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Topic: The historic, present and future role of trade unions in the tripartite alliance in South Africa: A case of survival.

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List of Acronyms

ANC (African National Congress)

AFCWU (African Food and Canning Workers Union)

CPP (Convention People's Party)

COSATU (Congress of South African Trade Unions)

DGB (German Trade Union Federations)

ERP (Economic Recovery Program)

FCWU (Food and Canning Workers Union)

FEDSAL (Federation of South African labour)

GEAR (Growth Employment and Redistribution)

LRA (Labour Relations Act)

NDP (National Development Plan)

NEDLAC (National Economic Development and Labour Council)

NEDLACA (National Economic Development and labour Council Act)

NMC (National Manpower Commission)

NEF (National Economic Forum)

NACTU (National Council of Trade Unions)

RDP (Reconstruction and Development Plan)

SACP (South African Communist Party)

SACTU (South African Congress of Trade Unions)

SPD (Social Democratic Party)

TUC (Trade Union Congress of Ghana)

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Chapter 1

1. Research Proposal

Topic: The historic, present and future role of trade unions in the Tripartite Alliance in South Africa: A case of survival.

2. Research problem

This thesis deals with problems affecting trade unions in the South African context, specifically their marginalisation in the Tripartite Alliance in labour policy making in the institution of social dialogue. The thesis explores how trade unions can be protected from the dominance of political parties in the institution of policy making and specifically with regard to the policies that affect the rights of workers. It investigates how trade union federations (the Congress of South African Trade Unions) in the tripartite alliance can influence policies that are favourable to workers before the government adopts policy in parliament.¹

3. Assumptions

Trade unions and trade union federations are products of associational rights as they are enshrined in the constitution of the Republic of South Africa.² The associational rights are applicable to both natural and legal persons as they are reasonably applicable to them.³ The primary role of trade unions is to ensure the improvement of terms and conditions of employment of their members through the institution of collective bargaining.⁴ Trade unions and employer organisations have the right to collective bargaining and this right can only be limited only in terms allowed by the constitution.⁵ The other role of trade unions is to assist their members to enforce their legal rights.⁶ Trade unions, however, do not operate in a social or political vacuum. They operate in different political systems whose decisions in terms of policy making

¹ S 5 (1) (c) of National Economic Development and Labour Council Act of 1994 (Hereafter NEDLACA of 1994)

² S 18 of the 1996 Constitution of Republic of South Africa. The section states that everyone has the right to freedom of association (hereafter the 1996 Constitution).

³ S 8(2) of the 1996 Constitution.

⁴ Deakin and Morris *Labour Law* 772.

⁵ S 23(5) of the 1996 Constitution.

⁶ Deakin and Morris *Labour law*772.

may affect their execution of their duties. This is why it is very essential for trade unions to participate in politics to ensure that the legal and economic environments are suitable for the fulfilment of their goals and that the views of their members are protected in political process.⁷ In order to consolidate their political power, trade unions form trade union federations.⁸ There are three ways in which trade unions may achieve political power. These include: turning industrial action into political power (this happens where the collective bargaining efforts influence macro-economic policy), unions may have privileged links in the political system, and thirdly unions may derive political power from institutionalised collective institutions like the tripartite alliances.⁹ The thesis will focus on the institution of the tripartite alliance as a way by which trade unions achieve political power in South Africa. It must be investigated how the trade unions have achieved political power in labour policy making and in the development of legislation through the institution of the tripartite alliance and how such an institution has been used successfully by other countries. Recommendations will be made whenever necessary to improve the influence of the trade union in policy making and legislation development within the structure of the alliance relationship.

3.2. Research questions

1. Research question

Do trade unions influence policy making in the trade union federation and in the alliance in South Africa?

2. Research question

What challenges do trade unions in the federations face in their role of influencing national policy in South Africa?

3. Research question

What can be done to ensure that trade unions execute their duties in the tripartite alliance properly despite the existence of challenges, if any?

⁷ Deakin and Morris *Labour law* 773.

⁸ McGuire and Scherrer "Developing labour voice in trade policy at national level" 8.

⁹ Streek and Hassel "Trade unions as political actors" 344.

4. Research

Are there any means available to strengthen the position of trade unions in policy making within the alliance?

4. Motivation

The trade unions are products of associational rights as enshrined in the constitution.¹⁰ It is clear from the constitution that everyone has the right to associate with whoever they choose. It is this right that enables trade unions to recruit, grow in size and form alliances with other organisations (like political parties and interest groups). The primary purpose of forming trade unions is to improve the members' terms and conditions of service of members through the institution of collective bargaining.¹¹ Trade unions also ensure that the rights of its members are correctly enforced and protected.¹² Trade unions, however, like all interest groups achieve their goals only if the political environment is in their favour.¹³ Hence, it is imperative that trade unions are politically active to ensure that the policy framework supports the interests of workers.¹⁴ The question is how unions connect with political parties in order to ensure the protection of the interests of workers.

Trade unions may achieve political influence over governing parties in various ways.¹⁵ These ways includes: unions turning industrial power into political power (these unions have strong bargaining power to influence macro-economic policies); unions may have privileged links which may help them achieve their industrial objectives and unions may derive political power from institutionalised collective representation institutions like the tripartite alliance.¹⁶ Trade unions are likely to choose a way to influence politics in terms of how they define themselves and their roles. Some scholars identify three types of unions.¹⁷ These include industrial unions which are unions which concentrate

¹⁰ S18 of the 1996 Constitution.

¹¹ S23 (5) of the 1996 Constitution.

¹² Deakin and Morris *Labour law* 772.

¹³ *Idem* 773.

¹⁴ *Ibid.*

¹⁵ Streek and Hassel "Trade unions as political actors" 344.

¹⁶ *Ibid.*

¹⁷ Torres "Welfare: Politics or Market"? South African Workers Speak: Common Security Forum Studies" 128.

on the bread and butter issues of employees at shop floor level while keeping political engagement and qualitative demands at work at bay.¹⁸ Sectoral unionism concentrates on bread and butter issues and it includes training and restructuring concerning productivity, and deals with political issues only when they concern the sector in question.¹⁹ Political unionism encompasses unions, which address a wider range of issues including workplace issues.²⁰ These kinds of unions are more likely to follow a class compromise than unions with narrower strategies. This is because such unions represent issues in and out of the workplace and they must compromise in order to achieve their goals.²¹ It is this kind of unionism which challenges unilateral decision making by the government and, consequently, it allows trade unions to have an impact on policy making by the government.²² This, however, provokes questions of how trade unions involve themselves in the political process without developing a conflict of interest.

Trade unions easily influence political decision making by engaging in political alliances.²³ This, however, as argued above provokes the question of how trade unions maintain their independence and ensure that they do not lose their purposive approach of promoting the interests of workers. It is argued by some that unions that unions must be strategic in their alliances and, more importantly, that they should maintain their autonomy and be independent from political parties to ensure that union leadership is able to formulate decisions that promote and protect the interest of workers.²⁴ The purpose of this research is to establish whether the South African trade unions in the federations are autonomous and whether they really influence policy in the best interest of workers.

The political negotiation for policy that is favourable to the working class is done through the institution of the National Economic Development Labour

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Idem* 12.

²¹ Khunou *The Influence of COSATU on the Welfare Policy debate in Democratic South Africa* 27.

²² *Idem* 29.

²³ Misra *Strategic Unionism: The political role of the COSATU in South Africa and what it means for Black workers* 23.

²⁴ *Ibid.*

Council(NEDLAC).²⁵ It is designed in such a manner that policy is first discussed in the NEDLAC before being finalised in parliament.²⁶ The question of how this procedure is effective is very important in the South African context. The way NEDLAC is structured, where policy is debated within it before being finalised in parliament, gives parliament more power in policy making.²⁷ Labour, however, sends representatives into parliament where policy making is finalised.²⁸ The sending of labour representative is done very clumsily without ensuring that the trade union parliamentarians are accountable to labour or the African Union Congress which is their gateway into parliament.²⁹ It is, thus, necessary to investigate how best the relationship between labour and politics could have been structured to ensure proper labour influence on policy making. An investigation of political unionism across the world is done in order to determine how other trade unions/party politics relations are structured and how they effectively influence policy.

The adoption of the Reconstruction and Development Plan by the government was a result of labour influence in 1994 (a policy aimed at the redistribution of resources to the poor through employment and the correction of racial imbalances).³⁰ This underlines the success of the intended purpose, which labour wished for in joining the alliance. Such success was, however, short-lived; the government went on to impose the Growth Employment and Redistribution policy,³¹ a policy which aimed at strict fiscal discipline, focusing on economic development first and then distribution through a trickle-down effect.³² This marginalisation of trade unions in the tripartite alliance in the context of policy making by the African National Congress (ANC hereafter) shows that the relationship between trade unions and any political party has to be redefined in ways that ensures equal participation in policy making.

²⁵ Khunou "COSATU influence on policy making in post apartheid South Africa: Fact and fiction" 176.

²⁶ S 5 (1) (c) of NEDLACA.

²⁷ Khunou *The Influence of COSATU on the Welfare Policy debate in Democratic South Africa* 23.

²⁸ Misra *Strategic Unionism: The political role of the COSATU in South Africa and what it means for Black workers* 247.

²⁹ *Idem* 145.

³⁰ Beckman, Buhlungu et al *Trade Unions and Party Politics: Labour Movements in Africa* 141.

³¹ *Idem* 142.

³² *Idem* 146.

5. Background

The trade unions and political relationships in South Africa dates back to the historical phase of apartheid.³³ Trade unions allied themselves with political parties to increase the number of supporters.³⁴ As argued above, however, unions realised that the struggle of workers in the workplace is not different from the one they face within their community.³⁵ The racial segregation that black workers suffered in their communities was perpetuated by the same system that exploited them and forced them to work for low wages and under poor condition because they were black. The roots of tripartite alliance can, therefore, be traced back to early 1920s when black trade unionism arose.³⁶ In May 1990 a formal tripartite agreement was passed with various aims: the independence of the parties in campaigning for policy; to formulate a joint programme on agreed issues; the central objective of fighting apartheid; having representation at various levels of the governing institution; defining how it related to various constituencies; the ANC being the spear-head of the alliance; and the alliance based on democratic principles of consultation.³⁷ The purpose of this research is to investigate what is causing the failure of the alliance to stick to one of its founding objectives of following democratic principles of consultation in policy making and examining how can this be corrected.

6. Literature review

The research proposal is based upon the idea of the trade unions being able to fulfil their duties of protecting the interests of workers in the tripartite alliance. In the context of South Africa labour and trade union rights are constitutionally entrenched.³⁸ It is in the light of this right that the constitution of the Republic of South Africa is used in this research in order to throw some light on some of the labour rights as they are entrenched in the constitution. National legislation may be enacted to regulate the

³³ Misra *Strategic Unionism: The political role of the COSATU in South Africa and what it means for Black workers* 80, he says trade unionism in Africa rose in connection with colonialism.

³⁴ *Idem* 129.

³⁵ Beckman, Buhlungu *etal Trade Unions and Party Politics: Labour Movements in Africa* 136.

³⁶ Misra *Unionism: The political role of the COSATU in South Africa and what it means for Black workers* 150.

³⁷ Baskin *Striking Back – History of COSATU* 432.

³⁸ S 23(5) of the 1996 Constitution, states that every trade union has a right to engage in collective bargaining and that national legislation may be enacted to regulate the institution of collective bargaining.

institution of collective bargaining and industrial relations.³⁹ It is the constitution again which protects the right to freedom of association.⁴⁰ These rights, as guaranteed in the constitution apply to both natural and legal persons.⁴¹ The relationship between trade unions and political parties can also have the constitutional foundation of freedom of association. This relationship is necessary for trade union influence in policy making. The constitution is, thus, one of the documents consulted in answering the issues raised in this research topic since the constitution defines the rights and duties that apply to trade unions as they are entrenched in it.

The LRA was passed as an Act which gives effect to the labour relations rights as they are protected and entrenched in the constitution.⁴² This Act is also consulted as one of the founding pieces of legislation in the labour relations law in South Africa. It regulates the relationship between employers and employees in which the trade unions are participants. The National Economic Development and Labour Council Act (hereafter NEDLACA)⁴³ is another piece of legislation consulted, since is it the foundation of the social dialogue where the partners of the tripartite alliance meet and consider all labour market policy proposals before these are considered in parliament.⁴⁴ The imperative question evoked after reading the objectives of this Act is whether the legal mandate of this legislation is being met successfully.

Deakin and Morris in their book⁴⁵ have done considerable research on the roles of trade unions. The primary role of trade unions is the improvement of the terms and conditions of employment of their members through the institution of collective bargaining.⁴⁶ The trade unions, however, do not operate in vacuum; they operate in a political, economic and social environment. It is, therefore, essential for the interest groups to be connected in politics to ensure that legal and economic platforms are conducive to their goals and means of operation and that the views of the members

³⁹ *Ibid.*

⁴⁰ S 18 of the 1996 Constitution.

⁴¹ S 8 (2) of the 1996 Constitution.

⁴² S 1(c) of LRA, it is stated as one of the main objectives of the Act to provide framework within which trade unions, employers and employers' organisation can bargain collectively and formulate industrial policy. See also s23 (5) of the 1996 Constitution.

⁴³ NEDLACA 35 of 1994.

⁴⁴ S 5 (1) (c) of NEDLACA.

⁴⁵ Deakin and Morris *Labour law*.

