



UNIVERSITY OF ZIMBABWE

**A HUMAN RIGHTS CENTERED APPROACH TO LABOR LAW: ANALYSING
INTERNATIONAL LABOR LAW TO ADDRESS THE DECENT WORK DEFICIT IN
ZIMBABWE**

BY

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“[t]he right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity”

[General Comment No. 18 on the right to work in Article 6 of the ICESCR]

ABSTRACT

The convergence of international norms targeted at individual protection formulates part of the most substantial advances of modern international law. The consideration herein is two-fold with international labor law on the one dimension and international human rights law on the other.

In discerning these two considerations, a number of intersections can be construed, that is – A copious number of labor rights are intrinsic within various human rights protected by the requisite international human rights instruments. Inversely, the core general human rights are instrumental in the consideration of labor rights due to their very nature wherein they constitute the requisite precondition for the exercise of labor rights.

What can be deduced from this thesis is that despite certain structural differences¹, there is a close correlation between labor rights and human rights in form, application and aspiration. The structural differences are negligible in so far as labor rights contribute to the socio-economic infrastructure that human rights seek to regulate. That correlation between labor rights and human rights is yet to be intentional in so far as obligations and enforcement of human rights is concerned.

What is left to dialogue, tripartism, international discourse, academic scrutiny and civic action - sometimes treated as mutiny - should in fact be canvassed within the precepts of inalienability, indivisibility and interrelatedness and equality characteristics of human rights. There are overlapping legislative objectives in the consideration of human rights. In applying the human rights epoch to enforcement of labor rights, one draws closer to the full and intentional realisation of the ILO Decent Work Agenda through social justice.

¹ Kolben, Kevin. 2010. "Labor Rights as Human Rights?", in Virginia Journal of International Law, Vol. 50, No. 2, pp. 450-484

CHAPTER 1

1. INTRODUCTION

A human rights approach to attaining decent work segments with it the 'social justice approach' which has at its core the thematic concerns for poverty, inequality, and human dignity. Whereas there is an assortment of human rights methodologies, these are primarily derived from the international human rights framework first set forth in the Universal Declaration of Human Rights ("UDHR") and subsequently implemented in numerous human rights treaties. Stephen Marks explains that, "the holistic human rights approach connects all human rights in a unified system, rather than focusing on distinct components."²

Firstly, the right to decent work falls squarely within the ambit of human rights, it therefore ought to be defined to incorporate human rights concerns beyond the International Labour Organisation's four 'Core Labor Standards'. There is a perceived interrelatedness of work rights in that regards, pursuit of a few rights at the expense of others is fatal to the core function of labor rights.

Secondly, it is critical to the effective implementation of labor rights to recognise the interdependency of rights and of people and furthermore to contemplate the cumulative effect of these relationships when regulating for decent work. For example, appreciating the rights of disabled persons at the expense of women's rights essentially does not enable achieving decent work for all.

Thirdly, human rights specialists and academics are considerably developing human rights based mechanisms and tools - including human rights impact assessment - which potentially can contribute to the improvement of policies, strategies, and programmes by illuminating the prospective impacts of applications on human rights. These methodologies avail the prospect for mitigation of negative impacts and maximisation of positive ones. Subsequently, cumulative employment of these tools potentially prevents violations and brings us closer to the realisation of the right to

² Stephen P. Marks, The Human Rights Framework for Development: Seven Approaches, in REFLECTIONS ON THE RIGHT TO DEVELOPMENT 23, 24-25 (Arjun Sengupta et al. eds., 2005) (arguing that human rights are so interconnected that it is impossible to make progress on some rights without achieving progress in the system as a whole)

decent work. Finally, the wholistic human rights approach enables the construction of coalitions amongst individuals and groups that share the common interest of achieving decent work for all, realising the full panoply of human rights, and accomplishing social justice.

1.1. JUSTIFICATION FOR A HOLISTIC HUMAN RIGHTS APPROACH TO DECENT WORK

This thesis pursues a holistic human rights approach³ to labor rights and essentially, the subsequent concept of decent work. The epoch explored herein will exhibit that the alienated approach to human rights by Zimbabwe has resulted in the country's framework falling short of the international yardstick, in particular international labor standards. While endorsing human rights in general on one hand, consideration for decent work is seen to slip through the cracks.

A human rights centered approach conceptually underscores the universality, interdependency, and equality of all human rights. Furthermore, the approach acknowledges that each category of rights includes both the positive and negative elements, requires resources, may well be subject to violations and are indispensable to the attainment of human dignity. In the framework of decent work, the holistic approach requires deliberation of all human rights as opposed to labor rights that patently appear most pertinent. For example, "to combat child labor, policy-makers must consider the very definition of child labor, minimum age for employment as well as the child's right to education, right to health, right to family life, and right to participation in the community, among other rights that may be affected by such policy changes."⁴

In this regard, the Universal Declaration of Human Rights (UDHR) and various human rights instruments proffer support to the advancement of the wholistic human rights approach. **Article 28** of the Universal Declaration of Human Rights purports the

³ therefore, saliently rejecting traditional, hierarchical distinctions between civil and political rights on the one hand, and economic, social, and cultural rights on the other

⁴Zimbabwe- Elimination of Child Labor, Protection of Children and Young Persons
https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76958&p_country=ZWE&p_count=432&p_classification=04&p_classcount=5

inclusive and all encompasses entitlement to a social and international order in which the rights and freedoms wherein all the rights and freedoms aspired to by the Declaration are a reality.⁵ The point of inference for this provision is a wholistic framework in which social, economic, and political stratum at all levels advance the full realisation of all categories of human rights.

This approach is further reinforced by the subsequent United Nations Declarations, including but not limited to the Declaration on the Right to Development and the Vienna Declaration and Program of Action, which both acknowledge the indivisibility and interdependency of all human rights and propagate equal consideration to the application of civil, political, economic, social, and cultural rights.

Notably, beyond such declarations, the wholistic approach is reiterated in preambles of the International Covenant on Economic, Social and Cultural Rights (Adopted) and the International Covenant on Civil and Political Rights (“ICCPR”). The ICESCR makes reference to the UDHR in that freedom from fear and want can be attained where an environment whereby all may enjoy their fundamental human rights. This is known as the conditioning of human rights a characteristic where enforcing agents create conditions prerequisite to the attainment of rights through legislature and strategy.⁶

In this thesis, the manner in which the holistic human rights approach has been explored embraces the principles articulated in the International Labour Organisation Declaration of Philadelphia and the International Labour Organisation Declaration on Social Justice. Essentially, this includes the ethos that civil and political rights such as freedom of expression and association are crucial to sustainable development and that the “war against want” requires an integrated approach of national and international cooperation to promote the common welfare.

Additionally, both the social justice and the holistic human rights approaches encompass “a set of values” for evaluating policy and practice in Zimbabwe. Notably, both frameworks are now implemented through international laws with monitoring and accountability mechanisms within the ILO international and domestic structures.

⁵ Article 28 of the Universal Declaration of Human Rights

⁶ International Covenant on Economic, Social and Cultural Rights

Moreover, there are significant points of departure in these two approaches. The holistic human rights approach includes but also has far reaching implications over and above the parameters of the ILO social justice approach.

Whilst both mechanisms are primarily centered around oppressed and vulnerable clusters, the holistic human rights approach, takes an inclusive outlook of all individuals and groups. Secondly, the extension of the holistic human rights approach transcends from a limited area of life concerns to advancing the notion that central to the human being are interrelated dimensions of their livelihood. Finally, the holistic human rights approach demands that the economic, political and social institutions treat these dimensions as equitably indispensable in the livelihoods of the people that they govern.

Regardless of the national and regional specifications and various historical, cultural and religious contexts, it is the duty of each State, notwithstanding the systems and context in place, to ensure that human rights are a natural reality. To buttress this point, the Optional Protocol to the ICESCR has most recently re-affirmed the “the universality, indivisibility, interdependence and interrelatedness of all human rights.” It is within this framework, that this thesis finds relevance and is contextualised.

1.2. PROBLEM STATEMENT

Zimbabwe has had a tumultuous history of compliance with the requirements of the International Labor Organisation supervisory system which led up to the establishment of an ILO Commission of Inquiry in 2008. Implicit in this is the observation that to a certain extent, international labor obligations have been treated as a mere pursuit of political obligations and not as a binding legal reality. The result is almost two decades of appearances before the Committee of Application of Standards with Zimbabwe falling short of international labor standards culminating in a Commission of Inquiry of 2009.

An assessment of the history of International Labour Organisation’s conclusions from the Commission of Inquiry exhibits that this mechanism, pursued in terms of Article 26 of the ILO Constitution, is rarely applied and is invoked in instances of gross non-

compliance. Within the constitution of the ILO, a Commission of Inquiry represents the highest compliance supervisory body. This is ordinarily constituted as an intervention where other supervisory mechanisms have proved inadequate as evidenced by repeated non-compliance by a member state with the International Labour Standards. The other supervisory bodies include the Committee on Freedom of Association (CFA) and the International Labor Conference Committee on the Application of Standards.

In various instances which shall be exhibited in this thesis, the ILO supervisory bodies at various levels repeatedly called upon the Government of Zimbabwe to fully implement Convention Nos. 87 and 98. This was succeeded by a decade of violations in the legislative framework and in application notably between the years 2000 and 2009. The period was marred with violations ranging from failure to submit mandatory country reports to the supervisory bodies (International Labour Conference 2001), failure to appear before the Committee on Application of Standards (International Labour Conference 2007 to 2008) during which complaints from Zimbabwe Trade Unions regarding non-compliance with Convention 87 were being examined.

Therefore, chief amongst the complaints which subsequently led to the Commission of Inquiry in 2008 the primary concern for both the workers and employers at the 97th Session of the International Labour Conference were directed at the cumulative non-compliance and non-cooperation by the Government to the ILO supervisory mechanisms and system.

The case of Zimbabwe potentially exposes the need for a holistic human rights approach to labor rights to address the systematic challenges which have repeatedly manifested in non-compliance with International Labour Standards. What will further emerge as a thematic concern in this thesis is that while the social justice approach is based on a sense of moral obligation to alleviate poverty, the holistic human rights approach establishes legal principles that bind governments to act in ways that promote such social justice.

