TRADE UNIONS AND THE GOVERNMENT: A STUDY OF UNION AND INDUSTRIAL RELATIONS LEGISLATIONS IN INDEPENDENT EAST AFRICA UPTO 1972

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INTRODUCTION

Legislation has been ranked by various authors on industrial relations, as the major general method of government involvement in industrial relations in the new societies.[1] This is particularly the case in new nations of Africa. There we find that legislation of this nature was first enacted by the colonial governments. The major reasons at the time for this legislation were a concerned over political agitation finding a forum in trade unions and a desire to avoid disruptive manifestations of industrial conflicts. Following independence, the independent governments have not only strengthened their hands under the colonial legislations but also have amended and repealed them to have both social and economic implications.

East Africa is no exception to this generalization. Like British colonies elsewhere, when trade unionism was accepted in Kenya, Tanzania and Uganda the colonial governments' policy was governed by the principle that free collective bargaining between employers and workers was the preferred situation, and that the state should only intervene when this system was not functioning effectively.[2] Trade unions were regarded as the most suitable institutions to represent the workers and were thus to be given official encouragement when they did not appear political. To preclude the development of any

political organization under the cover of trade unions, registration legislation was used by the colonial governments so that during the colonial period the three territories possessed basically similar trade union legislation.

In September, 1964 one year, three years and two years after, Kenya's Tanzania's and Uganda's Independence respectively, a four day seminar was organized by the East African Institute of Social and Cultural Affairs, in which thirty five delegates and observers consisting of Ministers, Senior Civil Servants and representatives of employers and workers in East Africa took part. They ended the Seminar with the following conclusions on the role of unions, employers and the governments in developing countries:-

(a) That in East Africa today there is a need for a constructive labour policy which must aim at promoting industrial peace and political stability.

(b) That in evolving such a policy, the closest possible consultation among the government, the employers and Trade Unions is essential.

(c) That in promoting national unity, there is a need to change the structure of the labour movements in developing countries. There should be more effectively in the economic and social development in East Africa. These structural changes should be made by the labour movement itself. But where the movement is unable or unwilling to make the necessary changes, the government has a duty, in the interest of the nation to advise, guide and if necessary to legislate to provide the structure best suited to each country.

(d) Trade unions and employers' organizations must identify themselves with the economic policies of their governments. The three parties should cooperate to achieve common objectives. In doing so, voluntary agreements should be negotiated on a national and industrial basis and where this is not possible the Government must provide statutory machinery.[3]

And yet in the same year negotiations on the immediate formation of an East African Federation were suspended because of the failure of negotiators to achieve complete agreement on two key issues one of which was common policy concerning trade unions. The implications of this failure

were that either the three countries had already legislated differing trade union policies or they were intending to do so in the future.

The questions that were in the minds of those who followed the negotiations were:-

(1) If the three countries had basically similar union legislation during the colonial period. Why had they taken or intended to take a divergent approach towards trade unions?

(2) If they have already taken divergent approach to trade unions, how far apart are they?

What this study is purporting to do is to provide some answers to these questions. The objective is to compare unions legislation enacted in the three countries since independence and up to 1972. In doing so I will investigate how the three countries have approached certain trade union and industrial relations issues. I shall also attempt to give some reasons why the three countries might have adopted the approaches they follow in these issues.

Chapter One discusses the colonial situation in both the industrial relations systems and the wider society in East Africa. The objective is (1) to provide some explanation for the trade unionist's expectations from independence and (2) to show how the colonial industrial relations systems influenced the decisions taken by the political leaders on the types of industrial relations systems the new independent countries were to adopt. By doing this it is hoped we shall provide a base for the argument made later in the study that the development of union legislation in each of the three countries has been influenced by the interaction between trade union expectations and the ideas held by the political leaders on the type of industrial relations system to be developed. The second chapter outlines some of the major trade union activities and the transitional governments' reactions during the transitional period from colonial administration to independence. The objective is to examine the statements made in first chapter about trade union expectations and the new governments' positions on industrial relations in the independent nations.

The third chapter is divided into three parts. Part One presents the dependent variables to be examined in the study, Part Two makes some working hypotheses and Part Three discusses the method of study.

The Fourth Chapter presents union legislation by each country from independence and up to 1972 on (1) union organization and management, (2) trade union political relations and (3) settlement of trade disputes between management and unions. The final chapter makes some conclusions and comments by comparing the results between the three countries in light of the statements of hypothesis and expectations discussed in the third chapter.

References to Introduction

1. See E.M. Kassalow, "Trade Unionism and the Development Process in the New Nations: A Comparative View" in International Labour, et. al. Barkins (Harper and Row, 1967), page 69.

2. The study only covers Tanzania Mainland formerly Tanganyika.

3. East African Institute of Social and Cultural Affairs, (November, 1964).

CHAPTER ONE

COLONIAL BACKGROUND

1.1 INTRODUCTION

This chapter discusses the colonial situation in both the industrial relations systems and the wider society in East Africa. The objective is to provide some explanation for the trade unionists' expectations at independence and the decisions taken by the political leaders on the types of industrial relations systems the nations were to adopt. Both these factors are suggested by this study as the prime factors that have influenced the development of union legislation in independent East Africa.

1.2 INDUSTRIAL RELATIONS

Industrial relations systems in Kenya, Tanzania and Uganda like any other such system can be said to be made up of actors. The number of actors and the power of each actor in the system has been changing over time. The first phase starts from the beginning of industrial employment in East Africa and ends at the time when workers' trade unions became operative. During this phase there were two actors, namely, the employers, being the major actor and influencing significantly the rules governing the industrial relations systems, and the workers as the poor second actor. The colonial government at the time, though interested in industrial

relations system, did not become a formal actor in the system until workers, pressed by the generally bad conditions of employment, began clamouring for trade unionism. For most of this first phase colonial government participation in industrial relations in East Africa, seems to have been on an adhoc basis and to intervene in disputes between the workers and employers. Either it was to ease the labour shortage or to settle a prolonged dispute between workers and employers or to stop the springing up of political organizations under the cover of trade unions. The industrial relations rule making process was predominantly unilateral by the employers without workers participation.

In Kenya this period cannot be said to have ended in any one year but it withered away as trade unions pushed themselves further into the industrial relations system. Starting around 1937, when the first Trade Unions Ordinance was enacted, going through 1943 when an ordinance to regulate Trade Unions and trade disputes was issued, to early 1950's when the trade unions had pushed their way into the system. Similarly for Tanzania and Uganda this period of two actors did not end in any one year.

In Tanzania, though the first Trade Unions Ordinance was passed as early as 1932, this phase of two actors and unilateral rule making began to die away only with the

beginning of African trade unions, particularly the Dock Workers Union, were formed and goes on until 1955 when the Tanganyika Federation of Labour (TFL) was formed. This federation however had to start with an internal reorganization of unions, particularly the amalgamation of the numerous local crafts British type trade unions into fewer national industrial organizations. By 1956 this was done and the Federation turned to industrial action.[1] Thus 1956 can be said to be the year in which the phase of unilateral rule making and two actors really disappeared in Tanzania.

In Uganda, though the first trade unions ordinance came as early as 1937, this phase of two actors and unilateral rule making began to wither away only in the late 1940's when the first African trade unions namely, the Uganda Motor Drivers Association was founded in 1938 and the Transport and General Workers Union of 1949, became operative in representing workers, and goes on to end at about the same time as it ended in Kenya.

The second phase, following the recognition of trade unionism in East Africa, can be said to be one of three actors namely, the employers and their organizations, the colonial governments by way of legislative as well as administrative agencies, and the workers and their trade unions as the junior third actor. This phase began to emerge with the enactment of trade unions

ordinances in 1937, 1932 and 1937 for Kenya, Tanzania and Uganda respectively, but did not become effective until trade unions had started representing workers in bargaining. At the time the colonial governments were particularly concerned with keeping law and order which was being eroded by the political sweep which was spreading all over East Africa. Thus they were concerned about politics getting into trade unions. At the same time they wished to see free independent and economic trade unions develop in East Africa. Consequently their participation in the industrial relations systems was three pronged. First they applied strict and detailed registration laws to ensure that no organizations other than economic trade unions were registered. To make sure that no such organizations existed there were penalties for anyone purporting to be an official of unregistered trade unions. Second, to ensure law and order in the industrial systems and to avoid manifestations of industrial conflicts, they also extended their legislative participation to the making of rules governing the operation of systems. Most significant they provided alternative procedures for settling trade disputes. Third, they extended their administrative arm to help in the organization and management of trade unions so as to develop "responsible" economic unions. This was accomplished either by the Colonial Governments labour departments or groups of experts recruited from the International Confederation of Free Trade Unions

(ICFTU) and the British Trade Union Congress (BTU). The Industrial relations systems rule making process in this second phase was predominantly bilateral with the workers collectively represented by their unions on one hand and the employers and their organizations on the other. Occassionally when this system did not work a trilateral process was applied through the Government's legislative and administrative agencies or some independent bodies like conciliation boards or arbitration tribunals coming in.

What is worthy of emphasis at this stage is that in this second phase of bilateral rule making, the three countries experienced similar forms of government participation. Thus at the time of independence, although the social, economic and political factors were different, the industrial relations system in each of the three countries was developing towards free collective bargaining between employers and the workers with little, if any, government intervention. This phase ended in Kenya in 1962, in Tanzania in 1960 and in Uganda in 1961 when these countries obtained independence and self-government.

As the colonial government increased their participation in the industrial relations systems, particularly during the earlier part of the second phase, it became clear to the other actors that the only way they would increase their power in the system was through

influencing the colonial governments. The employers tried to do so primarily through the legislative councils while the workers who did not have effective representation on the legislative councils resorted to political activities.[2]

The third phase covers the independence period. The number of actors still remained three and the rule making process was still predominantly bilateral although trilateral process was occasionally applied. What however happened was that the government participation in the industrial relations system in the three countries diverged. As mentioned in the introduction this phase is dealt with in chapter four.

1.3 THE COLONIAL ENVIRONMENT

Along side the purely internal forces in the industrial relations system that tended to push trade unions to political activities there were also external forces which, in the majority of cases, were the decisive factors in trade unions joining the political movements to struggle with the others for independence. The following quotation sums up the colonial attitude of Europeans towards Africans.

> "One day in 1951 when one of my European colleague was away on leave....I was busy...when a European woman came in.... she looked around for a few moments and did not say anything. 'Good morning Madam', I said. When I spoke she turned round and asked, 'Is there anybody here'."(3)

Africans were not 'anybody'; they were less than people of other races in East Africa. This kind of attitude except in very rare cases was duplicated in the industrial relations system.

In the socio-economic sphere, social interactions followed racial and ethnic lines which correlated generally with the division of labour and economic distinction. While the British were the top administrators, both in governments and in commercial enterprises, other Europeans were plantation owners and artisans and they occupied the best housing estates in the urban areas. Asians on the other hand constituted the middle class of petty merchants, store-keepers, contractors and artisans and occupied the second best housing estate in the urban areas. Africans formed the lowest social and economic class. They were primarily workers or labourers occupying some of the worst estates in urban areas.

Just as the social and economic life was dominated by foreigners, so was the political life. East Africa was administered by the British Governors in much the same manner as any other colony. The Governor-in-Council formulated legislation which was implemented by a civil service of British officials. There was little participation by the Africans in this process for quite a long time. Even with the application of the indirect rule

principle in Uganda and Tanzania Africans were not significantly involved until shortly before independence. Even when the local political institutions were created, most significantly the legislative council, no Africans would be found who spoke English with sufficient ease to become members of these organs.[4] In the later years when such Africans could be found they were often appointees of the Governor and the council which was exclusively foreign. Such was the kind of environment in which the East African industrial relations system was born.

KENYA

The first group of British colonizers are said to have arrived at the Kenya coast in 1870. In 1880, trading concessions were granted to the British Government by the Sultan Batghash of Zanzibar who at the time claimed sovereignty over the coastal regions of Kenya. Soon after the concessions were received by the British Government, a Royal Charter was issued which implemented the formation of the Imperial British East African Company which commenced operation in Kenya in 1888. From the very start the company met with problems and could not make any profits in the following years.

In 1890, at an international conference convened in Brussels to discuss the abolition of the slave trade, several resolutions were adopted. Most significant to

Kenya in particular and East Africa in general was the resolution which called for the construction of roads and a railway line from the coast to the interior of East Africa. As is to be seen later, Uganda too had been visited and the British government had already laid down some plans for her. In 1884, Captain Lugard, a representative of the Imperial British East African Company arrived in Uganda and declared her a British protectorate. The following year (1895) realizing that Uganda could not be effectively administered without controlling Kenya, he also declared Kenya a territory. In the same year the Imperial British East African Company surrendered its charter and the administrative officers of the Imperial British East African Company. Later the responsibility of the same commissioner extended to Kenya.

In 1896 the British government proceeded with the implementation of their earlier policy of constructing roads and the railway line. The construction of the railway line was to start from Mombasa towards Uganda. The railway reached Kisumu on the shores of Lake Victoria some 500 miles from Mombasa in 1902.

Right from the start of the construction of the railway line, the only source of income anticipated to pay for the cost of construction of the line was the exploitation of land. In 1897 one of the first European

pioneer settlers Lord Delamere arrived in Kenya. On his arrival he said to have impressed by the climate and the potentiality of agricultural prospects owing to the fertility of land. He immediately made an appeal to the British government to encourage settlers to come to Kenya. Owing to the lack of clear British government policy on East African colonies and possessed by the need to pay for the costs of the railway line which was under construction, the British government encouraged the development of European settler community in Kenya. The first conditions for alienation of land to European settlers commenced in 1902. By 1906 the policy was well advanced and the development of plantation agriculture was to be encouraged. At the beginning the policy had protections for the interests of Africans but as time went on these interests were ignored. Thus the period that followed was one of sharp social, economic and political discrimination for Kenya Africans.[5]

To make more room for European settlers Africans were removed from their land and the land was given to the Europeans. It is estimated that by the time land appropriation stopped about 7% of Kenya's productive land was in the hands of European settlers.[6] For the sake of capital accumulation these plantations required cheap labour. The Africans, not being ready to work on plantations that spread across what was their land, had to be forced by colonial government action to work.

It was the colonial government's duty to see that the system they were developing in Kenya succeeded. To quote Van Zwanenberg:

> "The state provided suitable conditions for the development of capital on the estates. Plantations required entrepreneurs, technology, finance and wage labour.....Each factor had either to be persuaded to move to Kenya or provided by the Imperial state". (7)

Besides entrepreneurs, technology, finance and wage labour, the plantations required a ready market for their produce and a sound administrative system that would guarantee stability and the development of infrastructures. In case of the latter, the imperial state established the British decentralized administrative system with British officials right from the counties through the provinces to the Governor and the legislative council. Because the process directly involved British officials, it was much more successful than it was elsewhere in East Africa. At the time of independence in 1963, Kenya had not only the largest civil service in East Africa but also resembled Britain in most of her administrative life.[8] In Kenya, the imperial state encouraged the inflow of foreign capital to stimulate the development of a light manufacturing and processing industrial sector based on the British capitalist model. This sector later provided the capital, and supplemented with further foreign capital inflows, to further expand the industrial sector. Because administrators and

proprietors in this sector were predominantly Europeans, the general attitude of Europeans towards Africans spilled into the industrial relations system, they were looked upon by management as junior partners at the industrial relations level.[9] Also by 1921 employers in Kenya started to organize themselves under a much more able and experienced leadership than the workers' organizations; so that by the time trade unions got on their feet, the employers were more powerful at bargaining than were the unions.

All these developments had quite a significant impact on the development of trade unions and the industrial relations system in Kenya. The trade unions' inability to negotiate with the employers and the government's involvement in economic life, made trade unions vulnerable to political wooing if this would aid them influence the Government. To quote Beal,

> "When people see their rights as flowing only from government.....they turn naturally to political activities aimed at influencing the Government or capturing it or over-throwing it". (10)

Consequently the domination of national life by foreigners and the complete lack of political expression for the worker particularly and the entire population generally forced trade unions into political agitation. To the majority of trade unionists at the time the idea of "seek first the political freedom and the rest shall be added unto you"[11] made some sense. Also to quote

Kassalow:

> "....when workers' citizenship rights are lacking labour movements are inevitably highly politicized. When such rights are lacking for the great majority of the society, the political sweep is even more irresistable". (12)

So trade unions in Kenya joined hands with the nationalist movements to topple the colonial rule. A number of trade unionists were implicated in the mau mau movement which was decisive to Kenya's independence. Some trade union leaders were arrested and detained under the mau mau emergence regulation. However, because of the high involvement of British trade union experts whose aim was to develop a British type of unionism in the British colonies, Kenya unionism was basically economic in orientation. Thus the trade union role in the struggle for Uhuru was a means to their economic ends. Following up from that it would be expected that once independence was won, the trade unionists would expect the support of the new African government in their economic demands. In addition because of success in the growth of the industrial sector and perhaps because the employers were organized along similar lines, the trade unions in Kenya were to be organized on an industry basis.

In the area of industrial relations there were two major factors that are significant. First there was the early success in the growth of the industrial sector thus creating an industrial class. Second, there was the

early attempts by the employers to organize themselves which also stimulated the growth of trade unions. Both of these developments provided the very early conditions for the development of an industrial relations system in Kenya. As the colonial rule approached its end and trade unions grew stronger, the industrial relations system also developed. On 13th September, 1961, just months before independence, the system was formally institutionalized by an agreement between the employers' representatives and the workers' representatives. The agreement, among other things, provided for the western type of industrial relations system based on the philosophy of voluntary mutual consultation and cooperation between management and the workers with little government intervention.

TANZANIA

Tanzania became a German colony, under the management of the German East African Company in 1888 the same year the Imperial British East African Company took charge in Kenya. The administration of the German East African Company ended in 1890 and Tanzania came under direct German rule. The following years, under German rule witnessed a harsh and brutal centralized type of administration. The development of local political systems was completely discouraged because the Germans feared that they would form the nucleus for local resistance. Townshend, commenting on German administration in Africa had the following to say:

> "During the first twenty years of Germany's colonial history.....the native had been most cruelly treated and unjustly exploited.... Robbed of his lands, his home and his freedom and often wantonly and cruelly of his life by the colonial adverturer official and trading company, his continuous and fierce revolts were but the tragic witness to his wretchedness and helplessness". (13)

This quotation describes the German rule in Tanzania for the years 1888 to 1905 the year of the beginning of the maji maji revolts. It was partly due to this harsh administration and partly due to local factors, that the Tanzanian people rose to resist the German colonial occupation. At first it was done by tribal or regional groups, but later under a religious belief, that centered on the spirit of Kolelo, whose ministers administered water to people as they were told "Be not afraid; Kolelo spares his black children",[14] and which seems to have had influence in almost the entire colony, the movement acquired an ideological content which persuaded people to come and fight. The climax of the movement came with the maji maji revolts 1905-1907. Although this revolt failed to dislodge the German control on Tanzania it was not because the people lacked the will but that they were under-equipped. The following years 1907-1914, the year of the outbreak of the World War I saw some change in the German colonial administration. The major reasons for this change are two, namely, the maji maji revolts and the change of personalities at the colonial secretariat in Berlin.

Despite these changes, the damage had been done. The Tanzanian people had at least united in a mass movement to fight colonial control. This element was to play a major role in the development of Tanzania politics.

In the economic sphere the most significant schemes were two. First the construction of the Railway line from Tanga to Mombo on the foot of Usambara Hills. Like in Kenya, when the Germans began constructing this line, the only anticipated source of income to pay the costs of construction was the exploitation of land. The construction began in 1891 and at the same time German settlers began to arrive. By 1901 about 3,000 Germans had settled. Some land was appropriated in the upland areas along the line where the German settlers created plantations. To work these farms the German colonial government periodically instituted forced labour to ensure an adequate supply of workers. The second scheme was the cash crop system of peasant agriculture. This scheme, particularly for cotton crop, failed. For experimental purposes the colonial government instituted the introduction of a cotton farm on each and every headman's compound on which all people in the area were forced to work for at least two weeks for a wage. This scheme created bitterness in both the people and the headmen who were forced to implement it. When the maji maji movement started the appropriation of land and forced labour were among the evils it

sought to uproot from African society.[15]

Though the German rule in Tanzania did not last for very long, it left some marks on the society that are of interest to this study. First, because the German administration did not encourage the development of local political systems, the few African chieftainships that were found were not allowed to grow and new ones were not allowed to spring up. The effect of this was to preclude one element of African societies that has been a problem to national unity. Second, the maji maji days when the whole population united under a mass movement "to rid African society of the evils of European control and sorcery"[16] were never to be forgotten. It was during this period that the people learned of the evils of colonial rule. They also learned to be united when faced with similar circumstances. This element has played a very important role in Tanzania politics and, as I shall show later, brought trade unions into politics.

In 1919 after the first World War, Tanzania was acquired by Britain as a mandatory territory. The basic British policies in Tanzania were, (1) Tanzania was to be an African country and was to be developed for Africans, (2) The indigenous people were to be governed through the principle of indirect rule.

As a direct result of these policies the European settler community was discouraged which precluded the development of plantations. Peasant cash crop agriculture was to be encouraged. In this regard Tanzania was to be developed along the same lines as Uganda. One would have expected the same results in the two countries. However, certain factors made the development of the two countries different. First, the fear that the country may one day go back to the Germans reduced the growth of foreign capital. Second, becauseof bad climate and the vastness of the territory, the cash crop system of peasant agriculture failed. This affected the development of industrial sector at two levels. In the first place it precluded the possibility of creating reserves from incomes received through export of cash crops to be used in the development of industries as was the case in Uganda. In the second place, it removed the possibility of using the agricultural sector as a base to the growth of industries as was the case in Kenya. As a result of these factors the development of an industrial sector in Tanzania was hampered so that at the time of independence she was the least industrially developed country in East Africa.

Thirdly, because the colonial policy in Tanzania emphasized indirect rule rather than direct rule burieactatization depended on the presence of local political systems which could be used as agents of

colonial administration. Unfortunately at the time Britain acquired Tanzania she did not have such political systems. Tanzania had not evolved any significant political systems at the time the Germans colonized her. Worse still the German administration had not encouraged the development of such systems and therefore even the few they found were not allowed to grow. As a result of these factors, development of the British-type systems was less successful than it had been in Kenya.

Social and economic discrimination, though present, lacked the intensity it assumed in Kenya. Europeans had the top jobs in both administration and business, with Asians as the middle group mainly engaged in trade, and Africans were labourers. Wages of course were low, as in other parts of East Africa.

Political activities were not allowed in Tanzania for a long time. The first African representatives appointed by the Governor and the legislative council joined the same council in 1945 and yet full rights for Africans to participate in politics were not granted until 1954.[17]

The development of trade unions was also influenced by these developments. First the failure of the cash crop system of agriculture left workers with their jobs as the only source of income. Consequently when the idea of trade unionism was introduced to them they took it much more seriously than they would have had if they had another source of income. Second, because of the failure of the colonial government to attract foreign capital as it had been done in Kenya and the failure of the cash crop agriculture there were no facilities necessary for the growth of industries. Partly because of this and partly because of the British trade union involvement, trade unions in Tanzania were organized on the British model of "craft" and "employer" based unions. Unfortunately there was no counterpart of the British craftsmen to provide unions with leaders. As a result the growth of trade unions did not acquire momentum until 1955 after the establishment of the Tanganyika Federation of Labour (TFL). Right from its establishment and assisted by the Tanganyika National Union (TANU) the TFL began to reorganize trade unions from the numerous crafts unions to fewer industry-wide unions. At the same time the TFL encouraged more workers to join unions. By 1960 when Tanzania gained herself government, the trade union membership had risen from 9,000 in 1956 to 80,000.

The environment in terms of foreign control of national life and suppression of political expression

as stated above was not at all acute. For that matter it would have been expected that with the role the British trade unionists were playing in keeping trade unions on purely economic issues trade unions in Tanzania could not have got into political agitation. However they did join political movements in the struggle for Uhuru. This co-operation between the political movements and the trade union movement is complex. First, it has to be remembered that when the TFL was established, there were no unions with resources to support it. Consequently in its early efforts to reorganize trade unions it was supported by TANU. In turn in 1958 when TANU proposed the launching of a political college the TFL agreed to offer the college financial assistance. Second, it has to be remembered that the old days of resistance to colonization had fostered in the people a spirit of unity which TANU was quite able to arouse. The outcome of this was that when political activities were allowed, Tanzanians supported a single political party TANU. Even when the colonial government tried to promote another party, the United Tanganyika Party (UTP) to compete with TANU, it failed because people saw this as another expression of the divide and rule colonial policy and therefore refused to support the party.

As independence became imminent, and perhaps this

is very important, the trade union leaders who also might have had some political ambitions joined TANU, which was the only political party. Because of this friendly accord between the TANU and TFL leaders, together with the failure of UTP, plus the lack of factional rivalry within the trade union movement at the time, the relationship between the two movements grew closer. This development came to a climax in September 1958 with a formal affiliation. According to the arrangement ensuing from this affiliation, the TFL's General Secretary at the time R. Kawawa, became a member of the Party's national executive committee. Finally, it would seem that the political leaders also wanted this cooperation to be encouraged. In 1960, the president of TANU Julius Nyerere is on record as having said that:

> "The trade union movement was and is part and parcel of the whole nationalist movement.....Trade unions and the political organizations are prongs of the same nationalist movement...." (19)

In 1961, the year of Uhuru following some conflicts between the two movements on some issues of policy for the new nation, TFL was given a second seat on the TANU national executive council. In brief this is how trade unions got into politics.

The failure in the development of an industrial sector which delayed the organization of employers and

the slow development of trade unions during the years before 1956, hindered the development of an industrial relations system. As such Tanzania approached independence without an established industrial relations system.

UGANDA

Uganda became a British area of influence under the Imperial British East African Company in 1888. In 1894 after the visit of Captain Lugard, Uganda was declared a British protectorate. The formal agreement between the Kabaka of Buganda and the British Government officials were signed in 1900. By these agreements Uganda was to be a protectorate and to remain an African country. The Buganda Kingdom and other kingdoms were to retain their autonomy while in other areas a system of rule through appointed administrative chiefs was to be imposed. Thereafter the British policy in Uganda was to be based on the following principles: (1) Uganda was to be an African country and to be developed for Africans, and (2) The indigenous people were to be governed by the principle of indirect rule. A couple of reasons have been suggested to explain why the British adopted this policy for Uganda. First it is suggested that the acquisition of Kenya with a most appropriate climate for white settlement made the Europeans less interested in Uganda. Second, the existence in Uganda of well organized political systems

which posed potential resistance made the success of European settlement less likely than it would be in Kenya.

What were the implications and outcomes of this policy for Uganda's development? First, the European settler community was discouraged thus precluding the development of plantations. As a result there was no large demand for cheap labour which plantation agriculture tend to create. This further ensured that the colonial government did not have to be called upon to institute forced labour as was the case in Kenya. This tended to prevent a confrontation which otherwise could have occurred between the government and the workers. Secondly, the adoption of cash crop system of peasant agriculture precluded the possibility of agriculture forming a base for rapid industrial growth. In addition the British colonial government's inability to attract foreign capital to flow into Uganda further rendered industrial development slow and dependent on the success of cash crops to generate reserves. Fortunately the cash crops, particularly cotton and coffee were successful and generated the capital which was used in establishing the Uganda Electricity Board which has been very instrumental in the industrial development of Uganda. Also in 1952 when the colonial government realized that the growth of industrial sector was being dangerously slow, they established

a state corporation, the Uganda Development Corporation (UDC), whose objective was to initiate and promote industrialization. Basically because of these two elements of the Uganda situation, the country was relatively more industrialized than Tanzania.

Thirdly, the bureaucratization process also had some problems. Before the coming of the British colonizers, Uganda had a number of kingdoms, otherwise the rest of the society lived in much the same way as tribes in Kenya and Tanzania with no organized political systems. To implement the indirect rule principle some of these kingdoms, notably the Buganda kingdom, were used to subdue and rule other parts of the country. By the time of independence, the Bureaucratization process had only succeeded in the kingdoms but virtually failed in other areas of the country.[20]

Fourthly, though racial jealousies were present, they lacked the concentration they acquired in Kenya. There were several reasons for this. First, without the prospects of permanent settlement along the Kenya pattern, the Uganda Europeans regarded their role as essentially temporary and therefore direct confrontration with the people was avoided if only to make their stay longer. Secondly, because of the Kenya Luyas and Luos, the Rwandes and the Sudanese who had travelled to Uganda in search of market for their

labour, labour shortages were minimised. However, whenever there were labour shortages these people were employed and even more encouraged to come, rather than applying forced labour, a phenomenon that created bitterness whenever it was applied.

