Rossing who were retrenched by the mine. Johannes was retrenched about 15 years ago and has since been working for the sub-contracting company, which was formed around the same time.

Working hours and benefits

Arandis Services employees work the same amount of hours as Rossing workers, which is 8.25 hours per day. The only difference is that Rossing workers get paid fully for the hours they work whereas the sub-contractors get paid only for eight hours. Overtime is performed on a voluntary basis during weekends and workers are eager to work overtime to make more money. Paulus said that their only benefits were social security and a 70% bonus on their birthdays, while the union was still fighting for other benefits such as medical aid and pension fund. Rossing workers enjoy far better benefits than those of Arandis Services.

Paulus is a member of MUN and observed that the company does not discourage or victimise workers for joining the trade union. In fact, the company even encourages workers to join the union and signed a recognition agreement with MUN in 1996. The workers are satisfied with the union and are grateful to have a voice that speaks for them.

However, workers of Arandis Services are generally unhappy about their conditions of employment. The workers complain about their lack of benefits. Most have been working for the company for more than 10 years and still do not have most of the basic benefits that Rossing employees receive. In the event of an accident at work leading to an injury, workers of Arandis services can only claim from the workman's compensation fund, as they do not enjoy any of the medical benefits available to Rossing workers.

Rossing uses sub-contractors to cut costs, save on benefits and avoid the responsibilities of employing permanent full time staff. Arandis Services workers feel that they are earning a lot of money for the company but yet the company is refusing to compensate them fairly. Workers who are employed by the Rossing mine and who are doing the same work as the sub-contractors are better compensated in terms of salaries and benefits. Paulus even experienced racial discrimination with regards to promotions: *"Blacks only get promoted as far as supervisory level and there is no black person in management"*.

The Arandis Services workers also experience unfair treatment from the Rossing mine. One of the workers, for example, was left behind by his company's bus and thus decided to use a Rossing bus to get to work at the mine. Arandis Services then fired this worker because he used Rossing's bus to get to work. Paulus hopes

that his union will be able to resolve such problems: *“We fought to get the union because only the union can talk to the company”*.

Namibia’s fishing industry: The case of Hangana

Hangana Seafood Company is part of the Olthaver & List group of companies and is involved in fishing activities. The company became known as Hangana Seafood Company after the merger of Hangana Foodcorn and Kuiseb in 1997. Hangana is one of the biggest employers within the fishing industry, even though the company retrenched some of its workers in January 2004 due to “financial difficulties”. The retrenched workers were given an option to be re-employed by the company on a temporary contract basis until such time that the company’s financial position would change. The workers were promised that they would be given first priority to be re-employed as permanent full time workers.

The workers at the fishing company work 9 hours per day from Monday to Friday. Some workers feel that they have to work overtime when the company asks them to: *“If you refuse, they will make you sign a letter of misconduct”*.

The permanent workers at the company receive benefits such as pension fund, medical aid, social security and a housing loan while the contract workers do not have any benefits even though they had been employed by the company on a permanent basis for many years. The contract workers are very unhappy, as their salaries now depend on the number of hours worked. The lack of benefits makes their livelihoods difficult.

Hangana does not discourage workers from joining a trade union and there is an open relationship between NAFU and the company. Union organisers have access to their members during working hours and shop stewards are even allowed to perform union work during working hours as long as they have informed management in advance. However, some managers try to undermine the union, which limits their power.

Problems Experienced

During the past two years, there were many retrenchments in the fishing industry, including Hangana. The union tried to ensure that workers’ jobs were safeguarded: *“As a union we made sure that employment would be maintained by entering into an agreement that there would be no salary increases in 2004 until the financial position of the company improved. In the agreement, provision has been made that if there are any vacancies, then the retrenched people would get first priority with regards to being employed on whichever terms the company would decide on. This is how some people are now employed as fixed term temporary workers. These workers work on a contract basis with no benefits, except social security. They get paid on an hourly rate. Their employment depends on how well the*

company is doing. If there is work then they remain employed. If there is no work then their contract cannot be renewed. The company has been telling us that they are having financial problems without providing proper proof to the workers for verification”.

Another problem was that about 100 contract workers have been laid off by the company until further notice without informing the union and giving a proper explanation. The retrenched workers are unhappy that their shop stewards and union was not able to secure their jobs. They are without work for more than a year and were promised that they would get their jobs back, but this has not happened. They do not know if they will be employed on a permanent basis again and are not even sure if they will get a contract job. They do not believe that the company has such serious financial problems and believe that it is dumping its responsibility towards them.