⁴⁶ *Idem* 772.

are adequately represented in the political process.⁴⁷ This book works as a source which defines the roles of trade unions and answers the question of why trade unions involve themselves in political relations. Trade unions engage in the tripartite alliance in order to reconcile their duties with the government's economic, political, social objectives and embrace aims such as increasing employment and enlarging the labour market.⁴⁸

7. Research methodology

In this research study, a comparative approach will be utilised comparing the South African trade unions influence in the tripartite alliance with the other influence of trade unions in other countries in tripartite institutions. A comparative study is important because of its potential in deriving lessons and identifying the best practice.⁴⁹ This means that the comparison of South African tripartite institution with those of other countries will help to shed light on how this institution can be structured to work better by lessons drawn from other countries. It is said that this means that best practice can then be emulated from the conclusions drawn from the comparisons as another advantage of the comparative approach.⁵⁰ In this research, the case study of the Ghanaian and German tripartite institutions will be used.

The Ghana case study is very relevant to South Africa since political trade unionism in Ghana rose through resistance to colonialism just as it did in South Africa.⁵¹ In the long run the trade unions in Ghana failed to influence labour policy through marginalisation by the Convention People's Party (CCP).⁵² The decision of trade unions in Ghana to stay out politics did not help them much with regards to influencing labour policy making; it only deepened the polarisation.⁵³ This gives lessons (whether to dissolve the alliance or re-strategize from within the alliance) to South Africa whose

⁴⁷ *Idem* 773.

⁴⁸ *Idem* 774.

⁴⁹ Hyman 2001 *EJIR* 7(2) 203.

⁵⁰ *Idem* 204.

⁵¹ Misra *Unionism: The political role of the COSATU in South Africa and what it means for Black workers* 85.

⁵² *Idem* 88.

⁵³ *Idem* 90.

trade unions are failing to influence labour policy as they wished in the formation of the alliance.

In Germany, the trade union federation has no formal connection to any political party owing to their tangled history with the Weimer Republic and the National Socialist Germany.⁵⁴ The unions have been able to influence labour policy making in the Bundestag through specialised labour committees that debate policy in parliament.⁵⁵ This is in contrast to the South African situation in which labour tries to influence policy outside parliament through NEDLAC. Policy in South Africa is finalised in parliament outside of direct organised labour influence.⁵⁶ The German case study of trade unionism is relevant because the South African tripartite institution is copied from the European model.⁵⁷ The comparative approach, despite its advantages, is, however, littered with over generalisation about issues which the researchers assume to be universal but which are unique to the history of the country at stake.⁵⁸ Hence, it is imperative in this study to guard against over generalisation.

8. The structure and chapters

The research will be broken down into chapters which will explain the origin of the tripartite alliance, its objectives, success and failures and how its success could be enhanced in South Africa.

Chapter 2 – The origin and history of the tripartite alliance in South Africa.

The chapter will discuss the origin and the history of the tripartite alliance in South Africa. The influence of the trade unions in such an alliance will be investigated.

Chapter 3 – Influence of trade unions in labour policy and legislative formulation.

This chapter will deal with the question of whether the South African trade unions in the alliance are able to meet the objective of influencing labour policy making in South Africa as purported in the objectives of the Alliance.

⁵⁴ Dalton "Political interest" 5.

⁵⁵ *Idem* 9.

⁵⁶ Khunou *The Influence of COSATU on the Welfare Policy debate in Democratic South Africa* 51.

⁵⁷ Khunou "COSATU influence on policy making in post apartheid South Africa: Fact and fiction" 174.

⁵⁸ Hyman 2001 *EJIR* 7(2) 204.

Chapter 4 – The tripartite alliance and lessons from other jurisdictions.

This chapter will deal with the tripartite institutions in European and African context.

Chapter 5 – Conclusions and recommendations.

This chapter will make conclusions with regard to findings and suggestions on how the tripartite institution can be improved in South Africa.

Chapter 2

The Origin and History of the Tripartite Alliance in South Africa

1. Introduction

The overall purpose of this chapter is to investigate the history of the tripartite alliance among the African National Congress (ANC), the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU). This chapter will investigate the purpose of the alliance to the parties and specifically to trade unions. The objective of the trade unions in the tripartite alliance in South Africa can be understood today only if the unions – alliance relationship is placed in its historical timeline. Thereafter, the definition of trade unions has to be established, and their objectives and the means with which they seek to achieve their objective has to be outlined.

2. Roots of the tripartite alliance in South Africa

The formal tripartite alliance between the ANC, SACP and black trade union movement has its origin in the relationship that goes back to the 1920s.⁵⁹ The ANC (formed in 1912), SACP (formed in 1921) and the first African unions (all formed in the early 1900s).⁶⁰ The three parties to the tripartite alliance were faced with the single enemy, the colonial master who oppressed the blacks in the social, political and economic spectrum. As the three partners fought against white exploitation of blacks a symbolic relationship developed between them.⁶¹ Owing to the exploitation of blacks by the colonialists there was a convergence of interest among the three partners. As argued

⁵⁹ Misra *Unionism: The political role of the COSATU in South Africa and what it means for Black workers* 150.

⁶⁰ *Ibid.*

⁶¹ *Idem* 151.

above, trade unions can affiliate with organisations with similar interest in order to achieve their objectives. It is very important to ask in this discussion whether such a convergence of interest is still a fact in the tripartite alliance as it stands now. Such a question will be addressed in the chapters to follow, investigating whether the tripartite alliance is still relevant to South African labour relations.

Since the early 1920s, both the SACP and ANC have been involved in the trade union movements.⁶² This marks the roots of the tripartite alliance. Most black trade union members were either members of the ANC or the SACP.⁶³ This can be explained in the view of some scholars that when union members are dissatisfied with the economic and political *status quo*, unions may seek to bring about change in the system by supporting an opposition party or forming a party themselves.⁶⁴ This may go as far as supporting the existing political party to gain leverage in policy formulation and legislative enactment. The members of the political parties were also responsible for the formation of some trade unions which later on formed a party of the largest trade union federation in South Africa (trade unions like Food and Canning workers Unions).⁶⁵ It is clear from the above evidence that black trade unionism in South Africa is intrinsically linked with black political parties responsible for the liberation of blacks Africans.

3. Black trade unions

Black trade unions in South Africa and in Africa as a whole developed as a result of a lack of opportunity given to black employees as opposed to the European counterparts that rose as a result of industrialisation.⁶⁶ Trade union federations in South Africa would exclude black trade unions or avoid meddling in politics as this was seen as being dangerous. The Trade Union Council of South Africa vacillated between accepting and rejecting them.⁶⁷ The South African Congress of Trade Unions, launched in 1955, affirmed its position to stand for black trade unionism and stated that the

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Bendix *Industrial Relations in South Africa* 174.

⁶⁵ Baskin "Unions in Transition COSATU at the Dawn of Democracy" 9.

⁶⁶ Misra *Unionism: The political role of the COSATU in South Africa and what it means for Black workers* 81.

⁶⁷ Baskin *Striking Back – History of COSATU* 7.

struggle of black employees in society was intrinsically attached to their political deprivation in society.⁶⁸ As such, the federation fought for both the political as well as the labour rights of black employees. This firm stand by trade unions to be politically involved in order to achieve their objectives of protecting the interests of black employees through influencing political change and policy formulation was the watershed that marks the foundation of the tripartite alliance.

4. Suppression of black trade unionism

The involvement of trade unions in political activities of the country had its shortcomings; it made trade unions susceptible to political attack by the Nationalist Party.⁶⁹ Laws were passed that prohibited black trade unions from registering, and this meant that they could not bargain legally for their members (Industrial Council Act of 1956).⁷⁰ The Suppression of Communism Act; forbade any involvement of an organisation or person in any activities that advanced or supported communism (as a result political parties, like the ANC and the SACP, were banned and their leaders exiled or imprisoned).⁷¹ The alliance, however, did not dissolve as a result of these suppressive pieces of legislation. It is said to have taken three forms. In exile there was alliance between the ANC, SACP and South African Congress of Trade Unions (SACTU hereafter), where the SACTU was regarded as the labour arm of the ANC. The domestic relationship among the parties developed (here the trade unionists maintained a secret relationship with the ANC and SACP), and, individually, trade unionists participated subversively.⁷² The tripartite alliance survived this era of political suppression because of the unity of purpose among the parties to the alliance. They had one enemy in common which suppressed the interests of black workers and black citizens at large, viz. colonialism. The question that immediately arises from this is whether the alliance is still based on unity of purpose today. If this is the case, is the alliance achieving its objectives?

⁶⁸ *Idem* 13.

⁶⁹ Bendix *Industrial Relations in South Africa* 69.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Misra *Unionism: The political role of the COSATU in South Africa and what it means for Black workers* 152.

5. Formalisation of the tripartite alliance

The striving for unity among black trade unions in order to enhance their bargaining power gave birth the formation of the Congress of South African Trade Unions (COSATU hereafter) on the 30th of November 1985.⁷³ It is clear, that for trade unions to achieve their objectives, they needed to affiliate with organisations of like interest in order to increase their bargaining power against employers or the government.⁷⁴ Trade unions in South Africa formed COSATU for that specific reason, to ensure the easy achievement of trade union objectives. The aims and objectives of COSATU were summarised at the federation's inaugural congress as: to ensure social and economic justice for all workers; to encourage worker solidarity; to understand how the economy of the country affects workers; to formulate clear policies as to how the economy would best be structured in the interests of working class; and to strive for a decent standard of living, social security and fair conditions of work for all.⁷⁵ Trade union affiliation with other organisation parties, however, which gave birth to COSATU, is not the end of achieving the objectives of trade unions. COSATU can work well only in combination with other means aimed towards achieving the same objectives. This is because trade unions themselves do not work in a uniform environment. The changing of the environment in which trade unions work demands varied methods of achieving their objectives.

The political association by trade unions as a means of achieving their objectives is seen by COSATU's adoption of the ANC's Freedom Charter as its guiding principle during the federation's second congress in 1987.⁷⁶ The raising of concern over this is whether the Freedom Charter was enough workers' blue print to be adopted by the federation. For some a worker's' charter would have been more relevant.⁷⁷ It is not, however, the aim of this chapter to delve into this debate. The adoption of the Freedom Charter marks the genesis of the formalisation of the tripartite alliance. On 9th May 1990, the tripartite alliance was formally signed and constituted by the ANC,

⁷³ Bendix *Industrial Relations in South Africa* 207.

⁷⁴ Finnemore *Introduction to Labour Relations in South Africa* 84.

⁷⁵ Bendix *Industrial Relations in South Africa* 211.

⁷⁶ Misra *Unionism: The political role of the COSATU in South Africa and what it means for Black workers* 155.

⁷⁷ Baskin *Striking Back – History of COSATU* 94.

SACP and COSATU.⁷⁸ One of the objectives of the alliance was the conducting of decision making based on the democratic principles of consultation and consensus on issues such as policy making and the development of legislation.⁷⁹ The imperative question now asks what the benefits of trade unions joining the tripartite alliance with political parties in government as in the case of democratic South Africa are.

Trade unions affiliate with like organisations for the purpose of increasing their bargaining power.⁸⁰ Trade unions are politically involved sometimes through the instrument of the tripartite alliance and the supporting of a specific political party in order to influence political decisions.⁸¹ The tripartite alliance helps trade unions achieve their objectives: the maintenance of the economic status of its members; social welfare of employees; job regulations; job security; and individual development.⁸² This is because the laws regulating employer – employee relations are passed by the political parties in government and as such they also affect how trade unions will achieve their objectives. As such it is imperative that those trade unions be politically involved in order to influence legislative and policy formulation. The argument is advanced by some scholars that trade union involvement in politics ensures that the legal, political and economic environment is conducive to its goals and operations and that the views of trade union members are adequately represented in the political process through lobbying and other means.⁸³ The purpose of this research study is to discuss the historic, present and future influence of trade unions on policy and legislative formulation in government in South Africa through the instrument of the tripartite alliance. Hence, it is imperative, for the purpose of this research, to discuss in passing the definition of the term trade union, types and other means with which they can use to influence policy and legislative formulation.

6. Trade unions

Bendix quotes Salamon's definition of trade union as; any organisation, whose membership includes employees. It seeks to organise and represent the interests of

⁷⁸ *Idem* 432.

⁷⁹ *Ibid.*

⁸⁰ Finnemore *Introduction to Labour Relations in South Africa* 84.

⁸¹ *Idem* 85.

⁸² Bendix *Industrial Relations in South Africa* 169.

⁸³ Deakin and Morris *Labour law* 773.

employees in the workplace and the society at large, and, to be specific, it seeks to regulate their employment relationship through direct action of collective bargaining or action with the management.⁸⁴ In the light of the definition above, it is clear that trade unions in their daily activities engage with employers or their management in trying to ensure good conditions of services for their members. The definition is expansive enough to include the society. This might be elaborated by the fact that trade unions, inasmuch as, in their daily engagements, they involve employees and employers' organisations and so they do not operate in a vacuum. The laws and the environment in which trade unions operate has to be conducive for trade unions to achieve their objectives. This is interpreted by some to mean that trade unions are also required to engage in the political process to protect the interests of their members.⁸⁵

7. Types of trade unions

Trade unions may vary depending on the interests they intend to serve. Types of trade unions include craft unions, industrial unions, general unions and white – collar unions.⁸⁶ A craft union is a union which seeks to organise all employees performing a certain kind of job requiring some skills regardless of which industry they work in.⁸⁷ These kinds of unions are used by employees like technicians and artisans. Industrial unions are unions which seek to organise employees in a single industry despite the differences in their areas of work.⁸⁸ This kind of union seem to help to reduce the proliferation of trade unions at workplace. It promotes industry specific unions. General unions aim at organising all workers regardless of the industry in which they work.⁸⁹ The general unions envisage unions among workers to overcome the exploitation of workers by their employers. Ultimately white collar unions seek to organise all white collar workers across the board; these include employees like

⁸⁴ Bendix *Industrial Relations in South Africa* 162.