Finally the economy was to be developed through peasant agriculture. Because of the good soil and climate this was much more successful than it was in Tanzania. The result of this was to keep people on the land rather than move for wage employment. The few who went for wage employment went to subsidize their agricultural incomes. Thus they were not only temporary but also lacked commitment to the industrial system.

These elements of the colonial environment in Uganda had some influence on the development of trade unions and the birth of an industrial relations system. Since the workers were uncommitted to wage employment, because of the success of their agriculture they did not see any use for workers' organisations. The few committed workers who saw the need for workers' organizations were foreigners - the Luos and Luyas of Kenya, the Rwandes and the Sudanese and therefore they feared to start the union movement because of the suspicion that they could be deported. When the trade union movement was started it was in fact these same

foreigners who were ready to come forward to lead the movement. These people not being Ugandans, could not involve unions into the nationalist movements. To quote Maynaud:

> ".....these workers, who have no roots in the country which employs them, are not reliable material for developing a nationalist movement". (21)

Consequently trade unions in Uganda were kept out of politics.

In the late 1940's and early 1950's some leaders tried to use trade unions as vehicles of political expression in the absence of an alternative, but this did not go very far because the workers, besides not being interested in trade unions themselves, were just not interested in politics. As Fischer put it,

> "The necessity.....political nature of the union struggle is borne out by the fact that the betterment of the workers economic plight can be achieved only by political action and victories". (22)

Since the workers did not feel the foreign domination they did not see the need for political action. Reporting on the non-political nature of trade unions in Uganda the Labour Department had the following to say:

> "Even though a state of emergency existed in Buganda.....and the political situation was somewhat involved, labour remained calm". (23)

After 1954, the prices for cotton and coffee on the world market began to fall, thus affecting the incomes of the peasants in Uganda. The direct outcome of this was unemployment. This further made the workers more committed to their jobs as jobs were going to be difficult to obtain. This commitment was later reflected in the growth of trade unions after 1956. In 1966, Tom Mboya, a Kenya unionist, visited Uganda and helped the formation of the trade union centre. By this time however, Governor Cohen's administration allowed political activities which kept the politically ambitious elements out of trade unions.

At the time of independence therefore, Uganda, unlike Tanzania and Kenya, had a trade union movement which was more or less nearer to what the colonial administration wanted to see of a trade union movement than her two neighbours. A trade union movement that had kept out of politics.

The industrial relations system was influenced by the factors discussed above. First, because of the slow growth of the industrial sector, and the late

development of trade unions, employers also did not get organized for a long time. Consequently, at the time of independence the Uganda industrial relations system was in its infancy.

SUMMARY

In this chapter it has been said that workers and their unions having been the weakest participants in the industrial relations systems in East Africa, tended to force the unions to seek support of the governments. But because of lack of legislative influence, they tended to become vulnerable to political wooing. In Kenya and Tanzania where the environment too was supportive to this tendency, trade unions fell into political struggles. In Uganda where the environment was lenient, trade unions resisted getting into politics.

To assist the reader, in understanding how the colonial period influenced the trade unionists' expectations and the decisions of the political leaders about the types of industrial relations systems the new countries were to adopt, I have tabulated the factors discussed in the chapter to show just how the situation in the three countries at the time of their self government. The table shows the relative success of foreign domination of national life, development of industrial sector and industrial relations system,

freedom of political expression and bureaucratisation in Kenya, Tanzania and Uganda.

Table 1:

A Comparative View of the Impact of Some Cultural Factors in the Three Countries

	Factors Discussed	Kenya	Tanzania	Uganda
A	Foreign domination of national life	H	M	L
B	Development of industrial sector and the industrial relations system	H	L	M
A	Freedom of political expression	L	M	H
B	Bureaucratization	H	L	M

Key:
H = High
M = Medium
L = Low

A - affected trade union involvement in politics and expectations.

B - affected the possibility of change of the established systems including the industrial relations systems.

Kenya witnessed a high foreign domination of national life. At the same time there was little freedom of political expression for the citizens. The direct outcome of these factors was that trade unions joined the nationalist movements to fight for independence.

This coming together was not complete fusion and therefore the trade union movement retained its own identity. Under these circumstances, it would seem logical to suggest that trade unions at independence would expect to retain their identity as free economic trade unions. At the same time, as consideration for their support for nationalist movement in the struggle for Uhuru, they expected the support of the nationalist government in bargaining with employers. I would not think that Tom Mboya's call to the KFL leaders to persuade the union members to believe "that the businessman who yesterday was the arch supporter of the colonialist regime, today becomes the colleague of their nationalist government",[24] was really acceptable to trade unionists. At the same time, Kenya was quite successful in establishing an industrial sector and there after an industrial relations system modelled on the Western capitalist system. In addition, the direct involvement of British officials in most of the administrative functions ensured a high degree of bureaucratization both in public and private sectors. Under such circumstances it would seem logical to suggest that Kenya was least likely to change her systems on attainment of independence.

In Tanzania, because of the policy persued by the colonial administration, foreign domination of national life had been high during the German occupation, but

after 1919 when the British came in this was relaxed and the situation improved. So that during most of the colonial period Tanzania, relative to Kenya experienced medium foreign domination of the nation. For quite similar reasons the freedom of political expression for the indigenous people was medium. Partly because of these factors and partly because of the common accord between the leadership of the trade union movement and the political movement, trade unions joined the nationalist struggle to Uhuru. Here the coming together of the two movements was more complete than it was in Kenya. The two movements by formal affiliation, shared the same office facilities, arranged joint action on issues of common concern and conducted joint recruiting campaigns. Under such a situation it would seem logical to expect that trade unionists expected much wider co-operation with the independent government than mere government support at industrial relations level. I would suggest that they expected to be consulted and their advice sought on wider economic and political issues. On the other hand because of a lack of facilities of local political systems, which was a pre-requisite to the success of planting British bureaucracy under the principle of indirect rule, bureaucratization had struck low relative to Kenya. In addition, because of the failure of cash crops to generate reserves and the apparent reluctance of the colonial administration to attract capitalforindustrialization, the development

of industries and industrial relations system had also struck low. The combination of these two facts would reasonably lead one to suppose that Tanzania would be the most likely of the three countries to change its systems.

In Uganda, foreign domination of national life was low relative to Kenya where it was high or Tanzania where it was medium. In addition political expression for the indigenous people was relatively high compared with her neighbours. These factors placed trade unions out of political activities and subsequently out of the struggle for Uhuru. Consequently, it would be logical to propose that trade unionists were not to expect any special relationship with the independent government. On the other hand, bureaucratization had been medium if compared with Kenya where it was quite successful and Tanzania where it virtually failed. In addition, the development of an industrial sector and an industrial relations system was also medium. The combination of the two factors would lead anyone to suppose that Uganda would not find changing its systems as hard as Kenya would and yet not as easy as Tanzania.

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CHAPTER TWO

TRADE UNIONS AND THE SELF-GOVERNMENTS

2.1 INTRODUCTION

In this short chapter, I attempt to outline some of the major trade union activities and the new governments' reactions to them in the three countries during their respective transitional period from colonial administration to independence. The objective is to examine the statements made in the previous chapter about trade union expectations and the independent governments' position on industrial relations.

Following up the statements made in the previous chapter it would seem that the amount and nature of support trade unionists expected from the independent governments dependend on two factors, namely, (1) the extent and the nature of support trade unions gave the nationalist movements during the struggle for independence, and (2) the degree to which the colonial industrial relations philosophy of economic trade unionism was implanted.

KENYA

In Kenya, the period of self-government 1962/63 saw a series of spontaneous strikes that actually threatened the industrial peace. The majority of these strikes were encouraged by trade unionists and had

the support of trade unions. And yet in 1963 months before independence the acting General Secretary of KFL was saying:

> ".....the movement believes in mutual cooperation with the state in the consolidation of independence and in the economic reconstruction for the country".(1)

What may be asked is whether this spirit of cooperation is compartible with the strike! To appreciate the meaning of the strikes one has to see strikes as not only a means of settling industrial disputes but also as a demonstration of power.[2] Trade unions had worked side by side with the nationalist movements in the struggle for Uhuru and therefore the rise of KANU to power was logically construed as an increase in trade union power. The strikes therefore were not meant to be inconsistent with the spirit of cooperation expressed by trade unionists. Trade unionists could not see how an African government could support the predominantly European management, which during the colonial period was the arch supporter of the colonialists in suppressing the African trade unions. Thus KANU government's support for the demands that were being made on the employers by trade unions was taken for granted. This was particularly the case because one of them, Tom Mboya, was the Minister for Labour in the new

government. That this was the case can be seen in the trade unions reactions to the government's failure to support them.

The government on the other hand seems not to have perceived the strikes in the same manner as the trade unions. This should have been expected. The government had the duty to protect everybody in the country and not only trade unions. Consequently, the government was very much concerned about the strikes. This was the most critical moment for industrial relations in the new Kenya. It was the time the government had to make a decision on the future relationship between the unions and management and between the unions and the government. The government did make a decision. The Minister for Labour sponsored a meeting between the trade unions' centre KFL, the employers' centre FKE and himself. The outcome of the meeting was the industrial relations Charter prepared by the Minister for Labour and signed by the representatives of the three parties on 15th October, 1962.*

This charter was definitely a continuation of the free collective bargaining between management and unions with no government intervention the colonial regime had embarked on establishing in Kenya. In fact it was an extension of the memorandum of agreement

between the KFL and the FKE which set up a National Joint Consultative Council on 13th September, 1961.* This decision of the government on this matter is quite understandable. Considering the statements made in the last chapter, Kenya had been successful in the development of colonial systems and therefore any change would not only have meant sacrifices but it would have perhaps been seen as a revolutionary move which would have perhaps resulted in political instability. Trade unions on the other hand seem not to have expected this kind of action from the government they helped to establish. The KFL leaders might have subscribed to the philosophy of the charter, but not the affiliates and certainly not the members. They did not expect the government to leave them at the mercy of management which was still predominantly white. The charter therefore, in its entirety, was the first written evidence to the trade unions that the KANU government was neither going to support them in industrial bargaining nor was it going to support strikes. It proved that the government was for the continuation of the previous approach which unions had been struggling against during the colonial period.

In addition, there had been pronouncements from some prominent KANU leaders condemning the activities of trade unions and the government had done nothing about it. By 1963, the year of independence,

trade unionists no longer had confidence in KANU or any other existing political party. They wanted now to go it alone. At the elections preceeding independence, trade unions attempted to sponsor their own candidates to contest elections with KANU and KADU candidates. At the same time some trade unionists considered forming a labour party. The opinion of the government was sounded by Mboya. In his own words,

> "Trade unions as a movement cannot in my view enter candidates and behave as political parties, and at the same time plead to be left alone by politicians.....I am not overlooking the fact that trade union leaders can and have provided political candidates in the past. But I say that such leaders must qualify within the party machinery as it exists in the country without jeopardizing the movement's future by involving it in a straight party political struggle". (3)

Some trade unionists did not heed this advice and went ahead to stand for elections as independent candidates. The outcome of the election proved Mboya right. All, but one trade unionist, C. Lubembe who had stood on KANU ticket, failed to get to parliament. The same Lubembe had been the Deputy General Secretary of KFL since 1960 and had become its General Secretary in 1963 when Tom Mboya left to join the KANU government. Lubembe's position in KANU made him suspected by other trade unionists as a government supporter. In addition, Tom Mboya who had already disappointed them is said

to have supported Lubembe's rise to KFL leadership. This confirmed to these trade unionists who were out to withdraw trade union support for KANU that Lubembe was not only a KANU supporter but also a government supporter. As Kenya entered its independence era, the relationship between the trade union movement and the party in government was already strained. But the trade union movement was led by a person who was a supporter of the party in power. Realising the militant history of the trade union movement in Kenya, it would be expected that the years following independence would witness a struggle between the KANU government and the trade union movement.

TANZANIA

In Tanzania, trade unions greeted self-government by Postal and Railway Workers' strike. For the same reasons as in Kenya these strikes were not at all to be inconsistent with the established friendly accord between TANU and the trade union movement. The TANU governmenr did not support these strikes. This marked the beginning of the deterioration of the relationship between TANU and the trade union movement. The period that followed was to witness a series of wild cat strikes. Of particular significance was the Mwadui strikes of August 1960 in which the African Mine Workers Union attempted to breach a 15 months

agreement they had signed with management in April 1960. The unions expected the TANU government to support them against management. They were therefore very much angered when the government supported management. To quote Friedland:

> "The unionists fully expected the new TANU government to support their side in the first major industrial dispute since TANU had come to power....They were very much disappointed when the Minister...took a public stand against them." (4)

In addition there were other wider issues which further worsened the relationship between TANU and the trade union movement. In Tanzania, unlike in Kenya where trade unions joined the nationalist movements in the struggle for Uhuru but without each organisation surrendering its identity, the cooperation between TANU and the trade union movement was more formal and based on cooperation in wider issues than merely industrial cooperation. The first of such issues to come up was the stand of the independent Tanzania on the East African High Commission. The TANU leadership was for the retention of the High Commission while the majority of the trade unionists were opposed to the continuation of the Commission. The second was one of Africanization. The conflict on this issue though less dramatized, was nevertheless significant. The position of TANU

leadership and the Minister responsible for Labour favouring localization rather than Africanization was unacceptable to trade unionists. The issue began to develop as the first TANU government was constituted in September, 1960 and continued through a series of crises in which unions sometimes implicitly threatened to seize the railways and sisal plantations until the army mutiny in 1964 in which one of the demands was the Africanization of the Officers Group. Several trade unionists were implicated in the mutiny.

Concerned about the increasing number of strikes the government had to do something. This too was a very critical moment for the future of industrial relations in Tanzania. The first indication of the new government's stand came in December 1960. In a memorandum circulated to branches of TANU, J. Nyerere the Prime Minister had the following to say:

> "The Trade Union movement was, and is part and parcel of the whole Nationalist movement.....Trade Unions and the political organizations are legs of the same nationalist movement". (5)

This seems not to have pleased many trade unionists either. They started to struggle for a separation between the trade union movement and the political movements. During these struggles the country experienced some industrial unrest. In 1961 at the

heat of the conflict between the trade union movement and the TANU government, the TFL was granted a second seat on the TANU national executive committee. This was another indication of the TANU government's stand on the future relationship between the trade union movement and the government. The trade union movement was going to continue to work together with TANU in formulating national policies but separation of the two movements was rejected. Considering that Tanzania had not been so successful in planting colonial system in particular, which left her choices open, this decision cannot be surprising.

In the trade union movement too there were no agreements. In 1960 when Kawawa, the then General Secretary of TFL joined the TANU government, Michael Kamaliza succeeded him. At the same time Kamaliza was on the TANU national executive committee under the 1958 accord. This made him sometimes silent on issues of conflict between unions and the TANU government. For example, he supported the government on the High Commission issue and kept silent over the Mwadui strikes. Besides these incidents which made him suspect for a government supporter, Kamaliza tried to centralize the trade union movement by giving TFL substantial financial power and control over its affiliates. The government workers union was most opposed to this move because they feared losing their autonomy to TFL. The

government's reply to this was to remove the majority of them from unionism all together. Kamaliza's idea was viewed by the anti TANU elements as the start of a TANU takeover of the unions. Thus like Kenya, Tanzania entered the independence period with a trade union movement led by a person believed to be a government and TANU supporter while the movement wished for a separation to assert their freedom.

UGANDA

In Uganda even when self-government was imminent, trade unions still held the position of no political bonds with any nationalist movement. The Secretary General of Uganda Trade Union Congress (UTUC) is on record as having said as late as 1960 that the UTUC intended to keep aloof from politics and not to identify with any particular party and that were the UTUC to affiliate itself to a particular party, it would cease to be a free Labour movement.[6] Nevertheless, as self-government progressed and independence was very close, some trade unionists began to feel that they would do better if they alligned with political movements. At the same time some politicians were feeling that trade unions support was important to the attainment of independence. The first union to declare the importance of political independence to industrial freedom for unions was the Railway African Union. At their 1960 Annual Conference they

agreed that complete industrial freedom could only be achieved when the country attained political freedom. Thus it promised to urge its members to support the African politicians who were working for political freedom. Luande the General Secretary of this Union is on record as having declared,

> "The unions cannot insulate themselves from politics entirely.....free unions in this country are committed not only to the defence of workers but also to fight along with the politicians who are struggling to achieve this country's independence." (7)

Besides this interest in politics by some trade unionists, there were also some politicians particularly within the Uganda People's Congress (UPC) who did not belivve in the concept of free trade unionism. They did not see why trade unions could not become an integrated part of the structure of the ruling party. In the words of John Kakonge, the Secretary General of UPC at the time:

> "The UPC does not accept the theory that trade unionism can be entirely isolated from politics....that trade unionism in Uganda did not need the interference of politicians in their dispute. Such a view smacks of imperialism and colonialism." (8)

Later in 1962 just months before independence he added:

> "The independence of the UTUC is a reactionary myth. The unions are a force in the country and in this capacity, it is inconceivable that they should exist independent of government direction.....for a trade union to consider itself a mere social organization is to obstruct the development of the country. The government is the agent of the people and must control the instruments of state." (9)

In addition to these internal attempts by both trade union leaders and political leaders to bring their respective organizations closer there was also some external influence which made the relationship between trade unions and the government even more intricate. The July 1962 Tanzania Act which gave the government control over TFL started some scare activities among trade unionists in Uganda. At this stage it has to be remembered that Uganda, though less successful than Kenya, was much more successful than Tanzania in developing colonial systems. Consequently trade unions in Uganda, though more likely than trade unions in Kenya, were much less likely than trade unions in Tanzania, to accept a situation which limits their freedom and autonomy. However, these activities were accompanied by unofficial strikes. The climax of these activities came in September 1962 weeks before independence. The Department of Labour recorded 29 strikes in August and 35 strikes in September 1962. A local commentator is said to

have remarked:

> "One gets the impression that the unions have a list of firms which they are steadily working through, keeping six or seven strikes going at one time." (10)

During the election preceeding independence UPC got into the government. In the same election only one trade unionist H. Luande, the General Secretary of Railway African Workers Union, joined the government as a member of Parliament for Kampala East; an urban constituency. Thus unions being almost unrepresented in the new government and not having supported the politicians in the struggle it appeared that they did not have any high expectations from the new government as was the case in Kenya and Tanzania. Thus Uganda emerged into independence period without trade unions developing a direct confrontation with the government or the party in government. Nevertheless, as the pronouncements of the UPC leadership seemed to indicate the government wanted to control industrial relations affairs.

SUMMARY

At the beginning of this chapter, it was proposed that the amount and nature of support and cooperation trade unionists expected from the independent

governments depended on (1) the extent and nature of support or cooperation trade unions extended to the nationalist movements during the struggle for independence, and (2) the degree to which the colonial industrial relations philosophy of free collective bargaining between workmen and management was implanted. The events I have outlined in this chapter do not only confirm that proposition, but also show that the three countries were going to a dopt divergent approaches to certain trade union and industrial relations issues.

In Kenya the new government decided to continue with the colonial approach to industrial relations which was in conflict with the trade unions expectations of government support. Thus unions which during the colonial period had supported the nationalist movements, were to be opposed to them as they emerged into independence.

Trade unions in Tanzania had expectations that went beyond mere government support in bargaining with employers. They also expected continued cooperation and consultation on wider economic and political issues affecting them. The new government too decided to continue with the cooperation between the TANU party in government and the trade union

movement. However, they did not accept the idea of supporting unions on some national issues particularly the issue of Africanization. As the country emerged into independence trade unions that had cooperated with TANU were to be opposed to it.

In Uganda, unions had not cooperated with the nationalists in the struggle for independence and therefore did not expect any special relationship with the independent government. If they had any expectation it was the retention of the status quo. However, the UPC then in government had expressed a need to make trade unions an integrated part of the ruling party.[11] Consequently the country emerged to independence with trade unions still indifferent to political issues but showing signs of opposition to the UPC government's intended control of unions.

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CHAPTER THREE

HYPOTHESES AND METHODOLOGY

INTRODUCTION

In this chapter, I make some hypotheses regarding union and industrial relations legislation each of the three countries would enact following independence, in the light of the proceeding propositions. In addition I have outlined the methodology applied for the study. In doing so I thought it necessary to identify certain union and industrial relations issues which would be covered by legislation and which could be adopted as dependent variables. In addition, such issues had to be mutually exclusive to avoid possible overlapping which would make comparison difficult. Consequently, I chose to deal with the following three dependent variables.

3.1 THE VARIABLES

(i) INTERNAL ORGANIZATION AND MANAGEMENT OF UNIONS

Under this variable I shall be dealing with the extent to which union legislation includes rules governing union organisation and internal management. I shall particularly look for the provisions giving the government some control over the internal operation of the

unions. In addition I shall look for any provisions on whether unions are organised on an industry or craft basis.

(ii) TRADE UNION POLITICAL RELATIONS

Under this variable I shall look for any provision in union legislation restricting or allowing trade union relations or bonds with either the party in government or any other political organizations.

(iii) SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT

Here I shall look for provisions on the settlement of trade disputes between unions and management. Great emphasis will be placed on the procedure set out in the legislation for settlement of disputes. For the purposes of clarity, distinction will be made between rights and interests disputes whenever such distinction is provided for in the legislation. Rights disputes are those disputes that stem from interpretation or application of a law or any existing agreement while interests disputes are those disputes that stem from a demand by either management or unions for either the modification of an existing right or a claim

for a new right.

3.2 STATEMENT OF HYPOTHESES

Based on the statements I made in the first two chapters about the trade union expectations at independence and the decisions made by the political leaders about the kind of industrial relations the new states would develop, I would make the following working hypotheses about union legislation in each of the three countries.

KENYA

INTERNAL ORGANIZATION AND MANAGEMENT OF UNIONS

The government control of trade unions by way of registration laws would be retained. Otherwise there would not be any categorical statement on how trade unions would be organized. If on the other hand it were necessary to make a provision on this matter it would encourage industry based unions since this is how unions were organized during colonial administration.

TRADE UNION POLITICAL RELATIONS

Legislation would not contain any categorical statement on trade union involvement in politics as was the case during the colonial days. On the other hand if it were necessary to make a provision

on this matter, it would be to discourage trade unions as a movement to involve in direct party politics.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT

Legislation would encourage unions and management to devise and utilize their own machinery for settling disputes between them without involving the government. If it was necessary to provide for government involvement it would be to assist unions and management to solve their disputes without involving the government. In this regard there should be statements providing conciliation and arbitration either by way of Boards and Tribunals or Courts composed of independent persons.

TANZANIA

INTERNAL ORGANIZATION AND MANAGEMENT OF UNIONS

There would not be any categorical statement on the matter of internal organization and management of trade unions. On the other hand if it were necessary to include some provision on the matter, it would be to change from the crafts based to industry based unions because this is what the TFL and TANU which was then in government were doing just before independence. In addition the colonial trade union registration laws would be retained.

TRADE UNIONS POLITICAL RELATIONS

Legislation would not contain any categorical statement restricting or allowing trade unions political relations since the cooperation between TANU and the trade union movement had nothing to do with the government and could only be found in the rules governing the two movements. On the other hand if it were necessary, say if the trade union movement was not prepared to cooperate with TANU, then legislation would restrict trade union political relations if they are not within TANU.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT

Legislation would encourage unions and management to devise and utilize their own machinery to settle disputes between them without government involvement. If it were necessary to include the government it would be to help unions and management to settle their disputes independent of government. In this regard there would be provision for conciliation and arbitration by way of independent Boards and Tribunals or courts.

UGANDA

INTERNAL ORGANIZATION AND MANAGEMENT OF UNIONS

Legislation would provide for a centralised trade union movement either by way of a single trade

union to which all workers would belong or by way of giving the central organization of unions. In addition the colonial registration laws would be retained to keep the government in control of the management of unions.

TRADE UNION POLITICAL RELATIONS

Here legislation would provide for restrictions on any political relations or activities that were outside the UPC. All members of the trade union movement would be required to be members of UPC. The labour movement would be subordinate to the government and government intervention in union affairs would be provided by legislation.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT

Legislation would encourage branch unions and management to devise and utilise their own machinery for settlement of disputes without involving the government. On the other hand if it were necessary, provisions would be made to give the government power to help branch unions and management in the settlement of disputes without itself getting directly involved. Provision would be made for conciliation and arbitration by way of either independent Boards and Tribunals or courts.

METHODOLOGY

The main data base of the study has been information drawn from original union and industrial relations legislations and in some cases bills of parliament reported in national Gazettes have been used. In case of background events to legislation, use has been made of secondary information recorded by various authors on industrial relations activities in East Africa.

CHAPTER FOUR

UNION AND INDUSTRIAL RELATIONS LEGISLATION

4.1 INTRODUCTION

This chapter will make a report of the information found in union and industrial relations legislation in each of the three countries on the following union issues: (1) Internal Union Organization and Management, (2) Trade Union political relations, and (3) Settlement of trade disputes between trade unions and management. The report is presented by country and in the majority of cases a summary of the provisions in the legislation is provided.

4.2 KENYA

The origins of union legislation in Kenya is the Trade Unions Ordinance of 1937. The Ordinance legalized trade unions, established the office of the Registrar of Trade Unions to which all trade unions could apply within 30 days of their formation for registration. Unregistered trade unions were not allowed to carry on business. The Ordinance defined a trade union as "any combination whether temporary or permanent the principle purposes of which are under its constitution the regulation of the relations between workermen and master, or between workermen and workermen or

master and master or the imposing of restrictive conditions on the conduct of any trade or business and also the provision of benefits to members; whether such combination as aforesaid would or would not if this Ordinance had not been passed have been deemed to have been unlawful combination by reason of someone or more of its purposes being in restraint of trade.[1]

The Ordinance was amended in 1940 by the Trade Unions (Amendment) Ordinance of 1940. The amendments were all new sections added to the principle Ordinance. The amendments allowed peaceful picketing, defined a trade dispute as"....any dispute between employers and workermen or between workermen and workermen which is connected with the employment or non-employment or the terms of employment or with the conditions of any labour", and provided for right for trade unions to sue or be sued in courts of law in their own right.[2]

The entire Ordinance was repealed in 1943 by another Ordinance, the Trade Unions and Trade Disputes Ordinance, 1945. The Ordinance was divided into two parts. Part one dealt with and expanded on the objects that were covered by the 1937 Ordinance, while part two dealt with trade disputes the subject of the 1940 amendment and provided immunity for trade unions against prosecution under tort for acts in contemplation of or furtherance of a trade dispute.[3]

In 1948 the Trade unions and Trade Disputes Ordinance, 1943 was amended by another Ordinance the Trade Unions and Trade Disputes (Amendment) Ordinance, 1948. The Ordinance made the following important amendments. In Section 2, it repealed section 8 of the principal Ordinance which provided for voluntary trade union registration. The amendment provided for compulsory trade union registration. "....every trade union shall apply for registration in accordance with the provisions of this Ordinance within 3 months after date of its formation...." Under Section 3 the Ordinance added to the list of conditions under which the Registrar of Trade Unions shall not register a trade union. It also provided for more conditions under which the Registrar of trade unions could deregister a trade union. Finally, under Section 5, it gave the Registrar powers to call for accounts of any trade union at any time and inspect accounts, or any documents of a union at any reasonable notice.[4]

In 1949 another Ordinance was passed, the Trade Unions (Registration) Ordinance, 1949. The purpose of this Ordinance was to require all trade unions registered before 20th April, 1948 (the date the Trade Unions and Trade Disputes (Amendment) Ordinance, 1948 was effective) to reapply for registration.[5]

In 1952, the principle ordinance, and as amended in 1948 and 1949 was repealed by the Trade Unions Ordinance, 1952. This 1952 Ordinance forms part of the basis for union legislation in independent Kenya.[6] The other part which covered the settlement of trade disputes has its origins in the Trade Disputes (Arbitration and Inquiry) Ordinance 1940, which provided for some procedure for settling trade disputes generally. Thereafter all disputes existing or apprehended could be reported to the Governor by or on behalf of either of the parties to the dispute and the Governor was to take the matter into his consideration and take such steps as seen to him expedient for promoting settlement. He could refer the dispute to an Arbitration Tribunal which was to be established (if the parties consented). If such reference was to be made the Tribunal would, as the parties may prefer, consist of either: (1) sole arbitrator appointed by the Governor, (2) an arbitrator assisted by assessors to be appointed by the Governor in equal numbers from persons nominated by workers and employer, and (3) one or more arbitrators selected by the Governor from a panel of persons nominated by or on behalf of the employer and workmen. Any existing machinery for settling disputes to take preference before any other means.