1.3. HYPOTHESIS

The presupposition is that the Decent Work deficit in Zimbabwe is exhibited by the country's numerous appearances before the International Labour Organisation on allegations of non-compliance with international standards. The next logical question would be how then do we close the gap? This is the question this thesis seeks to answer.

In an extreme rendition, Virginia Leary has described the human rights and labor rights "running on tracks that [...] rarely meet".⁷ Although this is considered by the author of this thesis to be a more radical way of pitching a paradox of workers' rights and human rights it only rings true only in so far as it exhibits that notwithstanding normative linkages between international labor and human rights law, there has generally been a lower offtake in the synergies and unity of purpose for the aforementioned movements. This has led to labor rights and human rights being treated as, to a greater extent, similar yet isolated movements.

The comments by Leary are therefore watered down by the evident increased emphasis on economic and social human rights in the consideration of the ILO Decent Work Agenda and the subsequent Decent Work Country Programs and various other International Human Rights fora. There are somewhat efforts at an integrated approach within the discourse on labor rights and human rights. Nonetheless, despite the ongoing discourse, considerable gaps are still intrinsic in this dialogue and it is yet to enter the plane of enforceability.⁸

The contention herein is that international human rights mechanisms have not fully been deployed or explored in so far as labor rights despite the overlapping aspirations and applications. What contributes to the fragmentation is the alienation between domestic public policy and the public international law domain as will be exhibited by Zimbabwe's tumultuous history of non-compliance with the ILO regulations. Global policy and domestic policy can be effectively harmonised through regulations. Therefore,

⁷ Leary, Virginia A. 1996, *The Paradox of Workers' Rights as Human Rights*, in Compa, Lance A.; Diamond, Stephen F. (eds.): *Human Rights, Labor Rights, and International Trade*. Philadelphia, University of Pennsylvania Press, pp. 22-47

⁸ Mundlak, Guy. 2011. *Human Rights and Labor Rights – Why the Tracks Don't Meet*, Paper Presented at the Regulating for Decent Work Conference (6-8 July 2011).

advocates of deregulation of the labor market in favour of market forces regulation, as explored in Chapter 4, are radically at odds with the implementation of labor law in principle.⁹

In a more accurate description, Simma, Bruno and Pulkowski, Dirk. 2006 equate the transformation of international regulations as a transition from a “normative pyramid” to a “normative web”. Resultantly, legal systems and their sub-systems “stand together and yet are apart from each other”.¹⁰

1.4. LIMITATIONS

This scope of this thesis is limited to ‘addressing’ the decent work and not ‘determining’. Noteworthy, there is yet to be a cohesive undertaking by both the Zimbabwe Government and ILO to deploy tools to comprehensively determine the decent work deficit in the country. This is a scientific exercise which would require quantitative and longitudinal research with cumulative data capture. Even more important would be the development of a standard yardstick and parameters to explore the extent of a decent work deficit benchmarked against international norms. These tools were not available to the author for there to be the desired scientific determination of the extent of the decent work deficit.

RESEARCH QUESTIONS

- i. **What is the nexus between decent work and human rights?** (This essentially answers the question of whether or not decent work is a human right through exploration of various theories)
- ii. **In the pursuit of human rights can labor rights at work be reconciled with trade and competitiveness?** (It is frequently argued that liberalization of trade and investment throws labor and welfare systems into competition with each other. This is put forward as a justification for limiting employment rights and their enforcement.)

⁹ Fischer-Lescano, Andreas; Teubner, Gunther. 2004. “Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law”, in *Michigan Journal of International Law*, Vol. 25, pp. 999-1046

¹⁰ Simma, Bruno and Pulkowski, Dirk. 2006. “Of Planets and the Universe: Self-contained Regimes in International Law”, in *European Journal of International Law*, Vol. 17, No. 3, pp. 483-529

- iii. **How should decent work be progressively realized?** (The starting point for countries that wish to realize certain social and labor rights is to distinguish three levels of obligation: (1) the obligation to respect a right; (2) the obligation to protect a right; and (3) the obligation to fulfil a right.

CHAPTER 2

“The conceptual foundations of the Social Justice Approach (ILO Decent Work Agenda) and a Holistic Human Rights Approach”

2. INTRODUCTION

As societies converged at the turn of the millennia through globalisation, digitisation of the economy culminating in the building Fourth Industrial Revolution, there have been multilevel transformation of all segments of the human interaction with the world economy. Traditional notions of the world of work are transforming, emerging, re-emerging. There is a visible strengthening, within the milieu, of the social justice and human rights approaches to development in order to mitigate, possibly address, the new risks and threats emerging the above mentioned factors. In this chapter, Human rights thus find their relevance in pursuit of maintaining the delicate balance between the world of work and the world economy.

2.1. The Preliminary Objectives of the ILO Constitution and the Decent Work Agenda: The Social Justice Approach

Since inception in 1919, the International Labor Organisation (ILO) has systematically designed an intricate supervisory system for the International Labor Standards (ILS) adopted. According to Thomas, Oelz and Beaudonnet these mechanisms have been established a compliance monitoring system in the course of application of its International Labour Standards by member states. They are therefore ILO’s monitoring and evaluation tool.”¹¹ This is aptly summarised by the International Labour Guide of the ILO, “through its history, the ILO’s principal means of action has been the establishment of international labor standards.”¹²

At the core of the functions of the International Labour Organisation, including its very constitution is the principle of social justice. For the avoidance of doubt this is to be

¹¹ Thomas, Oelz and Beaudonnet (2004:254)

¹² <https://libguides.ilo.org/c.php?g=657806&p=4636553>

found at the Preamble to the 1919 ILO Constitution which states that “universal and lasting peace can be established only if it is based upon social justice.”¹³

The original constitution formulated Part XIII of the post war Treaty of Versailles. The rationale for the labour centric approach to ‘world peace’ is further asserted in the original constitution by acknowledging that, “conditions of labor exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled.”¹⁴ Resultantly, the Constitution declares that “an improvement of those conditions is urgently required.” In declaring this requirement, the International Labour body was borne out of a desire for universal, lasting peace based on social justice and therein lies the fundamental purposes of the ILO.

The ILO Constitution has since been amended six (6) times and become a separate instrument. The 1944 ILO Declaration of Philadelphia reaffirmed the fundamental ILO principles that the harmony of the world was contingent on social justice, that “poverty anywhere constitutes a danger to prosperity everywhere,” and that the “war against want” must be carried within and consisting of what has now famously become known as the tripartite structures consisting of the government, workers and employers. Precisely, the social justice thematic concerns remain evident.

The Declaration, which is annexed to and forms an integral part of the constitution, reaffirms the ILO fundamental principles in that,

- a) labour is not a commodity;
- b) freedom of expression and association are essential to sustained progress;
- c) poverty anywhere constitutes a danger to prosperity everywhere;
- d) the war against want requires to be carried on with unrelenting vigour within each nation and by continuous and concerted international effort
Therefore the representatives of workers and employers, enjoying equal status with those governments, join with them in free discussion and

¹³ ILO Constitution pmbi., June 28, 1919, 49 Stat. 2712.

¹⁴ Supra Note 14

democratic decision with a view to the promotion of the common welfare.¹⁵

In the Ninety-seventh Session of the International Labour Conference on 10 June 2008 the ILO adopted the Declaration on Social Justice for a Fair Globalization which is consistent with the original vision of the ILO to, “the universal aspiration for social justice.” The Declaration;

Expresses the contemporary vision of the ILO in an era of globalisation ... comes at a crucial political moment, reflecting the wide consensus on the need for a strong social dimension to globalisation in achieving improved and fair outcomes for all. It constitutes a compass for the promotion of a fair globalization based on Decent Work, as well as a practical tool to accelerate progress in the implementation of the Decent Work Agenda at the country level.¹⁶

The four key strategic objectives which are declared to be “inseparable, interrelated and mutually supportive” are asserted in the declaration. Firstly, the Declaration commits all member states to promoting employment by creating a sustainable institutional and economic environment. Secondly, the Declaration affirms the mandate to develop and enhance measures of social protection – social security and labour protection – which are sustainable and adapted to national circumstances. Thirdly the Declaration promotes social dialogue and tripartism as the most appropriate methods consistent with the inclusivity approach of the original ILO 1919 constitution of the workers, employers and government in the attainment of social justice. Lastly, “respecting, promoting and realizing the fundamental principles and rights at work, which are of particular significance, as both rights and enabling conditions that are necessary for the full realization of all of the strategic objectives”.

The above principles formulate the cornerstone of the Decent Work Agenda and the Decent Work Country Program currently being implemented. It has become a yardstick for implementation and assessment of the core values of the ILO in Member

¹⁵ ILO Declaration on Social Justice for a Fair Globalisation, Geneva, June 10 2008, 97th session of the International Labour Conference

¹⁶ Juan Somavia, ILO Director General, Preface to the Declaration on Social Justice for a Fair Globalisation

states. Conclusively, it is consistent with the social justice thematic concern of the ILO and contextualises this within the era of globalisation and possibly transcends into the Fourth Industrial Revolution.

By virtue of this Declaration, the ILO Decent Work Agenda is integrated, institutionalised and constitutionalised within the foundation of the ILO in order to fulfil the universal aspiration for social justice. Cumulatively, in view of the above, reference to the ILO framework and aspirations set forth in the ILO Constitution of 1919, the Declaration of Philadelphia, and the ILO Declaration on Social Justice for a Fair Globalization may be compounded as “the social justice approach.”

2.2. Profiling the Key Features of a Holistic Human Rights Approach

The social justice and holistic human rights approaches are understood not as parallel features with different applications, rather, they find much in common and the primary differences are less in outcome than they are in application. What the human rights approach has to offer is a distinct advantage which stems from the key features of human rights: universality, interdependency, and equality of all human rights.

There are undoubtedly similarities to be drawn from human rights approach and social justice approach. In a pictorial depiction, this would be a venn diagram with a lot of intersections. Reference to the development and transition of the ILO Constitution and values in section 2.1 above is evidence of that the aspirations expressed in the ILO Constitution of 1919, ILO Declaration of Philadelphia and the ILO Declaration on Social Justice - including the ideals on freedom of expression, the “war against want”, core labour rights, social security and tripartism – exhibit that the human rights approach represents the universal set correlating to the social justice approach if the venn depiction is to be pursued.