Chapter 5: The future of workers rights in Namibia

Following the repression of workers' rights during colonial rule, Namibia adopted a liberal labour relations framework after independence, based on the notions of tripartite consultations and social partnership. After independence, the labour law was changed to enshrine basic workers' and trade union rights and Namibia also ratified almost all ILO core conventions.

At the same time, Namibia placed emphasis on FDI as the engine for economic growth and job creation. The EPZ Act of 1995 paved the way for increasing concessions offered to export-oriented foreign investors. The tension between attracting FDI on the one hand and ensuring workers rights and decent standards of work on the other have surfaced sharply on several occasions. The case of the Malaysian Ramatex textile company presents a typical example of a global production chain in the era of globalisation. The experiences in Namibia are in line with international trends of transnational corporations (TNCs) spreading their operations globally in search for increased profits. The fact that Ramatex managed to play out three Southern African countries against each other showed how TNCs utilise their bargaining position to gain increasing concessions from host countries which are desperate to attract investments. Ramatex' employment practices are in line with other global textile companies who prefer young women workers who are seen to be "docile" with "nimble fingers" and less likely to join trade unions or resist company management.

Ramatex' operations in Namibia have been turbulent and marked by many controversies. Many of the conflicts and tensions have remained unresolved as they were dealt with at the "political level" instead of addressing the root causes of the problems. Ramatex seems to have a very close relationship with the Namibian government but unless the problems experienced by Ramatex workers are addressed, the company is likely to be the site of many future conflicts. Companies like Ramatex essentially contribute to the establishment of a large number of "working poor" - people in full-time employment, unable to even meet their basic needs. This stands in sharp contrast to the Namibian government's stated objective of promoting decent work in line with ILO standards.

The Ramatex case has also shown the dangers of cross-subsidising a foreign company with public funds. The company reaped all the benefits of subsidised infrastructure, water and electricity but still closed down one of its subsidiaries in 2005, leaving 1 500 workers without a job. Even the remaining jobs are at risk as the company is busy relocating most of its production to China. The Ramatex case highlights the vulnerable position of Namibia in relation to TNCs that play the globalisation game to their own advantage. Unions need to understand their motives and strategies in order to counter them successfully.

The experiences with several foreign investors to date point to the urgent need to ensure compliance with Namibian laws, regulations, workers rights as well as environmental, health and safety standards. Experiences elsewhere have shown that compromises on social, environmental and labour standards in the name of international competitiveness have led to a “race to the bottom”. The Namibian government - as well as trade unions – will have to demonstrate that they are serious in defending these rights that were only won through long and bitter struggles. It will be critical to demonstrate to all companies that labour laws and regulations as well as workers’ rights are not negotiable. Otherwise, companies like Ramatex might set an example that others will follow, resulting in the loss or undermining of some of the achievements realised in Namibia since independence.

Other challenges regarding the improvement of workers rights in Namibia are the high levels of unemployment and poverty. With an unemployment rate that officially stands at around 34% but is significantly higher among women (40%) and young people (over 60%), Namibia has a “reserve army of unemployed workers” that are desperate for any kind of work under almost any conditions. This place enormous pressure on the achievements of trade unions who have seen an increasing number of casual workers and workers employed by labour hire companies (labour brokers) enduring working conditions that are far worse than those of permanent workers. Some companies have resorted to outsourcing and sub-contracting to cut costs and drive down the wage bill. The labour movement will have to reverse this trend in order to defend its achievements. This will require an effective organising strategy as well as strategic policy intervention.

Namibian workers’ rights are also threatened by a lack of enforcement. Studies by the Labour Resource and Research Institute (LaRRI) revealed a fairly low knowledge among workers about key labour laws and even basic rights at work. This results in arbitrary and at times outright illegal measures taken by employers to go unchallenged. In addition, labour inspectors are seemingly unable to visit workplaces regularly to ensure compliance with the law as well as health and safety regulations. Vulnerable workers in particular, such as domestic workers, security guards and farm workers are not only poorly organised by trade unions but still suffer from violations of their basic rights – even when they are enshrined by law.

These are some of the challenges Namibian workers will have to confront in the years to come.

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