Awards made whether by conciliation under the existing machinery or by arbitration to be recorded and published later by the Governor and to be known as a negotiated agreement, and any disputes on interpretation of any award to be made to the tribunal that made the award.

The Governor also was given powers to refer any dispute whether reported or not to a Board of Inquiry the same will report to him. On receiving the report he would make an award which would have the same effect as a negotiated agreement. He was also given powers to make the rules regarding the functioning of the Ordinance. The appearance of advocates for the parties to the dispute at the hearing or whether the hearing was to be public or private were left at the discretion of the tribunal or Board of Inquiry whatever was the case.[7]

This Ordinance was repealed in 1948 by the Trade Disputes (Arbitration and Inquiry) Ordinance, 1948 which now forms the basis of industrial relations legislation in independent Kenya.[8]

The investigation therefore commenced with the Trade Unions Ordinance, 1952 and the Trade Disputes (Arbitration and Inquiry) Ordinance, 1948 both of which formed the industrial relations legislation

with which Kenya ushered into independence era.

TRADE UNION ORGANIZATION AND MANAGEMENT - 1963

The Ordinance does not make any explicit statement on whether unions are to be organized on either industry or craft basis. However, it provided that all trade unions, once formed, had to apply for registration within 3 months of formation. Every application to be made on a prescribed form to the Registrar of Trade Unions by at least 7 members of the union. The application to be accompanied by a copy of the rules of the union and a statement of the following particulars, namely: (a) the names, identity certificate numbers, occupations and addresses of members making the application, (b) the name of the union and the address of its registered office, and (c) the titles, names, identity certificate numbers, ages and addresses and occupations of the officers of the union. The registrar could either:

(1) Defer registration
(2) Refuse registration, or
(3) Register the union and issue certificates, or
(4) Call for further information from the applicants.

The Registrar also had powers to cancel the registration of a trade union if he was satisfied that any provision of the Ordinance was being broken. Any party aggrieved by the decision of the Registrar in any of these matters could appeal to the Supreme Court whose decision was to be final.

Once registered, trade unions were free to operate and enjoyed a legal existence. Unregistered trade unions however were prohibited from carrying on business;

> "No trade union shall perform any act in furtherance of the purpose for which it has been formed unless application has been made by such trade union for registration in accordance with the provisions of this Ordinance...."

Any changes in any of the matters required on registration and amalgamations were to be notified to the registrar.

The Ordinance too provided some objects that trade unions had to include in its rules and constitution, namely: (1) the whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, the conditions under which any member may become entitled to any benefits and the fines and forfeitures

to be imposed on any member, (2) the name of the trade union and place of meeting for the business of the union, (3) the manner of making, amending and rescinding rules, (4) the appointment or election and removal of an executive and of trustees, secretaries, treasurers and other officers of the union, (5) the custory and investment of funds of the trade union, the designation of the officer(s) responsible thereof and the annual or periodical audit of its accounts, (6) the inspection of books and register of names of members of the trade union by any person having an interest in the funds of the union, (7) the manner of dissolution of the union and the disposal of the funds available at the time of dissolution, (8) the taking of decisions in respect of the election of officers, the amendment of rules, strikes, lock outs, and any other matter affecting the members, (9) the right of any member to reasonable opportunity to vote, (10) the amount subscription and fees payable and penalties for default, (11) the condition under which any one can become an honorary member, and (12) that the secretary and the treasurer of the union shall be persons sufficiently literate in English and Swahili language to be able to perform the duties of their offices.

Funds of a registered union were to be applied for objects approved by the Governor. The treasurer of every registered trade union to prepare and render every quarter or more often as the rules may require, to the trustees and members a just and true account of all moneys received and paid by him since he last rendered the like account. The trustees were to cause such an account to be audited. The Registrar of trade unions could direct that the account and rules of union be translated into a language the members understand. The secretary of every union was required to submit to the registrar annual returns which were to include audited accounts.

In 1956, the Ordinance was amended to specifically require that any alteration in the rules of any registered trade union be sent to the Registrar of Trade Unions for registration within 7 days of such alteration and that no such alteration in the rules of a union would have effect unless registered. The Registrar was given power to refuse to register the alterations if such alterations could make the union illegal. The amendment also specifically made it an offence to refuse to send or to produce any document which it was required by the Ordinance or any regulation under it to be sent or produced.[9]

TRADE UNION ORGANIZATION AND MANAGEMENT - 1964

Following independence in 1963, this situation was adjusted in 1964 by the Trade Unions (amendment) Act, 1964. The act did not make any major alterations to the provisions discussed above. It was also silent on the issue of the nature and basis of organization of trade unions. It however made some minor amendments as follows: The period within which trade unions had to seek registration was reduced from 3 months to 28 days and the penalties for operating an unregistered trade union after that period changed from 5,000/- to 5,000/- and/or 6 months in prison. Branches of trade unions were also to seek registration within 28 days of formation and were to notify the Registrar when dissolved. Changes of officials of trade unions were not only to be notified to the Registrar as was the case before independence, but now was to be registered and could not be effective unless registered. Rules of trade unions were not only to include manner of election of officials but that the elections of officials are to be by secret balot and once each year. Persons aggrieved by the Registrar's decision on matters of registration were not to appeal to supreme court but to a Trade Union Tribunal established under the same Act. Reports sent to the Registrar, were not only to show money received and paid out but also to show money received

by way of grants and donations from local and overseas sources. Penalties of one year in prison and up to 12 strokes was imposed for falsefication in accounts.[10]

BACKGROUND TO AMENDMENT

To recall what was said in chapter 2, Kenya ushered to independence with clearly uneasy union-government relationship. The reasons for this were also mentioned in chapter 2. Significant however was the fact that C. Lumbembe was General Secretary of KFL. Lumbembe was not only suspected for a government supporter, but also the base of Mboya's political strength (the same Mboya as already mentioned in chapter 2 had disappointed the movement by siding with the government).

Thus the period following independence witnessed some bitter struggles within the trade union movement aimed at removing C. Lumbembe and his faction from the trade union movement so that they can both assert their independence and remove Mboya from the government. During these struggles it is understood that a lot of foreign money came into the movement and some personalities in the government were concerned about it. For example, the Prime Minister Jomo Kenyatta is on record as having complained that 'imperialist money' was going to corrupt unions, also Oginga Odinga, the Vice President of KANU and later Vice President

of Kenya, is said to have remarked that:

> "I have never attacked the KFL but what I criticize is its financial aid which will make Kenya a slave to the West". (11)

Consequently, the amendments which in fact were spear-headed by Mboya, can be expected to have been aimed at: (1) to save his own political base by making it difficult for unions to remove his friends led by C. Lumbembe, (2) to give the Registrar more powers to check on the possibility of new unions coming up which were likely to be opposed to the KANU government, and (3) to keep the government informed of the financial assistance entering the union movement.

TRADE UNION ORGANIZATION AND MANAGEMENT - 1965

The Act of 1952 as amended by the acts of 1956 and 1964 was amended in 1965. By the Presidential acceptance of the Presidential Ministerial Committee's recommendations on trade unionism in Kenya, some changes were affected, particularly in the area of the trade union centre.[12] The recommendations as accepted were silent on the nature and basis for organization of trade unions in Kenya. It however made some statements that could imply that the organization was to have an industrial basis. In recommendation (8) it is stated that the Central Organization of Trade

Unions (COTU), the new union centre established by the same report, was to maintain as one of its urgent and primary objectives the amalgamation of trade unions in order to have fewer but stronger and viable trade unions and the Ministry of Labour was to be consulted as to the classification of trade unions. Gauging this against the fact that trade unions in Kenya had been and are organised on the basis of industries it would seem that the government was actually encouraging that tendency. On the nature of organization, the recommendations leave it to COTU to decide but in consultation with the government.

On management of the centre, the Kenya Federation of Labour and the Kenya African Workers Congress were to be deregistered and COTU formed and registered as the new workers' organization. The government was to supervise new elections in all trade unions and the Minister for Labour and the Registrar of Trade Unions given powers to this effect. The government was to be represented on the governing council of COTU by the Permanent Secretary in the Ministry of Labour. The President of Kenya was empowered to appoint and dismiss at will the following members of the executive committee; Secretary General, Deputy Secretary General and Assistant Secretary General. Furthermore, a government representative was to attend COTU executive meetings in advisory capacity and the

constitution of COTU was to be drafted by the Attorney General. The constitution when it was published and handed to COTU contain all the above recommendations. In addition, a check off system was introduced and the funds of COTU were to be applied only to objects specified in the constitution and the accounts of the Union were to be audited by someone approved by the Registrar of Trade Unions. COTU could change the rules in the constitution, if required, by two thirds majority of the governing council. COTU could also dissolve itself if required by $\frac{3}{4}$ of members of the governing council present voting by secret balot.[13]

BACKGROUND

The differences between the trade unionists had become more acute. The amendments of 1964 made it difficult to remove union leaders. Thus, between 1964 and September 1965 when the above alterations in union law were made, those trade unionists who were opposed to C. Lumbembe's leadership and had failed to remove him because of the 1964 amendment had formed another workers organization to rival KFL. The organization called the Kenya African Workers Congress (KAWC) was first refused registration by the Registrar of Trade Unions but was later registered. After it had become legal the period which followed witnessed a struggle between KFL

and KAWC for union affiliations and support. These struggles sometimes led into fights leading to strikes at times. The climax of these struggles came in Mombasa in August 1965 when 3 workers were killed and 100 others injured. The government stepped in and the President appointed a ministerial committee consisting of seven Ministers including Tom Mboya, the person whose political strength was actually at trial in these struggles. It is the recommendation of that committee and as accepted by the President that is referred to above.

TRADE UNION POLITICAL RELATIONS

The situation as at independence was that the legislation was silent about union political relations or activity. The amendments made after independence did not contain any categorical statement on this matter though there are provisions in the constitution of COTU drafted by the government which could lead one to conclude that COTU was to cooperate with KANU. In the rules of COTU, included in its constitution, it is provided that COTU is to cooperate with the government. Also it provided for the suspension of the three officials of COTU appointed by the President of Kenya by the governing council. If one matched these provisions with the events that have taken place after 1965, it would seem COTU was to cooperate and support KANU. In particular,

Kenya has since become a one party state, the President of Kenya is also the President of KANU and the same President is to appoint the three top executives of COTU. Definitely these officials have to support KANU. As evidence to this, in 1966 when another political party was formed, the Kenya People's Union and some of the executive group of COTU joined the Party they were suspended for acting contrary to COTU's constitution.[14] Also in press release late 1969, the General Secretary of COTU, D. Akumu, was reported to saying that COTU supported KANU.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT 1963

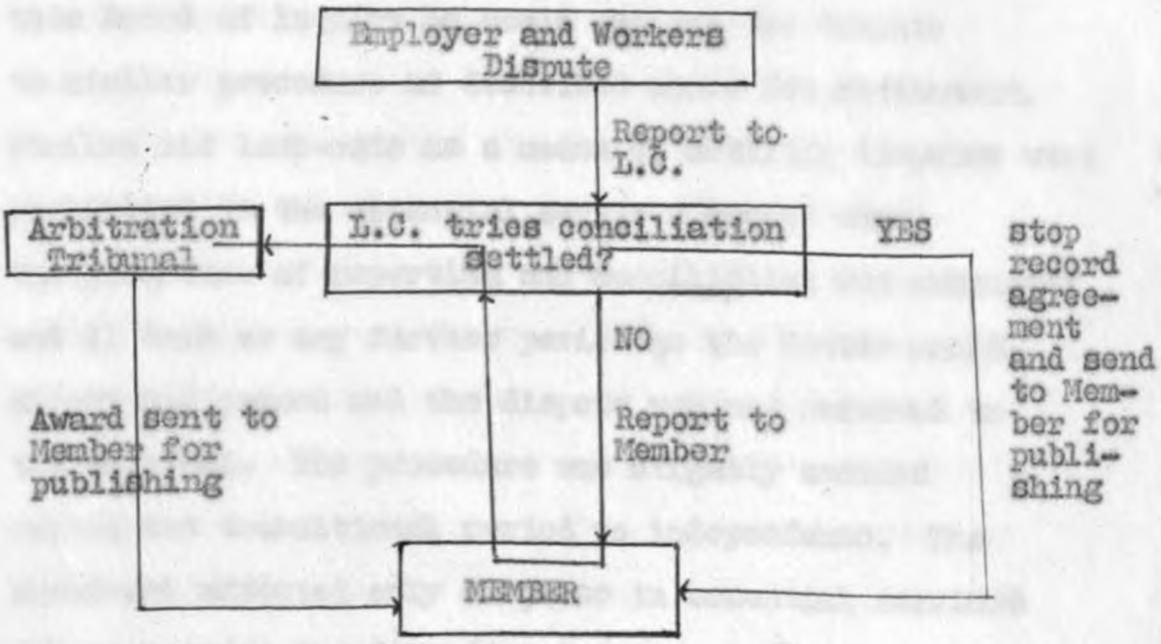
The situation on dispute settlement at independence was covered by the Trade Disputes (Arbitration and Inquiry) Ordinance, 1948 as amended by the Essential Services (Arbitration) Ordinance, 1950. The Ordinance did not distinguish between disputes over rights and those over interests. The procedure laid down in the Ordinance did not apply to persons in the naval, military or air service but applied to civilian employees of the crown in the same manner as if they were employed by a private person.

All trade disputes existing or apprehended were required to be reported to the Labour Commissioner

by or on behalf of either of the parties to the dispute. The Labour Commissioner or any Labour Officer required by him to do so would then try to conciliate between the parties. For these purposes any existing machinery within the industry or trade for settling disputes was to be given top priority. If the dispute was in an essential service, that is one of the services included in the schedule to the Essential Services (Arbitration) Ordinance 1950 or added to it by any regulation thereof, the Labour Commissioner would have to act very quickly and, in case there is no organization in the service to represent workers or the employer or if there is but in his opinion it does not sufficiently represent the interest of those in dispute, he will appoint up to five persons for each side, from persons nominated by the workers and the employer who would act as representatives in negotiating an agreed settlement of the dispute.[15] In either cases, regardless of whether the dispute is an essential service or not, if the Labour Commissioner could not effect a settlement or it appeared it would take unnecessarily long, he can report the matter to the Member of the executive council for the Colony responsible for labour matters. The Member on receiving the report could authorise the Labour Commissioner to refer the dispute to an arbitration tribunal. In case of Essential Services such references were to be made within 21 days from the date dispute was reported.

The Labour Commissioner through the Member had powers to increase the length of this period. Also such reference was to be made to a tribunal appointed at the Members discretion. In other cases such reference could be made at any time and the parties had to consent to such reference and to the composition of the tribunal if there was some other machinery in the trade or industry that could solve the dispute and had not failed to effect a settlement. Chart 1 below shows the procedure as described in the Ordinance.

CHART 1



PROCEDURE FOR SETTLEMENT OF TRADE DISPUTES - 1963

All awards whether by tribunal or agreement by conciliation were recorded and sent to the Member who would publish them. In case of essential services they were binding on both parties and became an

implied part of the employment contract until varied by a subsequent award or agreement. Matters of interpretation of awards were to be applied to the tribunal that made the award. Appearance of advocates for parties at the tribunal hearing was allowed in essential services but left to the tribunal in other cases to decide.

The Labour Commissioner was also given powers with the approval of the Member to carry out an inquiry in any dispute existing or apprehended whether reported to him or not. Upon the recommendation of this Board of Inquiry he could subject the dispute to similar procedure as described above for settlement. Strikes and lock-outs as a means of settling disputes were prohibited in the essential services except where the procedure of reporting and conciliation was exhausted and 21 days or any further period as the Member could direct had passed and the dispute was not referred to the tribunal. The procedure was slightly amended during the transitional period to independence. The amendment affected only disputes in essential services and came under the Essential Services Ordinance 1963. By this amendment essential services disputes were to be settled the same as other disputes except that these disputes had to be also reported to the employers. No strikes were allowed except after 14 days but less than 22 days had elapsed since the report was made to the

Employer and nothing was being done. It was an offence to initiate a strike before reporting and before 14 days and after 22 days after such report.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT 1964

Since independence there have been a number of changes in this arrangement. The first changes came in 1964 just months after independence.[16] By the Trade Disputes Act of 1964, all disputes existing or apprehended were to be reported by or on behalf of either party to the dispute to the Minister responsible for the Ministry of Labour and not to the Labour Commissioner as was the case before independence. The Minister, who is now the counterpart of the Member of the colonial procedure, under this new arrangement was given more alternatives for dealing with the dispute once reported to him. He could reject the subject of the dispute or any part of it, he could refer the dispute back to the parties for further negotiation, he could accept the report and endeavour to conciliate, or cause an inquiry into any matter of the dispute.

The procedure of conciliation did not change and the Minister was to attempt to use any existing machinery in the same manner the Labour Commissioner was in the colonial arrangement. The appointment of

the conciliator was to be on the consent of the parties as before.

If conciliation failed to effect a settlement or the dispute was referred to inquiry and the Board of inquiry has so recommended, the Minister was to refer the dispute to the Arbitration Tribunal in the same manner as before. The consent of the parties was required and the Minister was not to refer the dispute to a tribunal for arbitration if there was in the industry or trade a machinery for settling disputes which had not been used to settle the dispute. The appointment of an arbitration Tribunal was left to the discretion of the Minister just as it was left to the Member before.

The Minister also retained the same powers as the Member to appoint a Board of Inquiry into any dispute he referred to it whether such disputes are reported to him or not. All awards made by the tribunal or any negotiated settlement by way of conciliation were to be submitted by the arbitrator or conciliator whichever was the case to the Minister who would publish it.

A completely new provision was the industrial court. It was provided that for the settlement of disputes the Governor General could by order establish

a standing industrial court to deal with trade disputes referred to it by or on behalf of the parties to the dispute jointly.

The Act does not distinguish between rights or interests disputes. It seems all were to follow the same procedure. All awards were not to/ inconsistent / be with any terms and conditions of employment made under any law - this was also in the previous law.

BACKGROUND

The changes of 1964 as I have mentioned did not significantly change the procedure of settling trade disputes in Kenya. This should be expected because the government had indicated that they were going to continue with the old methods of dealing with industrial relations matters. That this was the case is found in the Industrial Relations Charter signed by the employers, workers and the government on 15th October, 1962 the year of self-government and attached to this study as Appendix A. In addition, on the 10th February, 1964 the three parties again came to a voluntary agreement on several issues affecting industrial relations generally. A summary of this agreement is given in Appendix D. Thus the changes of 1964 were only to bring legislation in line with changes in the structure of the bureaucracy. For example it replaced the Member

mentioned in the colonial legislation by the Minister who was holding the same office as the former, and also gave the Minister more alternatives of dealing with disputes reported to him.

SETTLEMENT OF DISPUTES BETWEEN UNION AND MANAGEMENT 1965

In 1965 there were again further changes. Under the Trade Disputes Act 1965 enacted on 4th June, 1965, disputes were to be reported in the same manner as it was required by the 1964 Act.[17] The Minister was to deal with disputes in the same manner as before except that this time he was to do it after consulting with the tripatrite committee of employers, government and workers established under the February 1964 agreement referred to above. A standing industrial court was to be established by the President of the Republic and not by the Governor General. The President of the court to be appointed by the Chief Justice and other members to be appointed by the Minister for Labour, provided members representing workers and employers were to be appointed from persons nominated by organisations representing them.

The court was to hear disputes referred to it by the Minister or by or on behalf of the parties. However, there was a provision similar in principle to the colonial one which required the parties to

adhere to agreed procedures for settling disputes.

Where it appears to the Minister that there is an actual or a threatened strike or lock-out arising out of a trade dispute in any section of industry, and the Minister is of the opinion:

(a) That there is a machinery of negotiation or arbitration for the voluntary settlement of disputes in that section of industry; and

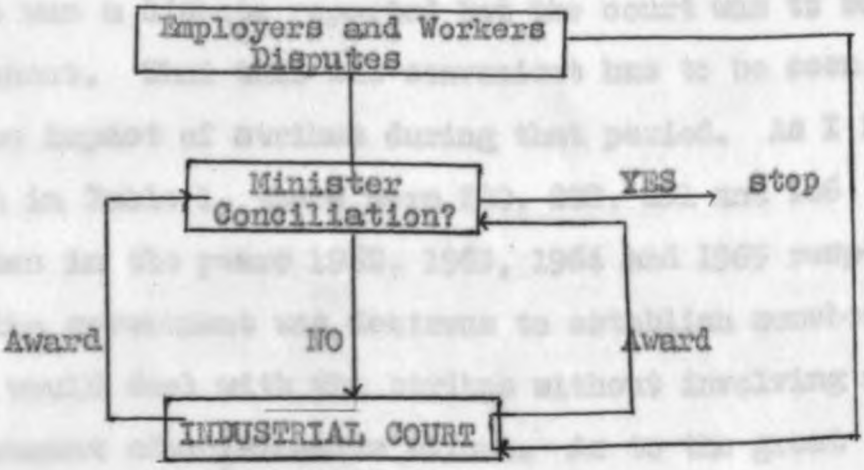
(b) That a substantial proportion of the employers and a substantial proportion of the employees in that section of industry are, either directly or through their representative organizations of employers or employees parties to any agreement for the use of that machinery, and

(c) That that machinery is suitable for the settlement of that dispute, and

(d) That all practical means of reaching a settlement of that dispute through that machinery have not been exhausted, the Minister may by order: (i)require the parties to that dispute to make use of that machinery; and (ii) declare any strike or lock-out (whether actual or threatened in that section of industry to be unlawful".

The provision on arbitration tribunals was excluded in the Act. The new arrangements for settling disputes were not any different except the tribunal was to be replaced by the Industrial Court and that whereas in the old arrangement only the Minister could refer the dispute to the tribunal, now the parties could refer their dispute to the industrial court. In the essential services the procedure was to take up to 49 days and no strike was to be allowed until 21 days had passed and the Minister had done nothing. Reference to the industrial court in the essential services was compulsory as before but voluntary otherwise. Chart II below shows the new arrangement for settling trade disputes as introduced by the 1965 Trade Dispute Act.

CHART II PROCEDURE FOR SETTLEMENT OF TRADE DISPUTES - 1965



The Minister's powers of inquiry in any trade dispute whether reported to him or not were retained. Strikes as a means of settling trade disputes was prohibited until all the existing machinery for settling disoutes and the procedure as laid down in the Act are exhausted. In addition the Minister had powers to declare any strike unlawful and all sympathetic strikes were prohibited.

BACKGROUND

As can be seen there were not many radical changes in the procedure for settling disputes. The only significant changes are two. Replacement of the arbitration tribunal by a standing industrial court and the powers given to the Minister to deal with strikes and lock outs. The replacement of Arbitration tribunals by a standing industrial court was done for convenience. The arbitration tribunals were appointed every time there was a dispute reported but the court was to be permanent. That this was convenient has to be seen in the impact of strikes during that period. As I have shown in Table 1, there were 280, 282, 231 and 186 strikes in the years 1962, 1963, 1964 and 1965 respectively and the government was desirous to establish somebody that would deal with the strikes without involving much government administrative effort. As to the great emphasis placed on strikes in the Act, this was again

as a result of the continuation of strikes after the 1964 Act. Though the years 1964/65 saw a slight decrease in the number of strikes from 231 to 186, the numbers of strikers actually increased from 67,038 to 82,250.

Table 1

Industrial Disputes which Resulted in a Stoppage of Work - The Number of Workers Involved in Kenya 1961 - 1973

YEAR	NUMBER OF DISPUTES	NUMBER OF WORKERS INVOLVED
1961	167	26,677
1962	280	132,433
1963	282	54,881
1964	231	67,038
1965	186	82,250
1966	130	42,554
1967	129	30,160
1968	93	20,428
1969	110	33,718
1970	79	18,739
1971	69	13,553
1972	94	27,510
1973	82	12,927

Sources: The figures for the years 1961-1962 are adopted from the ILO Year Book of Labour Statistics, (Geneva 1971) while the figures for years 1963-1973 are adopted from the Faculty of Commerce staff seminar paper on Labour Legislation and Industrial Disputes: the Kenyan Case, by J. Brown and J.D. Muir.

In addition the number of workdays lost in strikes also increased from 167,767 to 345,855.[18] The voluntary agreement signed in 1964 which we referred to earlier in which unions had promised not to call any strikes for 12 months from the 10th February, 1964 had not stopped unions from calling strikes. The internal strifes within the trade union movement as already discussed in this chapter had not allowed unions to refrain from strikes and it was now the end of the 12 month period for which the agreement was signed and the government wanted to try some other method that would put some limits on use of strikes.

SETTLEMENT OF DISPUTES BETWEEN UNION AND MANAGEMENT 1971

The most recent amendments were made in 1971 by the Trade Disputes (Amendment) Act 1971.[19] The procedure for settlement of disputes was left as set in 1965. The only major changes were in the appointment and the designation of the head of the industrial court. In the 1965 Act the head of the industrial court, the President was to be appointed by the Chief Justice while the two independent Vice Presidents were to be appointed by the Minister for Labour. The Minister could also appoint any number of other members but not more than 20 of which at least one was a representative of Workers and the other a representative of the Employers. According to the new arrangement, the

head of the industrial court would be called chairman and was to be appointed by the President of the Republic. The other four members of the court to be appointed for a term of not less than 3 years, by the Minister after consulting the Minister for Finance, COTU and FKE. The consultation with Minister for Finance was for the purposes of deciding the members' remuneration. Assessors could also be appointed by the Minister but left at the discretion of the President. The court was also given powers to register and maintain a record of all awards and collective agreement. The court could record the agreement with or without alterations. For the purposes of carrying out this task the government was to provide the court with guidelines. The guidelines came out on 23rd August, 1973 and included the following: (1) so long as the economy continues to expand, all sections of the population have a right to expect some regular improvement in their standard of living, (2) the decision of the court should not cause any check to the regular growth of wage/employment opportunities in line with the development plan targets or cause redundancy in cases where labour becomes less profitable than machinery, (3) in order to avoid widening inequalities and frustrating the creation of new jobs, the court would make sure that on the whole, increases in wages and salaries did not exceed the rate of income growth in the economy as a whole, (4) workers' wages should

not normally be eroded by prices increases. Compensation for increases other than those caused by increases in taxation may be granted, based on the rise of the Nairobi wage earners' price index, (5) workers are entitled to a basic minimum standard of living. It will be for the court to decide what the minimum should be from time to time in each occupation, (6) priority in the allocation of awards should be given to lower paid workers provided this does not cause either a contraction in the opportunities for the employment of general skilled labour or a decline in the incentives for workers to improve the level of their work skills by training, (7) the court should endeavour to prevent increases in wages in one industry leading to increases in wages in another industry less able to afford such an increase. This is because annual leap-frogging of wage increases from one industry to another will be harmful to the economy, (8) the ability to pay higher wages should not necessarily be regarded as adequate and conclusive reason for an increase if it means that one group of workers will receive awards significantly out of step with those being given to other workers of similar skills, (9) the court should endeavour as far as possible to ensure that higher wages do not lead to higher prices whether in export industries or industries for local consumers, and (10) the pay of any one section of workers should not be reviewed more than

once every two years. This rule should apply to all awards granted or agreements entered into after these guidelines became effective. It will not preclude reviews of wages and salaries for groups which are presently covered by collective agreements of a duration shorter than two years.[20] These guidelines form the very first attempts by the Kenya government to regulate even voluntary collective agreements between employers and workers. They cover mainly disputes over interests. It would seem that in future disputes over adjustments in existing rights will not be allowed unless the right in question was at least two years old. This is a major diversion from the kind of system the colonial regime had tried to establish.

Another alteration included in the 1971 Act, was about the Public Service disputes. Whereas in the old arrangement they were treated like other disputes, they were now not to be subjected to a similar procedure. The industrial court would not entertain any public service disputes unless the Minister has sanctioned it in writing. This was because on the same day as these amendments the Minister had published regulations containing the machinery of settling disputes between the government as an employer and Civil Servants' Unions and Associations. The same machinery had to be exhausted before the disputes could get into the procedure provided in the legislation.[21]

All the awards given by the court and the agreements entered into by the employers and workers are to be reported to the Minister who has the powers to reject the award or agreement and make an appeal to the court for the award or agreement to be altered. The Minister also now has powers to refuse to accept the report of a trade dispute although any person agrrieved by such refusal could appeal to the industrial court and thereafter to the Kenya High Court.