Both approaches present assessment tools which can be deployed for impact assessment of labour rights intrinsic within their set of values for evaluating policy and strategy. Notably, both are implemented through international norms with monitoring and accountability mechanisms as was exhibited for the social justice approach in 2.1 and will be exhibited below for the human rights approach.

The human rights approach has far reaching implications extending beyond the ambit of vulnerable and oppressed persons, which is the primary concern of the social justice approach, to individuals and groups.¹⁷ Secondly, the human rights approach extends beyond particular rights and concerns and recognises the interrelatedness of various concerns for individuals and groups.¹⁸ Thirdly, the human rights approach demands that in their interrelatedness, each of these concerns be treated equally.¹⁹

This holistic framework is notably reaffirmed in the Vienna Declaration which reiterates the universality, interdependency, indivisibility and interrelatedness of human rights. The Declaration further calls upon the international community to treat rights equally and fairly and with the “same emphasis”. An irrevocable duty, albeit the circumstances, is placed on the state promote, protect and ensure the realisation of these fundamental rights and freedoms.²⁰

2.2.1. Universality and Inalienability

Jack Donnelly simply puts that international law recognizes that “[h]uman rights are, literally, the rights that one has simply because one is a human being.”²¹ By virtue of this, human rights are universal and inalienable. Notwithstanding the national, regional, cultural and religious particularities, you cannot separate the ‘human’ from the human rights.

Within this context, by definition, “Universality” means that all people are entitled to human rights at all times whilst “Inalienability” means that people cannot voluntarily or involuntarily surrender their own human rights or the human rights of others. For example, a person cannot sell herself or another person into servitude. All individuals

¹⁷ The point is further unpacked in the subsequent items 2.2.1 to 2.2.4

¹⁸ See Marks, *supra* (explaining that individuals impacted by an affordable housing project may also have related concerns regarding health, education, information, and work, and that a holistic human rights approach demands consideration of all of these interrelated rights).

¹⁹ See The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies, U.N. DEV. GRP., http://www.undg.org/archive_docs/6959-

²⁰ Declaration on the Right to Development, G.A. Res. 41/128, art. 6, U.N. Doc. A/RES/41/128 (Dec. 4, 1986) (affirming the indivisibility and interdependence of all human rights)

²¹ JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 10 (2d Ed. 2003)

are always holders of human rights “one cannot stop being human, no matter how badly one behaves nor how barbarously one is treated.”

Articles 55 to 56 of the Charter of the United Nations demands that all member states universally respect and observe all human rights and freedoms.²² As an extension of references to universality and inalienability derived from the preamble of the UDHR, Article 1 states that “All humans are born free and equal in dignity and rights” and Article 2 that “Everyone is entitled to the rights set forth in this declaration.”²³ To further affirm the universality and inalienability of human rights, 1993 Vienna Declaration simply propounds that, “[t]he universal nature of these rights and freedoms is beyond question.”²⁴

2.2.2. Interrelatedness, Interdependency, And Indivisibility

A. Interrelatedness

Human rights are interrelated, interdependent, and indivisible. The interrelatedness stems from the intricate connection which human rights have which is directly proportional to their inalienability expounded in 2.2.1 above. Johannes Morsink in his analysis of the origins, drafting and intent of the UDHR makes the following observation, “The organic character of the text applies to how it grew to be what it now is, as well as to a deeper interconnectedness of all the articles.”²⁵

There is a clear causal link between the realisation of one rights and another. As examples to exhibit this, Article 3 on the “right to life, liberty and the security of person” is closely related to Article 4 which prohibits slavery, servitude and slave trade. Therefore, in pursuit of the realisation of the aspirations captured in the preamble, the drafters of the UDHR understood that all the rights captured thereto “implicate each other.”²⁶

²² U.N. Charter arts. 55-56

²³ See UDHR, *supra*, art. And art. 2

²⁴ *supra*

²⁵ See JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT 232 (1999)

²⁶ See also U.N. DEV. PROGRAM, HUMAN DEVELOPMENT REPORT 2000: HUMAN RIGHTS AND HUMAN DEVELOPMENT, at 74, U.N. Sales No. E.00.III.B.8 (2000) [hereinafter HUMAN DEVELOPMENT REPORT 2000]

B. Interdependency

The interdependency of human rights is two pronged in that it exhibits the relationships between rights, and the relationships between persons. Interdependency stems from the fact that the realisation of one right reinforces or supports the realisation of another right. The causal link is the intricate support or reinforcement each right has on other.

In General Comment Number 14 of ECOSOC, CESCR on the right to the highest attainable standard of health an intricate link is made to support proffered up stream by the right to health to the rights to work, non-discrimination, privacy, freedom of association and assembly, and the prohibition against torture. In establishing a humane state of health in tandem with the standards proffered by human rights, all these other rights are relevant. The right to food, water, and housing are underlying determinants of health.²⁷

On the other hand, “the right to education can also enhance the right to health, for example, by improving access to health information. The right to health is also linked to the right to work because ill health may reduce an individual’s productivity at work or may limit or prevent that person from working at all. In turn, the right to work bolsters the right to health by assisting in the realization of related rights, such as the rights to food and housing.”²⁸ Indeed, the Commission on Social Determinants of Health, established by the World Health Organization, “considers fair employment and decent work as important to living long and healthy lives.”²⁹ In the CESCR General Comment 18, the committee had this to say on the right to work, “Expressing the essential nature of the right to work, both as an end in itself because the ability to work allows individuals to “live in dignity,” and as a means to achieving a host of related rights.”

²⁷ See ECOSOC, CESCR, General Comment 14: The right to the highest attainable standard of health (Art. 12) 3, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter CESCR General Comment 14] (linking the right to health to the rights to work, non-discrimination, privacy, freedom of association and assembly, and the prohibition against torture)

²⁸ see also Office of the United Nations High Commissioner for Human Rights [OHCHR], Principles and Guidelines For a Human Rights Approach to Poverty Reduction Strategies, U.N. Doc. HR/PUB/06/12 (2006) (illustrating the “instrumental relevance” between the right to work and the right to food).

²⁹ See WHO, Comm. on Soc. Determinants of Health, Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health, at 5, 72-83 (2008)], available at http://whqlibdoc.who.int/publications/2008/9789241563703_eng.pdf (explaining how “[e]mployment and working conditions have powerful effects on health and health equity” and presenting employment and poverty data from all regions of the world)

In contrast to the economic rights, in the context of labor rights, there is need for a correlation of workers' economic rights to the supporting civil and political rights including freedom of association and expression. one study of corporate codes of conduct from twelve countries in Asia and Latin America, "found that workers who claimed violations of the codes faced retaliation from their employers unless they had proper employment contracts and a guaranteed right to organize."³⁰

The principle of interdependency is evident in the ILO's constitution and application of the social justice approach and the complaint mechanism within the ILO structures together with the constitution of Trade Unions and Employers Organisations. In the application of a human rights approach to labour law, the notion interdependency is a key consideration. As Craig Scott explains in reaching Beyond (Without Abandoning) the Category of Economic, Social and Cultural Rights, giving the example of human rights defenders whose right to freely call attention to human rights concerns is directly related to protecting the rights of others, "interdependence may also be understood in terms of the relationships between people."³¹ Therefore a court in deciding to grant an interdict against an unlawful strike or considering a show cause order must also going the employees right to collective job action and unionise.³²

C. Indivisibility

Similarities can be drawn between indivisibility of human rights and interdependency. James Nickel observes the indivisibility of human rights as "indispensable bidirectional support." For Nickel, two rights are indivisible only if each right is indispensable to the other.

The meaning of the "indivisibility" of human rights is less obvious than the meaning of "interrelated" or "interdependent" human rights³³.

³⁰ HUMAN DEVELOPMENT REPORT 2000, at 75

³¹ Craig Scott, Reaching Beyond (Without Abandoning) the Category of "Economic, Social and Cultural Rights", 21 HUM. RTS. Q. 633, 645 (1999) (giving the example of human rights defenders whose right to freely call attention to human rights concerns is directly related to protecting the rights of others)

The understanding provided Jack Donnelly augments the holistic human rights understanding in this thesis where he states that , “[t]he Universal Declaration model treats internationally recognized human rights holistically, as an indivisible structure in which the value of each right is significantly augmented by the presence of many others.”³⁴

According to Diane Elson “the indivisibility of human rights means that measures to protect, promote, and fulfil any particular right should not create obstacles to the protection, promotion, and fulfilment of any other human right.”³⁵ The indivisibility is therefore defined within the context of the obligation imposed to fulfil the human rights. By extension this may also refer to lack of the adequate legislative infrastructure or direct impediment to the fulfilment of right through legislation. This will be further explored in the following chapter in the consideration of Zimbabwe’s tumultuous history with the ILO. In application, indivisibility means that procedures for allocating resources and evaluating outcomes must account for the interdependence and interrelatedness of all rights.

2.2.3. Equality of Rights

An understanding of the equality of human rights can be discerned from the opening of the preamble to the UDHR which references the inalienability of rights, equality and foremost recognises the right to inherent dignity as the imperative to “freedom, justice and peace”. The same ethos is echoed in various international instruments and verbatim in the in the preambles to the ICESCR and the ICCPR. Resultantly, all human rights are inherent to human dignity.

As a result, all human rights have equal status, and accordingly, they “cannot be ranked . . . in a hierarchical order.” The equal status of rights was also reaffirmed in the 1993 Vienna Declaration, which urged the international community and national governments alike to treat all human rights “in a fair and equal manner.”

³⁴ *supra*

³⁵ Diane Elson, Gender Justice, Human Rights, and Neo-liberal Economic Policies, in GENDER JUSTICE, DEVELOPMENT, AND RIGHTS 78, 87-114

In consideration of application of human rights, Elson³⁶ surmises that “there is no hierarchy of human rights as ultimate goals: they are all equally valuable and mutually reinforcing.” Summarily, a holistic human rights approach includes all human rights, all people inclusively in an equal manner. This is what the principles of universality, interdependency, and equality of rights entails. It is further more evident and relevant in the application of human rights and exercise of state obligations as a yardstick for compliance. This is in tandem with the original understanding of the international human rights law framework at the time that the UDHR was adopted³⁷.