⁸⁵ *Ibid.*

⁸⁶ Grossett and Venter *Labour Relations in South Africa: A comprehensive guide for managers and practitioners* 76.

⁸⁷ *Ibid.*

⁸⁸ Bendix *Industrial Relations in South Africa* 166.

⁸⁹ Grosset and Venter *Labour Relations in South Africa: A comprehensive guide for managers and practitioners* 76.

nurses, doctors and teachers.⁹⁰The discussion of trade union classification has dealt with the role of trade unions representing the interest of employees in the workplace. This categorisation of trade unions into industrial unions, occupational unions and general unions has, however, weakened the trade union influence in the formulation of both legislation and policy.⁹¹ As a result of this, trade union join to form trade unions federations in order to form a united entity with more bargaining power to influence government policy and legislation.⁹² Trade union classification must not be a means of replacing their required unity beyond the workplace in the form of federations in order to deal with collective challenges affecting them as a whole. It is important that other means are utilised by trade unions to ensure that their influence in the process of government is considered.

8. Methods used by unions to achieve their objectives

Individual employees join trade unions simply because they want their interests well represented and protected; this can be material if unions achieve their objectives. The power dynamics in the workplace is among the employees or employees' representative, the employers (holder of power at workplace) and the state (in policy formulation power configuration).⁹³ This power distribution has led to the various means through which unions achieve their objectives. These means include collective bargaining (both with employer and the government), collective action, representation at company level, affiliation with other bodies, representation at local and national bodies, representation to government and employer's organisation, political involvement, benefit fund and education and social programmes.⁹⁴

9. Affiliation with other bodies

Trade unions usually affiliate with other organisations with common interests in order to increase their bargaining power with employers and the state.⁹⁵ A common example

⁹⁰ *Ibid* 77; it is not the dwelling of this research to dig into the nitty-gritty of the types of trade unions.

⁹¹ Bendix *Industrial Relations in South Africa* 167.

⁹² Grosset and Venter *Labour Relations in South Africa: A comprehensive guide for managers and practitioners* 77.

⁹³ Davies and Freedland *Kahn-Freund's Labour and the law* 18.

⁹⁴ Bendix *Industrial Relations in South Africa* 172 to 174; the purpose of this chapter is not so much to discuss the trade union's means of achieving their objective; however, it will handpick and discuss those most relevant to the author's purpose of writing.

⁹⁵ *Idem* 173.

of this is when trade unions form a federation in order to increase their bargaining power. In the case of South Africa, one of the earliest all-inclusive trade union federations was the South African Congress of Trade Unions (SACTU) launched in 1955; it was made up of the Food and Canning Workers' Union (FCWU), the African Food and Canning Workers' Union (AFCWU) and the Textile Industrial Workers' Union.⁹⁶ The importance of this is discussed in the above paragraph Union affiliation with other organisations with similar interests goes beyond the union to union affiliation and it may involve other civic organisations or political parties with similar interests as those of the union.

10. Political involvement

The operations of trade unions do not occur in a political vacuum; their objectives and ways of operation are not immune to the political actions of the government.⁹⁷ It is because of such an environment where trade unions operate that it is imperative that trade must have political power. The question that arises from this need is how trade unions can gain political power. To gain such political power trade unions either influence their members to support a political party sympathetic to their interests, contribute funds towards a political party, or action, organise a stay-away and participate in a tripartite institution.⁹⁸ The justification of political trade union involvement in South Africa was explained long back by the SACTU. It argued that the struggle of workers in the workplace was intrinsically connected with the oppression and challenges they faced in the community outside the workspace.⁹⁹ This argument underlines the difficulty which exists in separating a labour matter from a political matter. This is in line with the scholarly view that every class struggle is a political struggle; hence the struggle unions is inherently political.¹⁰⁰ The reason for this intrinsic connection between political and labour matters emanates from the fact that labour matters, like all societal issues in civilised society, are presided over by an elected political elite who are not concerned about the interest of society as a whole.

⁹⁶ Baskin *Striking Back – History of COSATU* 13

⁹⁷ Bendix *Industrial Relations in south Africa* 171.

⁹⁸ Finnemore *Introduction to Labour Relations in South Africa* 85.

⁹⁹ Baskin *Striking Back – History of COSATU* 13.

¹⁰⁰ Tucker (ed) *The Marx – Engel Reader* 481.

The main objective of this chapter has been to trace the history of the tripartite alliance and not the means by which trade unions achieve their objectives.

11. Conclusion

The history of trade unions in the tripartite alliance is reflective of the objectives of the trade unions and how trade unions seek to achieve these objectives. It is clear from the discussion above that trade unions are formed by employees to fulfil certain objectives stated above; these include aiming to improve the terms of employment, the physical environment, security of employment and having a voice in government.¹⁰¹ The forming of the trade union federation and the tripartite alliance are means used by trade unions to achieve their objectives. As such their success will be measured against the question of whether the trade unions, by engaging in such activities, are really achieving their objectives. The main objective of this discussion is to investigate the effect of the tripartite alliance on trade unions influence on their policy and legislative formulation duty. This question will be answered in the next chapter. Whether or not the tripartite alliance affects trade union policy and legislative formulation capacity such a question will be answered with due regard to the objectives of trade unions?

¹⁰¹ Bendix *Industrial Relations in South Africa* 168.

Chapter 3: The influence of trade unions in labour policy and legislative formulation

1. Introduction

The principal task of macro-economics and labour policy is to provide a stable and enabling platform upon which firms and individuals invest, work and consume.¹⁰² They also contribute towards the country's economic development, poverty eradication and the creation of employment.¹⁰³ Labour legislation is formulated for the specific purpose of establishing guidelines as to the conduct of the employer or employee in labour relationship and minimum conditions of service.¹⁰⁴ The importance of monetary policy, labour policy and labour legislation in the execution of trade union duties makes it significant for trade unions to ensure their participation in the making and formulation of policy and legislation. The purpose of this work is to investigate the trade union influence in both policy and legislative formulation in the tripartite alliance through the instrument of NEDLAC or any other institution. The starting point is from the official inception of the tripartite alliance, the adoption of RDP up to the National Development Plan (NDP) in 2011 and the accompanying labour legislation. Trade unions' primary objective is to advance the interests of its members and society at large. In the execution of their duties trade unions are affected by policy and legislation which regulates the environment in which they operate. It is, thus, important that trade unions are involved in legislative and policy formulation for the purpose of ensuring that policy and legislation favourable to their duties is passed or enacted.

2. The National Economic Development and Labour council (NEDLAC)

The trade unions use various methods to influence and shape both the development and implementation policy in South Africa, including labour law. These include: the advocating of certain policies; working through the political process of the Tripartite Alliance; mass mobilisation; and negotiation in NEDLAC.¹⁰⁵ For the purpose of this research study, policy making and the formulation of legislation will be investigated

¹⁰² National Development Plan (NDP) (2011) 120 www.gov.za.

¹⁰³ *Ibid.*

¹⁰⁴ Bendix *Industrial Relations in South Africa* 98.

¹⁰⁵ Cherry "Workers and policy – making" 144.

through the institution of NEDLAC and the political process of the tripartite alliance. Other means will be considered in passing. COSATU was an active participant in the formation of NEDLAC among the members of the tripartite alliance.¹⁰⁶ There is growing disgruntlement by trade union members towards COSATU, and about the failure of the tripartite alliance relationship to address the rights of workers. As a result new trade union federation, the South African Federation of Trade Unions (not aligned to any political party) was formed in 2017 spearheaded by Zwelinzima Vavi.¹⁰⁷ The intended purpose of the federation was to represent the interests of employees without being in a compromising position like the one created by the alliance.¹⁰⁸ It must be accepted, however, that this new federation is the fourth largest federation and COSATU remains the largest.¹⁰⁹ Hence, COSATU still has the highest number of trade union members, and, therefore, it is likely to be influential in the government process of policy and the development of legislation. In as far as the influence of trade unions is concerned, either in collective bargaining with the employer or lobbying with the state, the trade union with majority of members is most influential.¹¹⁰ Hence, COSATU is still a federation to reckon in so far as trade union influence of the government process in NEDLAC is concerned. This is, however, not an attempt to disqualify the influence the other federation can have.

NEDLAC is a tripartite institution; its goal is to promote economic growth, participation in economic decision making and social equity by bringing together representatives from organised labour, business, community and the government.¹¹¹ NEDLAC is modelled after the European social dialogue tripartite institution except that it involves the organised community in its structures.¹¹² Hence, it is possible to draw a comparison between NEDLAC as a social dialogue institution and its European

¹⁰⁶ Beckman, Buhlungu et al *Trade Unions and Party Politics: Labour Movements in Africa* 141.

¹⁰⁷ Quintal "Vavi's new trade union federation gets rolling" *Business Live* of 27 March 2017 <https://www.businesslive.co.za/bd/national/labour/2017-03-17-vavis-trade-union-federation-gets-rolling/> (accessed 25 July 2017)

¹⁰⁸ Twala et al (2012) 37(1) *Journal for Contemporary History* 178.

¹⁰⁹ Anonymous "Vavi launching new South African trade union federation" *The Citizen* (21 April 2017) <http://citizen.co.za/news/south-africa/1493702/launch-new-sa-trade-union-federation-gets-underway/> (accessed 20 July 2017)

¹¹⁰ Du Toit (2007) *ILJ* 1408.

¹¹¹ Khunou *The Influence of COSATU on the Welfare Policy debate in Democratic South Africa* 22.

¹¹² Khunou "COSATU Influence on policy making in the post apartheid South Africa: Fact and fiction" 174.

counterparts. This helps to determine whether NEDLAC is meeting its objective efficiently in accordance with the set yardsticks. The comparison will further make it possible for South Africa to take lessons from the counterparts in order to increase efficiency. In the light of this discussion it is imperative to explain the function or objectives of NEDLAC.

3. The functions of NEDLAC as an institution

The inception of NEDLAC was based on the 1990 Laboria Minute agreement signed between unions, employers and government.¹¹³ According to that agreement, decisions with an impact on labour would be considered by the employers' representative bodies and trade unions before being considered in parliament. This means that the purpose of NEDLAC which relates to the purpose of this research is that of ensuring that trade unions are in a position of influencing policy and legislation that promotes the interests of labour and its members. The purpose of NEDLAC made clear, it is now important to investigate whether trade unions successfully utilise this tripartite alliance institution to influence policy and legislation so that it is favourable to workers. This can be done through analysing the influence of trade unions on policy and legislation favourable to their members through the tripartite alliance relationship. More so, there is the question of whether that institution is the only or best possible way the trade unions could have influenced policy and legislation in the tripartite alliance.

4. The Reconstruction and Development Programme and the development of labour law

South Africa had a dual employment relations system during the Apartheid system, one which applied to white employees (which ensured that their employment rights were protected) and one which ensured the oppression and exploitation of black employees.¹¹⁴ Against this background, the Reconstruction and Development Programme (RDP hereafter) was adopted as a micro-economic policy. Now one may ask what the importance of micro-economic policy in the context of labour law is. It is argued above that the micro-economic policy provides the platform on which firms

¹¹³ Webster and Joynt (2014) 191 *Global Labour Column* 1.

¹¹⁴ Du Toit, S Godfrey etal *Labour Relations Law: Comprehensive Guide* 7.

and employees work, invest and consume.¹¹⁵ The RDP was adopted with the support of COSATU and other trade unions to reverse the ills of the apartheid government policy of racial segregation.¹¹⁶ It has two principal objectives: the reduction of poverty through wealth redistribution from the rich to the poor; and the reconstruction of the economy through the creation of employment.¹¹⁷ After the formal conclusion of the tripartite alliance on the 9th of May 1990,¹¹⁸ COSATU campaigned for the ANC to win the election and looked up to it for the fulfilment of its long – standing demand with regard to the interests of the working class.¹¹⁹ The RDP, therefore, endorsed most of workers' rights and gains which are manifest through the concomitant labour law regime emanating from the principles of RDP policy.

Trade unions operate in a political environment the objectives of which are to adopt policies and enact legislation which may affect the capacity of trade unions to execute their duties.¹²⁰ Hence trade unions are involved in the policy and formulation of legislation through the tripartite institution of NEDLAC. It was the purpose of RDP policy to abolish the dual labour relations established by the apartheid government which made a distinction between black and white workers (it established uniform sets of laws which applied equally to employees).¹²¹

The first labour legislation to be discussed in the NEDLAC was the Labour Relations Bill on 2 February 1995, and it was meant to comply with RDP policy.¹²² There were some points of contention regarding the Bill. In compliance with the Laboria Minute agreement, the Bill had to be discussed in NEDLAC before proclamation in parliament as discussed above.¹²³ The Bill did not make provision for closed shop agreements as a means of trade union security; however, agency shop agreements were allowed.¹²⁴ Trade union federations like COSATU, the National Council of Trade Unions (NACTU),

¹¹⁵ National Development Plan (NDP) (2011) 120 www.gov.za

¹¹⁶ Du Toit, Godfrey *et al* *Labour Relations Law: Comprehensive Guide* 17.

¹¹⁷ Ndlozi *Trade unionism in South Africa: A critical assessment of trade union strategy; the case of the Commercial Workers Union, 1987 – 1999* 35.

¹¹⁸ Baskin *Striking Back – History of COSATU* 94.

¹¹⁹ Du Toit, Godfrey *et al* *Labour Relations Law: Comprehensive Guide* 16.

¹²⁰ *Idem* 171.

¹²¹ *Idem* 17.

¹²² *Idem* 23.