BACKGROUND

At the time the government was concerned about unemployment which was rising very fast. In fact in the same year in February the government had invited the ILO mission to come and study the situation and make some recommendations.[22] Thus the government wanted to have full information about the changes in wages and to ensure expansion in employment opportunities. In addition there were occasions when agreements were not adhered to by the parties after they were negotiated and the government wanted to limit this tendency.

4.3 TANZANIA

Union and industrial relations legislation in Tanzania originated from the Trade Unions ordinance, 1932.[23] This ordinance, like the Kenya 1937 ordinance, legalised trade unionism in Tanzania. In 1941 it was amended to provide for peaceful picketing and prohibit

intimidation.[24] The entire ordinance was repealed in 1956 by the Trade Unions ordinance, 1956; the same ordinance forms part of the base for union and industrial relations legislation in independent Tanzania.[25] The other part has its origins in the Trade Disputes (Arbitration and Inquiry) ordinance 1947.[26] The entire ordinance was repealed in 1950 by the Trade Disputes (Arbitration and Settlement) ordinance 1950 the same ordinance formed the base of industrial relations legislation in independent Tanzania.[28]

The investigation therefore commenced with the Trade Unions ordinance of 1956 and the Trade Disputes (Arbitration and Settlement) ordinance 1950, both of which formed the union and industrial relations legislation with which Tanzania ushered in independence.

TRADE UNION ORGANIZATION AND MANAGEMENT - 1961

The ordinance defined a trade union as "any combination, either temporary or permanent of twenty or more employees or of four or more employers the principle purposes of which are under its constitution the regulation of the relations between employees and employers, or between employees and employees, or between employers and employers, whether such combination would or would not, if this ordinance or the trade union ordinance had not been enacted, have been deemed

to have been unlawful combination by reasons of some one or more of its purposes being in restraint of trade and includes any federation of trade unions where the principal purposes of such federation are as herein before mentioned."[29] The ordinance is otherwise silent on whether unions were to be organised on craft or industry basis. Nevertheless it established the office of Registrar and gave the Governor powers to appoint the Registrar of Trade Unions and any such assistant Registrars as he deemed fit. The Registrar was to keep and maintain a record of prescribed particulars relating to any registered trade union. Every trade union not registered as a trade union or to be established was to apply for registration or be assumed disolved 3 months from the commencement of the ordinance or from the day it is formed. The period could be extended if the Registrar thought it necessary. The Registrar upon receiving the application had powers to do one of the following: (1) Call for further information to satisfy himself that the group applying for registration was a trade union, (2) Require alterations in the name of the union, (3) Refuse to register the union, (4) Register the union and issue certificate and (5) Cancel registration of a union. Any appeal against the Registrar's decision in all these cases was to be lodged with the High Court.

The application for registration was to be made on a prescribed form, to be signed by 4 members, if union of employers or 20 members if union of employees, and to be accompanied by the following statements. Name of union, rules of union, officers, executive committee, postal addresses and any other matter required by the ordinance or any regulations thereof. Any changes in these matters were tobe notified to the Registrar. All unregistered trade unions were prohibited from carrying on business.

On management of unions, no statement could be found stating how they were to be managed. But all the time, the ordinance required that certain objects be included in the rules of any registered trade union. These were: (1) The name of the union, (2) The principal purposes for which the union is to be established, all other purposes ancillary to the principal purposes that may be pursued by the trade union, the purposes for which the funds of the union shall be applicable, the rates of contribution and conditions under which any member may become entitled to any benefits, the fines or forfeitures which may be imposed on any member of the union, (3) the manner of making, altering, amending and rescinding rules, (4) the appointment of election and removal of general committee of management and trustee(s) and other officers and re-election of these officers at intervals of not

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more than 3 years, (5) the taking of decisions by secret balot in respect of: (i) election of officers, (ii) amendment of rules, (iii) strikes or lockouts, (iv) federation or affiliations, and (v) amalgamations or dissolution, (6) the keeping of full accurate accounts by the treasurer, (7) the keeping in a separate fund all moneys received or paid by the union in respect of any contributory provident fund or pension fund scheme, (8) the investment of the funds or their deposit in a bank and for the audit of accounts at intervals not greater than one year, (9) the inspection of books and names of members of the union by any person having an interest in the funds of the union, (10) the manner of dissolution of the union and the disposal of funds available at the time, and (11) the right of any member to a reasonable opportunity to vote. Also the Registrar was to receive annual returns which were to include a statement of account on or before 31st March or any year. The Registrar had powers of inspection of the books of any registered trade union. Peaceful picketing was allowed but intimidation was prohibited for registered trade unions. Members of the armed forces excluded from unionism.

The situation of unions in Tanzania as outlined above was very similar to that in Kenya as outlined in the previous section. The basic provisions in

the legislation are the same in spite of some differences in terminology and arrangement of provisions. This arrangement was first altered in 1960 during the transitional period by the Trade Unions (Amendment) Regulations, 1960.[30] The alterations provided a form to be used in sending notice of dissolution of union to the Registrar and amended the form used by Unions to apply for registration. Otherwise there was no statement of significance on the organisation and management of Unions.

TRADE UNION ORGANIZATION AND MANAGEMENT - 1962

Other changes followed in 1962 about two years after independence. These changes were contained in the Trade Unions Ordinance (Amendment) Act 1962.[31] The Act gave the Minister of Labour powers to appoint a designated federation to which all registered trade unions will be members. Every trade union to which the above provision applied was to apply for membership with such designated federation before applying for registration as a trade union with the Registrar of trade unions. The designated federation was not to have powers to refuse or even cancel membership of any registered trade union and to which the provisions above apply without the Minister's consent. Registered trade unions were prohibited from becoming members of any other federation apart from such a designated

and if there was any such other federation, shall be dissolved within 3 months of the appointment of the designated federation. Combinations of Employers excepted.

The procedure for registration of trade unions remained as before and to apply to the designated federation, the Registrars' powers of inspection remained the same and to apply to the designated federation. The provisions about rules, funds and officers of unions to remain the same. The only other major addition was that the Registrar was to refuse to register any union unless he is satisfied that the union applying is a member of the designated federation. And he was to cancel the registration of any union which did not within 3 months of the appointment of a designated federation, become a member of such federation.

On management of trade unions, the old provisions still applied but in addition the designated federation could by the approval of the Minister direct that part of the union dues of the registered trade unions be paid to the federation. The Minister was given powers to direct how the funds so received would be applied.* The Registrar was given powers to suspend

* These powers were revoked by Act 44 of 1962 and re-imposed in 1964 under the NUTA establishment Act. See Reference 31 page 218, and Article 16 of NUTA establishment Act Reference 33, page 9.

officers of unions if he thinks or is satisfied that the funds of the union were being applied for unlawful purposes or if the accounts are not properly maintained, he could also apply to the High Court to oppoint receiver of assets of a trade union if satisfied that the funds of the union are being misused. The Act did not apply to Police, Prisons and anyone who holds or acts in any office to which appointments are made by the Judicial Service Commission.

BACKGROUND

To understand the logic behind the provisions of the 1962 Act some statements made in chapter one and two have to be recalled. TANU and TFL joined hands and almost merged to fight for independence. At independence several TFL leaders were called upon to serve in the new government. However, inspite of this friendly accord things started to go wrong. As we observed in chapter two, Tanzania got independence when the trade union movement was already looking for ways of withdrawing its cooperation with TANU. There were however some leaders within the movement, particularly Kamaliza the secretary general of TFL who were still supporting TANU. Thus the few years following independence, like was the case in Kenya, witnessed factional strifes. The majority of the leaders of the members of TFL were against continued TFL cooperation with TANU.

In addition, one of the most popular trade union leaders Christopher Tumbo who had been appointed High Commissioner to Britain resigned and it was suspected he did so to come and lead a political party, the People's Democratic Party which he was the founder, to appose TANU. And this Party tried to rally behind it all the discontented trade unionists within TFL. The government therefore wanted to make provisions which would give it power to dissolve TFL if it proved necessary. In addition to these changes in the trade union affairs, the government also passed the emergency power Act under which some of the trade unionists were detained. Tumbo himself fled to Kenya.[30] Things cooled down a little and the government did not designate the federation until 1964.

TRADE UNION ORGANIZATION AND MANAGEMENT - 1964

In 1964 new changes were introduced and are the most recent changes in the period under study. Under the National Union of Tanganyika Workers (Establishment) Act, 1964, NUTA was established as the designated federation referred to in 1962 and TFL plus all its members were dissolved.[32] NUTA was to be registered as a trade union by the Registrar of trade unions. NUTA had no powers to dissolve itself or to make provisions in its rules to dissolve itself.

However the President of Tanzania could if satisfied that NUTA had failed to carry out its objects direct the Registrar to cancel the registration of the new union under the Trade Unions Ordinance or establish some other body representative of employees which shall be deemed to be and shall be registered by the Registrar under the Trade Unions Ordinance as a trade union and direct the Registrar to cancel the registration of the new union, and such cancellation shall have effect as though made under the Trade Unions Ordinance. And provided at the time of cancellation the rules of the new union do not provide for the disposal of funds on dissolution the President was to include in the directive the manner in which the funds available at dissolution were to be applied, and in case he appoints another body the assets of NUTA are to go to the new body. The President of Tanzania is to appoint the General Secretary and Deputy General Secretary of NUTA. NUTA to be made up of the following industrial sections: Dock Workers and Seafarers, Agricultural Workers, Domestic and Hotel Workers, Transport and General Workers, Government Workers, Mines and Quarry Workers, Teachers and any other industrial sections as the Annual Congress may establish to which the union will allot its members. The assets of the TFL were vested in NUTA.

On management of NUTA, the Act included a schedule of the provisional rules of the new union. The Head Office of NUTA is to be in Dar es Salaam. The funds of the union are not to be applied to objects which are not allowed by the trade unions ordinance. A check off system was introduced to be the major source of union income. Check off money is paid by all members but at any undertaking where the members of the union are less than 50% no such statutory contribution applies. Application for membership is to be made at any office of the union by any person who at the time of such application is employed or resident in Tanzania. All members of NUTA are to be issued with membership cards. Changes in rules of NUTA must be approved by the Minister. However, the powers of the Registrar concerning the funds of the union were not changed. The Minister was given powers to require the specified union to submit its estimates of expenditure and income to him for his approval and to prohibit the union from making any expenditure save in accordance with estimates as approved by him. Notwithstanding that he has approved such estimates, to prohibit any further expenditure on any matter provided for therein and the specified union and its officials shall comply with any such requirement or prohibition. Any person who disobeys shall refund such funds applied after such prohibition or requirement. The Minister could also require a union to engage an accountant with

such qualifications and experience as the Minister may specify.* Though no explicit statement is made to the basis and nature of organization it is evident that the movement had been centralized with a single blanket union to which all workers were to belong.

BACKGROUND

The factional strife within the trade union movement had continued through 1963, and the government was anxious to put an end to it. The chance presented itself in 1964 following the army mutiny. To many labour leaders the chaos created by the mutiny was perceived as an opportunity to gain political control. As a result, some aligned themselves with the mutineers. It can be therefore suggested that the TANU government wanted to put an end to future union opposition. That this could have been so, in his first appointment of NUTA General Secretary, the President appointed his Minister for Labour. Also, when defending the provision on the Presidential appointment of the General Secretary and his Deputy, the Minister for Labour is reported to have stated:

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* See The First Schedule to the Act for specific provisions about the rules of NUTA.

> "I realise that the decision that the General Secretary and his Deputy should be appointed by the President may be misunderstood by our critics, particularly overseas, who do not understand the situation here as we do. These critics should know that in Tanganyika we have had a trade union movement which has been weakened by conflicts of personalities between union leaders. It is now the intention of Government to remove this source of weakness and that a strong labour movement should be organized and built up which will assist Government in implementing effectively our socialist policies.....It is absurd to justify the right of workers to elect their leaders when the result is a continuing weak labour movement." (33)

In addition the TANU government had indicated its desire to develop Tanzania on socialist lines under a "One Party Democracy" political system. The implications were that the government and the Party, TANU, had to be accepted as the legitimate representative of the major interest groups within the country. This had to include the workers. Consequently, it is also reasonable to suppose that the 1964 measures were part of a deliberate policy to help workers come out of their old weakness which usually rendered them vulnerable to exploitation by the generally strong employers. That this was the case could be seen from the measures that came out at about the same time. The 1963 wage increases that covered large numbers of the employed, the Security of employment Act 1964, the National Provident Fund, and the union closed shop included in the Act are examples of such measures.

The Minister himself in the Bill introducing the Act said:

> "....No government which is representative of the workers' interests need fear the emergence of a strong trade union movement under responsible leadership, since that movement will guarantee the industrial peace and stability which Government and private employers all recognise as essential to our economic and social progress....As a result of their new-found strength to secure for them (workers) in negotiations with employers the right to work at improving standards of living." (34)

Finally, it is plausible to suggest that the Government thought that a united strong and centralized union was crucial to its economic plans. To quote from the Bill again:

> "The measures were also part of the Government plan to introduce to the wage earners to understand government plan for the country and the position of the industries that employ them and how the profitability of those industries and indeed the incomes of our peasant farmer are affected by the fluctuating world price for the commodities they produce." (35)

The Act also emphasized national and industry negotiation for wage claims rather than what it called a system of wage claims which often affected one undertaking but can lead to general labour unrest.

During the following period there was increasing agitation and criticism against the practices of some NUTA officials. The administrative procedure of the new structure of course had some problems. This was most felt in financial matters. Pressure from the press, the Ministry of Labour and the employers as well as a number of legal actions arising from the administration of NUTA funds, eventually led to a Presidential commission of enquiry into the activities of NUTA.

The Commission made the following recommendations: (1) The President's power to appoint and dismiss the two top officers of NUTA be abolished, (2) There should be stricter enforcement of control measures over the administration of NUTA funds. Moreover, NUTA's accounts should be available to members for examination. (3) NUTA should be reorganized to provide substantial delegation of responsibilities to regional and branch officers. (4) NUTA should be prohibited from engaging in any political activity except through TANU. Their argument was that since the country had achieved political stability some freedom for the trade unions was of no danger. When Government responded, they also pledged to improve the management of NUTA. There were not any changes affecting the organization and management of trade unions as established by the 1964 act.[36]

To understand why the TANU government did not accept the entire recommendations of the commission one has to understand the changes that took place in Tanzania during and after 1967. On 5th February, 1967 the Arusha Declaration which was the TANU policy to build a socialist state was published. The policy placed all major means of production and exchange under the control of the peasants and workers. (Nationalized) by the Tanzania level of industrialization at the time this made the state the biggest single employer as is the case in many socialist countries. Consequently, the labour movement had to remain organized in a manner that conformed to the new political system. The President himself in a speech to TANU national conference said:

> "Our trade union movement must shake off its British heritage, where it found its justification for existence by quarrelling with the employers. The largest employer in Tanzania now is the people - their government and their public institutions. NUTA must learn something from the Soviet trade unions or the Swedish ones....Thus they first encourage and to help improve productivity and then argue about its fair distribution."

Further measures were introduced in 1970 under the Presidential Directive No. 1 of 1970, popularly known as 'MWONGOZO'. The directive had three major objectives.

1. It decreed creation of workers' councils, remodelling of management executive committees and of Board of Directors so as to ensure workers participation in management of the enterprises that employ them.

2. Realizing that many managers, despite basic changes in Tanzania industry, still behave in the same way they used to behave; called for change in the capitalist attitudes of master and servant relationship to a new socialist attitudes of workers and leaders relationship in the industrial relations system.

3. It called upon managers to discard the old capitalist habit of secrecy which compelled them to tell their workers as little as possible about the productivity, the profit or loss, the marketing prospects and future plans generally (which may involve redundancies and therefore of interest to the workers) relating to the enterprise that they work for. It required that the workers participation institutions be fully taken into confidence and provided with all data relevant to an issue being discussed.

These measures are not mere attempts to surpress the workers movement as many critics of Tanzania tend to argue but rather they are part of a long term policy directed to change the industrial relations system from the British model of free unionism to the Chinese or Soviet type. No doubt they have also pulled the workers from their subordinate position to management as established during the colonial period to a position where they are equal partners with management in industrial relations.

TRADE UNION POLITICAL RELATIONS

Legislation as at independence was silent on the issue of trade union political relations. The trade unions (Amendment) Regulations of 1960 and later the Trade Unions Ordinance (Amendment) Act 1962 also was silent on this issue. In 1964 under the National Union of Tanganyika Workers (Establishment) Act, a categoric statement was made on trade unions relations with TANU. NUTA was to be affiliated to TANU and it was to do everything in its powers to promote the policies of TANU and was to encourage its members to become TANU members.

The 1966 Presidential commission further recommended that NUTA should not engage in any political activity except through TANU. In addition, after the

Arusha Declaration, industrial TANU branches were established at every industrial undertaking. The objective was to make available to the workers, some of whom are TANU members, to the enterprise leaders including members of workers committees, and members of management, enlightened advice and views on the political angle of the policies to govern the enterprise concerned and on the general behaviour of management and workers in general. The leaders of industrial TANU branches are the judges of the policies adopted by the enterprise according to whether they further the national policy of self-reliance embodied in the Arusha Declaration. They are to work in cooperation with workers committees and management in this task.

BACKGROUND

To understand the origin of these changes, two major factors have to be recalled. First, it has to be remembered that the defunct TFL had cooperated with TANU right from the time it was established. This cooperation was much more of a merger between the two movements than the kind of cooperation we outlined between the KFL and KANU in Kenya. At independence TANU leaders wanted to continue with this cooperation. However, because of some disagreements on various issues between TANU and trade unionists, the trade union movement wanted to pull out of this common accord

and ascert its independence. Consequently, the provision that the union, NUTA, was to affiliate with TANU was to remove any doubt that a separation between the two movements was impossible. In fact the Minister supported the provision by saying that it only recognized the then existing situation.

Secondly, the introduction of socialist measures in Tanzania excluded the possibility of the British model of free unionism and called for an arrangement which subjected all movements in the country trade unions included, to the people's party.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT 1961

The settlement of trade disputes in independent Tanzania is based on the colonial Trade Disputes (Arbitration and Inquiry) Ordinance, 1947,[37] as amended by the Trade Disputes (Arbitration and Inquiry) (Amendment) Ordinance, 1948[38] and repealed by the Trade Disputes (Arbitration and Settlement Ordinance 1950).[39]

The procedure to be outlined below did not apply to His Majesty's Forces, the Police Force and Prison Service but otherwise applied to employment by or under the crown in the same manner as if it were employment by or under a private person.

The ordinance defined trade disoute as any dispute or difference between emoloyers and workmen or between workmen and workmen or between workmen and any authority or body connected with the employment or the terms of the employment or with conditions of labour of any person.

Any dispute existing or apprehended could be reported to a Labour Commissioner. No differentiation is made between disputes over rights and those over interests. The Labour Commissioner would consider the matter of the dispute and he or any Labour Officer required by him would endeavour to conciliate between the parties; provided he shall for the purposes of conciliation make use of any existing machinery for settlement of disputes. Any agreement in such efforts was to be recorded by parties and upon endorsement by the Labour Commissioner became a negotiated agreement and shall be deemed to be an award.

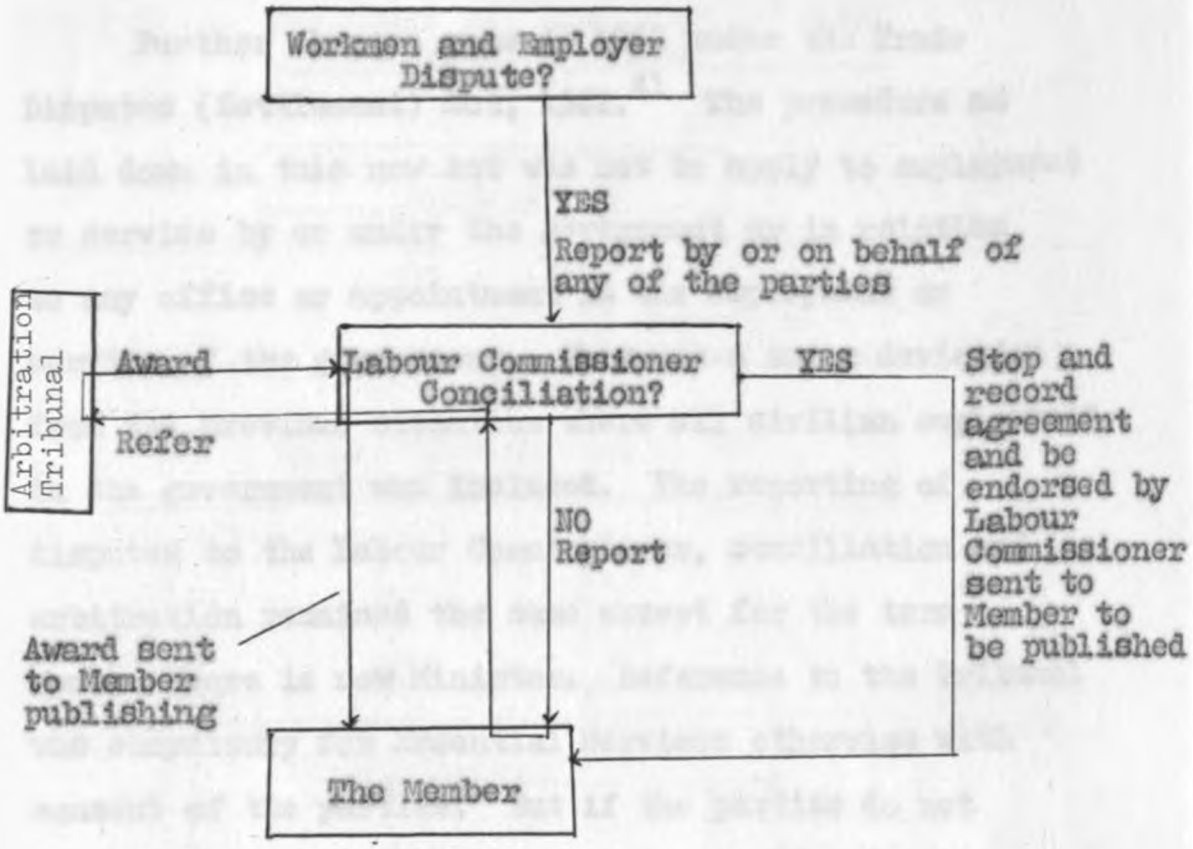
Where conciliation failed to settle the dispute, the Labour Commissioner could report thematter to the Member of the Executive Council for the time responsible for Labour matters who may (provided the parties consent) authorize the Labour Commissioner to refer the dispute to an Arbitration Tribunal which would hear the parties to the dispute and make an award. But the member was not to authorize the dispute

to be referred to an Arbitration Tribunal unless all the existing machinery in that trade or industry for settling disputes was exhausted and no agreement reached. If the dispute was in any of the essential services, that is the services included in schedule 2 to the Act and as altered thereto by the Member, the procedure was similar but with some modifications. The reporting was the same but the Labour Commissioner had powers to reject the matter in the disputes as matters of dispute in an essential service. If he accepted he would attempt conciliation. Where in the service there is no union representing workers or employers or there is one but he thinks it is not sufficiently representative of the parties, he could appoint representatives not exceeding five for each side from persons nominated by employers or/and workmen who want to take part in negotiating an agreed settlement of any such dispute. The agreement reached was to be treated as in any other case and any existing machinery in the trade or industry was to take preference. If the dispute is not settled or there is undue delay the Labour Commissioner was to report to the Member who may refer the dispute to an Arbitration Tribunal. This was to be done within 21 days from the date the dispute was reported to the Labour Commissioner. The Arbitration Tribunal shall hear the parties and make an award. Strikes as a means of settling disputes

were prohibited in essential services unless the procedure as laid down above is exhausted and dispute not settled.

Awards were not to be inconsistent with any law. Any dispute on the interpretation of any award was to be made to the Tribunal that made the award. Any award or agreement made or reached under this ordinance was binding to the parties and was an implied term in the future contracts of employment until varied by another award or agreement. The composition of the Tribunal was to be consistent with the wishes of the parties to the dispute. The ordinance also gave the Labour Commissioner power provided the Member approved to investigate in any trade dispute whether reported to him or not. The appearance of advocates at the hearing or whether the hearing was to be public or private were left to the Labour Commissioner, Labour Officer, Arbitration Tribunal or Board of Inquiry as the case may be. Publication of awards or report to be made by the order of the Member. Chart III below depicts the procedure of settling trade disputes as enherited by Tanzania at independence.

CHART III PROCEDURE FOR SETTLEMENT OF TRADE DISPUTES - 1961



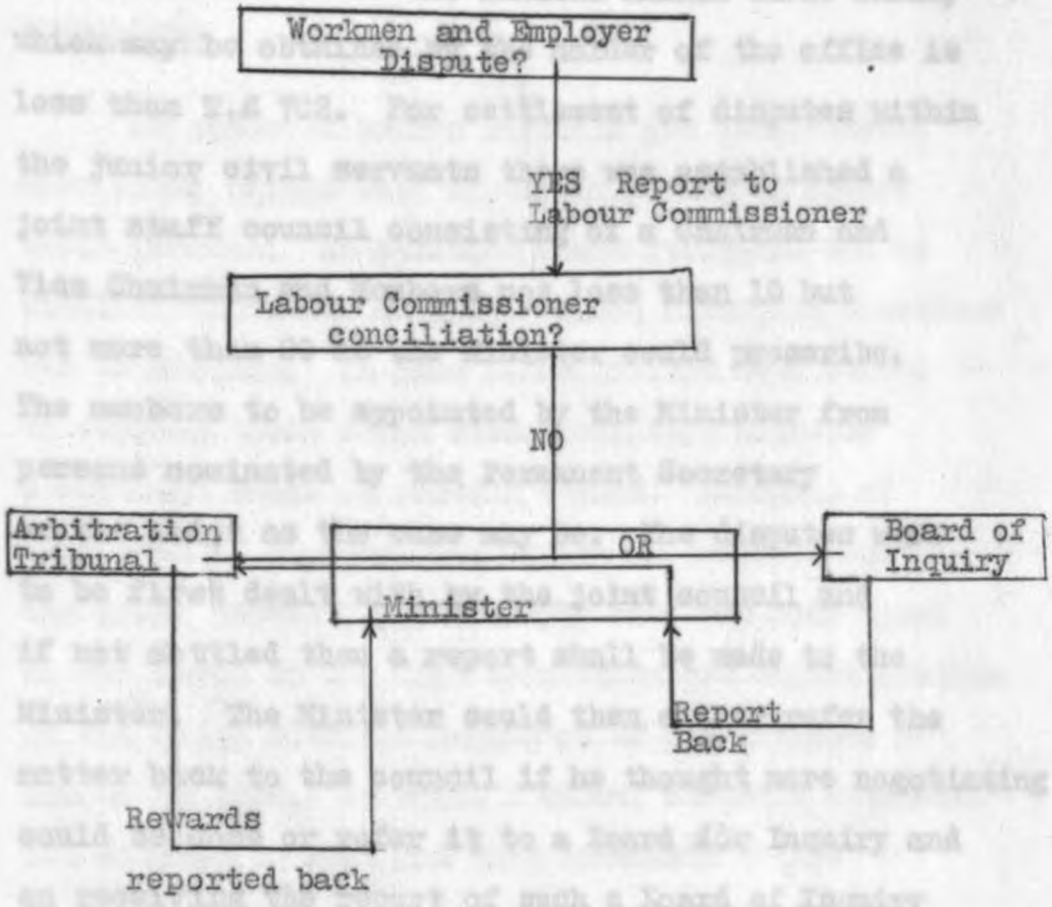
The first change in this arrangement came in 1960 the year of self-government. Under the Trade Disputes (Arbitration and Settlement, Prescription of Notice) (Amendment) Rules, 1960[40] arbitration was made compulsory in Essential Services only. It also restated the prohibition on strikes in essential services until the procedure existing in the industry and laid in the ordinance was exhausted. Otherwise the procedure was left unchanged.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT 1962

Further changes came in 1962 under the Trade Disputes (Settlement) Act, 1962.[41] The procedure as laid down in this new Act was not to apply to employment or service by or under the government or in relation to any office or appointment in the employment or service of the government. This was a major deviation from the previous situation where all civilian employment in the government was included. The reporting of disputes to the Labour Commissioner, conciliation and arbitration remained the same except for the term Member there is now Minister. Reference to the Tribunal was compulsory for Essential Services otherwise with consent of the parties. But if the parties do not consent to Arbitration the Minister could refer the matter to a Board of Inquiry and if the Board recommended arbitration then the Minister would refer it to the Tribunal for arbitration. The Labour Commissioner could refer the dispute to a Tribunal for advice but not for settlement as this was now for the Minister. Lockouts and strikes prohibited anywhere until all machinery and procedure laid in the Act was exhausted and 21 days or 42 days if inquiry carried out or any further period as the Minister may direct had past and no settlement. Chart IV below shows the arrangement for settlement of disputes as established by the 1962 Act. Note that the civil servants were not included

in it.