Having explored the various notions of human rights, this thesis proceeds to explore the potential of this approach for advancing the right to decent work in the following section.

2.3. An Integrated Approach to repositioning Decent Work within the Human Rights Framework

There was an evident utilisation by Labor movements in the nineteenth and twentieth centuries of civil and political rights to strike the delicate balance between political power vis-à-vis potential abuse of economic power at the detriment of the labour market. For the greater part, the pressure groups -pressing for recognition of social rights ranging from the right to work, to the right to education and the right to social security – came from labour movements. The strains of the close link between trade unionism and political activism are still evident today.

There is an understanding of the integral role of rights as a means to balance the bargaining scale between employers and employees. In this section the phrase “workers’ rights” is used rather than “rights at work” because the latter may include the rights of corporate employers (e.g. the right to associate), trade unions etc.

Whilst the term “human rights” has been comprehensively defined in preceding sections and explored through its notions as attaching to all natural persons, suffice to say not much attention has been paid to workers’ rights within the domain of

³⁶ supra

international human rights. “The human rights movement and the labour movement run on tracks that are sometimes parallel and rarely meet”³⁸.

Arguably, the extent of respect attributed to workers’ rights in a country is a relevant yardstick for application and realisation of human rights. A lot of reasons have been proffered by scholars of these “parallel tracks” of workers’ rights and human rights. In first instances is the consideration of whether social and worker’s rights are human rights. Cranston, M. in the book ‘What are human rights?’, presents one extreme school of thought where contrast of legal rights with socially accepted principles of justice is made. Cranston links possibility of delivery of obligations entrenched in human rights to the classification of a right under human rights.³⁹

Essentially, provision of any of these meaningful “rights to work” or a “rights to social security” places a fiscal burden and obligation on the state which most states, Zimbabwe included, do not have. Thus, whilst these are, “desirable social goals, it is said that to call them ‘human rights’ is to devalue the importance of basic civil and political rights.”

Similarly, Amartya Sen adopts an interrelated line of thought with a point of departure on the extent of insistence of adherence and burden of implementation on the state. He acknowledges that the rights-based approach and programmatic approach are not parallel considerations. His understanding is that the real conflict arises only when rights are approached with rigidity without consideration for what can and what cannot be done or possibility for trade-offs.⁴⁰

To the extent that a rights based approach and a programmatic approach correlate, the formula in Amartya’s suggestion falls within the context of interrelatedness, which formula he applies in consideration of labor rights. Thus, the point underscored is the application of rights and their enforceability.

The consideration therefore is the inalienability of the rights of those at work from human rights. They can be considered “along with” as opposed to “not instead of” the

³⁸ Leary, V.: “The paradox of workers’ rights as human rights”, in L.A. Compa and S.F. Diamond (eds.): *Human rights, labor rights and international trade* [Philadelphia, University of Pennsylvania Press, 1996], pp. 22-47

³⁹ Cranston, M.: *What are human rights?* [London, Bodley Head, 1973]

⁴⁰ Supra (2000, pp. 123-124)

interests of human rights, application of one does not substitute the other neither does it mitigate the need to fulfil the other. This demands a correlation of rights in an equal framework. Essentially, for this reason, for the effective application of both labor and human rights, there is no hierarchy of rights.

Secondly, another reason for the different schools of thought and application has been the propensity of human rights organisations to focus on civil rights while trade unions have focussed on local and economic issues. At international level there was a clear differentiation of roles of the various bodies and Conventions although they do borrow from each other's ethos. Originally, the ILO Declarations and Conventions were not perceived as human rights statements. In fact, in the complete set of the ILO's official compendium of Conventions and Recommendations there are only 3 instruments which make direct and actual reference to "basic human rights" which will be discussed in this thesis in the following chapters.

In Rawls J's 'A theory of justice', there is a third reason preferred why the "categorization of workers' rights as human rights has met with scepticism." Rawls purports the individualisation of rights as opposed to the pluralisation or categorisation of rights in respect of interest groups. Thus the relationship of rights is to the person and the equality of rights refers to the person's claim to the sum total of these rights, equally.⁴¹ What emerges from this line of thought is that the intention of rights is the individual and not the collective that is to be protected. In a wider statement, this has given emergence to the individualisation of rights. If this line of thought is pursued, it rejects the interrelatedness of human rights to the extent that this relates to a collective or persons.

It is important to note that there is a grave limitation on the use of the Dworkin and Rawls approach in the application of labor law to the modern context. Firstly, one must consider that most civil and labor rights, except for the few core values enshrined in the ILO Declaration, 1998 including freedom from slavery, forced and child labor, freedom of association and freedom from discrimination, are neither universal nor unqualified. Therefore, the prerequisite of rights to decent working

⁴¹ Rawls, J.: A theory of justice [Oxford, Clarendon, 1973]

conditions and fair is largely dependent on socio-economic, social welfare, social security, presupposition economic growth and sustainable development.

A second consideration is the global causal link between production and consumption resulting in vulnerability of the working class. We are at the peak of global competitiveness and trade whilst simultaneously we are also at the verge of the fourth industrial revolution. Within this political and economic sphere, there is the added risk and possible reality that social rights can be devalued by political action because “industrial citizenship” does correlate to “political citizenship”.

Thirdly and importantly is the matter of the enforcement mechanisms attributed to social rights which essentially place greater reliance on soft law such as voluntary codes. In this regard, commonly heard are the statements, ‘social dialogue’, ‘negotiation’ and voluntarism. This and the privatisation of enforcement in turn reduces the enforcement of rights to a rhetoric primarily dependent on management controlled systems or to borrow from Jeremy Bentham, it reduces the application of rights to “So much bawling on paper.”⁴²

To sum up human rights cannot exist without social justice and the reverse is true.

In this regard labor rights are correlated to human rights and a cohesive approach would see them formulated in such a manner that they are integrated and applied in the same manner as human rights against the backdrop of social justice. Labor rights, human rights and social justice are not mutually exclusive concepts. This can be done by defining rights not simply as negative means of defence against the state, but also as positive means to achieve meaningful participation in society.

2.4. Conceptual approaches to core labor standards as human rights

2.4.1. Positivist Approach to Core Labor Standards as Human Rights

Another means of positioning labor rights within the human rights framework is through the various theories proffered. Within the context of the positivist approach, the

⁴² Bentham, J.: “Anarchical fallacies”, in J. Bowring (ed.): Collected works of Jeremy Bentham [London , 1843]

question whether labor rights are human rights is much easily answered. Mantouvalou, V in “Servitude and forced labor” defines the positivist approach to mean that, “a group of rights are human rights in so far as certain treaties recognise them as such. Accordingly, if core labor standards are incorporated into human rights documents, they must be treated as human rights.”⁴³

Adams identifies the purpose of the UDHR and observes the historical context preceding the declaration which inspired the legal and cultural forces which speak into the instrument. The Declaration was precisely against the atrocities which occurred in the events preceding its adoption particularly, the holocaust.⁴⁴

In the same vein, Petersmann, whilst calling for reconsideration of the Washington Consensus and for strengthening human rights in global integration law, observed that the all-inclusive right in a social and international reality wherein all the rights entrenched in the Declaration are realised. This was to be done through the creation of machinery which would ensure and monitor compliance of the new rules-based international order.

There is a notable connection between human rights and trade as the Declaration was concluded simultaneously to the General Agreement on Tariffs and Trade (GATT) of 1947 and the 1948 Havana Charter for an International Trade Organization. The underlying principles for these agreements were the same aimed at protecting civil, economic and political liberties.⁴⁵

What both authors underscore is the intention component of the aspirations of the authors of the Charter. The understanding historical context preceding the penmanship of the Charter is therefore just as important as the rights themselves. Valticos N in the “The ILO: A retrospective and future view” notes that the mandate of the ILO at its constitution was entrenched in the key duty to protect labor rights and

⁴³ Mantouvalou V “Servitude and forced labor in the 21st Century: The human rights of domestic workers” (2006) 35(4) *Industrial Law Journal* 395

⁴⁴ Adams “From statutory right to human right: The evolution and current status of collective bargaining” (2008) 12 *Just Labor: A Canadian Journal of Work and Society*

⁴⁵Petersmann E “Time for a United Nations ‘global compact’ for integrating human rights into the law of worldwide organisations: Lessons from European integration” (2002) 13(3) *European Journal of International Law* 621.

redefine the course of history on the relations between employer and employee on an international basis.⁴⁶

A historical outlook will show that the ILO was a post-war formation after the World War I as part of the League of Nations. The ILO was to formulate a unique tripartite body with representation from employers, workers unions and member states.⁴⁷ The premise was, “lasting universal peace can be established only if it is based upon social justice.” In order to fulfil this mandate, the ILO was to construe through recommendations and conventions what are now known today as International Labor Standards.⁴⁸

Post-war and in today’s labor market, these principles still ring true as the founding aspirations of the organisation. The organisation further embarked on adopting the 1998 ILO Declaration on Fundamental Principles and Rights at Work sought to enable the fulfilment of core labor rights. Seven Conventions were adopted which set out provisions on freedom of association and collective bargaining, forced labor, non-discrimination and minimum age, all of which affect specific rights entrenched in the human rights Covenants. This was done by comprehensively benchmarking a floor set of rights which member States must conform to without derogation on account of their developmental level or particular regional, national or cultural considerations.

This begs the question of how ILO as a body was excluded in form and function from direct as opposed to peripheral and consequential participation in international human rights discourse. One supposition is that an analysis of this period will show that ILO distanced itself from direct dialogue on international human rights. Perhaps this may be a result of ILO’s choice to distance itself from the then ongoing debate on the East-West debate particularly regarding the de-classification of rights, as it were, into first generation and second generation rights.⁴⁹

⁴⁶ Valticos N “The ILO: A retrospective and future view” (1996) 135(3-4) *International Labor Review* 473. See also De la Cruz HB, Von Potobsky G & Swepston L *The International Labor Organization, the international standards system and basic human rights* (Boulder: Westview Press 1996) at 19

⁴⁷ See Art 7 of the ILO Constitution adopted in 1919. See also ILO “The ILO: What it is. What it does” (2014). Available at http://www.ilo.org/global/about-the-ilo/WCMS_082364/lang--en/index.htm

⁴⁸ See the ILO Constitution’s Preamble

⁴⁹ Pettersman *supra*

Despite the fact that end of the Cold War in the early 1990s, the UN invested in international conferences particularly to contextualise and profile the work of the ILO in the postcold war period. An example is that of the Vienna Declaration. Therein, member states re-affirmed their obligation to uphold the universality and indivisibility of human rights in terms of the founding principles of the UDHR.⁵⁰ Nonetheless, there was no resultant departure of ILO from its core functions and mandate to monitor compliance to international labour standards of member states.

