

LABOUR DAY, ESCR AND “SMART PARTNERSHIP”

Peter Henriot

This coming Thursday will be Labour Day and we will hear plenty of words about the needs of workers and the plight of the unemployed. But will we see any practical steps taken to improve the conditions of the employed and promote jobs for the jobless?

This year's Labour Day celebration occurs within a context of conflict. The Government is proposing to lay before the Parliament new labour legislation that is highly contentious. Understandably the trade unions are anxious and are threatening actions to secure their demands for greater fairness in labour policies. Moreover, the re-opening of UNZA is still in question these days as lecturers and staff are on a “go slow” until they receive very clear and binding assurance that their demands for improvements in salaries and conditions will be met.

I thought of these challenges on the weekend when I sat with hundreds of government officials, business leaders, and civil society persons to learn about the “Smart Partnership” Forum which Zambia is to host in July. Just how “smart” will such a partnership be in promoting development in this country if it does not take as a number one priority an improvement in the labour situation?

LABOUR RIGHTS

For such an improvement to occur – in the midst of a “booming economy” such as Zambia is now experiencing -- will require a significant change in the legal framework within which workers' rights are guaranteed and fostered. That change is, of course, the inclusion in a new Bill of Rights in a new Constitution of the set of Economic, Social and Cultural Rights (ESCR).

A point raised repeatedly in this column and in so many other constitutional analyses is something that delegates to the National Constitutional Conference (NCC) must not grow weary of hearing. Currently the Zambian Constitution does not -- repeat, “does not” -- include protection and promotion of many of the most fundamental human rights due every Zambian citizen.

Let's just look at what this means in the draft Constitution NCC delegates will be picking up these days to study, debate and decide. The draft of the Mung'omba Constitutional Review Commission (CRC) makes very explicit in the proposed Bill of Rights the right to just and decent labour practices. These include fair remuneration, equal work for equal pay, satisfactory, safe and healthy work conditions, reasonable pensions, membership in trade unions, participation in strikes.

In speaking about rights of youth, the draft Constitution mentions youth's right to access to gainful employment. And children are to be protected from any work that is likely to be hazardous or adverse to their welfare.

Without inclusion of the proposed ESCR in the new Constitution, the type of labour conflicts we are currently experiencing in Zambia are likely to be repeated year in and year out. But the future of sustainable and integral development in this country will not be bright if such conflicts continue. Bring in as much new investment as you can promote, set up all the new technologies you can find, establish all the “smart partnerships” you can encourage. But if you don't address the fundamentals of labour rights, you simply aren't going forward, no matter how many nice speeches, smart parades and fancy t-shirts you use to commemorate Labour Day!

CLEAR CALLS

So is there a possibility that the NCC will indeed take seriously the need to adopt a Bill of Rights such as the Mung'omba Commission wrote after in-depth study and extensive consultation? This week I am a bit more optimistic about that outcome than I might have been a few weeks earlier. Why? Three reasons.

First, the Zambian Human Rights Commission (HRC), in its official capacity of providing “expert” input into the NCC deliberations, has offered a very powerful call to the NCC to structure a “good governance paradigm” that

will give the same prominence to ESCR as to the ordinary civil and political rights. Making a presentation before the NCC delegates last Friday, HRC vice chairperson Palan Mulando made it very clear that “Social, cultural and economic rights are wrongfully subordinated to civil rights...the protection of social, cultural and economic rights is still much weaker.”

What Mulando was arguing for, in my opinion, is the approach that the South African Constitution exemplifies so well. The ESCR are justiciable (can be legally addressed in court) the same as civil and political rights. Currently in Zambia a worker’s right to free speech is constitutionally guaranteed; her or his right to “fair remuneration and equal pay for equal work” is not constitutionally guaranteed.

It is indeed encouraging that the HRC, the official body of the Government of Zambia that is charged with promotion of human rights, has made very clear its endorsement of putting ESCR in a new Bill of Rights in a new Constitution.

Second, it is very important to note that the Zambia Centre for Inter-party Dialogue (ZCID) has of late been listening to the cry for ESCR from persons participating in its “constitutional sensitisation” programmes around the country. The ZCID secretariat has reported this cry and urged that the NCC pay heed to the popular demands.

Remember, the ZCID is the body that brought forth the NCC plan last year. Surely it is significant if this group composed of top representatives from most political parties in this country is now speaking out for the need for ESCR in the new Bill of Rights in the new Constitution. Clearly, a non-partisan movement is taking place around this cause.

Third, it is helpful that a book has recently been published which clearly sets forth the debates around the processes and contents of Zambia’s new Constitution. This is Simon Kabanda’s excellent overview entitled, “Know Your Constitution” (Mission Press, February 2008). A collection of Kabanda’s insightful articles on the Constitution and its reform process over the past five years (many of which appeared in THE POST), the book offers very lucid analysis of the issues that the NCC is now grappling with.

Kabanda is in my view particularly helpful in presenting the case for inclusion of the ESCR in a new Bill of Rights in a new Constitution. Indeed, relevant to the topic of labour rights that should be central to this year’s celebration of Labour Day is his discussion of what the Mung’omba draft outlines regarding employment, wages, unions, etc.

If this NCC is to intelligently deal with the ESCR, I suggest that every member of the NCC should be given a copy of Kabanda’s book alongside the copies of the Mung’omba Commission report and draft text.

REALLY “SMART”

I believe it would be very important for the Republican President, in his Labour Day address this Thursday, to endorse the inclusion of ESCR in the Constitution. Similarly, the leaders of the Zambian trade union movement should include in their speeches and statements this call for ESCR.

This surely would be an excellent example of the “smart partnership” for development that is getting some attention these days. For labour rights for all Zambians are certainly “smart” in every sense of the word!

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