¹²³ Webster and Joynt (2014) 191 *Global Labour Column* 1

¹²⁴ Du Toit, Godfrey *Labour Relations Law: Comprehensive Guide* 27.

and the Federation of South African Labour (FEDSAL) were strongly in favour of closed shop agreements as a means of trade union security, and they succeeded in having it included in the NEDLAC agreement.¹²⁵ The final section regarding dealing with the closed shop agreement and its regulation was influenced by trade unions in NEDLAC.¹²⁶ This Act applied equally to all employees and employers alike in regulating their relationship. The trade unions in the tripartite alliance have been effective to this point in influencing policy and the formulation of legislation. It soon became clear, however, that the tripartite institution of NEDLAC has some loopholes both structurally and technically in so far as policy making and the formulation of legislation is concerned.

5. Structural weakness of NEDLAC

The discussion of policy initiatives or legislation in NEDLAC before inception in parliament is weakened by structural weakness. Despite the noted influence above, the trade unions' influence on policy and legislation favourable to labour constituents is weakened by the positioning of the point of influence. The fact that policy or legislation affecting labour or business must be discussed in NEDLAC before final discussion in parliament shows that parliament has more power in passing policy or enacting legislation than NEDLAC has.¹²⁷ In other words, policy and legislation sent to parliament by NEDLAC enter a new round of negotiations in the absence of the trade unions.¹²⁸ At this juncture the voice of trade unions and other partners to the social dialogue are muted. In the above paragraphs, it is argued that there are several methods by which trade unions can influence policy; under such situations trade unions may revert to other means, like mass mobilisation, policy advocacy and the political process of the tripartite alliance.¹²⁹ The other methods of influencing policy, like mass mobilisation and policy advocacy, were at disposal of trade unions before the formal conclusion of the tripartite alliance in 1990. The question relative to why

¹²⁵ *Ibid.*

¹²⁶ S 26 of LRA.

¹²⁷ Khunou *The influence of COSATU on the Welfare Policy Debate in Democratic South Africa* 23.

¹²⁸ *Idem* 51.

¹²⁹ Cherry "Workers and policy – making" 144: states the ways in which trade unions use to influence policy or legislation.

the trade unions' influence over policy making and the formulation of legislation is important and it will be answered in the following discussion.

The black trade union federation struggle against apartheid policies through mass mobilisation can be dated back to 1955 by SACTU.¹³⁰ It was the first federation to recognise that to ignore the influence of government over the laws regulating labour relations would be equal to accepting racial laws which allowed employers to exploit the black employee.¹³¹ The first consolidated labour relations law excluded blacks from the definition of the employee.¹³² This means that black employees' rights were not protected by the then labour law. Black trade union federations won the struggle for the full recognition of black employees' rights only in 1995 by the amendment of the labour law.¹³³ If mass mobilisation would take that long to achieve the influence over policy making and the formulation of labour law, surely more convenient and civilised methods had to be adopted. This, however, does not necessarily mean that policy influence through mass mobilisation is outdated. This shows that an institution like NEDLAC and the tripartite political mechanism came into being to close the gap that mass mobilisation could not have solved by itself. NEDLAC also suffers from power strife from among the partners of the tripartite alliance.

6. Disunity in the Tripartite Alliance

The structure of NEDLAC, where labour, business, government and other constituencies meet and discuss proposed legislation or policy relating to labour or business, implies a joint decision-making body. It is argued by some scholars that the idea of labour, business and government operating of the same degree of joint decision making is problematic.¹³⁴ The rationale for this is that these organs operate and occupy different forms of power; business has economic power, government has political and labour has social power.¹³⁵ Although the scholar acknowledges the fact that there is an organ which can claim to be operating within only one sphere of power, she further states that each organ can only influence policy or the formulation

¹³⁰ Msira *The political role of the COSATU in South Africa and what it means for Black workers* 129.

¹³¹ *Idem* 131.

¹³² S 1 of Industrial Conciliation Act 28 of 1956.

¹³³ S 1 of the LRA.

¹³⁴ Khunou *The influence of COSATU on the Welfare Policy debate in Democratic South Africa* 50.

¹³⁵ *Idem* 51.

of legislation by only acknowledging its form of power.¹³⁶ In the light of this argument, labour can influence policy by appealing to its social power. This implies that the present day trade union failure to influence labour policy and legislation favourable to workers is based on its failure to appeal to social power. The history of trade unions given above and the argument raised in this chapter, however, shows that the trade unions appeal to social power were an influence in policy making and the formulation of legislation during the apartheid era but that it was not an end in itself. It had some weaknesses; it created a hostile environment between labour and government.

It is stated above that trade unions in South Africa have various ways of engaging with the government, one of which is working through the political process of the tripartite alliance.¹³⁷ The trade union members of the tripartite alliance are also involved in the process in order to ensure that their interests are given heed in the political process. One way trade unions ensure the protection of their interests by political involvement is to send some members from trade unions into parliament.¹³⁸ The motive for this strategy by trade unions was create a mechanism for double checking that their interests were not sidelined at the pinnacle of policy making because trade unions realised that parliament was the legitimate institution for policy making or formulation of legislation. This could work even in a situation where policy or legislation is introduced directly into parliament by bypassing NEDLAC. It is imperative to determine whether such sending of trade unionist to parliament has worked in favour of the interests of trade unions and labour.

The trade union federation (COSATU) in the tripartite alliance with the ANC had to send twenty members into parliament to ensure that the interests of labour are protected.¹³⁹ As argued above, the aim of this political process by trade unions was to guard the interest of labour as agreed in NEDLAC or, in cases of NEDLAC being bypassed, trade unions needed to be able to represent the labour constituency in policy and labour legislation with a direct impact on the interests of workers. The trade union federation was well intentioned in doing this but it lacked strategy to capitalise

¹³⁶ *Ibid.*

¹³⁷ Cherry "Workers and policy – making" 144.

¹³⁸ Misra *The political role of the COSATU in South Africa and what it means for Black workers* 181

¹³⁹ Beckman, Buhlungu et al *Trade Unions and Party Politics: labour Movements in Africa* 141.

ton it to influence policy or legislation formulation. Trade unionist who made it to be members of parliament did so as members of the ANC and as such they owed allegiance to the ANC rather than to the labour constituency.¹⁴⁰ The twenty never met as a caucus nor were approached by the federation to act as a collective to discuss how they were going to advance the interests of labour.¹⁴¹ There were also no defined roles to the twenty going to parliament.¹⁴² It is such a lack of strategy that made trade unions fail to influence policy or legislation related to labour meaningfully in parliament. It seems that the intended purpose of sending twenty to parliament to defend the interests of labour constituency was turned to career channel for becoming career politicians. As such, the sending of trade unionist to parliament is said to have not benefited COSATU.¹⁴³

It was possible for trade unions to have arranged that their members who went into parliament be experts needed to shape labour policy or legislation in the Labour Committee of South African parliament. As argued above, however, the trade unionists who went into parliament never had a strategy for influencing legislation or policy directing impacting on the labour constituency. As such, it is argued by some that South African parliamentary committees suffered from a lack of expertise in dealing with the bills referred to them.¹⁴⁴ The influence of trade unions in other countries with regard to legislation and policy directly impacting on labour constituency will be discussed. That discussion must seek to provide lessons for South Africa.

7. The adoption of neoliberal macroeconomic policies

The ANC adopted Growth Employment and Redistribution (GEAR hereafter) in 1996 without prior consultation with trade Union federations as partners in the tripartite alliance.¹⁴⁵ This was a radical departure not only from the principle of consultation but also from a major policy adopted with the support of trade unions and other partners of the tripartite alliance, the RDP.¹⁴⁶ GEAR entails a neoliberal policy which includes

¹⁴⁰ Misra *The political role of the COSATU in South Africa and what it means for Black workers* 245.

¹⁴¹ *Idem* 247.

¹⁴² *Idem* 249.

¹⁴³ Beckman, Buhlungu *Trade Unions and Party Politics: Labour Movements in Africa* 141.

¹⁴⁴ Obiyo *Legislative Committees and deliberative democracy: the Committee system of the South African Parliament with specific reference to the standing committees on Public accounts* 76.

¹⁴⁵ Misra *The political role of the COSATU in South Africa and what it means for Black workers* 168.

¹⁴⁶ *Idem* 167.

reduced government spending, privatisation and labour market flexibility among other things.¹⁴⁷ The bypassing of NEDLAC by the ANC by declaring GEAR without its being debated by other members of the tripartite alliance calls the purpose of NEDLAC and the tripartite alliance into question. It is imperative to pose the question of why NEDLAC was formed as a tripartite alliance institution. In answering this question, the formation of the tripartite alliance has to be revisited. The South African trade unions made significant inroads into the apartheid government between late 1980s and early 1990s.¹⁴⁸ Trade union federations influenced the restructuring of the National Manpower Commission (NMC) and the establishment of the National Economic Forum (NEF) and these became the forerunners of NEDLAC.¹⁴⁹ In February 1995, the NMC and NEF were integrated into NEDLAC by Act of Parliament 35 of 1994.¹⁵⁰ One of the objectives of NEDLAC is to consider and debate social and macroeconomic policy and labour legislation before its being introduced into parliament.¹⁵¹ This consultative style engraved in the NEDLAC relates in a way to the principles of the tripartite alliance between the ANC, COSATU and SACP.

The tripartite alliance as formally concluded in 1990 between the ANC, COSATU and SACP, has guiding principles. One of the most relevant principles relative to the question of the research dealt with in this chapter is that the alliance will be based on democratic principles and practices of consultation and consensus as the basis for decision making.¹⁵² NEDLAC as a statutory tripartite institution which came later than the tripartite alliance was created to fulfil the goals of the tripartite alliance of a consultative way of passing policy and the formulation of legislation.

8. The impact of imposition GEAR on labour law development

Growth Employment and Redistribution Policy as argued above entailed a neoliberal policy whose objectives include reduced government spending, privatisation and labour market flexibility.¹⁵³ This policy had some impact on labour. The reduced

¹⁴⁷ Khunou *The Influence of COSATU on Welfare Policy debate in Democratic South Africa* 18.

¹⁴⁸ Gostner and Joffe (1998) 2(1) *African Journal Online* at 131.

¹⁴⁹ *Idem* 132.

¹⁵⁰ Bendix *Industrial Relations in South Africa* 105.

¹⁵¹ S 5 of the NEDLACA.

¹⁵² Baskin *Striking Back – History of COSATU* 432.

¹⁵³ Khunou *The Influence of COSATU on Welfare Policy debate in Democratic South Africa* 18.

government spending means less spending on public services and public goods. There is direct relationship between employees' access to public services and their wages. It is argued by some that access to public goods complements the direct wage money paid to workers and, as such, contributes to wealth redistribution.¹⁵⁴ The fiscal discipline which comes by the declaration of GEAR runs contrary to the idea of complementing employees' wages through affordable access to public goods.

The concept of flexibility is not defined in GEAR. A labour market flexibility survey shows that employers moved towards the greater use of casual workers, contract labour, subcontracting and agency workers.¹⁵⁵ This resulted in a loss of jobs, deteriorated job security, long working hours, and dangerous and unhealthy conditions of work.¹⁵⁶ It is, therefore, important to show up GEAR's objective of creating employment; by revealing that the jobs that were created were of poor quality and temporary in nature. Some argue that GEAR did not reduce unemployment in South Africa.¹⁵⁷ The concept of flexibility as an enhancer to investment and job creation, therefore, must be balanced by job security. This must bring about a kind of regulated flexibility, the reason being that, in as much as flexibility is a necessary for conditions for investment and job creation, job security and the protection of employees is an intrinsic part of creation of jobs. Reverting to the subject of the discussion in this chapter, it might be correct to say that if GEAR had been adopted through proper negotiations with other parties to the tripartite alliance, like labour and other parties to the tripartite institute of NEDLAC, a compromise could have been achieved. Since both parties could have fought for a better position for their constituents and perhaps a regulated flexibility could have been achieved.

South Africa's current macroeconomic policy is the National Development Plan (NDP hereafter). As argued above, the macroeconomic policy has a direct impact on labour law because it creates a platform on which firms and individuals invest, work and consume.¹⁵⁸ The NDP is projected to reduce unemployment to less than 14% by 2020

¹⁵⁴ *Idem* 47.

¹⁵⁵ Mokate "Macro – Economic Context" 64.

¹⁵⁶ Khunou *The Influence of COSATU on Welfare Policy debate in Democratic South Africa* 3.

¹⁵⁷ Kim *Why corporatism failed: Comparing South Africa and South Korea* 112.

¹⁵⁸ National Development Plan (NDP) (2011) 120 www.gov.za

and create 1 million jobs.¹⁵⁹ This was to be achieved through infra-structure development.¹⁶⁰ COSATU was against this policy in that it proposes the creation of jobs of low quality, many of which are casual jobs characterised by low wages and many of which may not materialise.¹⁶¹ The South African government failed to follow the National Growth Path as supported by COSATU as a member of the tripartite alliance.¹⁶² The trickle down mode of the distribution of wealth animated by GEAR is still at the centre of the NDP.¹⁶³ The implication of this is that wealth will still be concentrated in the hands of the few until the life span of the NDP comes to an end. These macroeconomic policies came with legislation seeking to promote and advance their objectives.

9. Labour legislation regime during the neoliberal macroeconomic policies

As argued above, flexibility as inferred from GEAR entailed a situation that allowed employers the leeway to “informalise” the working conditions in order to deprive the employees of the protection offered by labour law.¹⁶⁴ The protection of employees in labour law provided a reason for employers to rely on outsourcing to reduce the cost incurred by standard employment contracts.¹⁶⁵ There is an inequality of treatment between labour broker employees and that of the client.¹⁶⁶ The LRA of 1995 allowed the return of labour broking as a means of market flexibility.¹⁶⁷ In terms of this section of the Act, employees placed with the client are employees of the labour broker if he or she has assumed responsibility for remunerating them. The unintended consequence of such flexibility is that the client could dismiss the placed employees without any challenges on the basis of unfair dismissal since they were not his employees.¹⁶⁸

¹⁵⁹ *Idem* 92.