Reference to core labor standards constitutes the threshold against which labor rights may be construed as human rights. According to the ILO, core labor standards amounting to human rights are universally applicable and also are not subject to the discretion of States in terms of implementation. These standards are further encompassed beyond the above specified human rights instruments and further affirmed in the African Charter on Human and Peoples' Rights (ACHPR).⁵¹ Utilising the positivist, core labor standards can be posited as human rights.

2.4.2 Instrumentalist Perspective on Core Labor Standards as Human Rights

According to Collins H in 'Marxism and the Law' is a direct product of the Marxist school of thought which observes the correlation between core labor standards and human rights against the backdrop of their enforcement through strategy including litigation. The material question is what instrument has been or will be used to enforce the respective right? The answer would contribute to the right's classification.⁵² This perspective considers the best scenario approach in the application and fulfilment of labor rights.⁵³

The constitution of core labor standards as human rights is endorsed is primarily effective if domestic or international courts and state institutions acknowledge and

⁵¹ Article 15 of the African Charter on Human and Peoples' Rights which was adopted on 27 June 1981 and entered into force on 21 October 1986

⁵² Collins H *Marxism and the Law* (Oxford: Oxford University Press 1982) at 75

⁵³ Fenwick C & Novitz T "Conclusion: Regulating to protect workers' human rights" in Fenwick & Novitz (eds) *Human rights at work: Perspectives on law and regulation* (Oxford: Hart Publishing 2010) 587

promotes them as such. Under this perspective, the judicial attitude is imperative in the consideration of core labor standards as human rights.

2.4.3 Normative Perspective on Core Labor Standards as Human Rights

In direct contrast to the positivist or instrumental perspectives, the normative approach analyses them “from the view of moral truth.” The theoretical norm for those who subscribe to this perspective is that there has been little direct and intentional interaction between the labor law scholarship and the human rights theory.⁵⁴

However, Collins, questions the place of core labor standards in the human rights framework. His argument is that the labor rights do not encompass the constituency of human rights that is, equality, indivisibility, interrelatedness and what he terms the special moral weight. He in fact construes a hierarchy of rights where labor rights, by virtue of moral weight, are construed as secondary.

To deny the plausibility of this argument, it is important to revert back to the central themes of Human rights. By their very nature, human rights seek to prohibit moral wrongs. Within the ambit of labor standards, there are indeed rights that by constitution prohibit moral wrong. Mantouvalou V in the ‘The many faces of slavery’, agrees with this notion by giving the example that ill-treatment of employees is indeed tantamount to slavery.⁵⁵

2.5. Rights and obligations

This approach has already emerged in various instances particularly under the instrumentalist perspective. It takes a downstream conception where the consideration of labor rights as human rights is done through the lens of the agencies which are obliged to provide and enforce workers’ rights (e.g. the state, employers). This makes rights specific and contextualised. For example, when assessing civil rights, this

⁵⁴ Risse M “A right to work? A right to leisure? Labor rights as human rights” (2009) 3(1) Journal of Law and Ethics of Human Rights 1. See also Nickel J Making sense of human rights (Malden: Blackwell 2007) at 10

⁵⁵ See Mantouvalou V “The many faces of slavery: The example of domestic work” (2012). Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2046039

provides the tools to distinguish between those which are simply goals or aspirations and those which are effective because a correlative obligation exists.

2.6. Substantive and procedural rights

Substantive rights determine the conditions of labor (e.g. wages, hours). Procedural rights, “shape the processes by which substantive rights are created and enforced. In contemporary labor law, the emphasis is on procedural rights because it is widely believed that desired outcomes are best achieved by enabling employers and workers to make and enforce substantive rules”, The role of the state is thus defined as a means to ensure that minimum safeguards exist and there is a substantive framework for application of rights.

CHAPTER 3

“Historical and Comparative Models of Rights at Work”

3. INTRODUCTION

For the purposes of integrating the human rights into the decent work discourse, it is necessary for this thesis to briefly interrogate the historical and comparative models of rights at work. This serves to provide an understanding of the relevance and application of rights at work in different countries and at different times through deductive “models” or “ideal types”.

This will entail the comparatist examining alienated features of the historical applications of labor rights to enable an assessment in the differences in application of labour rights.

The first port of call is an understanding that rights at work are the outcome of struggle between different social groups and competing interests. In exploring the history of labor law in Zimbabwe, Professor Lovemore Madhuku aptly explores this understanding from the colonial occupation of Zimbabwe to the Proclamation of 10 June 1891 right across the historical plane to the amendment of the Labour Relations Act (Labour Amendment Act, 2005) and the Constitution of Zimbabwe.⁵⁶

Essentially, the realisation of rights is not a matter of choice, it is what the concerned groups can and have managed to, through various mechanisms, convince the powers obtaining that they can have.⁵⁷ The material question thus becomes where does the balance of power lay? If the labor movements and reformers have the greater extent of power whether through dialogue or pressure groups they have the potential to change the course of human rights in that particular jurisdiction. The exploration below thus seeks to exhibit through a few historical attributions the transformation and mutation of this power rooted in social structure.

⁵⁶ Lovemore Madhuku, *Labour Law in Zimbabwe* 2015, page 11 - 24

⁵⁷ Abrams, P. : *Historical sociology* [Shepton Mallett, , 1982]

3.1. The Liberal State: Toleration and Protection

The first consideration is the pre-industrial societies where the worker enjoyed few civil liberties and the relationship was characterised as a master-servant structure. The broadly looks at the period in Western Europe on the eve of the French Revolution of 1789. Notably, the employment structure and relationship was primarily controlled by the household head within the family or guild structure.

Comparatively with the latter labour structures which were to emerge, the relationship was defined by mutual obligations between the “master and servant or apprentice” or “employer and labourer” as opposed to rights. Therefore, the obligation of the Master only stretched as far as training of the apprentice was concerned and in turn the servant swore his undying loyalty to the master. The regulation of the rules of this relationship for guilds was regulated by Public authorities.

The precepts of rights emerged under early the factory systems wherein owners. “enjoyed almost absolute rights or prerogatives within their own domain”. They were enjoined to apply penal master and servant laws to enforce their rights or prerogatives. This included imprisonment of laborers for breach of contract or trade unionism. Additionally, as a means to limit the laborer’s movements and thus control them, there was the “work-book” also known as the *livret* or “pass” system.

In nineteenth century Europe, there was an emergence of liberal constitutional states which actively promoted liberal doctrines, purporting to leave the economy alone *laissez-faire*. This was a form of intervention to the preceding capitalist system. There was a notable shift in organised trade and an increasing demand for a more advanced labor relationship. Thus was borne the contractual structure and formal proclamation of the equality between employer and employee. In this regard, the master servant relationship evolved and remnants of its penal character were removed.

There emerged of course, the social challenges of industrialisation which were to be characterised as political matters at the time. These ranged from urban poverty to collective job action and general unemployment. The shift would see the increase in organised labor movements dominantly from the enfranchisement of (male) workers turning into pressure groups. Consequently, protective legislation was gazetted for those laborers who were considered as particularly vulnerable including women and

children. During this period, the labor relations were canvassed in the language of protection as opposed to normative rights.

3.2. The Social Democratic Welfare State: Equality, Security, and Other Workers' Rights

In socialist Russia, the challenges presented by the preceding model were two fold. The first came from Marxian socialists and communists in a bid to present the pure capitalist society, were vehemently against the establishment of workers' rights under this order. Their real objective was the, "assumption of political power by worker and put to an end the employer-employee relationship.

In the Soviet Union, this existed within the historical movement of the "dictatorship of the proletariat". The direct consequence was that under this regime, trade unions were to be declassified into mere "conveyor belts" between the "vanguard" Party and the workers. In the worst case a declaration in the Soviet Constitution, Article 60, made it illegal to evade what was construed then as "socially useful work" denouncing this act as inconsistent with the guiding principles of the socialist society.

Similarly, during the same era there emerged the model from the social democrats. Their primary aspiration was to balance the scales between the suppliers and the purchasers of labor. This model emerged in German Weimar Republic (1919-33). The underlying output was the legalisation of the class system targeted within the intricacies of the supply of labor in a socially divided society.

In an economic crisis the fragile "collectivist system" of the Weimar Republic predictably crushed. A direct consequence of unemployment, this saw with it the destruction of the newly established labor systems of unemployment insurance and total abolition of collective bargaining through Presidential decrees. A divided labor movement led the National Socialists to victory.

In what Adam Smith termed a 'civil society', he observed the critical role of the formalisation of rights in drawing an end to the distinction entrenched in liberal societies of the private and public sectors of economic livelihoods, a tool which was used to aide and abate the class system. This concept was adopted in Continental Europe in preferring a working distinction between private law and public law

The British had a different approach, The idea was to defend the spoils won through industrial struggle using the law where voluntary means had failed. This was known as the principle of labourism. Thus, as opposed to social revolution the ideology shared across board was a "very special, very British" variant of pluralism. By definition of the Oxford School of thought, this struck a balance between employers and employees whilst ensuring the space for market forces to take charge.

In America, after the abolition of slavery, the aspiration of free labor had a direct correlation with the idea of freedom of contract. In a reactive and disproportionate judgment, post the Supreme Court's decision in the Lochner case⁵⁸ (1905), the majority of legislature underpinning labor rights was declared a unconstitutional on account of it diminishing the individual's right to buy and sell their labor as their require. This was to be eventually repudiated some 30 years later in majority Supreme Court judgment in 1937 and the court upheld the National Labor Relations Act. The decisions were primarily enshrined in the Government's desire to regulate commerce as opposed to regulating rights which saw a major shift after 1960 though the civil rights legislation and subsequent development of individual rights.