CHART IV PROCEDURE FOR SETTLEMENT OF TRADE DISPUTES - 1962



Perhaps it is necessary to mention what happened to disputes in the Civil Service. In the same month and the same date the Civil Service (Negotiating Machinery) Act, 1962 was passed.[42] The Act removed all senior Civil Servants from joining trade unions. A senior Civil Servant was not defined except that he was that Civil Servant who was not a junior Civil Servant. But a junior Civil Servant was any civil

servant who "holds or acts in any office: (a) the annual basic salary appropriate to which is less than T.£ 702, or (b) the salary appropriate to which is incremental where the maximum annual basic salary which may be obtained by the holder of the office is less than T.£ 702. For settlement of disputes within the junior civil servants there was established a joint staff council consisting of a Chairman and Vice Chairman and Members not less than 10 but not more than 20 as the Minister could prescribe. The members to be appointed by the Minister from persons nominated by the Permanent Secretary or the union as the case may be. The disputes were to be first dealt with by the joint council and if not settled then a report shall be made to the Minister. The Minister could then either refer the matter back to the council if he thought more negotiating could be done or refer it to a Board for Inquiry and on receiving the report of such a Board of Inquiry make an award. The award was to be binding on the government and such junior Civil Servants as it may apply. Strikes by junior civil servants were not allowed until the procedure is laid down in the act was exhausted and the Minister not made any award.

In 1963, under the Local Government Service (Negotiating Machinery) Act, the same arrangements were provided for settlement of disputes between the junior

Local Government servants and the Local Government Service Commission.[43] Senior Local Government Servants were also not allowed to join unions.

BACKGROUND

As observed before Tanzania got independence when trade unions were already fighting to ascert their freedom. In addition these struggles led to internal factional strifes. These struggles sometimes led to strikes. In some cases strikes were called to express trade union dissatisfaction with the Government stand on certain issues. Examples of this kind of tendency were given in chapter two. The civil servants particularly were the most vocal on the issue of the High Commission and centralization of the union movement suggested by the Minister of Labour in 1962. As table 2 shows, Tanzania witnessed 101 strikes in 1961 and this increased to 152 in 1962. The numbers of workers involved in these stoppages also increased dramatically from 20,159 in 1961 to 48,434 in 1962. Consequently, those changes can be said to have been motivated by two forces: (1) The desire on the part of the government to limit the strikes particularly among the Militant Civil Service employees. In fact in 1962 the number of strikes fell to 85. (2) The TANU government wanted to curb trade union opposition. I do not think that these changes were in isolation of the changes in the

Table 2

Total Number of Industrial Disputes Resulting in Stoppage of Work and the Number of Workers Involved and Work Days Lost in Tanzania 1961 - 1970*

YEAR	NUMBER OF DISPUTES	NUMBER OF WORKERS INVOLVED	NUMBER OF WORK DAYS LOST
1961	101	20159	113254
1962	152	48434	417474
1963	85	27207	77195
1964	24	3584	5855
1965	13	884	1825
1966	16	2062	8845
1967	25	3224	7224
1968	13	1906	5757
1969	4	874	2141
1970	3	357	726
1971	3	654	3026

* Excludes Disputes lasting less than 1 day

Source: ILO, Year Book of Labour Statistics, (Geneva, 1971).

organization and management of trade unions discussed in the last section.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT 1964

Further significant changes came in 1964 at the same time as and in fact being connected with the establishment of NUTA. These changes came under the security of employment Act, 1964.[44] They dealt with a number of issues affecting employment in general. For this study we shall only outline those areas affecting trade disputes settlement. The Act established Workers' Committees at all places of workers where there are 10 or more members of the union. The Committees' functions were: (a) To consult with the employer on matters relating to the maintenance of discipline and application of the disciplinary code which was included in the Act. (b) To discuss with the employer, at regular intervals and at least once every three months, means of promoting efficiency and productivity, (b) To consider and advise the employer on safety and welfare arrangements for persons employed in the business, (d) To attend, by a member of the committee nominated by itself for the purpose, all statutory inspections at the place of work by any authority charged by law with the duty to make inspections and report on working conditions, (e) To investigate and report to the appropriate authority on any non-

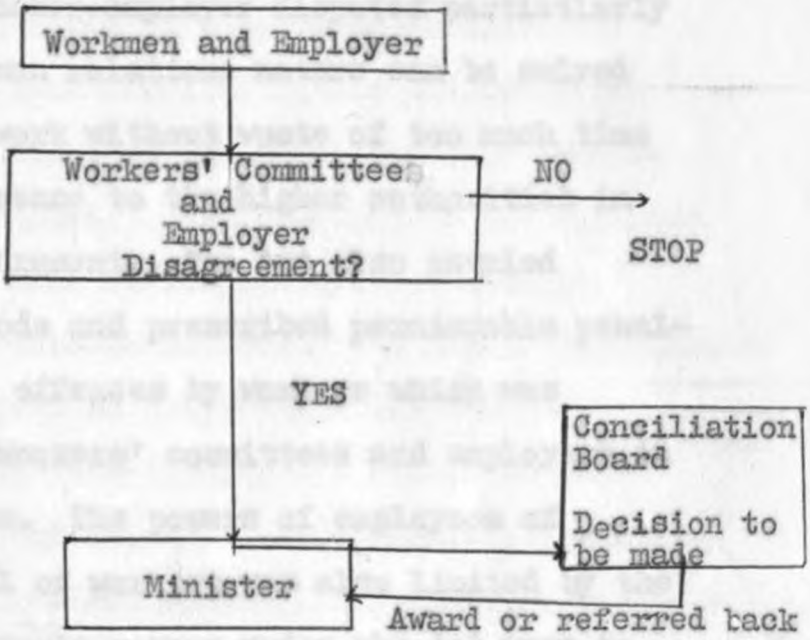
compliance with the provisions of a wage regulation order made under the Regulations of wages and Terms of Employment Ordinance or any law replacing the same, or with any collective agreement or arbitral award, which is related to the business or employees therein and for this purposes to inspect time and wage sheets and other appropriate employment records, (f) To consult with the employer concerning any impending redundancies and the application of any joint agreement on redundancies, (g) To consider and advise the employer on any of the employer's rules for the place of work, (h) Generally to assist in the furtherance of good relations between the employer and persons employed in the business and to exercise such other functions as they are conferred on a committee by this Act. The union was to pay the expenses of the committees.

An examination of these functions indicates that the committees were going to deal with all matters to do with rights of union members. The act adds that any disputes in these areas between the committees and the employer were to be reported to the Minister. The Minister would then refer the matter to a Conciliation Board. The Board was to consist of the chairman appointed by the Minister and two other members one representing NUTA and the other representing FTE, appointed by the chairman. The

hearing of the Board to be in camera and the advocates were to appear for the parties at the hearing.

This Act is significant in that it separated disputes about rights from the normal procedure of Arbitration. Chart V below shows procedures as provided by the Act in settling disputes over rights.

CHART V PROCEDURE FOR SETTLING RIGHTS DISPUTES 1964



On the same day another Act was passed, the Trade Unions and Trade Disputes (Miscellaneous Provisions) Act, 1964.[45] This Act prohibited senior Civil Servants and senior Local Government Servants from joining trade unions and to take part in any strike.

BACKGROUND

To appreciate the meaning of the provisions made in the Act discussed above, one has to see them as part of the NUTA establishment Act. If the establishment of NUTA was part of the socialist policy programme as was the establishment of workers' committees. The aim of these changes in the settlement of trade disputes was to increase productivity and also provide organizational arrangement whereby the day to day worker-employer disputes particularly disputes of a human relations nature can be solved at the place of work without waste of too much time and without reference to the higher authorities in NUTA and the Government. The Act also carried a disciplinary code and prescribed permissable penalties for certain offences by workers which was meant to assist workers' committees and employers in settling disputes. The powers of employers of summary dismissal of workers was also limited by the Act.* The Minister's powers under the Act were to add to or subtract from any of the schedules to the Act and to make the final ruling on any matter not settled by the conciliation Boards.

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* See schedule 2 for the cases in which employer could dismiss workers.

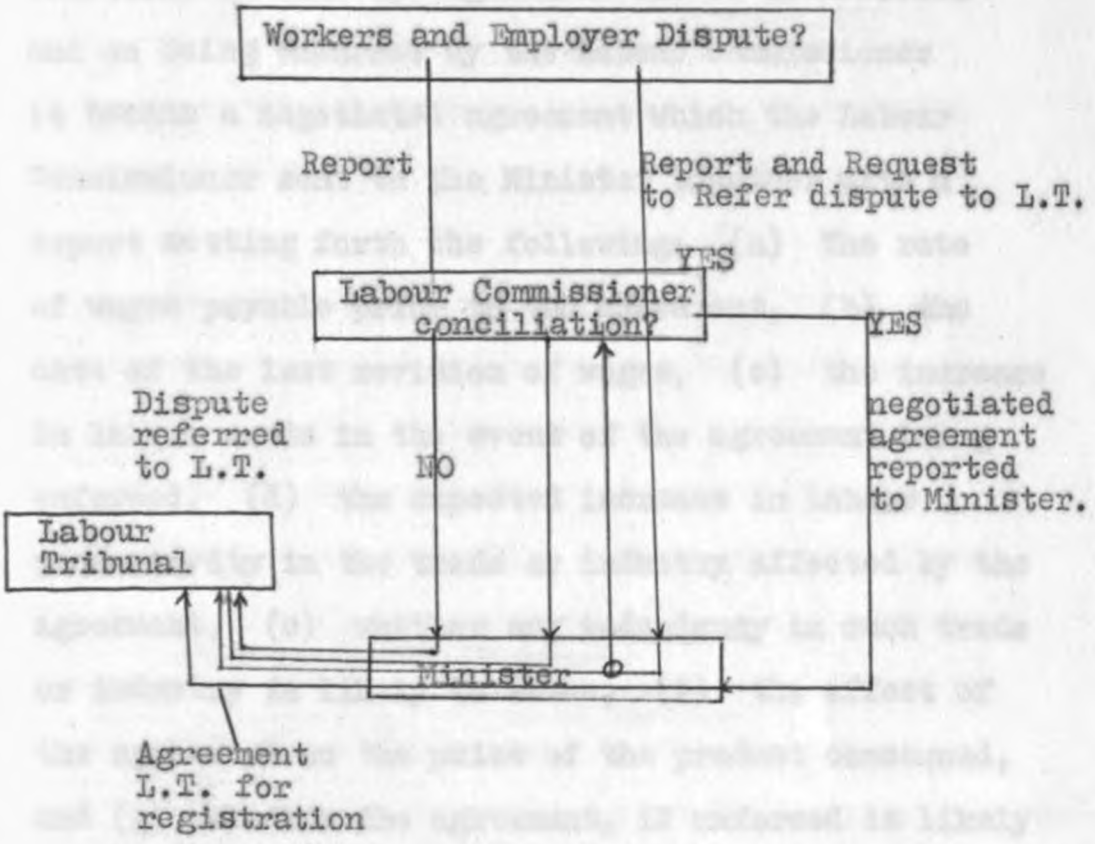
SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT 1967

In 1967 under the Permanent Labour Tribunal Act, 1967, new changes were introduced in the procedure for settling disputes generally.[46] In effect the Act repealed the 1962 Trade Disputes (Settlement) Act. But in principle it made few important changes. The reporting of all trade disputes, save those handled under the security of employment Act 1964, to the Labour Commissioner was not changed at all. The conciliation of parties by the Labour Commissioner or any Labour Officer required by him and utilizing any existing machinery in the trade for this purpose was not at all changed. The reporting to the Minister in case no settlement is reached was not changed. The Minister's powers to authorize the Labour Commissioner to refer the dispute to arbitration was changed. Under the new arrangement reference has to be made by the Minister, and not the Labour Commissioner to the Permanent Labour Tribunal which was also established under the Act. The establishment of a Permanent Labour Tribunal was a divergence from the old system where Arbitration Tribunals were appointed when ever there was a dispute. The appointment of the Labour Tribunal was also different. The Permanent Labour Tribunal was to consist of a Chairman and a Deputy Chairman both to be appointed by the President of the Republic and to hold office for period included in the

instrument by which they are appointed, except in case of resignation, dismissal by the President, death or just vacates office. The Deputy Chairman to exercise the duties of the Chairman in case the Chairman is absent from Tanzania, or by some reason unable to perform his duties or as directed by the Chairman. The Tribunal would sit at such occasions as the Chairman would direct. The jurisdiction of the Tribunal to be exercised by the Chairman sitting with two assessors one of whom shall be selected by the Minister either from any panel of assessors submitted to him by the union or from amongst the members of the union and the other shall be selected by the Minister either from any panel of assessors submitted to him by the Federation of Tanganyika Employers or any other body in the opinion of the Minister represents the interests of the employers in Tanganyika or from amongst the members of the Federation or such body. The absence of one or both the assessors not to stop the Tribunal from concluding its hearing. The Chairman not to be bound by the opinion of the assessor but he would record their opinion and reasons why he disagrees. There was also established an office of the Registrar to the Tribunal to assist the Tribunal in the performance of his duties.

The major function of the Tribunal was to hear and determine any trade dispute referred to it under the provisions of the Act. Chart VI below shows the new procedure set out by the 1967 Act.

CHART VI A PROCEDURE FOR SETTLEMENT OF TRADE DISPUTES - 1967



As can be seen in the chart, disputes were to be reported to the Labour Commissioner. He would then try conciliation. If in the industry there were no existing machinery through which conciliation could be made, the Labour Commissioner could inform the Minister who will after consultation with the employers and the union concerned establish by order

in the Gazettee machinery for the settlement of trade disputes within that trade or industry. If conciliation failed or the parties to the dispute did request in writing that the dispute be sent to the Tribunal without conciliation, the Labour Commissioner will report to the Minister. If there is an agreement on conciliation then the agreement was to be recorded and on being endorsed by the Labour Commissioner it became a negotiated agreement which the Labour Commissioner sent to the Minister together with a report setting forth the following: (a) The rate of wages payable prior to the agreement, (b) the date of the last revision of wages, (c) the increase in labour costs in the event of the agreement being enforced, (d) the expected increase in labour productivity in the trade or industry affected by the agreement, (e) whether any redundancy in such trade or industry is likely to ensue, (f) the effect of the agreement on the price of the product concerned, and (g) whether the agreement, if enforced is likely to affect any plan for expansion in the trade or industry concerned. On receipt of the agreement and the report the Minister would submit the agreement, the report and any comments which he may wish to make to the Tribunal which will consider it and register it with or without modification or refuse to register it.

Where the dispute is reported to the Labour Commissioner with a request that it should be referred to the Tribunal without conciliation, the Labour Commissioner will consult with the parties and if he thinks it should be referred to the Tribunal without conciliation, he shall report to the Minister who within 21 days from date the dispute is reported to him refer the dispute to the Tribunal or refer it back to the Labour Commissioner to proceed with the normal channels.

All other disputes if not settled by conciliation under the Labour Commissioner were to be reported to the Minister who will within 21 days or any period as he may direct from the date dispute as reported to him refer the dispute to the Tribunal. The Tribunal will then proceed to hear the evidence given by or on behalf of the parties and make an award or decision which shall be final and shall not be liable to be changed, reviewed, questioned, or called in question in any court save on the grounds of lack of jurisdiction. If a question arises as to the interpretation of awards the application to be made to the Tribunal itself. Appearance by advocates left at the discretion of the conciliator or Tribunal as the case may be. All awards to take effect after publication in the Gazette.

Besides settling disputes referred to it by the Minister the Tribunal had other duties. It was to inquire into any matter of trade disputes or conditions of employment and advise the Labour Commissioner as he may require. It was to inquire into any matter referred to it by the Minister and report to him, and finally to register all awards and collective agreements and reports thereof with or without alterations. For the purposes of performing its duties the Tribunal was provided with some guideline. (1) The need to maintain a high level of domestic capital accumulation with a view to increasing the domestic rate of economic growth and to providing greater employment opportunities, (2) the need to maintain and expand the level of employment, (3) the need to develop payment-by-result schemes, or other wage incentive structure, which will induce an employee to make greater effort and relate increases in remuneration to improvements in labour productivity, (4) the need to prevent gains in the wages of employees from being affected adversely by unnecessary and unjustified price increases, (5) the need to preserve and promote the competitive position of local products in the domestic as well as in the overseas markets, (6) the need to establish and maintain reasonal differentials in rewards between different categories of skills and levels of responsibility, (7) the need for the United Republic to maintain a favourable balance of trade and balance of payments,

(8) the need to ensure the continued ability of Government to finance development programmes and recurrent expenditure of the public sector, (9) the need to maintain a fair relation between the incomes of different sectors in the community, and (10) such other factors as the President may specify in directives which he may from time to time issue to the Chairman.

Strikes and lock outs were not allowed unless the procedure as set in the Act was exhausted. And considering that the decision or award of the Tribunal was final if one assumed that each of the steps was taken in the required time, up to the Tribunal which would make a decision or award, no strike could be legal.

BACKGROUND

The changes outlined above have to be looked at in the light of the eventsthat were taking place in the country. The TANU government had just pushed forward their first declaration along the socialist lines of economic development, the Arusha Declaration. Prime to the policy was the idea of self-reliance. This meant that the government was now going to ensure that everything possible was to be done to encourage the development of skills, accumulation of capital, to curb unemployment by

expanding employment opportunities etc. I do not think that strikes or inefficiency in the previous system of settling disputes can explain the changes contained in this Act. Thus, I would suggest that these changes be seen in light of the changes that were taking place in the union affairs as discussed before.

4.4 UGANDA

The origin of union legislation in Uganda is the 1937 Trade Unions ordinance,[47] which legalized trade unions. The act provided for the office of a registrar of trade unions with which all trade unions had to register. The ordinance was amended in 1941 by the Trade Unions (Amendment) ordinance 1941[48] and then repealed in 1943 by another ordinance, the Trade Unions and Trade Disputes ordinance of 1943.[49] The ordinance besides keeping the requirements of the 1937 ordinance also added provisions on trade disputes. It allowed peaceful picketing in furtherance of a trade dispute and prohibited intimidation and picketing in a way calculated to intimidate and annoy. This ordinance was repealed in 1952 by the Trade Unions Ordinance 1952,[50] the same forms part of the Union and Industrial relations legislation in independent Uganda. The other part originates from the Trade Disputes (Arbitration and Settlement) ordinance 1949,[51] as amended by the

Trade Disputes (Arbitration and Settlement) (Amendment) ordinance 1950[52] and the Trade Disputes (Arbitration and Settlement) (Amendment) ordinance 1952.[53] Consequently, the investigation for the purposes of this study commenced with the Trade Unions Ordinance 1952 and the Trades Disputes (Arbitration and Settlement) Ordinance of 1949.

ORGANIZATION AND MANAGEMENT OF UNIONS - 1962

No specific statement is made on the basis and the nature or organization of management of trade unions. Nevertheless, all trade unions were required as soon as they were established to notify their establishment to the Registrar of trade unions. For the purposes of the ordinance a trade union was defined as "any combination whether temporary or permanent, of more than 6 persons (other than employers associations or employers organizations not deemed to be a trade union under the ordinance) the principal objects of which are under its constitution the regulating of the relations between employees and employers, or between employees and employees or between employers and employers whether such combination would or would not, if the ordinance had not been enacted, have been deemed to have been an unlawful combination by reason of some one or more of its objects being in restraint of trade."

The office of the Registrar of Trade Unions was established and the Governor was to appoint a Registrar of Trade Unions and any number of assistants to help him in his duties. The principal function of the Registrar was to keep a register of trade unions in which shall be contained the prescribed particulars relating to any registered trade union, any alterations or changes which may from time to time be effected in the name, rules, executive committee or registered postal address and any other matter required to be contained therein by the ordinance.

All trade unions were required to apply to the Registrar of Trade Unions for registration as trade unions and be registered as such within 3 months of their existence but the Registrar could extend this period if he deemed it necessary. The application was to be made on a prescribed form and to be signed by at least 7 members of the body. The form was also to be accompanied by the following particulars: (i) the names, occupations and addresses of members making the application, (ii) the name of the union, addresses of its office, (iii) the titles, names, ages and addresses and occupations of the officers and trustees of the union. On receiving the application plus these particulars the Registrar could seek or demand more particulars before registration or alter name of the proposed union, or refuse to register the

union, or register the union and issue a certificate. He also had powers to cancel registration of a union. Any appeals against the decision of the Registrar in these matters could be made to the High Court. Unregistered trade unions were not allowed to carry on business.

The rules of any registered trade union were to provide for certain objects included in the schedule to the ordinance. These were: (1) The name of the union and place of meeting for the business of the trade union, (2) the whole of the objects for which the trade union is to be established, purpose for which the funds shall be applied, the conditions under which any member may be entitled to any benefit and fines to be imposed on any member, (3) the manner of making, altering, amending and rescinding rules, (4) the appointment or election and removal of any of the officers, (5) the custody investment of funds and the designation of the persons responsible thereof and the annual or periodic audit of the accounts, (6) the inspection of books and names of the members by any person having an interest in the funds of the union, (7) the manner of dissolution of the union and how the funds available were to be disposed of, (8) the taking of decisions in respect of the election of officers, the amendment of rules, strikes, lock outs,

dissolution and any other matter affecting members of the union by secret ballot, (9) right of members to reasonable opportunity to vote, (10) the amount of subscription, fees, payable by members and the disqualification of a member from voting if his subscriptions are in arrears, (11) if the honorary members are permitted, the conditions under which they were permitted, (12) provision for keeping a separate fund for all moneys received or paid by the union in respect of any contributory provident fund or pensions scheme, (13) for union consisting of persons from different trades, suitable provision for protecting each group.

Having been registered with these particulars in its rules, a registered trade union had to notify the Registrar of any changes particularly amalgamation, change of name and change of office of the union. Funds of the union to be applied as provided in the constitution and approved by the Governor. Any five members of any registered trade union could apply and obtain an injuction on application of union funds. Books of accounts were to be kept to show money in and out and the treasurer was to prepare an account and render it to members and having been duly audited to be submitted to the Registrar of Unions together with annual returns. Peaceful picketing was allowed and intimidation prohibited.

TRADE UNION ORGANIZATION AND MANAGEMENT - 1965

The very first major changes in the arrangement discussed above were introduced in 1965 three years after independence. They were ushered in through the Trade Unions Act, 1965.[65] The provisions of the Act did not also contain any explicit statement on the basis and nature of organization and management of unions. They however retained the office of Registrar of trade unions. The Registrar and any of his assistant to be appointed by the Minister of Labour unlike in the old arrangement where they were appointed by the head of government - the Governor. The duties of the Registrar of Trade Unions were not at all changed. All trade unions were to apply for registration to the Registrar within 28 days and not 3 months as was the case before. The application to be on a prescribed form as before but to be signed by 10 persons and not 7 as before. The particulars to accompany the application were not changed. The unions registered before 1965 were also to apply for registration within 28 days from the date of commencement of the Act. The powers of the Registrar to extend this period within which unions had to apply and be registered were retained. To avoid any doubts, a trade union was assumed to have been formed on the day 30 employers or employees as the case may be agree in writing to become or form a trade union. Any officer or person purporting to be

an officer in a trade union which fails to apply for registration within the period of 28 days commits an offence.

On receiving the application and the particulars required, the Registrar could act in similar manner as in the old arrangement. But he was not to register a union if any member of its executive was a non-Ugandan. This is a divergence from the old system which only required the officer or members to be resident in Uganda. If the Registrar was satisfied then he would register the union and issue a certificate as before. Any appeals on any matter of the Registrar's decision were to be made with the High Court as was the case before. Unregistered trade unions were again not allowed to operate. The powers of Registrar to cancel the registration of any union in certain cases were not changed. Cancellation of registration removed from such union the rights enjoyed by a registered trade union. Branches of registered trade unions were also to register (this is a new provision. Once registered a trade union had certain immunities and rights. These were the same as under the old law.

On management of unions, the Act retains all the objects that were required by the old law to be included in the rules of a registered trade union. The Minister was given several powers in trade union affairs:

(1) He could order any union to notify its existence or its establishment to the Registrar, (2) to make changes in any of the matters to be included in the rules of a union, and (3) to ask any union to submit to him any information he may require. Any change in the rules of constitution or name of the union was not to be valid unless notice in writing containing particulars of the proposed alteration or additions had been given to the Registrar and he had signified in writing that he approved the proposed change. Every trade union was required to hold a general meeting every year. The act also provided for the way other general meetings could be convened. Minutes to be recorded for each meeting and to be kept to be open to the inspection of the Registrar. Amalgamations or coming together to form a federation were to be passed by 50% of the members of each union, as in the old arrangement and the voting by secret ballot and to be registered by the Registrar of Trade Unions. A copy of rules and constitution of the union was to be given to any person becoming a member at 1/-. Notice to be displayed in every registered trade union's office giving the names of officials and trustees together with their titles. Changes in these persons had to be sent to the Registrar for registration and could not be effective if not registered. The Registrar could refer any matter he was not satisfied with to Trade Union Tribunal for inquiry. The Tribunal was to be composed of one or

more independent persons appointed by the Minister. After the report the Registrar could refuse to register the change, register the change of officers or trustees.

On funds of the union the Act retained all the provisions of the colonial legislation but instead of 5 members of a union being the only ones who could apply for an injunction on the use of union funds, the Act provided that any 5 persons or more having sufficient interest could apply for an injunction on unlawful or unauthorized expenditure. The provisions of maintaining books of accounts were retained. On accounts, the treasurer was now required to prepare at some date not later than 18 months from the date of formation and subsequently at least once in each year at intervals of not more than 15 months, "a balance sheet which shall give a true and fair view of the state of the financial affairs of the union." The auditing to be done by the auditor general or any auditor appointed by him. Annual returns to be submitted as in the colonial law. The Minister was given powers to appoint an investigator to investigate into the running of any union if he feels the union was being run badly. Trade unions were to produce all the documents, books and information required for this purpose.

BACKGROUND

An examination of the provisions summarized above will indicate that the UPC government had acquired more supervisory control of trade union activities than what the colonial government had. To understand why this was the case one had to recall what was said in chapter two. That the UPC government had taken the stand that the government was to control union activities. In fact the changes discussed above are more mild than what could have been expected. I shall be arguing later that it was because of the weak political position of the UPC that the government did not introduce more far reaching changes. In addition it has to be remembered too that the trade unions, particularly the UTUC, were not prepared either to surrender their free economic unionism or to allign with any political movement. Following independence, there were some press struggles between the unionists that trade unions would face a bleak future under an independent government. In addition there were some people who thought that there was some kind of conspiracy to frustrate the new government's effort. The Reporter for that month carried the following:

> "It began to appear to Ugandans that the whole thing was being fomented deliberately. Kenya men, it seemed were either using every weapon to increase their structure in the unions and their grip on the movement as a whole or they were bent on embarrassing the government." (55)

This allegation about foreign influence in Uganda union activities, though difficult to substantiate it was understandable. The role of Kenya workers in the development of trade unions in Uganda has already been mentioned in chapter one. The struggles were also escalated by the 1962 Tanzania Acts which limited trade union power to strike. Trade unionists in Uganda fearing that the Uganda government could follow suit started scare campaigns. The outcome of this were strifes that in some cases led to strikes. As we shall see later by 1965 when these changes were introduced the government had already legislated on strikes. Throughtout this period however, the UPC government looked for a method of controlling trade unions. But the trade unions, with their non-political background, avoided a direct confrontation with the government which could have led the government to control unionism. In 1964 when the industrial relations charter was introduced the government refused to be a party to it and also excluded the provision of the Kenya model which would have recognised the monopoly of

the UTUC.* In fact in the same year the government was supporting a new trade union centre the Federation of Uganda Trade Unions, which was more amenable to government direction. The FUTU however could not really get on its feet because it lacked the support of the workers. According to Scott behind all these manoeuvres was the "clear intention that one way or another, unions should be made to conform to the broad policy intentions of the government and not left to pursue their own narrow interests."[56] Thus, having failed to win trade unions voluntary cooperation, the 1965 Act was perhaps the best the government could get at in controlling trade unions. The provision excluding non-Ugandans from being union officials was I think aimed at Kenyan trade union leaders who were suspected to be the cause of the uncompromising stand of unions on the issue of cooperation with the government.