¹⁶⁰ *Idem* 95.

¹⁶¹ COSATU “Mangaung and the second phase of transition discussion document for COSATU” 2013 www.cosatu.org.za (accessed 9 September 2017) 20.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ Niekerk, Smit et al Law at work 63.

¹⁶⁵ Benjamin “South African Labour Law: A twenty – year of assessment” 30.

¹⁶⁶ *Idem* 31

¹⁶⁷ S 198 of LRA; the section stated that the employees placed with the client are employees of the agency.

¹⁶⁸ Du Toit, Godfrey et al *Labour Relations Law: Comprehensive Guide* 42.

COSATU was advocating for a ban on labour broking and it argued that despite a regulation on it, it was prone to abuse.¹⁶⁹ Organised employers and business was lobbying for the continuation of labour broking but with improved regulation¹⁷⁰The government, however, was not keen on an outright ban of labour broking for its likely conflict with s 22 of the constitution.¹⁷¹ Hence, the government chose to regulate labour broking. The 2014 Amendment brought about regulated flexibility with respect to labour broking. It says that an employee placed with the client for more than three months is deemed to be the employee of the client for the purpose of LRA.¹⁷² This had a significant effect of protecting placed employees from unfair dismissal and unfair discrimination by the client. It seems, however, that the amendment s 198A took it too far. It would have been enough if the amendment only created joint and several liabilities between the labour broker and the client. This is because placed employees were only unprotected in as far as unfair dismissal is concerned.

The other consequence of flexibility brought about by GEAR is the fact that employers could easily dismiss employees for the good of the wellbeing of business. It was argued that such flexibility would promote business investment.¹⁷³ Employees could easily be dismissed as a result.¹⁷⁴ Trade unions were fighting not only for the banning of labour broking but also for the security of their jobs. Prior to the Labour Relations Act amendment of 2014, the dismissal of employees was defined as a termination of employment contract at the initiative of the employer, hence protection against unfair dismissal applied only to employees employed in terms of common law contract of employment.¹⁷⁵ The effect of this definition is that employees who qualified as employees in terms of the Act¹⁷⁶ could not be protected against unfair dismissal (in terms of s 186(1)), simply because they were not employed in terms of common law

¹⁶⁹ *Ibid.*

¹⁷⁰ Van Eck 2010 (13) 2 *PER* 107 at 107.

¹⁷¹ S 22 of the Constitution, says that everyone has a right to choose a trade or profession of their own which may be regulated by the law.

¹⁷² S 198A (3) (b) of LRA.

¹⁷³ Ndlozi *Trade unionism in South Africa: A critical assessment of trade union strategy; the case of the Commercial Workers Union, 1987 – 1999* 40.

¹⁷⁴ Khunou *The Influence of COSATU on Welfare Policy debate in Democratic South Africa* 3.

¹⁷⁵ Van Niekerk *et al* *Law at Work* 223.

¹⁷⁶ S 213 of LRA, defines an employee as any person excluding an independent contractor who works for another person or for the state and who receives remuneration and any other person who in any manner assists in carrying on or conducting the business of an employer.

contract of employment.¹⁷⁷The section was amended in 2014 to include the termination of employment by the employer (as opposed to termination of the employment contract).¹⁷⁸ In terms of this amendment the unfair dismissal regime was expanded to protect all forms of employees as defined in s 213 of the Act. It brought about harmony between s 186 and s 213 of the Act. This shows that trade unions are sometimes capable of influencing both legislation and policy with a direct impact on labour through constant engagement with the government.

10. Collective bargaining

Trade unions engage with the employer in collective bargaining simply as a means of joint regulation of employment relations.¹⁷⁹ It is clear from that statement that collective bargaining can be a means for improving labour market policy and the development of legislation. Collective bargaining entails a process by which employers and an organised group of employees seek to reconcile their conflicting goals through mutual accommodation.¹⁸⁰ The objectives of collective bargaining are stated to be: settling the working conditions and other matters of mutual interest; the creation of substantive rules at the labour market; ensuring participation of employees in managerial decision making; and the resolution of employer-employee disputes.¹⁸¹ Vettori quotes the conception of Bamber and Sheldon of collective bargaining as existing in both a narrow and broad view.¹⁸² The narrow view of collective bargaining entails the bipartite discussion between the employees' organisation and the employer.¹⁸³ The broad view of collective bargaining includes both the bipartite and tripartite negotiations (this means that a state can be included as the third part; this is likely to happen when collective bargaining happens at national level at NEDLAC).¹⁸⁴ In South Africa the right to bargain collectively is entrenched in the constitution.¹⁸⁵ The dominant means of participation of employees in South Africa is collective

¹⁷⁷ Van Niekerk *et al Law at Work* 223.

¹⁷⁸ *Ibid.*

¹⁷⁹ Deakin and Morris *Labour Law* 871.

¹⁸⁰ Grogan *Workplace Law* 404.

¹⁸¹ Vettori *Alternative means to regulate the employment relationship in the changing world of work* 103.

¹⁸² *Idem* 104.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ S 23(5) of the Constitution.

bargaining.¹⁸⁶ The Act promotes voluntary¹⁸⁷ and sectoral collective bargaining.¹⁸⁸ Collective bargaining in South Africa does not empower trade unions or employees with prerogatives to make decisions with regard to the day today running of a business or production.¹⁸⁹ It is said that such power lies with the management or in joint decision making.¹⁹⁰ LRA aims at promoting the employees' participation in the workplace as one of its main objectives.¹⁹¹

Workplace forums are introduced in the LRA in order to ensure employee workplace participation in things that do not fall under collective bargaining.¹⁹² The purpose of this was to supplement the collective bargaining system since it does not ensure the full participation of employees in the day-to-day running of a business, like job grading, dismissal based on operational requirements as stated in s 84 of the Act. The trade unions in South Africa, however, did not support the workplace forums; they regarded them as being a means to blunt the class struggle as workplace forums will be co-opted by the management.¹⁹³ As such workplace forums failed to argument collective bargaining by trade unions as anticipated by the drafters of the Act.¹⁹⁴ The failure to use workplace forums to complement collective agreements is in a way attributable to the Act, which requires majority trade unions to be the ones responsible for the formation of workplace forums.¹⁹⁵ Workplace forums were an attempt to move away from the adversarial system of collective bargaining.¹⁹⁶ Trade unions are said to have intentionally prevented the setting up of workplace forums or did not attempt to initiate their setting up.¹⁹⁷ As such there is been poor employee participation in the

¹⁸⁶ Botha (2015) 18(5) *PELJ* 1815.

¹⁸⁷ *SANDU v Minister of Defence* (2007) 9 BLLR 785 (CC) par 55, the court confirmed that LRA imposes no duty to bargain and collective bargaining remains voluntary. However the employees have at their disposal a strike to compel the employer to the bargaining table.

¹⁸⁸ S 23, 27 and 28 of LRA, promotes the collective agreements made at sectoral level to an extent that shows that the LRA promotes sectoral level collective bargaining.

¹⁸⁹ Botha (2015) 18(5) *PELJ* 1816.

¹⁹⁰ *Ibid.*

¹⁹¹ S 1(d) (ii) of LRA.

¹⁹² S 84 of LRA, list matters that fall under the jurisdiction of workplace forums.

¹⁹³ Botha (2015) 18(5) *PELJ* 1818.

¹⁹⁴ *Ibid.*: as such South African worker's participation in workplace forums is so poor because trade unions did not support the formation of workplace forums.

¹⁹⁵ S 80 of LRA gives the prerogative to representative to apply for the establishment of workplace forum. This also limited the likelihood of establishment of workplace forum owing to size requirement.

¹⁹⁶ Botha (2015) 18(5) *PELJ* 1828.

¹⁹⁷ *Ibid.*

workplace matters. Since workplace forums failed to ensure worker's' participation as was one of its primary purpose it is imperative to ask whether trade unions were successful with regard issues falling within the jurisdiction of collective bargaining like minimum wages.

11. Minimum wages in South Africa

The LRA provided that the minimum wage should be fixed at a sectoral level by majority trade unions through a bipartite collective agreement concluded with the employer association in a bargaining council and then be extended to the whole country by the minister.¹⁹⁸ In terms of the Basic Condition of Employment Act,¹⁹⁹ the minister must set minimum wages covering vulnerable employees in sectors without bargaining councils through sectoral determination on the advice of the Employment Condition Commission.²⁰⁰ COSATU, however, voiced concerns over the failure of the current institution to correct wage disparities through sectoral determination in post-apartheid South Africa.²⁰¹ South Africa inherited such a wage-fixing system from the apartheid government (fixing wages through sectoral determination dates back to apartheid government).²⁰² It is clear that wage disparities in South Africa between whites and blacks was created by the institution of racial segregation like the Wages Act that aimed at protecting the interests of white employees at the expense of blacks as well as the bargaining councils whose interest in wage fixing was protecting only whites (trade unions of that era represented only the white employees as discussed above in the history section).²⁰³ Trade unions were in support of the inheritance and redesign of apartheid wages fixing in 1994 hoping that such a redesign would bring about change and likely better minimum wage through collective bargaining on a sectoral basis.²⁰⁴ The call for statutory minimum wage in South Africa is facing

¹⁹⁸ Seekings "Trade unions and the redesign of South Africa's minimum wage-setting institution in 1990s" 2. See also s 32 of LRA in as far as the extension of collective agreements made between the trade unions and employers' association at the bargaining council.

¹⁹⁹ 75 of 1997 (BCEA hereafter).

²⁰⁰ S 55 (4) (a) of BCEA.

²⁰¹ Seekings "Trade unions and the redesign of South Africa's minimum wage-setting institution in 1990s" 2.

²⁰² *Idem* 7.

²⁰³ *Idem* 10; the important question evoked is that, whether the same institution that created such disparity can end it

²⁰⁴ *Idem* 30; the question of why trade unions make such sudden changes and demand statutory minimum wage is immediately asked. It is suggested that by seeking that maybe trade unions

opposition from business and government because of the fear of causing the economic constraint and business failure.²⁰⁵ In Germany, trade unions accepted a move to a statutory minimum wage owing to waning trade union power to bargain collectively.²⁰⁶ The German situation will be considered in full in the following chapter.

12. Conclusion

The formation of the tripartite alliance between the ANC, COSATU and SACP had its unique purpose for each of the partners. Trade unions in the tripartite alliance wanted to protect the interests of labour in such an alliance, such as fighting for labour rights against the apartheid government. After the advent of the democratic government under the leadership of the ANC, COSATU remained in the alliance because trade unions realised that labour interest can be affected by political decision. This can include policy making and formulation of legislation in parliament. Trade unions did seek to negotiate policies and legislations in NEDLAC; where legislation and policy affecting labour and business are first introduced for consensus before final discussion in parliament. The discussion above, however, shows that the government sometimes bypasses NEDLAC and passes policy and make laws without consulting other partners. More so, trade unionists in parliament have failed to influence policy or legislation in the interest of labour. In the face of such unintended failure, it is imperative for trade unions party to the tripartite alliance to work out a viable strategy to influence policy and legislation as these can have a direct impact on their daily duties. The following chapter will work on that by using the comparative approach, using other countries as an example of what works in so far as trade unions would want to influence policy or legislation.

realised their diminishing membership and the concomitant waning power to collectively bargain.

²⁰⁵ *Idem* 11.

²⁰⁶ Weiss and Schmidt *Labour law and industrial relations in Germany* 9.

Chapter 4: The Tripartite Alliance and lessons from other jurisdictions

1. Introduction

It is the purpose of this chapter to explore the tripartite relationships between government and trade unions in other countries. It seeks to examine how the relationship ensures that trade unions fulfil their duties by protecting the labour rights of the working class and society at large. The chapter must make a comparison between the South African situation and other jurisdictions. The comparative method of this work seeks to get deeper into the operations of trade unions in their attempt to influence policy or legislation favourable to the labour constituency. It goes into investigating how trade unions in other countries engage with the government to bring benefit to their members. This comparison is helpful as it helps this research to come up with better explanations and better practice from which South Africa can learn.²⁰⁷ The trade unions in Ghana choose non-association with political parties.²⁰⁸ The success and challenges of such a decision by the Trade Union Congress of Ghana (TUC) will be discussed. Success in the context of this discussion reveals that trade unions were able to use such disengagement to the best interest of the working class through influencing policy and legislation adopted by the government. The relevance of Ghanaian trade unions tripartite alliance to the South African context is similar an historical point of view. In Germany there is no formal alliance or formal tripartite institution between trade unions and political parties in government.²⁰⁹ The means by which German trade unions influence policy and the formulation of legislation will be discussed.

2. Tripartite relationship between trade unions and political parties in Ghana

To do justice to Ghana's trade unions tripartite relations with the political parties, such a relationship must be placed in its historical context. In Ghana the trade unions joined alliance with the Convention People's Party (CPP) to overcome the British

²⁰⁷ Hyman 2001 *EJIR* 7(2) 204.

²⁰⁸ Kwetey and Dorkernoo "Disengagement from party politics: Achievements and challenges for the Ghana Trade Union Congress" 39.

²⁰⁹ Weiss "Unions and politics: A Conceptual suggestion from a German perspective" 5.

colonialists.²¹⁰ It is clear that before the independence of Ghana in 1957 there was a unity of purpose between trade unions and CPP because the trade unions wanted the protection of black workers' rights from the colonial masters. In the same light, the CPP wanted the general independence and rights of all of Ghanaians. After independence the alliance between trade unions and CPP was questioned and it was wondered whether such an alliance would allow trade unions to influence socio-economic policy and legislation in the interests of employees, job seekers and community at large. This question is especially relevant to the purpose of this research. The CPP consolidated authority to an extent that the TUC no longer had a voice in so far as socio-economic policy making and the formulation of legislation was concerned, and they resorted to striking.²¹¹ The TUC's tripartite relationship with the political parties was ended by the coup of 1966.²¹² This history of the tripartite relationship between the TUC and CPP in Ghana is relevant to this research because South African political trade unionism was also influenced by colonialism. The historical relationship between the two countries must make the comparison between the two countries more logical and convincing.