The language of rights had a direct shift at the end of the Second World War, the ILO's Declaration of Philadelphia (1944) on an international basis. The proclamations were an emphasis on the non-discriminatory pursuit of fundamental rights and freedoms encompassed in economic security, freedom and dignity and equal opportunity. The modern day ideals are enshrined in the aspirations of the declaration.

⁵⁸ **Lochner v New York 148 U.S. 45 (1905) which struck down a state law limiting the hours of work of bakers**

3.3. The Neo-Liberal State: Deregulation

Since the post-war era, regulation and its mutating varieties took centre stage. The trajectories took a turn from simply ideals of labor to varieties of regulation and at the core of it were consideration of labor rights. A departure the dialogue on labor rights being predominantly entrenched in the political context to them being motivated by the market system could be seen. The presumption being that the market system is rational and self-regulating. This was to present new risks as seen below.

At the turn of the millennia through globalisation, digitisation of the economy culminating in the building Fourth Industrial Revolution, there have been multilevel transformation of all segments of the human interaction with the world economy. Traditional notions of the world of work are consistently being challenged. There is a visible strengthening, within the milieu, of the social justice and human rights approaches to development in order to mitigate, possibly address, the new risks and threats emerging the above mentioned factors. There is an ongoing salient struggle maintaining the delicate balance between the world of work and the world economy.

Essentially, deploying the law as a means of intervening in the market order to preserve labor rights is a desirable output and yet not all are in agreement in this new world order. Collins observes that the deregulatory agenda premises its rationale on what he terms a “disarmingly naïve” consideration. That is, what need is there to regulate the employer-employee relationship where the self-regulating market and rationale market forces can do that through the general law of contract.⁵⁹ In this reality, the burden of proof is bestowed on those advocating for employment rights to exhibit the need for special rules to regulate employment as opposed to placing reliance on market rules.

However, this consideration ignores historical and contextual factors of the society and places the ‘market forces’ in a vacuum where inequitable distribution of wealth does not exist, gender bias does not exist and social classes are extinct. This further ignores that the labor market is a social institution structured by the law and without that legal structure is a threat to trade, competitiveness and even the economic marketplace

⁵⁹ Collins supra, 2000, p. 4.

itself. Essentially, what they advocate for is for self-interest to regulate the labor market, except that history teaches us otherwise and a look at the historical context of labor in the preceding sections exhibits that.

Deregulation is therefore meant to leave employment relations to the mercy of ordinary market principles, 'self-regulation' as underpinned in private law principles. In support of this notion, Hayek⁶⁰ argues that, "trade unions used labor law to cartelize the market, so in the historical British context they had to be stripped of their 'special privileges' which protected them from the operation of the ordinary law of obligations."

In relation to individual rights Epstein⁶¹ propounds in support of deregulation, that labor legislation is a bottleneck to the incentives naturally provided for by the law of contract. The concept relies on individualisation of the law as opposed to a collective approach through regulation. This is the rationale which shaped policies of a lot of states in the 1980s although this did not extend to deregulation of individual employment rights.

3.4. Cultural Relativism: "Asian Values"

An extreme adverse epoch worthy of consideration in this comparative analysis is the Cultural relativism also referred to as 'Asian Values'. The idea of human rights, "forces not only critical re-examination of what it means to be fully human and how individuals relate to one another in a society but also challenges the purposes and authority of governments and private employers and institutions. Because the struggle for human rights has been a struggle against traditional public and private authority and privilege, it has inspired powerful resistance (as well as ridicule) throughout history."

That resistance manifests in different characters and the most prevalent are claims of national sovereignty, cultural relativism, national exceptionalism, and "moral imperialism." Therein lies what has been posited as the "Asian values" controversy raises many of those challenges. In 1993, a group of Asian nations, in what has become known as the Bangkok Declaration, challenged the very basis of the UDHR.

⁶⁰ Hayek, F.A.: Law, legislation and liberty [London, Routledge, 1980], Vol. 3

⁶¹ Epstein, R.: "In defense of contract at will", in University of Chicago Law Review, 1984, Vol. 51, p. 947. --- : Forbidden grounds [Cambridge, Mass., Harvard University Press, 1995]

They propounded, “a form of cultural relativism in arguing that human rights must be considered in the context of national and regional "particularities" and different cultural and religious backgrounds. “Underlying the delicate phraseology was the assertion that human rights are rooted in "Western values" different from "Asian values.”

The historical various historical context which has been outlined has been for the purpose of gaining an appreciation of the actual circumstances prevailing in a country, locality or point in history. The underscored point in this section is that rights at work have not systematically transitioned in stages, or as a response to capitalist industrialization. This has been a culmination consistent struggle between the politics of economics and labor rights.

CHAPTER 4

“The International Labor Organisation and Its System of Supervision: Zimbabwe’s Tumulus Experience”

4. INTRODUCTION

The study of issues of the social and labor segment in Zimbabwe, allows making the following conclusion: if the core issues of the social and labor segment are viewed through the prism of their origin, the main thrust towards sustainable development of social and labor segment is the deficit of decent work, that is the labor, which results in everything required for human existence, prosperity and development; labor with which the progress in all areas of economic and social life is associated.

Maintenance of the decent work deficit is the evidence of failures in political, economic and social decisions made by the politicians and management at all levels. This is also a consequence of profound changes in the sources and driving forces of development characteristic of formation of a new multi-dimensional economy, the impact of which on human development is ambiguous and contradictory. The epoch explored herein will exhibit that the alienated approach to human rights by Zimbabwe has resulted in the country’s framework falling short of the international yardstick, in particular international labor standards. While endorsing human rights in general on one hand, consideration for decent work is seen to slip through the cracks.

This section covers a historical perspective into Zimbabwe’s journey with the ILO systems of enforcement. The perspective is not a narration of chronological events but it is an account of the key events which have led to the conclusion of this thesis. Zimbabwe has had a tumulus history of compliance with the requirements of the International Labor Organisation supervisory system which led up to the establishment of an ILO Commission of Inquiry in 2008. Implicit in this is the observation that to a certain extent, international labor obligations have been treated as a mere pursuit of political obligations and not as a binding legal reality. The result is almost two decades of appearances before the Committee of Application of Standards with Zimbabwe falling short of international labor standards culminating in a Commission of Inquiry of 2009.

An assessment of the history of International Labour Organisation's conclusions from the Commission of Inquiry exhibits that this mechanism, pursued in terms of Article 26 of the ILO Constitution, is rarely applied and is invoked in instances of gross non-compliance. Within the constitution of the ILO, a Commission of Inquiry represents the highest compliance supervisory body. This is ordinarily constituted as an intervention where other supervisory mechanisms have proved inadequate as evidenced by repeated non-compliance by a member state with the International Labour Standards. The other supervisory bodies include the Committee on Freedom of Association (CFA) and the International Labor Conference Committee on the Application of Standards.

In various instances which shall be exhibited in this thesis, the ILO supervisory bodies at various levels repeatedly called upon the Government of Zimbabwe to fully implement Convention Nos. 87 and 98. This was succeeded by a decade of violations in the legislative framework and in application notably between the years 2000 and 2009. The period was marred with violations ranging from failure to submit mandatory country reports to the supervisory bodies (International Labour Conference 2001), failure to appear before the Committee on Application of Standards (International Labour Conference 2007 to 2008) during which complaints from Zimbabwe Trade Unions regarding non-compliance with Convention 87 were being examined.

Therefore, chief amongst the complaints which subsequently led to the Commission of Inquiry in 2008 the primary concern for both the workers and employers at the 97th Session of the International Labour Conference were directed at the cumulative non-compliance and non-cooperation by the Government to the ILO supervisory mechanisms and system.

The case of Zimbabwe potentially exposes the need for a holistic human rights approach to labor rights to address the systematic challenges which have repeatedly manifested in non-compliance with International Labour Standards. What will further emerge as a thematic concern in this thesis is that while the social justice approach is based on a sense of moral obligation to alleviate poverty, the holistic human rights approach establishes legal principles that bind governments to act in ways that promote such social justice.

4.1. Establishment of the International Labor Organisation

The origins of the international Labor organisations together with its aspirations and founding values have been explored in the preceding chapters. What remains to be underscored is that since inception in 1919, the International Labor Organisation (ILO) has systematically designed an intricate supervisory system for the International Labor Standards (ILS) adopted. This is aptly summarised by the International Labour Guide of the ILO, “through its history, the ILO’s principal means of action has been the establishment of international labor standards.”

4.2. International Labor Standards (ILS)

From the inception in 1919 the organisation has developed within its core mandates an intricate system of ILS. The mandate of the ILO has included adopting ILS, promoting their ratification and application in its member states and the supervision of their application as a fundamental means of achieving its objectives”.

In this thesis, the manner in which the holistic human rights approach has been explored embraces the principles articulated in the International Labour Organisation Declaration of Philadelphia and the International Labour Organisation Declaration on Social Justice. Essentially, this includes the ethos that civil and political rights such as freedom of expression and association are crucial to sustainable development and that the “war against want” requires an integrated approach of national and international cooperation to promote the common welfare.

Zimbabwe’s relationship with the international body in a time lapse have been tumultuous. In summary, there has been a six dimensional consideration of these relations between Zimbabwe and:

- i. the Committee on Application of Standards (CAS),
- ii. the Committee on Freedom of Association (CFA),
- iii. the CEACR,
- iv. the International Labour Organisation Head Office,
- v. the Government of Zimbabwe,

- vi. the registered Employers' and registered Trade Unions.

Pursuant to the Tripartite Consultation (International Labor Standards) Convention, 1976 (No. 144), which was ratified in 1989, the main interactions within the tripartite consulate has been with the Employers' Confederation of Zimbabwe (EMCOZ) and the Zimbabwe Federation of Trade Unions (ZFTU) and the Zimbabwe Congress of Trade Unions (ZCTU).

Despite traditionally adhering to the reporting requirement, except for the reports requested in the year 2001, the Zimbabwe has been the subject of scrutiny by the ILO supervisory structures. This particularly concerns the adherence to two primary conventions, Convention Number 87 and Convention Number 98.

Zimbabwe's interaction with the Committee of Experts on the Application of Conventions and Recommendations (CEACR)

The CEACR was founded by the 8th Session of the International Labor Conference in 1926 to receive reports in terms of Articles 19 and 22 of the ILO Constitution. Its core functions are supervisory and in turn impose reporting obligations for member states with regard to adopted conventions and recommendations.