TRADE UNIONS ORGANIZATION AND MANAGEMENT - 1970

The year 1970 saw a few more changes. Under the Trade Union Act 1970, the government established a single trade union for Uganda, the Uganda Labour Congress to be registered as a trade union.[57] The new union was vested with all assets, liabilities,

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* See Appendix C.

rights and obligations of the old Uganda Labour Congress and any trade union registered under the Trade Unions Act of 1965. Every person, who, immediately before the coming into force of the Act was a member of a trade union became a member of the new Uganda Labour Congress, but no fee was chargeable for such persons. The Act also retained the office of Registrar of Trade Unions and gave the Minister powers to appoint a Registrar and any assistants for the purposes of carrying out the provisions of the Act. The Minister was also to appoint a Trade Union Tribunal consisting of not more than five persons to adjudicate between the Registrar and branch unions.

The duties of the Registrar were not basically changed, except that under the new arrangements he was going to deal with branch unions and not autonomous trade unions as was the case under the old arrangement. Workers were free to organise themselves but in branch unions of ULC. Like the unions, the branch unions had to apply for registration. Any application for registration of a branch union was to be made jointly by the secretary of the branch and of the Uganda Labour Congress within 60 days of the formation date. The application was to contain or be accompanied by a copy of the Constitution and the rules of the branch union and

a statement of the same particulars as required by the 1965 Act. No branch union was to be registered unless it had 1,000 members. Penalty of 1,000/- or six months imprisonment was provided for officers of a branch union which fails to apply for registration within the 60 days of its formation. The Registrar could grant an extension of the period.

On receiving the application with all the particulars as above the Registrar could either register the branch union and issue a certificate or require further information for the purposes of satisfying himself that an application for registration complies with the provisions of the Act. The provision that no union was to be registered if any of its officers was non-Ugandan or if the name of the branch union was unlawful was retained. The Registrar's powers to direct alteration of the name of the union, refusal to register a union, cancellation of registration of a union were retained. Unregistered branch unions were prohibited to carry on business. Any applicant aggrieved by the refusal of the Registrar to register a branch union, or any member of a registered branch union aggrieved by an order to cancel registration was to appeal to the Trade Union Tribunal. Any further appeal in case the applicant is not satisfied with the decision of the Tribunal was to be made to the High Court. This

particular provision presents a divergence from the old system where appeals were made directly to the High Court.

On management of unions, the Minister was given powers to order any officer of the ULC to furnish, within a stated time, such particulars as appear to him necessary about any association or organisation to which the ULC may be affiliated and it was an offence for anyone to fail to comply with such order. The ULC or its branch could change its rules and constitution provided that no such change would be valid unless notice in writing containing particulars of the proposed alteration or additions has first been given to the Registrar and he has signified in writing that he approves the proposed change. The ULC or any registered branch were to hold a general meetings in that year, and was to specify the meeting as such in the notice calling it. Amalgamation and federation were allowed as in the 1965 Act and was to be endorsed by the General Secretary of the ULC before being sent to the Registrar for registration.

Appeals against the Registrar's decision on registration of amalgamation or federation was to be made to the Trade Union Tribunal whose decision in the matter was final. The matters that were

required to be included in the constitution and rules of trade unions by the 1965 Act were retained by the new Act and it was further provided that they were not to be altered or amended as to cease to contain provisoons in respect of such matters. Every amendment of the rules or constitution of the ULC or a registered branch union to take effect from the date of registration of such amendment by the Registrar unless some later date is specified in the rules. Dissolution of a registered branch union was to be notified to the Registrar.

The funds of ULC and its branch unions were to consist as follows: (1) subscriptions from members, (2) investments, (3) donations, and (4) contributions made by an employee under the check off system which the Minister was given powers to institute. All the funds received by way of any of the above items were to be kept by the treasurer of the ULC and no branch union was to invest or keep any funds without the approval of the ULC. The ULC or a branch union were not to receive gifts or donations which directly or indirectly cause or are likely to cause financial liability to the ULC or a branch union without the authorization by the annual delegates conference. As for gifts or donations which do not cause or likely to cause any financial liability to the ULC they could only

be received by the central governing council of the ULC, otherwise the ULC or its branch union was not to enter into any agreement for aid of any nature with any foreign country or organization without consultation with and approval of the Minister. The funds of the ULC or any branch union were to be applied for only approved objects and the Minister was given powers to restrain any unauthorized or unlawful expenditure of the funds of the ULC or a registered branch union on application of any 5 persons having sufficient interest in the relief sought or on the application of the Registrar.

Provisions on keeping books of accounts were retained. The Registrar or his representative had the right to inspect such books at any time the Registrar thinks fit. The preparation of accounts 18 months after the Registration and once every calendar year to be presented to the members, was retained. Except that the auditor was to be appointed by the Minister and not the Auditor General as was the case under the 1965 Act. The ULC and every registered branch union were to furnish annual returns to include a balance sheet prepared and audited as provided, to the Registrar. The returns also to include a statement of any changes in the rules, officers, trustees or constitution of the ULC or a branch union within the 12 months after the

previous notice. The Registrar has the right to call for detailed accounts to show such information as he may require. The Minister's powers to inquire into any matters of ULC or branch union were retained.

BACKGROUND

The changes pushed forward by the Trade Unions Act 1970 can only be best understood if they are perceived as part of the social, economic and political changes that were taking place in the country. In 1968 the UPC annual delegates conference had passed several resolutions regarding the future economic development of Uganda and commissioned the executive committee to codify the resolutions into some concrete steps towards economic independence for the country. In December 1969 the UPC annual delegates conference adopted the first of such steps prepared by the President of UPC, A. Obote under the title of "The Common Man's Charter."[58] Following the adoption of the Common Man's Charter, several other declarations followed. Of significance to the study were the communication from the Chair of the National Assembly on 20th April, 1970 and the Labour Day speech on 1st May, 1970. In the former the President defined a Public Body to include persons employed in the Government, the East African Community, the Cabinet, the National Assembly, any

court of law, District Administration, Urban Authority and any other Public Body including Parastatal Bodies. He then added that consideration was being given to the inclusion of the cooperative unions, societies, and trade unions and the Uganda People's Congress as public bodies. The implication of this statement is that the government was going to treat Trade Unions as an organ of the state.

In the latter declaration, the Labour Day speech, the President announced several economic measures. Banks and other financial institutions were to be nationalized up to 60%. Trade Unions in the capital city Kampala were to acquire 60% of the shares of the transport companies in Kampala, and outside Kampala, the Trade Unions there would also acquire up to 60% of the shares of the transport companies in their respective areas. He also added that:

> "With the entry of the Common Man (ordinary man) into the fields of ownership and management of the means of production and distribution, I declare to the organized workers, the Trade Unions, that the Trade Unions Act will be appropriately amended to abolish the archaic principle and practice of strikes." (59)

Briefly, these are some of the changes in the country as a whole that I would expect to have pre-

cipitated the changes in the organisation and management of unions carried by the Trade Unions Act 1970. That this was the case was to be seen in 1971 when the UPC government was toppled and the Military took power. One of the first announcements made by the military on 25th January, 1971, when they took power was that they did not support the new political culture the UPC party was introducing. Some of the firms that had been nationalised were handed back to the former owners. In May of the same year they also issued a decree rescinding the right of the Uganda Labour Congress to be the sole union to represent workers in Uganda. However, the decree did not contain any statements on what was to be the new government policy on trade unions. In fact up to the end of 1972 there was no union organization in Uganda but according to the new decree, the Trade Unions Act (Amendment) 1973, all the activities of trade unions in Uganda would be coordinated under one body, the National Organization of Trade Unions (NOTU) which has yet to be established. All trade unions in Uganda will have to affiliate with NOTU and small trade unions will be required to come together to form bigger viable unions.[60] Minimum number of members before a union will be allowed to represent workers is 1,000, the same as the number that was required before a branch union of ULC was registered.

TRADE UNION POLITICAL RELATIONS

The trade unions ordinance, 1952 inherited by Uganda from the colonial administration did not have any statement on trade union political relations. What has to be remembered however is that although not included in the legislation, trade unions were not allowed to become involved in any political activities. The Registrar of Trade Unions was to look into this particular matter very carefully - in registering any union.

The changes in union legislation after independence are also silent on the issue of trade union political relations. Both the Trade Unions Act 1965vand the Trade Unions Act 1970, though maintaining the office of the Registrar of Trade Unions and the powers attached to his office, they did not also make any statement on trade union political relations but it can be expected that the Registrar of Trade Unions even after independence would be required to look for any such provisions in the rules of any union before registration. However, officials of ULC or any of its branch unions were not permitted to be members of parliament.

BACKGROUND

To understand the reason behind the provision barring officials of ULC or branch unions from being members of parliament, it has to be remembered that at the elections preceeding independence many trade unionists did not manage to join the parliament. Only one trade unionist, H. Luande was successful on a UPC ticket as a member for Kampala East which was mainly a residential area for the workers. When he was excluded from the Cabinet, Luande interpreted his role as the guardian of the interests of the workers and proved a virulent and often irresponsible critic of government policy.[61] I would suggest that the new provision aimed at stopping this kind of thing happening again.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT 1962

The situation in regard to settlement of trade disputes between unions and management as inherited by the independent government was that any trade dispute whether existing or apprehended could be reported to the Labour Commissioner or to an authorized officer by or on behalf of either of the parties to the dispute. This did not apply to disputes in naval, military or air services of the crown, the Uganda Police Force or the Uganda Prisons Services

but otherwise did apply to workmen employed by or under the crown in the same manner as if they were employed by or under a private person (similar to Kenya and Tanzania). A trade dispute was defined as "any dispute or differences between employers and workmen or between workmen and workmen, connected with the employment or with the conditions of labour of any person."

On receipt of the report of a dispute, the Labour Commissioner or any officer authorized by him would take the matter into his consideration and thereafter endeavour to conciliate. For this purpose he was required to make use of any existing machinery within the trade or industry for settlement of dispute. If within 14 days no settlement has been effected the Labour Commissioner was required to make a report to the Governor (in Kenya and Tanzania the report was made to the Member). On receipt of the report the Governor was to refer the dispute to an Arbitration Tribunal. In case of essential services it was compulsory arbitration and within 14 days or any period as he may direct from the date the report was made to him. Otherwise, he was to consult with the parties to the dispute before he referred the dispute to an Arbitration Tribunal. If the parties consented then he could appoint an Arbitration Tribunal to consist as the parties could consent, as follows:-

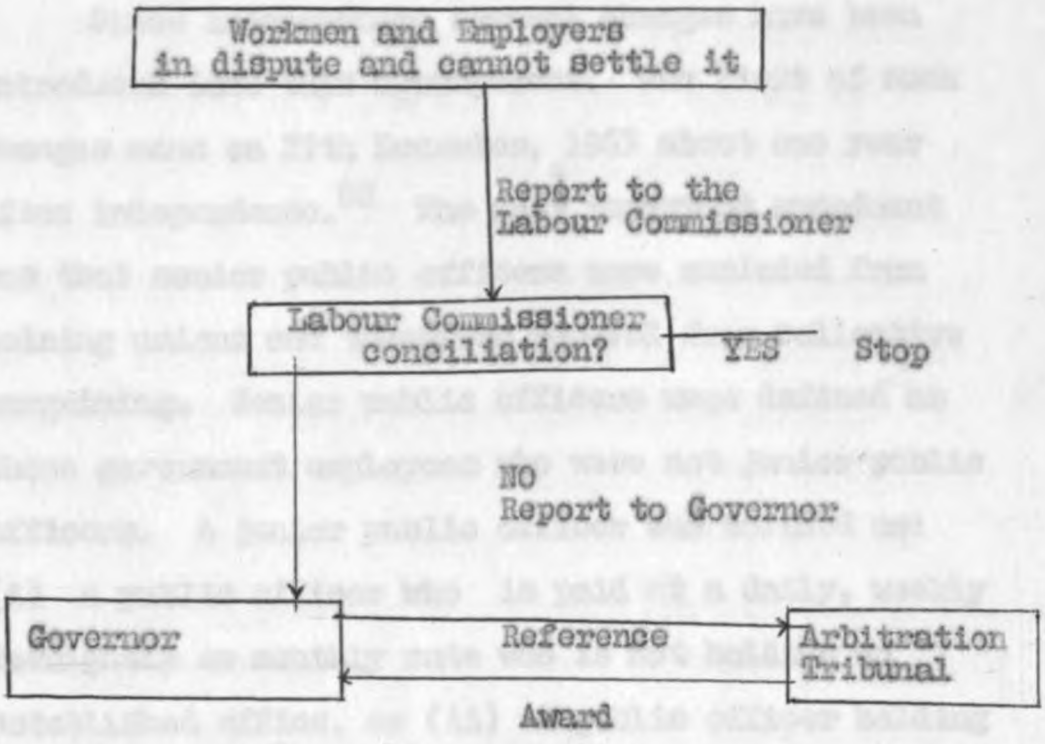
(a) a sole arbitrator appointed by him or (b) an arbitrator appointed by him, assisted by one or more assessors nominated by or on behalf of the employers concerned and an equal number of assessors nominated by or on behalf of the workmen concerned but all of whom were appointed by the Governor but the award to be made and issued by the arbitrator or (c) one or more arbitrators nominated as the assessors above and appointed by the Governor, provided in case where the members do not agree the matter will be decided by the Chairman as a sole arbitrator. The Governor could not refer any disputes to arbitration unless he was satisfied that there was no other existing machinery between the parties that could settle the dispute or if there was such machinery it had failed to effect a settlement.

The Arbitration Tribunal so referred to was to hear the dispute and thereafter make an award. For essential services, the award was to be made within 28 days from the date the matter was referred to it. All awards or negotiated agreements reached by conciliation were not to be inconsistent with any written law. Advocates were allowed to appear at the hearing of the Tribunal (Kenya and Tanzania it was left to the Tribunal to decide). Any questions on interpretation of any award was to be made to the Tribunal that made it. The sitting of the Tribunal

could be public or private as the Tribunal may decide (same as in Kenya and Tanzania).

There was no provision on strikes and lock outs for other industries except for essential services where it was provided that no strikes or lock outs were to be entertained unless the report is made to the Labour Commissioner, 14 days have passed, and the report has been sent to the Governor and 14 days have passed and the Governor has referred the dispute to an Arbitration Tribunal and 28 days have passed and no award was made. Any person whether an officer of a trade union or association or not who declared or instigated, conselled, procured or abetted a lock out or strike in connection with any trade dispute in essential services or public utility, unless the above procedure was exhausted, committed an offence. Incidentally the essential services included: water services, electricity services, health, sanitary and hospital services. The Chief Secretary had the powers to add to or to delete from that list. The chart below depicts the procedure for settlement of trade disputes as passed on to Uganda by the colonial administration.

CHART VII PROCEDURE FOR SETTLEMENT OF TRADE DISPUTE - 1962



All awards were to be sent to the Governor and published, and all negotiated agreements by conciliation or awards were binding to the parties from the date of such agreement, decision or award or as from such date as may be specified therein not being earlier than the date on which the dispute first arose, and were to be an implied term of the contract between the employer and workmen to whom they relate until varied by a subsequent agreement or award.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT
1963 - 1964

Since independence several changes have been introduced into this arrangement. The first of such changes came on 27th December, 1963 about one year after independence.[62] The most important amendment was that senior public officers were excluded from joining unions and therefore removed from collective bargaining. Senior public officers were defined as those government employees who were not junior public officers. A junior public officer was defined as: (i) a public officer who is paid at a daily, weekly fornightly or monthly rate who is not holding an established office, or (ii) a public officer holding or acting in an established office where the salary appropriate to the office is incremental on the scale rising from an annual basic salary of one thousand two hundred shillings to an annual basic salary of three thousand and twelve shillings or any part of such scale or (iii) a public officer holding or acting in an established office where the salary appropriate to the office is incremental on the scale rising from an annual basic salary of two thousand two hundred and eighty shillings to an annual basic salary of eleven thousand nine hundred and sixty four shillings or any part of such scale.

For th e junior public officers who were left to bargain collectively a joint staff council was formed composed of a Chairman, a Vice Chairman and any other members being not less than ten and not more than 20 as the Minister could prescribe. The appointment was to be made by the Minister provided the Chairman was to be appointed from persons nominated by the Government and the Vice Chairman from persons nominated by the junior public officers organizations or unions. The objects of the joint staff council was to be within the limits of its functions to secure the greatest measure of cooperation between the government, in its capacity as an employer and junior public officers, to provide machinery for dealing with the grievances of junior public officers and to enable consultation to take place in matters affecting the efficiency and well being of the public service. All trade disputes were to be presented to the Council which would attempt to negotiate an agreed settlement.

If no settlement was forthcoming the council Chairman could then report to the Minister. The Minister on receiving the report had the powers to refer the matterback to the council if he thought more negotiating was possible or refer the dispute to a Board for Investigation. This was a different Board from the Arbitration Tribunal referred to in the colonial legislation. The Board could then consider the matter

and even take evidence and then report back to the Minister who had the powers to make an award. All awards made by the Minister under this Act were to be presented to the National Assembly and to be published in the national Gazette. The award was also binding on the government and the junior public officers it relates for at least 12 months and save with the prior written permission of the Minister, no application to vary it or matters which involve the variation of it shall be placed on the agenda of the Council.

No strikes were allowed unless the procedure outlined above was exhausted and a total of 42 days or any further period as the Minister could direct had passed since the report was made to the Minister. As for the junior public officers in the essential services, they were not at all allowed to take part in a strike which causes or is likely or calculated to cause a cessation of work in any of the services that were included in the schedule to the act. The list of essential services mentioned earlier on in this section was increased by adding to it Transport services necessary or ancillary to any of the services included in the earlier list, and Fire services.

In 1964 other changes were introduced to cover other disputes not covered by the changes of 1963.[63]

All trade disputes whether existing or apprehended could be reported to the Minister (not to the Labour Commissioner as before). The report was to contain such particulars as could be prescribed by rules made under the Act. It was also required that any party making the report had to send a copy of such report to the other party or parties to the dispute. On receipt of the report the Minister in his sole discretion (no consultation with the parties as was the case before) could decide to deal with the dispute in any one or more of the following five ways:-

a. Inform the parties that the report comprises matters which in his opinion are unsuitable to be dealt with under the Act, or

b. Inform the parties that he accepts or rejects the report of the dispute, having regard to the sufficiency or otherwise of the particulars set out in the reports, to the nature of the report or to the endeavours made by the parties to achieve a settlement or having regard to any other matter which he considers to be relevant in the circumstances, or

c. Refer the matter back to the parties and if he thinks fit make proposals to the parties or to any of them upon which settlement may be

negotiated, or

d. Endeavour with all reasonable means at his disposal to conciliate the parties, or

e. Refer the dispute as reported with consent of the parties to (i) Arbitration Tribunal to be appointed by him, or (ii) Industrial Court which was established under the Act.

Provided that if there was an existing machinery or arrangement for settlement by conciliation or arbitration of disputes in that particular trade or industry or any part of it the Minister could not refer the dispute in such a trade or industry to an Arbitration Tribunal or the Industrial Court unless he got the consent of the parties or such machinery or arrangement had failed to settle the dispute. The appointment of the Tribunal was not affected. The Industrial Court as established was composed of a President to be appointed by the Chief Justice and was to hold office as long as may be specified, a deputy President to be appointed by the Minister after consultation with the Chief Justice to hold office for the period specified and who shall preside at all meetings of the court in the absence of the President, and one person appointed by the President of the court from a panel of not less than three persons appointed

by the Minister. In addition two other members, one representing employers and the other representing the workmen, both appointed by the Minister from a panel of not less than three persons in each case nominated by the employers or the workmen.

The court was competent to hear and arbitrate any trade dispute referred to it by either the Minister or directly but jointly by all parties to the dispute. Awards of arbitration tribunals and the industrial court were not to be inconsistent with any law and to be submitted to the Minister for publication. The effect of agreements and decisions of the Tribunal and industrial court were binding to the parties and were to be implied forms of the contract of employment between the relevant parties until varied by subsequent agreement or decision. Questions of interpretation of awards or decisions to be made to the Tribunal or the court that made it. Appearance of legal practitioners was allowed at both the court and Tribunal hearing. Whether the hearing was to be public or private was left to the Court or Tribunal. Strikes and lock outs were not allowed unless, if it is in furtherance of trade dispute, all machinery existing or as laid down by the Act were exhausted. Any contravention of this provision was an offence punishable by a fine of up to 5,000/- or one year imprisonment.

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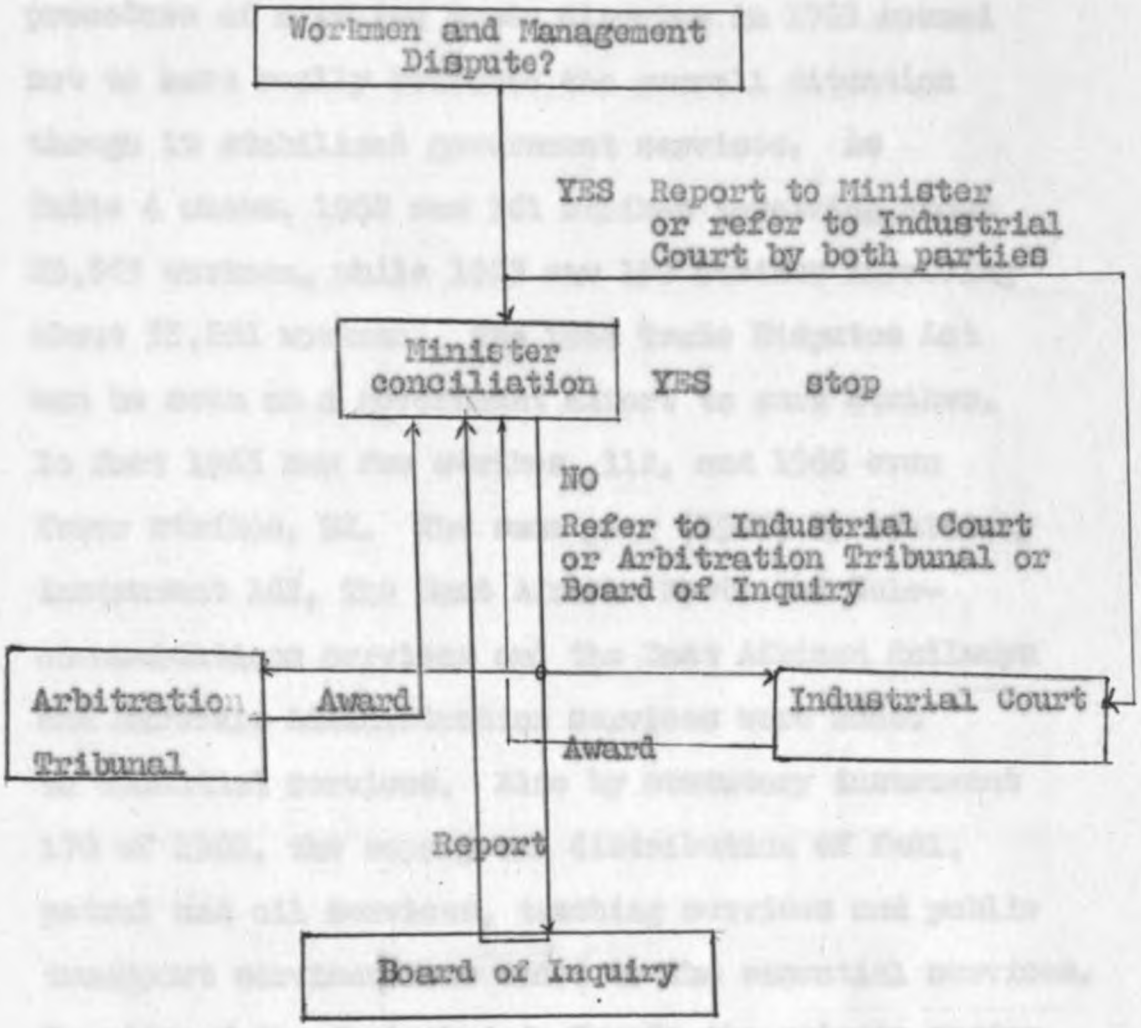
Disputes in essential services that were likely to lead to a strike or lock out were to be reported to the employer by or on behalf of either of the parties to such disputes and no strike was legal unless a report had been made to the Minister and 28 days had elapsed since the date a report was made to him and the dispute had not during that period been referred by him for settlement by the Industrial Court or by an Arbitration Tribunal. Every employer in the essential services was to display this section of the Act at the place of work. The Minister could vary the list of essential services and certify, in cases of doubt, whether a service is included in the essential services. The Minister in consultation with the Chief Justice would make rules governing the working of the Industrial Court but in his own discretion make rules governing arbitration tribunals abd Boards of Inquiry. He also had powers to appoint Boards of Inquiry to look into any matter of a dispute whether reported to him or not. Chart VIII below shows the procedure of settling disputes as established by the 1964 Act.

CHART VIII PROCEDURE FOR SETTLEMENT OF DISPUTES 1964



BACKGROUND to 1963/64 Acts

First, it has to be remembered that the UPC government had indicated that it was not going to allow free trade unionism which the colonial administration had tried to establish. This is why they had rejected to be party to the industrial relations charter I have already referred to. Secondly, the industrial unrest which accompanied independence and continued through 1963 and 1964 made the government

concerned about trade disputes. The first step of removing the civil service from the normal procedure of settling trade disputes in 1963 seemed not to have really bettered the overall situation though it stabilized government services. As Table 4 shows, 1962 saw 161 strikes involving about 25,563 workmen, while 1963 saw 150 strikes involving about 33,281 workmen. The 1964 Trade Disputes Act can be seen as a government effort to curb strikes. In fact 1965 saw few strikes, 112, and 1966 even fewer strikes, 92. The same year (1965) by statutory instrument 162, The East African Posts and Telecommunications services and the East African Railways and Harbours Administration services were added to essential services. Also by statutory instrument 170 of 1965, the supply and distribution of fuel, petrol and oil services, teaching services and public transport services were added to the essential services. In view of the fact that in Uganda the private sector at the time was small, these steps significantly reduced areas in which strikes were possible.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT 1966

The procedure set out in the 1964 Act was suspended on 23rd May, 1966 for certain disputes by the Minister for internal affairs as part of the emergency regulations that were governing the country at the time.

Table 3:

Industrial Disputes which resulted in a Stoppage of Work and the Number of Workers Involved and the Work Days Lost in Uganda 1961 - 1967

YEAR	NUMBER OF DISPUTES	NUMBER OF WORKERS INVOLVED	NUMBER OF WORK DAYS LOST
1961	72	21070	113537
1962	161	25563	96986
1963	150	33281	94292
1964	112	13268	39737
1965	92	18181	55937
1966	54	5658	12917
1967	34	5305	12864

Source: ILO, Year Book of Labour Statistics, (Geneva: 1971)

According to the Emergency Powers (Industrial Disputes) Regulations, 1966,[64] no employer was to declare or take part in a lock out and no workman was to declare or take part in a strike in connection with any trade dispute unless such dispute had been formally reported to the Labour Commissioner and the Labour Commissioner had not within 14 days of the receipt of the report, declared in his absolute discretion, that the trade dispute shall be determined in accordance with the provisions of the regulations. Whenever the Labour Commissioner decided that the dispute reported to him would be dealt with in accordance with the regulations then he would attempt to encourage and assist the parties to settle the dispute and if such settlement was not forthcoming then he would report to the Minister in writing within 1 month of the date on which the dispute was reported to him. The Minister would if he considered it fit fix another date by which the parties should have reached a settlement and he would assist the parties in any manner he thought fit. If the dispute was not solved within that period he was to refer the dispute to a sole arbitrator appointed by him. Any award, agreement or decision made under these regulations was binding on the employers and workmen and could not be questioned in any court. From then on such award or decision or agreement would be part of the employment contract between the parties

to which it applies until varied by subsequent agreement, award or decision. Questions of interpretation of awards were to be made to the arbitrator. The Labour Commissioner had the powers if a strike or lock out had occurred, and he is satisfied that the parties reasonably believed that their trade or industry is not one to which the provisions of these regulations applied, to decide that the provisions of these regulations apply and issue a certificate to that effect.