3. Trade unions disengagement from party politics

The Ghanaian TUC disengagement from its political alliance with political parties or government must not be confused with a withdrawal from political unionism.²¹³ Political unionism is when trade unions realise that their duties go beyond bread and butter issues. This involves being politically involved in policy making and the formulation of legislation to ensure that an environment for protecting the interests of employees, job seekers and the community at large is created.²¹⁴ As such, the TUC withdrew from the political alliance with the government or political parties and yet continued to seek ways to influence socio-economic policy and the formulation of legislation with a direct impact on the labour constituency. This shows that the TUC went into the alliance in the first place aiming to achieve the same objective of

²¹⁰ Misra *The political role of the COSATU in South Africa and what it means for Black workers* 88.

²¹¹ *Idem* 89.

²¹² Akwetey and Dorkenoo "Disengagement from party politics: Achievements and challenges for the Ghana Trade Union Congress" 39.

²¹³ Misra *The political role of the COSATU in South Africa and what it means for Black workers* 90.

²¹⁴ Bendix *Industrial Relations in South Africa* 171.

influencing socio-economic policy and the formulation of legislation with a direct impact on labour interests. The issue that emerges from the above discussion is the reason for disengagement.

4. Reasons for disengagement

The main objective of trade unions being in an alliance with a political party or government is for them to be able to influence socio-economic policy and legislation impacting on the interests of labour.²¹⁵ The TUC realised that, after the independence of Ghana, it was no longer heeded in so far as the adoption of social-economic policy and legislation was concerned.²¹⁶ As such, the alliance was no longer beneficial to the objectives of the trade unions. In other words, trade unions wanted to position themselves within a position of influence in so far as influencing socio-economic policy and the formulation of legislation is concerned. The new governments that came in passed laws that also forbade any form of alliance between trade unions and political parties.²¹⁷ This meant that, in terms of the law, the formal alliance between trade unions and the government or political parties is now illegal in Ghana. The other reason for disengagement by trade unions from the alliance with the government or political parties was the collapse of the CPP. The alliance had historical roots and so the collapse of the CPP in 1966 created sensitivities with regard to trust by the new military regime of the alliance with such trade unions. This evokes the question that asks whether the alliance with ANC will survive the collapse of an ANC government. This question serves to show that trade unions must work on developing strategies of how best they can influence the political process (like adoption of a macro-economic policy or the development of legislation) beyond the tripartite alliance. That will ensure their survival beyond alliance relations. Ghanaian trade unions have since lost the influence on policy or formulation of legislation that they had during the time of the CPP. If their motive for joining the alliance was, therefore, to advance the interests of labour, they could have come to the point of withdrawal (even during the time of CCP) because they were no longer achieving their mandate.

²¹⁵ *Ibid.*

²¹⁶ Akwetey and Dorkenoo "Disengagement from party politics: Achievements and challenges for the Ghana Trade Union Congress" 42.

²¹⁷ S 82 of the Labour Act 651 of 2003.

5. Other ways of influencing policy or legislation outside the alliance

The trade unions in Ghana, after disengaging from their political alliance with the government or political parties, it took a consensual approach to policy and the formulation of legislation.²¹⁸ The trade unions placed themselves in the position of a professional organisation representing and championing the interests of the labour constituency and influencing macro-economic policy.²¹⁹ In order to achieve this role the trade unions started recruiting young graduates from universities and giving them further specialised training specific for certain departments.²²⁰ The TUC in Ghana turned its Policy and Research Department into an independent Labour and Policy Research Institute capable of doing independent research assisting in the formulation of national socio-economic policy and the formulation of labour legislation.²²¹ The development of research and specialisation in policy making equipped the TUC to deal with the government in so far as policy and legislation making is concerned. It is because of this that it is held by some that the lack of expertise limits the value an organisation can add to the process.²²² Whether the establishing of a research department by TUC gave it leverage in macro-economic policy making and the formulation of legislation impacting on the interests of workers will be discussed in the following paragraphs.

6. The achievements of the TUC after disengagement

The TUC managed to get all political actors in policy and legislative formulation: government, political parties, business (employers) and international financial institutions, to accept it as being an autonomous organisation.²²³ As such, the TUC was allowed to attend the National Tripartite Committee which comprised of labour, the employers and the government periodically to address issues affecting the world of work.²²⁴ This means that it was recognised as an active member of social dialogue.

²¹⁸ Akwey and Dorkenoo "Disengagement from party politics: Achievements and challenges for the Ghana Trade Union Congress" 48.

²¹⁹ *Ibid.*

²²⁰ Kwasi Adu – Amankwah "A realistic Income and pension policy in Ghana: The role of Ghana TUC" 23.

²²¹ *Ibid.*

²²² International Labour Organisation 3 www.ilo.org (accessed on 17 September 2017).

²²³ Akwey and Dorkenoo "Disengagement from party politics: Achievements and challenges for the Ghana Trade Union Congress" 50.

²²⁴ *Idem* 49.

It was involved in fixing daily minimum wages through engagement with other partners of social dialogue.²²⁵ In building its institutional capacity the TUC was closely associated with the University of Cape Coast and Nkwame Nkrumah University of Science and Technology; two academic programmes, namely a diploma in labour studies and a postgraduate certificate in labour policy studies were introduced.²²⁶ With such capacity emanating from the department of research, the trade unions were able to push the government to place employment on its agenda by the adoption of the policy of National Employment Programme.²²⁷ The success of the TUC in this regard must be measured relative to the challenges it faced.

7. Challenges faced by TUC after disengagement

The trade unions outside of the alliance with political parties or government had only marginal influence on macro-economic policy. Trade unions were unable to alter the neo-liberal policies of the government. The government adopted the Economic Recovery Programme (ERP) in 1983.²²⁸ This macro-economic policy had these elements: reductions of public expenditure; monetary tightness and restraint of domestic credit; retrenchment was implemented to reduce government expenditure; and remove surplus labour.²²⁹ The reduction of public expenditure in terms of service delivery and social benefits had a direct effect on the lives of the workers or working class. It was argued above that the provisions of affordable public goods and services complements the direct wage paid to the workers in particular and redistributes wealth to the working class and the poor community.²³⁰ This argument by Khunou was made with reference to the South African neo-liberal policy context, but it is equally applicable to the context in Ghana. The ERP was broad and this research will stick only to elements with a direct impact on labour interests.

The retrenchment of workers was one of the elements of the ERP in order to reduce expenditure and maximise profits.²³¹ Ghana's labour legislation of the time controlled

²²⁵ *Idem* 52.

²²⁶ *Idem* 52.

²²⁷ *Idem* 53.

²²⁸ Goekel and Vormawor "Fes trade unions country reports: the case of Ghana" 7.

²²⁹ *Idem* 8.

²³⁰ Khunou (note 19 above) at 47.

²³¹ Rosa Luxemburg Foundation "Trade unions and industrial relations in Ghana" 9.

retrenchment so poorly.²³² As such, formal sector employees who numbered 333 000 in 1960 were reduced to 186 000 in 1991. This was so despite the increase in job seekers from 2.7 million in 1960 to 5.7 million in 1991.²³³ The trade unions failed to protect the interests of the working class from the neo-liberal government policies in this context. This shows that their influence on government macro-economic policies was still marginal even after disengagement from the alliance. With time, however, the labour legislation was amended to protect employees from this kind of retrenchment. The new labour Act protects employees from this kind of retrenchment by creating strict requirements to be complied with before the employer can retrench employees.²³⁴

The other element of ERP with a direct impact on employees was the informalisation of the workplace. The operation of private employment agencies was authorised by the Labour Code of 2003 despite the protests of trade unions.²³⁵ The Labour Act stated that the public and private employment agencies could operate as employment agencies if registered and licensed as such.²³⁶ The intended purpose of outsourcing was to increase the profitability and competitiveness of business to the detriment of the rights of the employees themselves. Outsourced employees are paid at a relatively lower rate than the permanent employees.²³⁷ These workers have less job security than that offered by the Labour Act and the majority of agency workers are effectively employees without a legal employer. The question of who their employer is not addressed in the Act. The employment agency is not their employer by the law, but neither is the client.²³⁸ Their licensing is about placing the employees with the client and not employing them, and the same goes for the client.²³⁹ This means that these employees are easy to dismiss without facing the consequences of unfair dismissal as stipulated in the act.²⁴⁰ The TUC's failure to influence policy and legislation in this instance has impacted negatively on their duty to advance the interests of workers.

²³² Industrial Relations Act 299 of 1965.

²³³ Gockel and Vormawor "Fes trade unions country reports: the case of Ghana" 9.

²³⁴ S65 of the Labour Act 651 of 2003 (LA).

²³⁵ Anyidoho and Amphofo (2017) 4(2) *Contemporary Journal of Africa Studies* 72.

²³⁶ S 7 of the LA.

²³⁷ Anyidoho and Amphofo (2017) 4(2) *Contemporary Journal of Africa Studies* 73.

²³⁸ *Idem* 79.

²³⁹ *Ibid.*

²⁴⁰ S 64 of the LA.

The question now is that, if trade unions fail to influence policy and the formulation of legislation in and outside the tripartite alliance, is the problem with the alliance or with the poor expert utilisation of such a relationship.

8. Did disengagement by TUC make it more influential than South African Counterpart?

The TUC was side-lined in Ghana when the government adopted the ERP as a policy.²⁴¹ In this instance the trade union federation was sidelined in the tripartite institution (Tripartite Committee) by not being consulted. In other instances some legislation will be adopted in parliament even after consultation through a political majority vote to the detriment of employees' rights. The 2003 adoption and inaction of the National Health Insurance Act is a testimony to this. This insurance scheme was to be deducted from employees' salaries to the level of 2.5% of the 17.5 % of social security contribution.²⁴² Despite the working class and the TUC voicing concern against this, the legislation was passed with a political majority in parliament.²⁴³ This proves that trade union federations can still face some difficult influencing policy even after disengagement. The same scenario of a trade union federation being side-lined in the adoption of policy or legislation is discussed above with respect of South Africa. This is evidenced by the government's adoption of GEAR without prior consultation with the trade unions and other members in the NEDLAC.²⁴⁴ The same would go for the adoption of legislation that could impact on labour being enacted on the basis of a parliamentary majority despite opposition from trade unions. The question now is what is done by trade unions in more developed countries to ensure more influence on policy and legislation adopted by the government.

9. Trade unions in Germany

The discussion on trade unions in Germany and how they achieve their objectives cannot be done without an attempt of shed light on their historical context. During the Weimer Republic, extending from 1919 to 1933, the German Trade Union Federation (DGB) and the party, the Social Democratic Party (SPD) were closely

²⁴¹ Gockel and Vormawor "Fes trade unions country reports: the case of Ghana" 7.

²⁴² S 78 (2) of the National Health Insurance Act 650 of 2003.

²⁴³ Akwetey and Dorkenoo "Disengagement from party politics: Achievements and challenges for the Ghana Trade Union Congress" 56.

²⁴⁴ Misra *The political role of the COSATU in South Africa and what it means for Black workers* 168.

connected.²⁴⁵ These two had a form of alliance in terms of which trade unions would influence policy or legislation adopted by the government. The coming of Hitler to power in January 1933 saw the trade unions being banned in Germany and workers being controlled by the state.²⁴⁶ During the time between the two world wars Germany experienced disastrous inflation, and dictatorial rule, workers were treated like servants and employers were not given room to be competitive entrepreneurs.²⁴⁷ It is this background that shaped the current shape of trade union influence in policy and legislative formulation in Germany. The DGB set a fixed objective in post war Germany; redistribution of essential control over German economy and the political system.²⁴⁸

It is said that the trade union federation had two options, either following the Weimar Republic style of alliance with political parties or American style of business unionism of unions (form of unionism which sells its membership employees and those who do not join are enemies and takes responsibilities only with regard to its members).²⁴⁹ Germany rejected both the American and the Weimar republic models for German trade unionism. The Weimar Republic model was rejected because of the Russian experience of state ownership of the means of production and Hitler's experience of the centralisation of authority in the hands of state.²⁵⁰ The German trade unions followed the option of unions independent of political parties; this is more akin to the American model.²⁵¹ The German trade unions could not have followed the American model because of its unique circumstances. It has work councils doing the daily services for the workers and the state above them giving legislative and judiciary protection to workers.²⁵² The trade unions were faced with the need for social reform.²⁵³

It is clear from the above discussion that in Germany there was separation of policy issues; labour market policy was influenced by trade unions through the instrument

²⁴⁵ Kerr (1952) 68(4) *The Quarterly Journal of economics* 543.

²⁴⁶ Trueman Trade unions and Nazi Germany (2016) www.historylearningsite.co.uk (accessed 02 October 2017).

²⁴⁷ Kerr (1952) 68(4) *The Quarterly Journal of economics* 535.

²⁴⁸ *Idem* 536.

²⁴⁹ *Idem* 543.

²⁵⁰ *Ibid.*

²⁵¹ Kerr (1952) 5 (3) *Industrial and labour Relations Review* 324.

²⁵² Kerr (1952) 68(4) *The Quarterly Journal of economics* 545.