The first complaint against the government, in November 2000, was in relation to Convention No. 98. The report canvassed an array of concerns regarding legislative discrepancies and inadequacies particular regarding the propriety of government's interference in trade union operations. It further probed the legislative inadequacy in catering from compulsory arbitration and collective bargaining.⁶²

In terms of the ILO reporting mechanisms, Notwithstanding the inherent obligation, no report was provided by government regarding the alleged violations. Consequently, in 2002 the government was called upon to appear before a much more superior body, the Committee on Application of Standards.

⁶² ILO Commission of Inquiry Report (2009:11) The

The Committee presented a proposal for the government to accept an ILO mission which is ordinarily a tripartite delegation consisting of government, employers and employees to assist in ensuring compliance. The proposal was rejected by the government. This marked the beginning of a tumultuous relationship between government and the ILO supervisory structures.

Consequently, in 2003 the adequacy of Zimbabwe's labor legislative framework was challenged and the Committee was presented with a complaint regarding the exception of prison labourers from collective bargaining which was deemed to be unfair and discriminatory.

In 2006, the CEACR (2006) in a report noted with castigated the refusal by the government of Zimbabwe a tripartite direct contacts mission. Furthermore, the challenged Public Order and Security Act (POSA) was challenged. It was cited a tool which was being utilised to infringe against the Trade Unions' freedom of expression on issues of public policy and strategies and as a bottleneck to information.

As a cumulative effect of the violations' reports, an adverse report was filed by the ILO Commission of Inquiry Report (2009:13), wherein various infringements were cited inclusive of allegations of governmental interference in workers' organisations elections, operations. Harassment through investigations into the unions and limitation of the right to collective job action.

4.3. Zimbabwe's interaction with the Committee on Freedom of Association

In 1996, this was the Committee that would set off Zimbabwe's embattlement with the Convention on Freedom of Association as it considered a complaint against the Government of Zimbabwe from the Trade Unions. The complaint had been subsequently lodged by the International Confederation of Free 31 Trade Unions (ICFTU), alleging violence by the police during a demonstration of workers.

Subsequent to this, the complaint as mentioned in the ILO Commission of Inquiry Report and national organisations as varied as the International Federation of

Commercial, Clerical, Professional and Technical Employees and the Zimbabwe Congress of Trade Unions (ZCTU).

Chief amongst these complaints were concerns pertaining to the alleged, “dismissals of trade unions officials, detentions, intimidation, harassment and assault of trade unionists by state organs.” Intrinsic in the report were also allegations of unwarranted interference in the affairs of trade union affairs by government wherein a government investigator was appointed to audit the Zimbabwe Congress of Trade Unions’ financial affairs in 2000.

The limited enjoyment by public servants of the rights to freedom of association and to organise was noted as part of inadequacies of the legislative framework. The CFA in the 336th Report called upon the ILO Governing Body to accord special regard to the dire status quo of Trade Unions in Zimbabwe. The general situation was regarded as so serious as to stifle the very existence of trade unionism in the country. This was a response to the long standing Case No. 2365 of 2004 regarding various allegations of violations of bodily harm, unlawful detentions and intimidation of trade unionists.

In consideration of the foregoing, the CFA subsequently, in writing, “regretted the government’s continued and long-standing failure to cooperate and underscored concern over the policy and operating environment affecting the trade unions in Zimbabwe. Special attention to the matter was solicited from the Governing body in consideration of the importance of the operation trade union as a going concern with the tripartite structure of the ILO.

4.4. The Committee On the Application Of Standards (CAS)

Constitution of the Committee and governing of its functions is in accordance with Article 7 of the Standing Orders of the International Labor Conference.

The ILO, in a Commission of Inquiry Report of 2009:9, noted that pursuant non-compliance by the government, and further to listing of Zimbabwe in course of allegations of violation of Convention 98, 2002, 2003, 2004 and 2005; and simultaneously, listing in course of allegations of violation of Convention No. 87 in

2006, 2007 and 2008 the government rejected a direct contact mission as recorded in 2002.

In response to this, government's stand point was that there was absolutely no need to this listing. The government asserted that labor law reform processes were ongoing pursuant to the matters raised and emphasis was placed in the ongoing collaboration with other African leaders regarding the challenges faced. This is notwithstanding that between 2006 and 2008 the listing was pertaining to the same Convention No. 87. Despite this position, Zimbabwe was discussed by the ILO on the subject contained in the special paragraph. Noteworthy, a special paragraph is a result of the escalation of foregoing matter to a conference plenary has been. This is done after the Committee has presented its adverse report. The plenary discussion is thus therefore a way of ensuring that the complaints do not slip through the cracks due to time lapse on countries that are found wanting in their application of conventions by the Committee.

4.5. The Commission Of Inquiry On Zimbabwe

The cycle of scrutiny on Zimbabwe was resultant in a collective action by the workers and employers' organisations filing a complaint in terms of Article 26 of the ILO Constitution in 2008 at the 97th session of the International Labor Conference. The complaint encompassed continued non-compliance by the government with Conventions 87 on freedom of associations and 98 on the right to organise and collective bargaining. There was emphasis on the deployment of the POSA and criminal law, Criminal Law (Codification and Reform) Act of 2006. mechanisms to repress the voice of the trade unions. In the employers organisations were in solidarity with this submission.

Discussion of Zimbabwe in the Committee of Application of Standards at the 108th session of the International Labour Conference, 14 June 2019

It would be remiss for this thesis to omit mention of what transpired in the most recent session of the International Labour Conference and the listing of Zimbabwe before the

Committee on Application of Standards and the outcome thereto. Five (5) issues were canvassed in the aide memoir by the Trade Unions pertaining to an alleged attack on Zimbabwe Congress of Trade Union's (ZCTU) Office and personnel by soldiers on 1 August 2018, an allegation of the ban on collective job action of the 1st of August 2018, Denial and delay in trade union registration, Public Order and Security Act, Labour Law Reform and the Harmonisation of the Labour, review of the Public Service Act and delay in the of the Health Service Act to enable harmonisation with the constitution.

Regarding the legislature, the government response was that it was indeed lined up to enable alignment with Zimbabwe constitution adopted in 2013 which has implicit provisos for the freedom of association and the right to strike under its section 65 and the ILO conventions 87 on Freedom of Association and Protection of the Right to Organise and 98 Right to Organise and Collective Bargaining. The Government also made reference to the Tripartite Negotiating Forum Act which was gazetted as an instrument for dialogue on matters of policy and legislature with the Trade Unions and Employers.

The government denied the demonstration ban totally, alleging that in turn, It should be noted that the demonstrations in question were organised by political actors and resulted in public violence and upheaval which attracted an equitable response from the security forces in accordance with the government's constitutional duty to protect citizens and property. A Commission of inquiry had since been deployed to investigate into this matter led by former South African Head of State, His Excellency Mr Kgalema Motlanthe. In this regard, the Government contended that it had already complied with the request made by the Committee of Experts.

Pursuant to the disgruntlement against the POSA the government attested that new legislation was in the process on of enactment whose provisions will be aligned to the principles of Freedom of Association enshrined in the Constitution of Zimbabwe. This new legislation would be called the Maintenance of Peace and Order Bill and suffice to say the Act is now in place.

4.6. CONCLUSION

Whilst a tumultuous history of non-compliance, in fact, systematic non-compliance is noted in Zimbabwe there is a notable shift towards a new era entrenched in social dialogue, compromise and tripartism. Nonetheless, noble as it is, a more systematic approach to a solution is required in tandem with Diane Elson's statement that "the indivisibility of human rights means that measures to protect, promote, and fulfil any particular right should not create obstacles to the protection, promotion, and fulfilment of any other human right."⁶³ The indivisibility is therefore defined within the context of the obligation imposed on the government to fulfil the human rights. If the supposition that core labor rights are human rights is to be adopted, then this principle also applies fully to labor rights.

The epoch augurs the question which remains to be answered in Chapter 5. Is the social justice pursued by the ILO system adequate to the realisation of decent work? Over and beyond that, beyond the mantra of dialogue and discussion, labor rights need a new trajectory, lest the systematic listing of Zimbabwe for violations continues. In a bid to move beyond labor rights as political international commitments, the need to consider a human rights integrated approach to policy is apparent.

⁶³ Diane Elson, Gender Justice, Human Rights, and Neo-liberal Economic Policies, in GENDER JUSTICE, DEVELOPMENT, AND RIGHTS 78, 87-114

CHAPTER 5

“Bridging the Gap: Strategies for Integrating a Holistic Human Rights Approach to Social Justice in order to Achieve Decent Work”

5. INTRODUCTION

International human rights law provides, the legal and ethical framework for policymaking, both policy intended to achieve decent work for all, and policy directed at other sectors requiring strategic intervention, including health, education, and transportation that would nonetheless impact the right to decent work.

5.1. FORMULATION OF A HUMAN RIGHTS APPROACH

The human rights approach has far reaching implications extending beyond the ambit of vulnerable and oppressed persons, which is the primary concern of the social justice approach, to individuals and groups. Secondly, the human rights approach extends beyond particular rights and concerns and recognises the interrelatedness of various concerns for individuals and groups. Thirdly, the human rights approach demands that in their interrelatedness, each of these concerns be treated equally. This holistic framework is notably reaffirmed in the Vienna Declaration.

Likewise, a holistic human rights approach to achieving decent work, “recognizes the interdependency of individuals and their respective rights, particularly individuals within a family. Accordingly, human rights scholars and practitioners include the interdependence of rights as one of the overarching principles of a human rights-based methodology.”⁶⁴

⁶⁴ OHCHR Principles and Guidelines, (explaining how the human rights framework “broadens the scope of poverty reduction strategies” by highlighting the fact that the enjoyment of economic and social rights—the rights traditionally thought most relevant to poverty alleviation—depend upon civil and political rights); see also Hunt & MacNaughton, , at 34 (including the interdependence of rights as one of seven general principles for human rights-based impact assessment)

5.2. Applying human rights-based mechanisms for policymaking:

In the past, human rights advocates relied upon several, “traditional advocacy methods including litigation, “naming and shaming,” and letter writing campaigns to address violations of human rights.”