BACKGROUND

The procedure set by the regulations is basically similar to the colonial procedure in spite of differences in details of appointment of the arbitrator. At the time Uganda was under emergency and there was a civil war in the Buganda region. The Prime Minister had on February 22nd taken over all powers of the Government of Uganda as a temporary measure, and on May 2nd he had taken over all the powers and duties of the President and the Vice President. These regulations therefore could be seen as part of the temporary measures adopted in the administration of the country at the time. The regulations could only apply to the disputes the Labour Commissioner had specified. In effect the regulations shortened the procedure of dealing with certain disputes. A report

to a Labour Commissioner who was in the region would take shorter period than making a report to the Minister who was in the capital and at the time busy with the changes that were going to take place following the civil war. Also the Government was worried about a possibility of some workers or employers declaring strikes or lock outs which were in support of the federal states.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT 1967-1968

In 1967 a few changes were made but they did not affect the procedure.[65] First, the Act required that trade disputes within the East African Community services be referred to the East African Industrial Court that had been established in the East African Treaty of Cooperation. Secondly, it prohibited any person in employment or service of the community or the corporations to instigate or declare a trade dispute in respect of any hardship to any person arising out of the implementation of the Treaty upon which the Community services commission had power to give or had given a final decision in its capacity as the final authority for deciding cases of hardships. Finally, it gave the Minister powers to refer any trade dispute in an essential service, to the East African Industrial Court or to the National Tribunal or Industrial Court without having to obtain the consent

of the parties to the dispute as was the case in the 1964 Act.

The following year (1968) another Act, the Public Service (Negotiating Machinery) Amendment Act 1968 was enacted.[66] The Act included local administration and urban authority employees and earning less than 4,200 per annum in the Public Service Negotiating Machinery established in 1963 but excluded from unions, chiefs, senior local government and urban authority employees, police and prisons services. The list of essential services as increased by the statutory instrument 170 of 1965 was included in the Act.

BACKGROUND

Following the internal political strifes of 1966, the federal states and administrations were abolished and the country became a republic. So the Act was meant to bring all the government employees under one law. In a memorandum to the Bill dated 12th July, 1968, it was stated inter alia:

> "The provisions relating to the employees of District Administration and Urban Authorities is consequential to the provisions of the constitution, which now give a wider definition of the expression "Public Officer to cover also the officers of these Administrations and Authorities." (67)

In fact the Minister himself in parliament when questioned on that provision on local administration employees, submitted that:

> ".....as local government employees were now public officers under the constitution they should be treated in the same way as civil servants with regard to the industrial relations provisions." (68)

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CHAPTER FIVE

SUMMARY AND CONCLUSIONS

5.1 INTRODUCTION

In this paper I have looked at the impact of the colonial environment on trade union involvement in the political struggle for independence and the development of industrial relations systems in East Africa. Subsequently, I tried to show how the nature of the role played by trade unions in the political struggle for independence influenced their expectations from independence and how the success in the development of industrial relations system influenced the independent governments' decisions on the type of approach the new nations were to adopt on certain industrial relations issues. Realizing that union legislation like any legislation prescribes a type of behaviour and reflects the government's ideas and sometimes reactions to certain issues, I made some working hypotheses. The statement made indicated what I expected to be the reflection of the interplay between the trade unions expectations from independence and the new governments' declared appraach to certain industrial relations issues was to make on union and industrial relations legislations in independent East Africa. In doing so, I examined three union issues, internal trade union organization and management, trade union political relations and

settlement of disputes between unions and management. In the previous chapter I reported the major provisions found in union and industrial relations legislations enacted in each of the three countries since their independence and up to 1972 on each of the three factors examined. What this chapter tries to do is: (1) highlight some of the findings, and (2) to make some comments and conclusions on union legislation in East Africa.

5.2 SUMMARY - KENYA

INTERNAL ORGANIZATION AND MANAGEMENT OF UNIONS

The colonial registration laws have been retained as it was hypothesised. There is still an office of the Registrar of trade unions whose function is to keep a register of trade unions and their branches with any information required by law. All trade unions including their branches are required to apply for registration within 28 days (not 3 months as was the case before independence) of their establishment. There are still penalties for any person(s) purporting to be officials of a union or branch of a union which fails to apply for registration and be registered within that period or any further period as the Registrar may direct. The particulars that were to be sent with the application form and the objects that were to be included in the constitution and rules of a registered

union have been retained and apply to branches of unions as well. Alterations in any of these items are not only required to be notified to the Registrar, but have to be registered if they are to be effective.

The Registrar's powers to defer registration pending further inquiry in the group seeking registration, or to cancel registration of a union or branch in certain cases, or to register the union or branch and issue a certificate if he is satisfied with the information made available to him were retained. Appeals against the Registrar's decision in any of these matters now is made to the Trade Union Tribunal established by the 1964 Act and not the supreme court as was the case before independence.

The government supervisory role of the financial affairs of the unions through the Registrar of Trade Unions has alsobeen retained. Annual returns, including an account of moneys received and pair out with a special note on all moneys received by way of donations and grants and audited by a person approved by the Registrar have to be sent to him once every year. There are penalties of 1 year imprisonment and up to 12 strokes for falsification in accounts.

Also to provide financial security for unions and perhaps as a bribe for the greater control the government had acquired in union affairs, a check-

off system is provided for and provides the major source of trade union income. The system is compulsory for all trade unions. It is provided in the decree that cheques for check-off are to be sent directly to COTU and banked in separate accounts. Thereafter, the money is to be divided in percentages to be agreed upon as follows: (1) COTU, (2) the trade union, and (3) to an investment fund to be approved by the government. The government reserved the right to withhold check-off money made payable by COTU to registered trade unions. However, at the time of the study all the check-off money was not being sent directly to COTU. The employer collects the money and sends on 15% to COTU and 85% to the union and there is no investment fund. The funds of COTU or any union member are applied only to approved objects.

In addition, the government has acquired some very direct involvement in the running of unions and particularly in the running of the central union organisation. Unions now do not only have to state the manner of election of officials but have to state that the elections of officials are also to be by secret ballot and triannually. Also the government requires that, in consultation with the Ministry of Labour, trade unions be organised in such a manner to produce fewer but stronger viable trade unions.

There is also some evidence, though it is not categorically stated, that the government requires that such organisation be on an industry basis. On the issue of whether the trade union movement should be centralised, (that decision making being vested into the central organization) or decentralized (that is leaving most of the decisions in the member union) is left to the unions to decide. There is however some evidence to indicate that the government is for a decentralised movement. For example, COTU's industrial relations committee is not allowed to take any action in a trade dispute unless invited by the union concerned. That this is the case has to be perceived in light of the present developments in the political system. Without any doubt at all I would suggest that the Kenya Government has been and still is very sensitive to any organized opposition. Therefore I do think that they cannot afford to allow COTU to become very powerful. In fact I am of the opinion that if the unions surrendered most of their powers to COTU and thereby making it powerful enough to be a political danger, legislation would be changed to check it. In addition, it is thought by some people that the employers too, do not like a strong trade union movement. It is even believed that the FKE used the good relationship it enjoys with the government to influence the instrument which produced the present structure of COTU.[1] If one accepted this view, it

would be reasonable to expect that as long as the FKE still enjoys a good relationship with the government, it would do all is possible to influence the government to maintain a weak workers' movement.

On management of unions, though the registration laws still form the major instrument, the government now directly controls union management through its direct involvement in the operation of COTU. The President of the Republic appoints and can dismiss at will the General Secretary of COTU. In addition the policy making body of COTU, (the COTU Governing Council) has the Permanent Secretary to the Ministry of Labour as a government representative. The government also has a member who attends COTU's executive meetings but in an advisory capacity. The present constitution of COTU was drafted by the Attorney General and though it is provided that a two thirds majority of the COTU Governing Council can cause an amendment since 1965 when it was drafted in spite of constant demands by many unionists that it be amended. However, at the time this study ended, the Attorney General was in the process of drafting a new constitution for COTU, and COTU is only allowed to make some comments. The implications of this trend is that only the government is competent to amend the constitution of COTU. This particular development is quite inconsistent with what one expects in a system where free

collective bargaining was the declared policy.

The government's direct involvement in union administration particularly in COTU, as evidenced by what I have summarised above, is quite out of step with my hypothesis. However, a close examination of the information about the events that preceded the enactment of the legislations reported, will show some factors that might explain this feature. First, there is some evidence of manipulation of union affairs by certain trade unionists and government officials for their political ends. The impact of these manipulations on union legislations enacted was either to stop or in some cases to reinforce them. The 1964 Act is an example of the latter. I tend to agree with Sandbrook[2] and Achola[3] that the 1964 Trade Unions (Amendment) Act was aimed at making the change of unions leaders more difficult than it had been before. The purpose was to ensure the position of C. Lumbembe and his followers in the trade union leadership. In doing so the political strength of Tom Mboya, at the time Minister of Justice would not be endangered by his political opponents in the trade union movement. The 1965 presidential decree is an example of the former. It is also generally held that the 1965 presidential declaration was directed towards giving the government some control on union affairs and thereby limit the union internal strife

which in some cases lead to violence.[4]

Second, it has to be remembered that the situation at independence had all indications of possible government control of trade unions though this is not what the government wanted to do. It was shown that trade unions having failed to realize the government support against management which they expected from independence, they sought withdrawal of their support for the government. The information available show also that trade unions did not end there but that they naturally set themselves in arms against the government. Attempts were even made to sponsor their own candidates for parliament and to form a Labour Party to fight the other parties in the elections. All these attempts having failed the strategy was directed towards dislodging certain personalities within the trade union movement who were suspected to be government supporters and thereafter perhaps make a united force against the government. Viewed in this perspective, the government involvement in union activities, though precipitated by specific events, can be assumed to be an element which was to come to curb the imminent trade union political opposition if the new government was to feel secure.

TRADE UNION POLITICAL RELATIONS

The colonial legislation silence on trade union political relation has been maintained. No categorical statement is made in union legislation enacted in Kenya between independence and 1972 on the matter of union political relations. This particular feature is in unison with what I had expected. However, in the constitution of COTU, which if we were reminded was drafted by the Attorney General, it is provided that COTU is to cooperate with government. At the time this statement was made Kenya was a multi-party democracy. Therefore it could be argued at the time that this provision did not make the trade union movement cooperate with anyone political party since political parties in government would be changing. Since then however, Kenya has been pronounced to be a one party democracy where the President of KANU is also the President of the Republic the same person appoints the top officials of COTU. Consequently, it can be contended now that the trade union movement has to cooperate with KANU. I for one, cannot see a chance where the President of Kenya who is so because he is the President of KANU would appoint anyone to any of the three top posts of COTU if he knew such a person was not going to further the cooperation between the trade union movement and KANU party. In fact quite often and particularly after their appointment, COTU officials

have made loyalty oaths to the President.

What I think has happened is a result of two factors which have reinforced each other to bring unions in a position where they just have to cooperate with KANU. The first of these factors is the direct government involvement in COTU affairs. The second is the change in the political system of the country which has now made Kenya a one party democratic state and at the same time the KANU government is not prepared to allow any organised opposition to KANU and the government.

back again to multi-party 1991

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT

The results show that there is still the colonial legislative encouragement to trade unions and management to establish and make use of their own machinery to settle disputes between them. In case of public employees the government has established such machinery to deal with disputes between itself as an employer and the Civil Servants.

For those disputes not settled by such existing machinery a standing industrial court has been established by the President of the Republic to which such disputes are now referred and not to arbitration tribunals which were provided under the colonial law.

The industrial court is composed of a chairman appointed by the President of Kenya and four other members appointed by the Minister in consultation with the Minister for Finance, COTU and the FKE.

The present procedure, and which still in principle applies to government employees as was the case under the colonial legislation, is that all disputes have to be reported to the Minister and not the Labour Commissioner as was the case before independence. In case of disputes in an essential service the report has also to be made to the employer. Any party making the report of the dispute to the Minister is also required to inform the other parties to the dispute of such report and the matters involved in the dispute. In case of a dispute which has been referred to the Industrial Court by the parties the Minister has nothing to do except if he has any objections to any matter included in the dispute that he has to inform the parties so. Otherwise, on receipt of the report the Minister can reject the subject of the dispute or any part of it, or he can refer the dispute back to the parties for further negotiating, or he can cause an inquiry into any matter of the dispute or he can accept the report and thereafter endeavour to conciliate between the parties. Any person(s) aggrieved by the Minister's decision in any of these

matters can appeal to the Industrial Court. For the purposes of conciliation the Minister has to consult with the tripartite committee of Employers, the Government and Workers established in 1965, and the appointment of the conciliator has to be on the consent of the parties to the dispute. If the dispute is settled, then the conciliator is to send the agreement to the Minister who can either accept the award and forward it to the industrial court for registration or reject it and make an appeal to the Industrial Court.

In case the dispute is not settled by the conciliator or it had been referred to a Board of Inquiry and it has been so recommended the Minister will refer the dispute to the Industrial Court which will hear the parties to the dispute and make an award or decision. The award is then to be sent to the Minister who can either reject it and make an appeal to the Industrial Court, or accept it and cause it to be published. Any party not satisfied with the decision of the Industrial Court can appeal to the Kenya High Court and thereafter, (though it is not so stated, but comes as a result of the East African Treaty of Cooperation), to the East African High Court of Appeal. Public service disputes are not entertained by the Industrial Court unless permitted by the Minister in writing. The chairman

of the Industrial Court decides the manner in which the court sits and will hear evidence from the parties. The Minister has powers to inquire in any dispute whether reported to him or not.

In addition to hearing trade disputes the Industrial Court has also the function of registering all collective agreements between management and unions. It is now the duty of every employer to lodge with the Industrial Court all collective agreements entered into between the union and himself for registration. For the purpose of carrying out this function and the settlement of disputes that involve interests, it was provided that the court would be issued guidelines. The guidelines were released in August 1973 just before this study commenced. At the time the report of the ILO mission mentioned earlier on had come out and the government was being pressed to issue an incomes policy. The guidelines therefore, are supposed to be some form of incomes policy.

The strike or lockout as means of settling trade disputes are only allowed under very strict conditions. In all cases the Minister has the right to declare any strike actual or threatened illegal. Thus in effect the strike is very limited and very rarely does actually a legal strike occur.

This procedure is in principle similar to what had been expected. Unions and management are still encouraged to settle their disputes without the intervention of government. Arbitration and conciliation still form the major method of state assistance to unions and management in settlement of disputes. However, there are a number of differences in certain steps of this procedure that would make one think that the government has actually gone further in trade dispute settlement than what the decision to continue with the colonial approach would imply. First, the report of disputes is made to the Minister, a member of the government and not the Labour Commissioner. Without sounding that there is a big difference between the two, I would still hold that a report to the Labour Commissioner who is a civil servant and only an agent of government would have been perhaps more in step with the policy of keeping the government intervention out of trade dispute settlement than a report to the Minister. There could be a number of reasons why the government chose to provide that a report be made to the Minister. What however have come to light during the study are that: (1) The reporting to the Minister could have been part of the centralization of government authority which has taken place since independence.[5] (2) It could have been a deliberate requirement to keep the

government informed of and in control of trade disputes and thereby limit the incidence of strikes and lock outs that seemed to acquire an upward trend after independence.

The second feature which is out of step with what was expected concerns disputes over interests especially if they involve wage claims. Here the government has put in a number of limits. First, before the dispute can be accepted the right to be affected should be at least two years old. Second, the award or a collectively bargained agreement must not conflict with certain economic objectives. The reason I found to explain this element lies in the effect of rising wages on the trend of unemployment. At the time this particular element was introduced, the government was facing rising industrial unemployment and there were suggestions that rising wages encouraged the movement of young men and women from the rural areas to town in search for employment. At the same time high wages tended to make capital cheaper than labour in which case the investors went for capital intensive techniques. The total effect of these two features was to escalate industrial unemployment. Therefore the guidelines which in effect give the government control of disputes over interests, can be viewed as a step aimed at

combating unemployment and not government intervention in trade disputes per-se.

5.3 SUMMARY - TANZANIA

INTERNAL ORGANIZATION AND MANAGEMENT OF UNIONS

What had been expected was that the internal organization and management of unions would be left to unions in which case legislation would not make any categorical statement on the matter. I had also thought that in case it were necessary to make any statement on this matter, it would actually encourage industry based unionism. The colonial registration laws were also expected to be retained by the independent government.

Today in Tanzania a branch unions of NUTA still have to apply for registration within 3 months of the date on which they are formed. The particulars that were to accompany the application form and the objects that were to be included in the rules and constitution of a union still apply. The powers of the Registrar of Trade Unions to call further information to satisfy himself that the group applying for registration was a trade union or to require an alteration in the name of the union, or to require an alteration in the name of the union, or to refuse to register a union or to register a

union and issue a certificate also apply to branches of NUTA. The requirement that any changes in any of the items that are required before registration, has to be notified to the registrar still holds. Unregistered NUTA branches are not allowed to operate. Appeals against the Registrar's decision on any matter of registration are still made to the High Court.

The government supervisory role of trade union administration particularly financial affairs still applies. The funds of registered unions have to be applied to items approved by the Minister. The Minister has powers to stop any expenditure if such expenditure was not approved. The major source of union revenue is now the check-off system introduced by the government in 1964. The powers of the Registrar of trade unions to inspect the books of a registered trade union still apply. Annual returns including a statement of account for the moneys received and paid out still have to be sent by not later than 31/3 of each year.

In addition, legislation provides for only one workers' union the National Union of Tanganyika Workers (NUTA) established in 1964. This is the only workers union permitted to represent workers in collective bargaining. All workers in Tanzania are

required to join this union. The union has regional and area branches and industrial sections to which the members of the union are allotted. NUTA cannot dissolve itself or cannot make any provision in its rules to dissolve itself. Only the President of the Republic can dissolve NUTA or appoint another workers union which would be registered as a trade union and thereafter NUTA would be assumed dissolved.

The President of the Republic appoints and can dismiss the General Secretary and Deputy General Secretary of NUTA. Rules governing NUTA were included in the Act that established it but NUTA's annual conference can amend it provided such amendment shall not be approved by the Registrar if it is not in line with the purposes for which NUTA was established.

These provisions, though do not contain any categoric statement on whether trade unions were to be organized on an industry or craft basis, it is evident that there is now only one blanket union to which all workers belong though for collective bargaining purposes industrial sections are used to group the members. No doubt this is not what I had expected. However the information in the study suggests that this particular element came as a result of two factors that reinforced each other.

First it has to be remembered that trade unionists in Tanzania, like their colleagues in Kenya, having taken part in the struggle for Uhuru, expected government cooperation in a number of areas. Having failed to achieve this, unionists naturally reverted to political opposition of the government. This included attempts to support forces that were opposing the government. Significant in such efforts was the TFL support for Tumbo's Peoples' Democratic Party (PDP) in 1962 and the army mutineers in 1964. Consequently the present situation, which in fact developed over a period, is a function of the government's efforts to curb trade union opposition.

Secondly, the changes in the economic development strategy from the colonial capitalist type to socialism which emphasized central planning as a major development mechanism should have influenced the government's decision.

TRADE UNION POLITICAL RELATIONS

Here legislation requires that NUTA, the only workers union, has to be affiliated to TANU the only political party. In addition, NUTA has to do everything possible to promote the policies of TANU and to encourage its members to join TANU. NUTA is not to engage in any political activities except

under TANU.

Earlier on I had hypothesized that legislation would not contain any categorical statement restricting or allowing trade union political relations. The assumption I had made was that since this had been the case during the colonial administration and yet the TFL had actually been affiliated to TANU, the mere restatement that this was going to remain the case in the new nation would not bring it in union legislation. What I did not take into account was a possible disagreement on the issue and possible political changes in the country after independence. What has however happened is that trade unions, for reasons already mentioned, wanted to pull out of the affiliation to separation of the two movements. Consequently, the TANU government was forced to make it law that the affiliation continues. In addition the adoption of developing Tanzania on the socialist lines made it necessary that unions which were economic by birth be controlled. Finally, the transfer of state power from the government to the party precluded the Kenya variety which subjects the union to the government, and instead subjected the union to the party. Here unions are not required to cooperate with the government as is the case in Kenya, but to cooperate and further the policies of the party TANU.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT

Unions and management are clearly encouraged to establish and utilize their own machinery for settlement of trade disputes. In fact it is expressed that after a dispute is reported to the Labour Commissioner and he discovers that there is no machinery in the industry or trade to settle the dispute, he has to inform the Minister who after consulting with the union and the employer concerned is empowered to establish by order in the Gazette machinery for settlement of trade disputes within that trade or industry.

For those disputes not settled by the private machinery are to be settled under the procedure set out in the legislation. The procedure does not apply to civil servants and local government servants as was the case under the colonial law. Senior Civil Servants and Senior Local Government employees have been removed from collective bargaining all together. As for Junior Civil Servants and Junior Local Government employees there has been established a joint council for each. In case of the former, it is composed of representatives of the government and the junior civil servants union, while for the latter it is composed of representatives of the junior local government employees' union and the local

government service commission. If disputes are not settled by these councils then they are reported by the chairman in either case to the Minister. On receipt of the report, the Minister is either to refer the disputes back to the Councils or refer them to a Board of Inquiry which will investigate the matter and report to the Minister who will make an award. Strikes by the junior civil servants or the junior local government employees are not allowed until this procedure was exhausted and the Minister did not make an award.

As for rights disputes, there have been established at all places of work where there are 10 or more members of NUTA, a Workers Committee. It is the duty of this Committee to dealwith all disputes on matters involving workers' rights and discipline. There is also a code of discipline listing some of the possible breaches of conduct and permissable penalties for each to assist the committees in their duties. In case where the dispute is not settled by the workers' committee and the employer, then a report is to be made to the Minister who will refer the dispute to a conciliation Board composed of a chairman appointed by the Minister and two other members, one representing NUTA and the other the FTE appointed by chairman. No advocates are allowed at the hearing of the conciliation Board. The Board

then hears the parties and makes an award or refers the matter back to the Minister who makes an award. In either case the award is final.

For all interest disputes, a tribunal called the Permanent Labour Tribunal has been established charged with the duty of settling trade disputes referred to it by the Minister. The procedure is that all disputes that are dealt with under this law are to be reported to the Labour Commissioner as was the case before independence. The Labour Commissioner or any Labour officer required by him if he accepted the dispute, and the report did not include an application that the dispute be referred to the tribunal without conciliation, is required to attempt to conciliate the parties. For this purpose the Labour Commissioner or any labour officer as the case may be is supposed to use the private machinery existing in the industry or trade for this purpose. If such machinery does not exist the Labour Commissioner can inform the Minister who will cause such machinery to be established. For those disputes with an application requiring direct reference to the tribunal, the Labour Commissioner is supposed to direct them to the Minister who will either refer them to the tribunal or send them back to the Labour Commissioner to take them through conciliation.

If the dispute is settled by conciliation, the agreement reached is to be recorded and after being endorsed by the Labour Commissioner it is to be sent to the Minister together with information, on wages before the agreement, the date of the previous revision of wages, the expected increase in labour costs, and labour productivity, any expected redundancy and whether plants for expansion would be affected if the agreement were enforced. On receipt of the agreement and these particulars, the Minister submits the agreement together with any comments he may wish to make to the Registrar of the Permanent Labour Tribunal for the consideration of the Tribunal and thereafter either be registered with or without alterations or be refused registration.

If the dispute is not settled by conciliation the Labour Commissioner is required to report the matter to the Minister who will within 21 days or any period he may direct refer the dispute to the Permanent Labour Tribunal.

The Tribunal is composed of a chairman and a deputy chairman, both appointed by the President of the Republic to serve for a period included in the instrument that appoints them. The jurisdiction of the Tribunal is exercised by a chairman or the deputy chairman as the chairman may direct, with two assessors

one of whom represents NUTA and the other the FTE both selected by the Minister from persons presented to him by the two bodies.

On receiving the dispute from the Minister, whether such dispute came direct without conciliation or one which conciliation could not settle, the Tribunal is to go ahead and hear the parties and make an award or decision. The awards or decisions of the Tribunal are final and cannot be changed, reviewed, questioned or called in question in any court save on the grounds of lack of jurisdiction. The awards are then to be published in the Gazette and are effective after such publication.

The Permanent Labour Tribunal has also the functions of: (1) to inquire into any matter of trade disputes or conditions of employment and advise the Labour Commissioner as he may require, (2) to inquire into any matter referred to it by the Minister and report to him, and (3) to register all awards and collective agreements and reports thereof with or without alterations. For the purpose of performing its functions the Tribunal was given a number of guidelines which I have reported in the previous chapter.

This procedure is in principle similar to the colonial one though much more lengthy. The only major differences lie in three elements: (1) The removal of the civil servants and local government employees from the general collective bargaining procedure, (2) The distinction between interest and rights disputes, and (3) The inclusion of guidelines to control the work of the Tribunal which is supposed to be independent.

I would suggest that these particular elements of difference are the out-come of three factors. First, the strikes which tended to increase following independence. In case of Tanzania, these strikes were a result of similar forces as I mentioned for Kenya. Such forces included demonstration of power following Uhuru and expecting the new government's support and internal union strifes because of rivalry for leadership among unionists. The second factor is the change in the political system to which I have already referred. With the socialist strategy for development, the government became naturally involved in planning and control of the economy. Production targets had to be met and the government was to do all it could to realize this goal. Therefore, in case of disputes they did not want to allow disputes over matters of rights waste too much time of those involved as this would affect production

targets. Thus a shorter mechanism based on the ideas that workmen and management should be encouraged to solve their day to day problems without involving highest levels of the union and government was introduced for such disputes. Finally, the government wanted to control changes in wages as part of the policy of controlling production in the whole economy and also as a step towards combating unemployment which was increasing very fast.

5.4 SUMMARY - UGANDA

The colonial union registration laws have been retained as I had expected. There is still the office of a Registrar of Trade Unions, appointed by the Minister for Labour, whose duties are to maintain a register of trade unions and any matters pertaining to trade unions as required by law. All trade unions have to apply to him within 60 days and not 3 months. In case of employee unions, there was up to 1972, only one trade union in Uganda the Uganda Labour Congress (ULC) to which all workers were required to belong. However, any group of at least 1,000 workers could form a branch union of the ULC.

Upon establishment, a branch union was required to apply for registration within 60 days like any other trade union. The application is to be signed

jointly by the secretary of the branch and of the ULC. The information that was required to accompany the application and the particulars that had to be included in the rules of a union still apply. There is a penalty of 1,000/- and/or 6 months imprisonment for anyone purporting to be an officer of a branch union which fails to apply for registration within 60 days. All the powers of the Registrar to defer registration pending an inquiry, to refuse to register a union in certain cases, or to register and issue a certificate still apply. But the Registrar will not register a union if any of its officers is a non-Ugandan. Appeals against the Registrar's decision on any matters of registration are made to the Trade Union Tribunal appointed by the Minister. Any further appeals go to the High Court.

The government supervisory participation in the management of unions through the Registrar of Trade Unions still apply. In addition, the Minister has powers to order any officer of the ULC to furnish within a stated time, such particulars as appear to him necessary about any association or organisation to which the ULC may be affiliated and it was an offence for such officer so ordered to fail to comply with the order. This particular provision aimed at checking the foreign influence, particularly the International Confederation of Free Trade Unions,

(ICFTU), which had been alleged to be behind industrial unrest in Uganda.

The ULC or branch could change its rules or constitution but such changes were only valid after a notice in writing containing these particulars of the change were given to the Registrar and he had signified in writing that he approved. Federations and amalgamations were allowed but to be endorsed by the General Secretary of the ULC before being sent to the Registrar for registration.

Funds of the ULC and its branches were to include: (1) Subscriptions from members, (2) Investments, (3) Donations, and (4) Contributions made by an employee under the check-off system instituted by the Minister. And the funds were kept by the treasurer of the ULC and not by the branch union. The ULC or branches were not to enter into any agreement for aid of any nature with any foreign country or organization without consultation with and approval of the Minister. This particular provision was aimed at the ICFTU financial aid which was part of the foreign influence in trade unions I said earlier that worried the government.