²⁵³ *Ibid.*

of work councils and collective agreements with employers' organisations. National macro-economic policy and legislation could be influenced through collective bargaining, lobbying and informal parliamentary engagements between trade unions and parliament. In the case of South Africa, workplace forums were expected to compliment collective bargaining by trade unions through dealing with the day-to-day running of workplace matters like the criteria for grading workers, pay increases and dealing with dismissals through operational requirements.²⁵⁴ This failed, however, since trade unions felt their survival being threatened rather than strengthened by the establishment of workplace forums that were going to deal with day-t- day running of business with the employer.²⁵⁵ It is held that, because of such a perceived threat by trade unions, it is either that they prevented workplace forums from being set up by exercising the veto or by not initiating their establishment.²⁵⁶ South Africa can learn from the German system of works councils which allow employees to participate fully at workplace decision making on issues of dismissals and production matters without limiting the collective bargaining power of trade unions at sectoral level. It is suggested that workplace forums in South Africa can be made useful through ensuring that both employees and trade unions are equally represented at the forum council and this will ensure that trade unions do not feel threatened.²⁵⁷

10. Collective bargaining in Germany

Collective bargaining in general is concerned about issues that include the improvement of terms and conditions of employment, higher wages and so forth.²⁵⁸ The discussion above about the German trade union history shows that the trade unions struggle for redistribution of power between themselves, employers and political parties of government.²⁵⁹ The daily needs of workers, such as disciplinary hearings and plant rules, were left within the jurisdiction of works councils.²⁶⁰ The trade unions in Germany, because of the history discussed above, disengaged

²⁵⁴ Botha (2015) 18 (5) 1827.

²⁵⁵ *Ibid.*

²⁵⁶ *Idem* 1828.

²⁵⁷ *Idem* 1836.

²⁵⁸ *Idem* 1812.

²⁵⁹ Kerr (1952) 68(4) *The Quarterly Journal of economics* 536.

²⁶⁰ *Idem* 539.

themselves from any form of formal political alliance.²⁶¹ Trade unions, however, did not only ensure their independence; they also ensured their influence in labour market policy and legislative influence in that regard.

Trade unions (DGB) and the employers' associations made sure, after the Second World War, to make certain matters, like wage policy and other issues of labour market policy, fall into the exclusive jurisdiction of collective bargaining.²⁶² In so far as collective bargaining is concerned the German trade unions can make binding collective agreements at an industrial level.²⁶³ These agreements are binding nationwide. In cases where the trade union federal executive signs such agreement at sectoral level, it can be extended to cover the nation, if the agreement concerned is made between a trade union and an employer with more than 50% of employees in that specific sector.²⁶⁴ The extension can be made by a declaration of general binding made by the minister of Labour and Social Affairs on application by one of the parties to the collective agreement.²⁶⁵ This agreement can be extended only if the employer concerned employees at least 50% of union employs in that sector, and it must be in the public interest.²⁶⁶ The question now is how that has influenced legislation and labour market policy in Germany. It is held that once such agreements are concluded by the dominant employer's' organisations and dominant trade unions or trade union federations these are extended by the government to cover the whole industry.²⁶⁷ Once extended, the collective agreements become, in effect, the minimum wage and hour laws of Germany in such a specific industry.²⁶⁸ It is because of this influence of the trade unions that they are regarded by some scholars as being quasi-legislative bodies.²⁶⁹ In South Africa, collective bargaining is also practised at a sectoral level just as in Germany and collective agreements can be extended by the minister as well. South African trade unions, however, must promote the use of workplace

²⁶¹ Weiss "Unions and politics: A Conceptual suggestion from a German perspective" 5.

²⁶² M Weiss and M Schmidt *Labour law and industrial relations in Germany* 182.

²⁶³ *Idem* 190.

²⁶⁴ *Idem* 191.

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ Kerr (1952) 68(4) *The Quarterly Journal of economics* 539.

²⁶⁸ *Ibid.*

²⁶⁹ Kerr (1952) 5 (3) *Industrial and labour Relations Review* 339.

forums just as in Germany to ensure that workers participate in the production matters as discussed above.

11. Minimum wage law

German trade unions have been resisting the passing of legislation dealing with the minimum wage simply because it is matter that falls within their jurisdiction.²⁷⁰ This resistance is attributable to the history as discussed above, where the state had centralised power and undermined the influence of trade unions. Trade unions, however, with the waning of their membership and decline in their collective bargaining power accepted the statutory minimum wage.²⁷¹ In 2014 the legislatures come up with the law that entitled every employee to a minimum wage of €8.50 gross per hour.²⁷² The question of trade unions keeping their influence on such legislation as there will be possible adjustment in time is an immediate one. The legislation makes provision for a commission that will sit and vote for such adjustments. Trade unions and employers' representative will be appointed by them to sit in the commission and make such an adjustment for five years.²⁷³ In South Africa, there is no statutory minimum wage. Trade unions in South Africa fix minimum wages through sectoral collective agreements capable of extension by the Minister of Labour.²⁷⁴ The Minister is allowed to set minimum wages of vulnerable employees, like domestic employees and farm workers, after consulting the commission as discussed above.²⁷⁵ It is held, as discussed above, that South Africa has inherited wage fixing from the apartheid government which failed to address the wage disparities.²⁷⁶ The other purpose of fixing a minimum wage was to address the social injustice emanating from a history of segregation. The sectoral fixing of the minimum wage has failed to address that problem. So it will be better for South Africa to adopt a statutory minimum wage at a reasonable level and make an exception for new infant companies. More than this,

²⁷⁰ Weiss and Schmidt *Labour law and industrial relations in Germany* 191.

²⁷¹ *Ibid.*

²⁷² S 1 and 2 of the Minimum Wage Act of 2014 (MWA).

²⁷³ S 4 and 5 of the MWA.

²⁷⁴ Seekings "Trade unions and the redesign of South Africa's minimum wage-setting institution in 1990s" 2. See also s 32 of LRA in as far extension of collective agreements made between the trade unions and employers' association at the bargaining council.

²⁷⁵ S 55 (4) (a) of the BCEA.

²⁷⁶ Seekings "Trade unions and the redesign of South Africa's minimum wage-setting institution in 1990s" 7, wage fixing structures has been used to protect the interest of white minorities against that of blacks.

trade union membership is falling which means that there is reduction in the powers of trade unions to bargain collectively. The other imperative question is how the trade unions in Germany that do not have any formal alliance or formal social dialogue institution influence legislation and the adoption of policy by parliament.

12. Germany parliamentary committees

Democratic legislatures depend on parliamentary committees to conduct their business. Committees are small groups of parliamentarians who are assigned, on either a temporary or permanent basis, the duty of examining matters more closely based on their expertise in a specific portfolio.²⁷⁷ These committees, each with a specific speciality in a specific ministry, justice, environment or labour, should conduct public consultations with experts, people or interest groups in order to discuss policy or legislation to be adopted.²⁷⁸ The German parliament is no exception to these parliamentary committees. It is of interest to this discussion that the Committee of Labour and Social Welfare be discussed.

13. Labour and Social Welfare Committee in the German parliament

The Labour and Social Welfare Committee handle the bills from the point of their inception until their passing or rejection.²⁷⁹ In the light of this, it is clear that the committee recommends amendments of bills but, like any other parliamentary committee, it has no power to stop legislation. It is said that the labour committee gets the attention of the minister of Labour and Social Welfare partly because unions are strongly represented in the committee.²⁸⁰ The question that immediately comes from the above assertion that trade unions are strongly represented in the Labour and Social Welfare Committee is how trade unions make it onto such committees.

The Germany Bundestag is composed of at least 598 members; half of them are elected directly in 299 constituencies on the basis of the first two votes cast by each voter, while the remaining 299 members are elected on the basis of the second vote, which is cast in favour of one of the list candidates put forward by the political parties

²⁷⁷ Benda "Committees in legislature a division of labour" 1996 (2) 3.

²⁷⁸ *Ibid.*

²⁷⁹ Janoski *The political economy of unemployment: Active labor market policy in West Germany and the United States* 169.

²⁸⁰ *Ibid.*

in each Germany's federal states.²⁸¹ This section does not explain how trade unions gain seat in the Labour and Social Welfare Committee. Committees are said to be privileged institutions which subdivide policy areas amongst distinct committees on the basis of required expertise.²⁸² As such it is said that having the wrong legislator on a committee risks producing outcomes with detrimental effects on the final outcome.²⁸³ The parliamentary groups should, therefore, be careful in choosing who goes to which committee based on what form of qualification that person has. It seems that the criterion used by the parliamentary groups in placing people in a specific committee, like Labour and Social Welfare Committee can be the member of parliament's prior occupation in labour related areas like trade union organisations.²⁸⁴ This means that even in parliament there are members who have become parliamentarians but who belong to trade unions or whose previous occupation was based on trade unions activities. This is evident in the case of the current minister of Labour and Social Welfare, Martin Schulz, who is a social democrat and came from a trade union.²⁸⁵

The president of the German Bundestag may call members from interest groups like trade unions and allocate them places in the Labour and Social Welfare Committee despite their not being Members of Parliament.²⁸⁶ This explains why these committees are described as an infrastructure for communication and information between members of parliament, government ministers and interest groups.²⁸⁷ It is clear that the government will pass labour legislation only after consulting with the affected parties.²⁸⁸ These parties include the trade unions and employer's' associations which are either present in the Labour and Social Welfare Committee as invited experts or members of parliament with close affinities with trade unions or employers' association

²⁸¹ S 1 of the Federal Electoral Act 1956.

²⁸² Mickler (2017) *West European Politics 2*

²⁸³ *Ibid.*

²⁸⁴ Mickler (2013) 22(4) *German Politics* 430.

²⁸⁵ Manfred "Unions and politics: A Conceptual suggestion from a German perspective" 6.

²⁸⁶ Committee Members "Function and responsibilities of committees"
www.bundestag.de/en/function/245820.

²⁸⁷ Mickler (2013) 22(4) *German Politics* 424.

²⁸⁸ Weiss "Unions and politics: A Conceptual suggestion from a German perspective" 7, it is held that parliament will not dare pass legislation or policy with regard to labour law or which directly impact on labour without consulting the trade unions or an employer's association with an interest in such a law.

to act as experts in so far as legislation and policy with a direct impact on the labour constituency is concerned. The German example of trade union engagement with parliament in the parliamentary committee of Labour and Social Welfare by acting as experts to influence legislation and policy with a direct impact on labour constituency must be used as a lesson to South Africa. Trade unions in South Africa in an alliance with an ANC party agreed that trade unionists must be admitted into parliament to protect the interest of labour. They must use this chance to go into labour committees in parliament to act as experts to influence legislation or policy with an impact on the labour constituency as is the case in Germany. South African parliamentary committees which lack experts, as Obiyo asserts,²⁸⁹ must make use of trade unionists in parliament to sit on labour committees as experts and also include members from trade unions who not admitted into parliament but are experts in the field.

14. Other ways trade unions influence legislation

Trade unions and employer's organisations in German also influence policy and legislation with a direct impact on the labour and business constituency through lobbying. Lobbying, by definition, is the activity of trying to persuade someone in authority, usually elected members of government, to support laws or policies that benefit your organisational interest.²⁹⁰ In Germany there are four types of lobbying to discuss: lobbying together on the employer's side; lobbying for laws and measures in spite of their being opposed by the employer; trying to oppose laws which are deemed to be against the interest of the employees; and trade unions and jointly opposing the law from being implemented by both the employers and trade unions.²⁹¹ Trade unions together with the employers' organisations can lobby jointly for legislation. This is evident in trade unions and employers' organisations lobbying jointly in favour of the law against unfair dismissal in Germany, and it was passed in 1969.²⁹² The requirements that the employers have to comply with before dismissal in the Act are the result of such joint lobbying.²⁹³ The same victory of joint lobbying among trade

²⁸⁹ Obiyo *Legislative Committees and deliberative democracy: the Committee system of the South African Parliament with specific reference to the standing committees on Public accounts* 76.

²⁹⁰ Cambridge English Dictionary, www.dictionary.cambridge.org/dictionary/English/lobbying.

²⁹¹ Weiss "Unions and politics: A Conceptual suggestion from a German perspective" 8.

²⁹² *Ibid.*

²⁹³ S 23 of the Protection Against Dismissal Act of 1969 as amended in 2008.

unions and employer's organisations is the case of the Act on collective agreements.²⁹⁴ The old Act, the Collective Agreement Act of 1979, allowed two collective agreements signed by two different trade unions to coexist even if they were conflict.²⁹⁵ The new Act abolished this old view and now the trade unions agreement signed by the trade union with the majority of employees in that work place takes precedence over the one signed by the minority trade union.²⁹⁶ This shows that when they lobby together in favour of law or opposing it the victory of trade unions and employers' organisation is certain.

Trade unions can also lobby against a law that is supported by employer's' organisations although this is difficult.²⁹⁷ There is an example of the success of trade unions lobbying against the views of employer's organisation; the law on equal treatment of employees is the product of this kind of lobbying (the Act aimed on dealing with unequal payment of sick leave between white and blue collar employees).²⁹⁸ As such unequal payment of sick leave between the white collar and blue collar employees has been abolished.²⁹⁹ Trade unions have, however, experienced some failures with this kind of lobbying. As is evident, trade unions were lobbying for parliament to adopt a law that forces employees who could not give apprenticeship to employees to pay the amount of money to the fund for the promotion of the apprenticeship system.³⁰⁰ Such a law was never passed because of employer's' organisation opposition.³⁰¹ It is evident from the above discussion that, when the trade unions act in isolation from the employer's organisation, they are likely to suffer loss as a result of the opposition by employer's' organisation. Joint lobbying by both trade unions and employers' organisations ensures victory to both parties.

Trade unions sometimes lobby to stop legislation from being implemented if it is against the interests of employees.³⁰² Trade unions acting in isolation from employer's'

²⁹⁴ Weiss "Unions and politics: A Conceptual suggestion from a German perspective" 8.