These tools are still relevant in the modern day world of work. However, what is lacking as was cited in the first chapter of this thesis which limited the scope of research to ‘addressing’ the decent work and not ‘determining’ it. Noteworthy, there is yet to be a cohesive undertaking by both the Zimbabwe Government and ILO to deploy tools to comprehensively determine the decent work deficit in the country.

This is a scientific exercise which would require quantitative and longitudinal research with cumulative data capture. Even more important would be the development of a standard yardstick and parameters to explore the extent of a decent work deficit benchmarked against international norms. These tools were not available to the author for there to be the desired scientific determination of the extent of the decent work deficit. New tools include human rights-based indicators, budget analysis, and impact assessment.⁶⁵

5.3. Building coalitions over common concerns by linking the right to decent work with other rights:

Jane Lethbridge presents a compelling case for building coalitions with labor in proficiency and efficiency in the labor rights discourse may be achieved if Trade Unions and Non-Governmental Organisations (Human Rights Organisations) band together. This would allow Trade Unions to gain access to a wider spectrum of the socio-economic agenda beyond the realm of labor rights. In respect of NGO’s, Trade Unions represent a larger subscription of workers to who they may not have access, the constituencies of NGOs rarely are as organised. The result would be a strengthening of both advocates in the pursuit of realisation of rights.⁶⁶

⁶⁵ A recent report of the U.N. High Commissioner for Human Rights provides an overview of each of these three new tools. Implementing ESCR, supra note 16

⁶⁶ Jane Lethbridge, Combining Worker and User Interests in the Health Sector: Trade Unions and NGOs

As previously alluded to in exploring the principle of interrelatedness, this is a central theme to the full realisation of labor rights. Johannes Morsink in his analysis of the origins, drafting and intent of the UDHR makes the following observation, “The organic character of the text applies to how it grew to be what it now is, as well as to a deeper interconnectedness of all the articles.”⁶⁷ There is a clear causal link between the realisation of one right and another.

5.4. The Development Model: Regulation based on Rights

This new model justifies the attribute of a human rights status to employment relationships. The justification for this consideration is two pronged. Firstly it looks at the market regulation of labor and acknowledges the risk associated with it. This stems from the glaring risk that competitiveness may play a significant deviation from ideals of labor rights. This would induce automated market failure at protecting labor rights. The historical analysis in chapter 3 does exhibit that such red flags in potentially any labor revolution do exist. Market based regulation ignores historical and contextual factors of the society and places the ‘market forces’ in a vacuum where inequitable distribution of wealth does not exist, gender bias does not exist and social classes are extinct.

There is a well-placed advantage to considering labor regulation as a necessary socio-economic institution structured by the law the adverse would be, without that legal structure is a threat to trade, competitiveness and even the economic marketplace itself.

Regulation is the means to balance the scales particularly in this era of convergence of globalisation, digitisation of the economy culminating in the building Fourth Industrial Revolution, there have been multilevel transformation of all segments of the human interaction with the world economy. Traditional notions of the world of work are consistently being challenged. There is a visible strengthening, within the milieu, of the social justice and human rights approaches to development in order to mitigate, possibly address, the new risks and threats emerging the above mentioned factors.

⁶⁷ See JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT 232 (1999)

There is an ongoing salient struggle maintaining the delicate balance within the market forces. Regulation thus becomes the guarantee a worker has in an evolving market place against forfeiture of rights for ease of trade.

Lastly, some advocates of the rights-based version of market regulation argue that, “labor market institutions which encourage “high trust” or “cooperative” workplace “partnership” lead to superior economic performance.” The role of the ILO in ensuring that domestic legislature of the member states is in tandem with International Labor Standards is therefore critical. Essentially, the section recommends special regulation through consideration of labor rights as human rights in the course of realisation of Decent Work.

5.5. Progressive realisation of Human Rights

Article 2.1 of the ICESCR permits State parties to design implementation frameworks in collaboration with international assistance through technical and economic resources in pursuit of the progressive realisation of the rights in the Covenant. Article 2.1 specifically makes mention of adoption legislative measures as a means of progressively achieving the panoply of human rights.

This approach to social rights places the emphasis on determining whether there are certain minimum or core obligations which must be observed, on finding ways to balance resource constraints against the achievement of these obligations, and on monitoring progress towards realization. A similar approach may be relevant to the implementation of workers’ rights contained in the ILO Declaration and ILO Conventions. These are the minimum floor rights or minimum core obligations propounded in the preceding chapters.

This requires, as previously quoted, the programmatic approach which Amartya Sen purports save for eliminations on application by considering the extent of insistence of adherence and burden of implementation on the state. On the latter regard, this thesis disagrees and invokes the principle of indivisibility of human rights and applies this principle to labor rights. Amartya Sen acknowledges that the rights-based approach and programmatic approach are not parallel considerations. In this regard, the

enforcing agency plays centre stage in integrating rights into policy and strategy. This entails the integration of International Labor Standards into policy, planning, monitoring and evaluation tools for Decent Work.⁶⁸

To the extent that a rights based approach and a programmatic approach correlate, the formula in Amartya's suggestion falls within the context of interrelatedness, which formula he applies in consideration of labor rights. Thus, the point underscored is the application of rights and their enforceability.

The consideration therefore is the inalienability of the rights of those at work from human rights. They can be considered "along with" as opposed to "not instead of" the interests of human rights, application of one does not substitute the other neither does it mitigate the need to fulfil the other. This demands a correlation of rights in an equal framework. Essentially, for this reason, for the effective application of both labor and human rights, there is no hierarchy of rights.

The South African Constitutional Court has interpreted the constitutional right of access to adequate housing to, "require the state to devise and implement a comprehensive programme to progressively realize this right, including measures to provide relief to those in desperate need of shelter, subject to available resources."⁶⁹

5.6. Policy Options For Implementing Rights At Work

Consideration should be made for new institutional structures for labor rights in taking into account that:

The potential of rights at work can be realized only if old modes of thinking about them are abandoned. The traditional theories and the categories of legal thinking – such as employee and "contract of employment" - were shaped in industrialized nation states where the typical subjects of the law were Fordist manufacturing companies

⁶⁸ Supra (2000, pp. 123-124)

⁶⁹ **Government of South Africa v Grootboom 2001 (1) SA 46 (CC)**

employing full-time male workers in life-time jobs on standardized contracts often regulated by collective agreements with trade unions.

It is argued that classical models are even less relevant in the developing countries. Chief amongst this are those models resulting from, “modern globalization – the liberalization of trade and investment, the domination of transnational companies (TNCs), the growth of a worldwide network society, and increasing global competition.”

Karl Klare (2002) has correctly observed that the law regulating work cannot be fitted into a single over-arching paradigm. Instead we need to, “reconstruct rights at work to safeguard the individual in the changing world of work. New directions may be found in a synthesis of traditional models with the modern approach of rights-based regulation as well as human rights theory. “

This synthesis can be explored based on the 4 pillars of the ILO Decent work agenda and an “emancipation through law” and implementation. In regulating for the future of work, international human rights law, and ILO Conventions, provide a basis for a new culture of social rights. The creation and enforcement of these rights enables the law “to act relatively autonomously to restrain public and private power for the benefit of at least some of the people for some of the time”.⁷⁰

⁷⁰ Hepple, *supra* 2002, p. 16

CONCLUSION

“Toward an integrated matrix of human rights and labor rights”

This thesis argues for a return to the original holistic human rights approach embraced in the Universal Declaration of Human Rights and in the ILO Declaration of Philadelphia. Economic and social rights are, “regaining parity with civil and political rights in the international arena as evidenced by the recent adoption of the Optional Protocol to the ICESCR. With this parity comes the renewal of the holistic human rights framework in the UDHR, which highlights the universality, interdependency, and equality of all human rights.”

Indeed, increasingly around the world, the right to form and join labor unions, the right to collective bargaining, the right to a safe and healthy workplace, and the right against discrimination in the workplace, among other work rights, “are considered human rights— not merely rights granted by statutes or collective bargaining contracts.”

This thesis has comprehensively exhibited the rationale that the right to decent work falls squarely within the ambit of human rights, it therefore ought to be defined to incorporate human rights concerns beyond the International Labour Organisation’s four ‘Core Labor Standards’. There is a perceived interrelatedness of work rights in that regards, pursuit of a few rights at the expense of others is fatal to the core function of labor rights.

Despite certain structural differences⁷¹, there is a close correlation which has been justified in preceding chapters, between labor rights and human rights in form, application and aspiration. The structural differences are negligible in so far as labor rights contribute to the socio-economic infrastructure that human rights seek to regulate.⁷²” Yet, while both the relations between the different regional human rights systems and their relations with other fields of international law have been subject to academic scrutiny, the interactions between the body of international labor law and the regional human rights systems have been rather unexplored.

⁷¹ Kolben, Kevin. 2010. “Labor Rights as Human Rights?”, in Virginia Journal of International Law, Vol. 50, No. 2, pp. 450-484

⁷² Valticos, Nicolas. 1979. “The Future Prospects for International Labor Standards” in International Labor Review, Vol. 118, No. 6, pp. 679-697

This thesis hence sought to contribute to the dialogue on the relation between labor rights and human rights and explored several strategies for doing so having observed Zimbabwe's tumultuous history of non-compliance with the ILO.

There are 3 key take away point of departure for the reader that it,

1. The right to decent work is a human right, and it must be defined to encompass human rights concerns beyond the ILO four Core Labor Standards. All work rights are interrelated, and therefore, a few rights should not be pursued at the expense of others.
2. It is essential to recognize the interdependency of rights and of people and to consider these relationships when regulating for decent work. Realizing children's rights at the expense of women's rights, for example, does not bring us closer to achieving decent work for all.
3. Third, human rights scholars and practitioners are developing human rights-based methodologies and tools, such as human rights impact assessment, that have the potential to improve policies, programs, and projects by revealing the likely impacts of proposals on human rights. These tools provide the opportunity to mitigate negative impacts and maximize positive ones, and therefore should be employed to prevent violations and to fully realize the right to decent work.

Finally, the holistic human rights approach helps to build coalitions among individuals and groups that share the common aim of achieving decent work for all, realizing the full panoply of human rights, and achieving social justice.

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