²⁹⁵ *Ibid.*

²⁹⁶ Article 1 of the Act on Collective Agreement Unity of 2015.

²⁹⁷ Weiss "Unions and politics: A Conceptual suggestion from a German perspective" 9.

²⁹⁸ *Ibid.*

²⁹⁹ S 2(1) of the General Equal Treatment Act of 2006.

³⁰⁰ Weiss "Unions and politics: A Conceptual suggestion from a German perspective" 9.

³⁰¹ *Ibid.*

³⁰² *Idem* 10.

organisations have, however, always found this to be difficult. Trade unions, for instance, failed to prevent the facilitation of fixed-term contracts and flexibility in the workplace.³⁰³ Trade unions, however, managed to stop the deregulation of collective bargaining and all forms of worker's participation.³⁰⁴ The reason for trade unions acting alone might be the fact that some issues might directly impact more on their members than on the employers so it is unlikely to win the support of employer's organisations. When the employer's organisation and trade unions act against the implementation of a law, that law is not likely to be implemented.³⁰⁵ The unity between trade unions and employer organisations in Germany have provided them with leverage into developing legislation and labour market policy suitable for them both. This can be achieved only by a willingness to reach compromise in areas of differences and accepting the responsibility towards all of the labour, business and community constituency. South African trade unions, employer's organisations and the business community must learn from the German example in so far as lobbying for legislation and policy is concerned.

13. Conclusion

The Ghanaian case study shows that the disengagement from political alliance in itself is not a solution to the problems facing trade unionism in Ghana. Trade unions are failing to influence policy or legislation favourable to labour simply because of lack of unity between trade unions themselves and employers' organisations. In addition the government still lacks a clear understanding of meaningful consultation. The same problem is affecting the influence of trade unions in South Africa despite their still being politically affiliated with the ANC through the tripartite alliance. The comparison between South African trade unions affiliated with the ANC through the tripartite alliance and that of Ghana not affiliated with political parties but still failing to have proper influence shows that the issue is not political alliance. The success story of German trade unionism lies with the strong unity between trade unions themselves and employers' organisations. In addition German trade unionism has developed experts that parliament relies on when passing legislation which directly affects labour.

³⁰³ *Ibid.*

³⁰⁴ *Ibid.*

³⁰⁵ *Idem*11.

It also has a developed committee system in parliament where assignment to any committee is based on expertise rather than on mere preference and political convenience. Germany has also separated labour market policy issues and has placed them within the exclusive jurisdiction of the trade unions and employer's organisations. This has given trade unions the capacity to develop labour market policy fully without political interference. Although no legal or political system can be transplanted from one country to another because these systems develop with relevance to the unique history of the country, lessons can, however, be drawn and be adapted to suit a specific country's historical context. It will be discussed in the following chapter what South Africa can learn from these foreign jurisdictions.

Chapter 5: Conclusion and suggestion

1. Introduction

This chapter seeks to look at lessons South African trade unions can learn from the trade unions in foreign jurisdictions. Their engagement with the government, their means of influence on policy and legislation, challenges and overall achievements will be discussed relevant to the South African set up. It is held that, because of political, cultural, institutional and economic differences among countries the insights drawn from an analysis of one country's political or legal system cannot easily be transplanted into another country.³⁰⁶ Comparative analysis is used in this research among South Africa, Ghana and Germany suggests that it is not necessary to transplant the Ghanaian and Germany systems into South Africa but rather to draw possible lessons from them. The lessons must help the South African system in relation to how best can it be developed in a way unique to its historical context.

2. Ghanaian trade unions influence on legislation and policy

The disengagement of the Trade Union Congress of Ghana from any form of formal political alliance had its benefits and shortcomings. It is argued that such a withdrawal from the political alliance was based on the trade union's objective to put itself in a position of influence in so far as labour market policy, the passing of legislation and macro-economic policy with a direct impact on labour is concerned.³⁰⁷ Trade unions in Ghana have made some remarkable strides towards their objectives; trade unions have managed to create specialised departments in labour and a policy research institute.³⁰⁸ The departments were created in affiliations with the University of Cape Coast and Kwame Nkrumah University of Science and Technology by introducing a diploma academic programme in labour studies and a postgraduate certificate in labour policy studies.³⁰⁹ This is a very significant achievement because; if trade unions have to influence labour policy and legislation with an impact on labour, they must have an expertise that can convincingly lobby the government with respect to such policies or legislation. Government must also be able to rely on such expertise when

³⁰⁶ Weiss Weiss "Unions and politics: A Conceptual suggestion from a German perspective" 2.

³⁰⁷ Akwetey and Dorkenoo "Disengagement from party politics: Achievements and challenges for the Ghana Trade Union Congress" 46.

³⁰⁸ Idem 48.

³⁰⁹ Idem 52.

dealing with matters that fall within their expertise. It is held that a lack of expertise limits organisational capacity in so far as lobbying for policy and legislation is concerned.³¹⁰ Hence such a move towards creating expertise with regard to policy making is commendable. It is advisable that South African trade unions take the same route and create for itself a base of expertise required for them to influence policy and legislation in NEDLAC and in parliament. This is because in the Obiyo study of parliamentary committees he concluded that, despite parliamentary committees being supposed to be places where legislation or policy is shaped by experts, the South African parliamentary committees suffer from such a lack of expertise.³¹¹

Trade unions in Ghana had only marginal influence on government macro-economic policy, labour market policy and legislation impacting on labour constituency. The trade unions failed to stop or prevent the effects of neo-liberal policies like the Economic Recovery Policy of 1983.³¹² This had a negative impact on labour retrenchments of employees in the formal sector, shown by the reduction of formal employees from 333 000 in 1960 to 186 000 in 1991 despite an increase in job seekers the details of which were discussed above.³¹³ This is enough of a lesson for South Africa that disengagement from formal political alliance is not in itself a remedy for the poor influence of trade unions on policy and legislation with an impact on the labour sector of society. It was important for trade unions in Ghana, as it is for trade unions in South Africa, to come up with a strategy of how they could influence labour market policy. Trade unions were also supposed to ensure that the National Tripartite Committee of Ghana was not bypassed in matters of legislation and policy within its jurisdiction.

South African trade unions have also suffered the same fate of being bypassed from the social dialogue institution (NEDLAC) by the government in adopting certain macroeconomic policies.³¹⁴ Trade unions in South Africa could have foreseen the possibility of their being bypassed by the government by introducing policy or

³¹⁰ International Labour Organisation 3 www.ilo.org (accessed on 17 September 2017).

³¹¹ Obiyo *Legislative Committees and deliberative democracy: the Committee system of the South African Parliament with specific reference to the standing committees on Public accounts* 76.

³¹² Gockel and Vormawor "Fes trade unions country reports: the case of Ghana" 7

³¹³ Idem 9.

³¹⁴ Misra *The political role of the COSATU in South Africa and what it means for Black workers* 168.

legislation impacting on their interests and that of employees and they could have ensured other ways of influencing policy even from within parliament. Trade unions in South Africa, through the tripartite alliance, have an agreement that allows their members into parliament through the ticket of the ANC.³¹⁵ Trade unions were, however, not strategic with regard to how those sent into parliament would lobby for legislation and policy favourable to labour.³¹⁶ Trade unions could have used this opportunity to lobby for legislation or policy that is favourable to labour. It is also possible that those trade unionists act as experts in labour parliamentary committees that Obiyo claims to be lacking in expertise required for formulating legislation. This also points to the need for why trade unions in South Africa should develop training and research institutions to train those required experts as has been done by Ghana. Hence, it is important to develop both expertise and strategy to influence government policy and legislation.

3. Germany trade unions influence on policy and legislation

Trade unions in Germany as in Ghana are not in any formal alliance with any political party.³¹⁷ The trade unions in Germany managed to influence the power distribution after the Second World War to an extent that there is a separation of powers between government and trade unions. Labour market policy making falls exclusively within the jurisdiction of the trade unions and employers' organisations.³¹⁸ This has enabled trade unions to deal with issues like wage policy issues by directly engaging with employers on sector or industrial based collective agreements. In this instance trade union has acted as a quasi-judicial institution because those agreements have the binding effect of law. The issues of labour market policy in South Africa could have been left to trade unions and employees to bargain through collective agreements. The state could have been involved only in cases where the bargaining reaches a stalemate.

Trade unions and employer's' organisations in Germany have recorded most victory in lobbying for legislation or policy when they act in unity.³¹⁹ This is evident when the trade unions were lobbying for the law or policy on the side of the employer or trying

³¹⁵ Idem 181.

³¹⁶ Ibid.

³¹⁷ Weiss Weiss "Unions and politics: A Conceptual suggestion from a German perspective" 5.

³¹⁸ Weiss and Schmidt Labour law and Industrial Relations in Germany 182.

³¹⁹ Weiss Weiss "Unions and politics: A Conceptual suggestion from a German perspective" 9.

to stop legislation from being implemented together with the employers.³²⁰ It was held that the government will not implement legislation against the will of both trade unions and employer's organisations.³²¹ There are, however, some matters that may directly impact on the isolated interest of trade unions and then trade unions may lobby in isolation from employers' organisations. It is also imperative that South African trade unions and the employer's' organisations act in tandem with regard to issues that directly impact on their common interest. This will help them to come up with a workable compromise rather than just lobbying in isolation which gives victory with unintended consequences. As in the case of labour broking, trade unions lobbied for their outright removal because there are prone to abuse by both the agency and the client.³²² Employer's organisations and organised business lobbied for continuation of labour broking but in a regulated form.³²³ As argued above, the mentioned abuse was a lack of protection or remedies in cases of unfair dismissal because there was no clarity of who is responsible in a case of unfair dismissal.³²⁴ The 2014 amendment, 198A(3), which come up with the deeming-clause that, after three months, the placed employees are deemed to employees of the client seems an extreme case of control.³²⁵ It could have been better had the employers' organisations, organised business and trade unions reached compromise and lobbied for proper regulation and so limited abuse. This is because, despite their lobbying for their close interest the government could give each of them their intended victory; labour broking was not banned and the regulation became stricter than expected. Joint lobbying between trade unions and employees can improve the influence that trade unions have on legislation and policy making.

Trade unions in Germany have an influence in the German parliamentary committee of Labour and Social welfare.³²⁶ This is because trade unionists who go into parliament

³²⁰ Ibid.

³²¹ Idem 10.

³²² Benjamin (note above) at 37.

³²³ Ibid.

³²⁴ M Soko and N Baldman "Breaking the deadlock: Tackling South Africa's labour market crisis" (2014) 2 GSB Business review online www.gsbbusinessreview.gsb.uct.ac.za/breaking-the-deadlock-tackling-the-South-African-labour-market-crisis/.

³²⁵ Ibid.

³²⁶ Janoski *The political economy of unemployment: Active labor market policy in West Germany and the United States* 169.

are selected onto the committee of Labour and Social welfare as specialists.³²⁷ In addition, trade unionists who are experts in the field are also invited onto the committee by the president to provide expert knowledge.³²⁸ Through this recognised expertise, trade unions in Germany have been able to influence policy and legislation directly relevant to labour interest. It is, therefore, suggested that South African trade unions develop the institution of learning and research to develop such required expertise. This will help with solving the problem highlighted by Obiyo in his research that the South African parliamentary committees, labour included, lack the expertise required to shape legislation or policy at that level.³²⁹ More so, the criteria for choosing people who go into parliament must be based on their expertise in respect of matters to be dealt with in that specific committee. It is stated above that in German the parliamentarians go to a specific committee on the basis of their expert knowledge required with respect to that committee.³³⁰ In case those parliamentarians on the Labour Committee lack the required expertise, the experts from trade unions are invited to Labour Committee.³³¹ In South Africa it is deplorable that the Labour Committee in parliament, and any other committee, lacks the required expertise.³³² Despite this lack of expertise being the case, parliament fails to work on such a shortfall by allowing the admission of such expertise from trade unions and possibly labour law scholars when dealing with labour bills or policy impacting on labour. It is recommended here that parliament should admit experts to the Labour Committee to deal with and shape labour legislation or policy in a way that progressively promotes the interests of labour.

4. Conclusion

The case studies used in this work are of trade unions which are not engaged in any form of formal political alliance, both in Ghana and Germany. The question relates to

³²⁷ Mickler(2013) 22(4) *German Politics*431.

³²⁸ Committee Members "Function and responsibilities of committees"
www.bundestag.de/en/function/245820.

³²⁹ Obiyo *Legislative Committees and deliberative democracy: the Committee system of the South African Parliament with specific reference to the standing committees on Public accounts* 76.

³³⁰ Mickler (2017) *West European Politics* 2.

³³¹ Committee Members "Function and responsibilities of committees"
www.bundestag.de/en/function/245820

³³² Obiyo *Legislative Committees and deliberative democracy: the Committee system of the South African Parliament with specific reference to the standing committees on Public accounts* 76.

whether it be said that the problems faced by trade unions in South Africa are the result of their alliance with the ANC. In responding to that question it must be highlighted that even though the trade unions in Ghana are as independent as they are, they were still sidelined by the government when making some decisions. So, to attribute the problems of South African trade unions entirely on political alliance with the ANC would be an inadequate response to the question of this research. It is true that the trade unions in South Africa had blind faith in believing that the alliance would solve the industrial relations problems. Trade unions in South Africa, however, need to revise their strategies of engaging with the government in so far as having any influence on legislation and policy making is necessary for the proper execution of their duties. Some of the ways of re-strategising are suggested above. Another question of interest evoked by this comparative study is whether trade unions must disengage from the formal political alliance. This question goes deeper into issues of the constitutional right of trade unions to exercise that choice. Apparently it is the finding of this discussion that the problem is not exclusively the alliance but rather a lack of strategy and the expertise required to influence policy and legislation adopted by the government.

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