The requirement of accounts and annual returns to the Registrar still applied. The funds of the ULC or branch were to be applied for approved objects. The Registrar or his representative had a right to inspect the books at any reasonable time. The treasurer of the ULC or branch was to prepare accounts once every calendar year and to be audited by an auditor appointed by the Minister. The annual returns to the Registrar were to include an account and any changes in rules, officers and trustees of the ULC or branch within 12 months of the last notice. The Minister was given powers to inquire into any matters of the ULC or branch.

The situation as I found it is in step with what I had expected and what the government wanted to do. Workers were organized in one trade union and not on an industry basis as they had been under the colonial law.

In 1971 following a change in the government the requirement that workers join the ULC was suspended so that by 1972 the situation was not very clear as to what was going to happen. Just before this study was written there was a statement from the Minister for Labour indicating that a decree had been drafted in 1973 which will require that all unions belong to one organization called the National

Organization of Trade Unions (NOTU). Though affiliation to NOTU is voluntary it is stipulated that no union will acquire the rights of collective bargaining under NOTU unless it has at least 1,000 members. Assuming that all other provisions will not change, which is very likely, the situation will not be very different from what it was in 1971 before the change of government.

TRADE UNION POLITICAL RELATIONS

There is no statement at all on trade union political relations. The only statement which might have some political implication is the one requiring that no officials of the ULC or branch was to be a member of Parliament.

This situation is quite inconsistent with what had been expected. In the hypotheses I had stated that legislation would provide for restrictions on any political relations or activities that were outside the UPC. And that members of the trade union movement would be required to be members of the UPC.

To understand why the UPC government in Uganda did not subject unions to the UPC one has to recall the non-political nature of unions discussed in

chapter one. In spite of the fact that trade unions were opposed to the UPC government idea of unions being an integrated part of the UPC their only expression was through strifes and hence strikes which the government dealt with under the trade dispute Acts. They did not set themselves in arms against the UPC as the KFL in Kenya or the TFL in Tanzania had done. Consequently trade unions were not an immediate political threat and therefore it was not very imperative to categorically curtail their political relations which they did not have in the first place. The provision on officials of the ULC or branch not being members of parliament was aimed at people like Luande who were capable of confusing unions to advance their political ambitions.

SETTLEMENT OF DISPUTES BETWEEN UNIONS AND MANAGEMENT

There is an encouragement to union and management to establish and apply their own machinery to settle disputes between them. For those disputes not settled by such machinery they are settled by the procedure provided by legislation. The procedure does not apply to civil servants and local government employees. In this respect Uganda is similar to Tanzania and different from Kenya. Senior civil servants and senior local government employees are not allowed to join unions. For junior

civil servants and junior local government employees there are joint councils similar to those discussed in Tanzania. If the councils did not settle the dispute the chairman are required to report to the Minister who can either refer it back to the council or refer it to a Board of Inquiry. The Board will hear the matter and report to the Minister who will make an award to be binding on the junior civil servants or the junior local government employees and the government or the local government service commission respectively and as the case may be for at least 12 months. No strikes are allowed until this procedure was exhausted and a total of 42 days or any period as the Minister may direct and no award is made.

Other disputes are to be reported to the Minister who in his sole discretion can decide to deal with the dispute in one or more of the following five ways: (1) Reject the report, (2) accept the report, (3) refer the matter back for further negotiating, (4) endeavour conciliation, (5) refer the matter with the consent of the parties to an arbitration tribunal to be appointed to union or the standing industrial court. Provided that there is any existing machinery between the parties it shall be applied as of priority and he shall not refer the matter to an arbitration tribunal or industrial

court without the consent of the parties.

Arbitration tribunals are appointed by the Minister and in the same temporary manner as was before independence. The Industrial Court on the other hand is a permanent body similar to the Kenya one. The President of the court is appointed by the Chief Justice and holds office as long as is specified when appointed. The Deputy President is appointed by the Minister after consultation with the Chief Justice and holds office as long as is specified on appointment. The jurisdiction of the court is exercised by the President or Deputy President in the absence of the former. In addition there is one independent member appointed by the President of the court from a panel of at least 3 persons selected by the Minister, and 2 other members one representing the employers and the other representing the workers both appointed by the Minister from at least 3 persons in either case nominated by the workers or the employers.

The procedure is that after the Minister has received the report he will attempt conciliation. If the dispute is settled then the award is recorded and published by the Minister. If it is not settled then he can refer it to the Industrial Court or an arbitration tribunal or Board of Inquiry. The

Industrial Court or arbitration tribunal to which the dispute is referred is required to hear the parties and make an award to be sent to the Minister for publication. The dispute that is referred to a Board for inquiry will be referred back to the Minister together with the report of the Board. The Minister thereafter can refer it to the court or to an arbitration tribunal. Also any parties to a dispute can refer it, but jointly to the Industrial Court which will hear them and make an award as in other cases.

Disputes in the essential services that are likely to lead to a strike or lock-out have to be reported to the employer. Strikes are not allowed unless a report was made to the Minister and 28 days had elapsed. Strikes generally are not allowed until all the existing machinery and the procedure under legislation were exhausted.

The procedure being applied in Uganda is basically in line with what had been expected. However, there are some significant differences in a number of important areas. (1) The Minister is now involved in the trade dispute earlier than the governor used to, (2) the procedure seems to be much more lengthy than was the case before, (3) the schedule of essential services is much longer than it was before,

and (4) the government employees are no longer included in this procedure. As I mentioned earlier, Uganda too witnessed an increasing number of strikes following her independence and the statements I have reported in the study indicate that the government was concerned about the impact of the strikes on the industrial peace. In addition, it has to be remembered that the UPC government had already indicated that union activities were to be controlled by the government.

Unfortunately, the UPC government, between 1962 and 1966 was very weak because of the troubles between the UPC and her partner the Kabaka Yekka and perhaps any attempt to reorganize unions which were in fact much better organized than the UPC would have been politically dangerous for the party. In addition, Uganda attained independence as a federal state in which the constituent states were semi-autonomous. Consequently, it would not have been possible even if the UPC government had been able to do it, to reorganize the unions in a manner acceptable to all states. Because ofthese technical problems the government during the early years of independence applied the Disputes Settlement law as the major instrument of control of unions.

5.5 CONCLUSIONS

The purpose of this study was to provide some answers to the questions that were asked in 1964 when negotiations on the immediate East African Federation were suspended because the negotiators could not agree on inter-alia a common policy concerning trade unions.

The result reported in the study show that Kenya, Tanzania and Uganda had similar union and industrial relations legislation prior to their independence. Freedom of association was provided for and workers were free to organise themselves into trade unions. The law did not specify the basis on which unions were to be organised. However, because of the different colonial policy in East Africa, the three countries had varying success in developing an industrial relations system. Kenya was the most successful of the three countries with Tanzania being the least successful, while Uganda was somewhere between the two. Also, for quite similar reasons Kenya unions were organised on industry base, while in Uganda some unions were organised on an industry base and others were organised on a craft base. In Tanzania most unions were organised on either a craft base or employer base.

Trade unions had to be registered by the Registrar of Trade Unions within 3 months if they were to enjoy the right to exist. All registered trade unions were required to include certain objects in their rules and the colonial government through the Registrar of Trade Unions had some supervisory powers on trade union administration particularly financial administration. Trade unions were not allowed to change any of the matters required on registration and continue to enjoy the rights of a registered union if such changes were not notified to the Registrar of Trade Unions. Unregistered trade unions were not allowed to exist.

On trade union political relations, there was no statement at all in the law whether they were allowed or restricted. However, it has to be noted that the colonial administrations in East Africa were only interested in encouraging economic unions and not political unions. Consequently, it can be expected that the Registrars would have to look for this particular element and satisfy themselves that the group applying for registration was an economic trade union before registering it.

Dispute settlement too was similar in the three countries. Unions and management were encouraged to formulate and utilize their own private machinery

for settlement of trade disputes. For only those disputes not settled by such machinery were subjected to the procedure under the law. The procedure was also the same. All disputes existing or apprehended were reported by or on behalf of either of the parties to the Labour Commissioner. On receipt of the report the Labour Commissioner or any Labour officer required by him would endeavour to conciliate between the parties. If the disputes were settled the agreement was to be recorded and after being endorsed by the Labour Commissioner became a negotiated agreement to be sent to the governor in case of Uganda or the Member in case of Kenya and Tanzania to be published in the Gazette.

If the dispute was not settled by conciliation the Labour Commissioner was required to report the matter to the Governor in case of Uganda and the Member of the executive committee for the colony responsible for labour in case of Kenya and Tanzania. The governor in case of Uganda and Member in case of Kenya and Tanzania, would authorise the Labour Commissioner to refer the dispute to an Arbitration Tribunal. The consent of the parties to the dispute had to be sought on the manner of arbitration. The strike as a means of settling trade disputes was not referred to generally except in case of essential services it was prohibited until all machinery as

established by legislation was exhausted.

Following independence, and for the period studied, union legislation in the three countries still exhibits some similarities because of the common base. However, it is also evident that there are elements of differences in the legislation concerning more specifically the provisions on trade union organization and management, trade union political relations and settlement of disputes, between unions and management.

Kenya for reasons we have already discussed, inherited from the colonial administration much more developed systems than any of the other two countries. As mentioned, changing these systems would have been much more difficult for the new government. I would think that if the new government had attempted to change them she would have met with a lot of opposition which could have even led Kenya perhaps to a situation similar to the Congo in the early 1960's. The new government realising that it could not survive the outcomes of an attempt to change the existing systems actually decided to continue with most of the colonial systems. This applied to the approach the new government adopted for industrial relations system. For years since independence the Kenya government seems to have tried to keep to this course. The union

legislation discussed contains much more of the colonial law than was the case in the other East African countries.

Unfortunately, however, trade unions did not support this kind of policy. The reason for this I think can be found in what they expected from independence. We have already noted the weak nature of union in collective bargaining with the employers who seem to be better organized because they were allowed to organize much earlier than workers. This particular element has always forced trade unions to look for government support. The other element is that trade unions having aided the political movement to bring an end to colonial rule they expected as consideration government support against the employers who were supporters of the colonial administration.

Disappointed by the new government's failure to support them against management, naturally trade unionists again turned to activities aimed at influencing the new government. As mentioned, attempts were made in 1963 to get trade unionists into government. At one time they even tried to form a workers political party. These efforts having been successfully thwarted by the KANU government, the unionists turned to political opposition. As part of this struggle

attempts were made to remove from union leadership all those suspected to be supporters of KANU and the government. The government then reacted by passing legislation making it more difficult to remove union leaders than it had been before.

Subsequently, trade unionists saw another loophole in the law. They could form another trade union national organization. This was successfully done and the following years saw struggles and sometimes scuffles between the two organizations for union members. To justify the new organisation the differences were turned into ideological ones. It was in reaction to this imminent trade union opposition to government policy and the strifes that accompanied the struggle between the two organizations that the government again pushed forward another law. In the preface to the decree of September 1st, 1965, the President had the following to say:-

> "....Our country is acknowledged to have some of the best and most advanced legislation and voluntary machinery for the settlement of industrial disputes in the world. It is therefore sad that the labour scene should have been so disturbed because of differences among trade union leaders. Kenya must have industrial peace. I have studied the recommendations of the committee and I am sure that these proposals will bring that peace we all want with fairness to all parties". (6)

One other element already mentioned to which the Kenya government has reacted is strikes. In persuance of her policy of continuation with the colonial approach to industrial relations affairs, the government had tried to encourage the unions and management to freely bargain and settle their disputes. The activities of trade unions I have tried to summarise above could not allow this to happen. Trade disputes often resulted in strikes which disrupted the industrial peace. Consequently, the trade disputes legislation too seems to have been much more influenced by the strike action of unions rather than any change in national policy.

Recently, the changes in the economy resulting in pressure on the government to curb the rising unemployment and skwed distribution of income have also forced the government to introduce some controls even on the agreements collectively and freely reached between unions and management.

My view is that all the legislations enacted in Kenya since independence, are not a result of any new policy to industrial relations issues rather they look to be more government desperate efforts to seal off any loop-holes in the existing legislation revealed either by trade unions or contradictions within the economy. The law seems not to take into

consideration the responsibility of unions to represent workers. COTU for example has been rendered much weaker than the KFL it succeeded. The trade union movement has definitely been tied up to the disadvantage of the workers and to the advantage of the management. The apparent success of this law has not been in its effectiveness but rather in two characteristics of the Kenya industrial scene. First, and here I agree with Muir[7] and Amsden,[8] there is high support for the legislation and the industrial court. It is even suggested by Ngoloma that this support for the industrial court could be due to the high esteem in which the chairman of the court is held by both unions and management.[9] Second, there have been tribal and personal differences which have kept the trade union movement divided. But now with the guidelines making the industrial court less useful than it has been plus changes in the economy affecting the workers' livelihood those differences will be dropped. It is my view that this is going to happen very soon because I do not see how trade unionists are going to continue to sit in their old differences leaving the workers at the mercy of the other participants in the system. I think when this happens we shall then expect some legislation to cover up the loop-holes that will have been revealed.

Tanzania too still exhibits some element of colonial union legislation. In fact there is quite a lot which is similar to what was found in Kenya law. However, there are certain issues on which she is different to Kenya. For instances: (1) Tanzania has only one trade union to which all workers belong, the same union is affiliated to TANU and is required to further the policies of TANU, (2) Rights disputes are no longer settled under the lengthy colonial type trade disputes Act. The reasons for these differences are not difficult to see.

We have already stated that Tanzania inherited the weakest British system from the colonial administration relative to her two neighbours. Consequently, the systems were also easiest to change. For that matter the Tanzania government decided to change some of them at independence. Of particular relevance here was the decision to keep trade unions affiliated to TANU the only political party. But it appears they did not support the idea of aiding unions in industrial bargaining with employers. Unions on the other hand expected this support. Trade unions in Tanzania had also aided the political party TANU to bring independence and naturally expected the government to support them as consideration. The conflicts that ensued from this difference in approaches

to this particular issue and other issues I have already mentioned in the study brought Tanzania union legislation for the first three years of independence in a similar category with Kenya. For the years 1961-1963 union legislation in Tanzania also reflected a desperate effort by the government to seal off loop-holes in the law to curb union opposition. All the Acts passed in 1962 and 1963 belong to this category.

In 1964 however, after the army mutiny the government decided to make other changes both in the industrial relations system and in the wider society which would suit the policy of socialism declared in 1962. Trade union legislations then ceased to be directed to covering loop-holes revealed by trade unions. Legislation enacted after 1964 was geared to controlling trade unions just as all other sections of the economy were being controlled. NUTA is much more powerful in representing workers even though subjected to TANU than the TFL and her affiliates were those days when they were trying to go it alone. In fact the support which the unions expected in 1961 has been granted in a number of areas. For instance,
(1) The powers of employers to summarily dismiss workers have been limited by the government,
(2) Employers are required by law to give to union officers any information the latter may require to help

him in the settlement of trade disputes, (3) NUTA has been given enough financial strength and better organized by the help of the government to be in a much more stronger position to look after the interest of workers than the TFL would have perhaps done, and, (4) disputes over rights which used to take a long time to solve through the colonial type legislation, normally to the disadvantage of workers and which in the majority of cases resulted into strikes are now dealt with by a much shorter procedure which is of advantage to the workers.

I would suggest that trade union legislation in Tanzania has actually strengthened the trade union movement; with the implementation of the worker participation programme which was in experimental stage at the time this paper was written the movement should overcome its weakness and bargain effectively with management without government support. Unlike union legislation enacted in Kenya and in Uganda which emphasizes the need for unions to further the policy of the government but at the expense of the workers, in Tanzania I see an attempt to keep the two elements side by side.

Uganda too still exhibits some characteristics of the colonial law in her union legislation. In this respect it is similar to Tanzania and Kenya.

Also Uganda seems to have been influenced by what was happening in Kenya and Tanzania. So that legislations enacted during the period studied, though exhibiting some unique features have some likeness to legislation in Kenya or Tanzania.

Perhaps we have to be reminded that Uganda's colonial occupation left them with some British systems but not so entrenched like in Kenya and also not so weak like the Tanzania case. The systems were therefore easier to change than the Kenya ones and yet not so easy as the Tanzania one. Partly because of this and partly because of the ideological values of some UPC leaders, there were some attempts to change some of these systems. For the industrial relations system, they declared that the trade union movement was going to be an integrated part of the ruling party. Trade unions had not taken part in the struggle for independence and therefore did not expect any special relationship with the new government. However, because of the success of unions to keep out of politics, they naturally would oppose the UPC idea of unions becoming an integrated part of the ruling party. As I have mentioned in the study they in fact did oppose the idea. What one would have expected is that the government would have deregistered the existing unions and formed others it could control

the way Tanzania proposed to do in 1962 and the way Kenya did in 1965. However, two other facts which are colonial in origin came into play. First, the UPC government did not have the power to do that because it was at the time existing on the coalition with the Kabaka Yekka party (KY) and a move like that would have definitely broken the coalition. The KY was predominantly a Buganda Kingdom party and we have to remember that Buganda was one of those kingdoms in which the British type of systems were most entrenched. So such a move would have been the end of the UPC and another party would have taken the government. Second and equally important was that trade unions having been non-political in their development, did not utilize the political type of strategy as trade unions in Kenya and Tanzania used. What was often utilized was the strike.

Consequently, the Uganda union legislation for most of the period studied was aimed at fighting strikes, though if and when the government thought it was strong enough, provisions were included to control unions' other activities. For instance 1962 to 1969 there is an element of the government encouraging the free collective bargaining and only months later denying it by introducing new laws. Also one finds that the list of essential services

where strikes are not allowed almost includes all the industries in the country and leaving very little area in which strikes can take place. In this regard, I see union legislation in Uganda during that period as being influenced by the need just to cover areas of weakness being exploited by trade unions. In this respect, it was similar to the Kenya case and to the 1961-1963 Tanzania case.

In 1969 following a number of changes in the country which made the UPC much stronger than she had been before, the UPC government went back to the old idea of changing some of the colonial systems. The country was going to be developed on socialist and not capitalist lines. Following from this unions were given the right to own shares in a number of commercial undertakings and also legislation enacted providing for a single trade union to which all workers were to belong. Unlike Tanzania, the ULC was not required to affiliate to the UPC at the time the UPC was the only political party. The explanation for this I would suggest lay in the trade union non-political characteristics. All along since independence, trade unions had not been of political danger and therefore it was not necessary to subject the union to UPC as this perhaps would have created unnecessary conflict. The coup d'etat in 1971 I think came before

further changes could come. I expect the changes would have been more of the Tanzania variety than the Kenya variety.

Following the rise of the military to power, the provision requiring one union in Uganda to which all workers were to belong was rescinded. This left the situation where it was before 1970 except that all the union organisations having been deregistered there was no union organisation up to 1972. However, before the study was completed, there appeared a press statement indicating that there is a decree, the Trade Union Act (Amendment) Decree 1973, which was to be effective by May 1974. Under the decree, it is provided that trade union affairs in the country would be coordinated by a single union organisation NOTU. All trade unions in the country will be required to affiliate and small unions will be required to join others to become bigger and viable with at least 1,000 membership before being allowed to bargain under NOTU. These changes if viewed in light of what has happened in other sections of the country would seem to be taking Uganda industrial relations system nearer the Kenya variety than the Tanzania variety the UPC government was introducing.

There are a couple of conclusions that can be made from the findings of the study:

1. That Kenya, Tanzania and Uganda still have in their union legislations important provisions common to all. Realizing that the three countries had basically the same union legislation during the colonial days, this is a feature which was expected and it is hoped that it will exist for some time to come.

2. That the three countries also exhibit some differences in their approach to a number of industrial relations issues, particularly the organisation and management of unions, trade union political relations and settlement of disputes between unions and management. Some of these differences are as old as the independence of these countries. These differences have been precipitated by a number of factors among which the following were found to be very important:

(i) The ideas of the political leaders on certain industrial relations issues.

(ii) The nature of trade unions reactions, (which were a function of their expectations) to the ideas of the political leaders.

(iii) National economic, political or social changes that have taken place since independence.

Following from these conclusions, it can be suggested that the three countries are likely to continue to display some similarities in their union legislations in the future. However, as they develop and the new systems acquired after independence grow, while the trade unions expectations change as they interplay with the new environments, the differences in union legislation between the three countries are likely to become even more conspicuous.

No doubt what I have examined in this study cannot be expected to provide all the answers to the reasons why Kenya, Tanzania and Uganda have diverged in their approaches to trade union and industrial relations affairs. However, what this study has tried to do is to make the way clearer than it has been before for further study in some other factors that are likely to influence union legislation.

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APPENDIX A

INDUSTRIAL RELATIONS CHARTER, NAIROBI

PREAMBLE

The government of Kenya, the Federation of Kenya Employers and the Kenya Federation of Labour:

1. Considering that at their conference held in Nairobi on Tuesday, the 3rd and Thursday, the 5th July, 1962, convened by and under the Chairmanship of the Minister of Labour, the Hon. T.J. Mboya, M.L.C., agreed to endeavour to prepare an Industrial Relations Charter.

2. Realizing that it is in the National Interest for the Government Management and Workers to recognize that consultation and cooperation on a basis of mutual understanding render an essential contribution to the efficiency and productivity of an undertaking and conditions of employment which include security of service, and income, also the improvement of Workers' conditions of service;

3. Desiring to make the greatest possible contribution to the success and prosperity of Kenya; agree upon the following Charter of Industrial Relations.

1. Agreed Responsibility of Management and Unions

(i) that the existing machinery for settlement of disputes should be utilised as quickly as possible.

(ii) that both sides undertake to settle any or all industrial disputes at the appropriate level and according to the procedure laid down hereafter.

(iii) that affirming their faith in democratic principles, they agree to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration or strikes or lock-outs as a last resort.

(iv) that there should be no strike or lock-out without notice.

(v) that neither party will have recourse to intimidation or victimisation or conduct contrary to the spirit of this charter.

(vi) that they undertake to promote maximum cooperation in the interests of good industrial relations between their representatives at all levels and abide by the spirit of agreements mutually entered into.

(vii) that they undertake to observe strictly the grievance procedure outlined in the Recognition Agreement which will ensure a speedy and full investigation leading to settlement.

(viii) that they will educate the Management Personnel and Employees regarding their obligations to each other for the purpose of good industrial relations.

(ix) that they respect each other's right to freedom of association.

(x) that they will deal promptly with all correspondence that arises between them.

Management Agree

(i) to recognize the Union appropriate in its particular industry and to accord reasonable facilities for the normal functioning of the union in the undertaking.

(ii) to discourage such practices as: (a) interference with the rights of employees as to enrol or continue as Union members, (b) discrimination, restraint of coercion against any employees because of recognized activity

of trade unions, (c) victimization of any employee and abuse of authority in any form, (d) abusive or intemperate language, and (e) generally to respect the provision of the I.L.O. Convention No. 98.

(iii) to take action for: (a) settlement of grievances and (b) implementation of settlement, awards, decisions and orders, as speedily as possible.

(iv) in cases of misconduct to distinguish between misdemeanours justifying immediate dismissal and those where discharge must be proceeded by a warning, reprimand, suspension or some other form of disciplinary action should be subject to appeal.

(v) that every employee has the right to approach Management on personal problems and agree always to make accredited representatives available to listen to the day to day problems of employees.

(vi) to impress upon their staffs the contents of this charter and to make appropriate action where Management inquiries reveal that the spirit or contents of the

of trade unions, (c) victimization of any employee and abuse of authority in any form, (d) abusive or intemperate language, and (e) generally to respect the provision of the I.L.O. Convention No. 98.

(iii) to take action for: (a) settlement of grievances and (b) implementation of settlement, awards, decisions and orders, as speedily as possible.

(iv) in cases of misconduct to distinguish between misdemeanours justifying immediate dismissal and those where discharge must be proceeded by a warning, reprimand, suspension or some other form of disciplinary action should be subject to appeal.

(v) that every employee has the right to approach Management on personal problems and agree always to make accredited representatives available to listen to the day to day problems of employees.

(vi) to impress upon their staffs the contents of this charter and to make appropriate action where Management inquiries reveal that the spirit or contents of the

Charter have been contravened and to give full publicity on their Notice Boards to this Charter.

(vii) to discourage any breach of the peace or civil commotion by Employers or their Agents.

3. Union(s) Agree

(i) not to engage in any activities which are contrary to the spirit of this Charter.

(ii) to discourage any breach of the peace or civil commotion by Union members.

(iii) that their members will not engage or cause other employees to engage in any Union activity during working hours, unless as provided for by law or by agreement.

(iv) to discourage such practices as: (a) negligence of duty, (b) careless operation, (c) damage to property, (d) interference with or disturbance to normal work, (e) insubordination, (f) abusive or intemperate language, and generally to respect the provisions of I.L.O. Convention No. 98.

(v) to take action to implement awards, agreements, settlements and decisions as speedily as possible.

(vi) that where strikes or lock-out action essential services (the cessation of which would cause injury to humans or animals) shall be maintained, but the employees concerned shall not be called upon to perform any other duties than the maintenance of the service concerned.

(vii) to display in conspicuous places in the Union offices, the provisions of this code and to impress upon their officers and members the contents of this Charter and to take appropriate action where Union inquiries reveal that the spirit or contents of this Charter have been contravened.

RECOGNITION

It is agreed in principle that the Model Recognition Agreement as Appendix 'A' is hereby accepted as a guide to parties in all future agreements and that the following principles should apply:

(i) that the provision by the Registrar of Trade Unions of F.K.E. or to the

employer, of a certificate that the Union is properly registered and exists effectively to represent the particular employees should decide the question of recognition and negotiations should then commence based on the Model Recognition Agreement and for eventual setting up of Joint Machinery as may be appropriate to the particular industry or undertaking.

(ii) that minor breaches of agreements by either party shall not give justification for withdrawing recognition but shall be processed as "disputes".

(iii) that these principles be brought to the notice of parties who are not affiliated to F.K.E. or K.F.L.

JOINT K.F.L./F.K.E. DISPUTES COMMISSIONS

Machinery exists at industrial level as provided for in the Recognition Agreement for dealing with disputes that may arise from time to time, firstly, through the local or district negotiating committee or through the Joint Industrial Councils. That machinery is not intended to be superseded in any way by the procedure of the Joint Disputes Commissions, and it is agreed that both sides will, wherever possible,

endeavour to settle disputes, using the machinery provided in the negotiated agreements.

The specific object of the Joint Disputes Commission is to prevent disputes involving loss of time and money to all concerned, and to deal immediately and effectively with disagreements in order to prevent any unnecessary stoppage of work. The use of the Commission is entirely voluntary and is not intended to prevent parties who so wish utilizing the processes provided under the terms of the Trade Disputes (Arbitration and Inquiry) Ordinance.

It is agreed that on receipt of recommendations from a Joint Disputes Commission, both parties to the dispute should indicate acceptance or rejection of the Commission's recommendations on the matters referred to it, within a period of seven days from the date of receipt of the Commission's report or such longer periods as the Commission shall decide.

REDUNDANCY

In the event of redundancy, the following principles will apply:

(i) the union concerned shall be informed of the reasons for and the extent of intended redundancy.

(ii) the principle should be adopted of "Last in First out" in the particular category of employees affected subject to all other factors such as skill, relative merit, ability and reliability being equal.

(iii) the redundant employee will be entitled to the appropriate period of notice or pay in lieu. The principle of severance pay is agreed but the form and amount of such pay shall be subject to joint negotiation.

EMPLOYMENT POLICY

The provisions of the I.L.O. Convention adopted June, 1962, Article 14, shall apply as follows:

1. It shall be an aim of policy to abolish all discrimination among workers on grounds of race, colour, sex, belief, tribal association or trade union affiliation in respect of:

(a) labour legislation and agreements which shall afford equitable economic treatment to all those lawfully resident or working in the country.

(b) admission to public or private employment.

(c) conditions of engagement and promotion.

(d) opportunities for vocational training.

(e) conditions of work.

(f) health, safety and welfare measures.

(g) discipline.

(h) participation in the negotiation or collective agreements.

(i) wage rates, which shall be fixed according to the principle of equal pay for work of equal value in the same operation and undertaking.

2. All practicable measures shall be taken to abolish, by raising the rates applicable to the lower-paid workers, any existing differences in wage rates due to discrimination by reason of race, colour, sex, belief, tribal association or trade union affiliation.

3. Workers from one country engaged for employment in another country may be granted in addition to their wages, benefits in cash in kind to meet any reasonable personal or family expenses resulting from employment away from their homes. This is to apply in cases of special skills not available locally.

4. The foregoing provisions as this Article shall be without prejudice to such measures as the competent authority may think it necessary or desirable to take for the safeguarding of motherhood and for ensuring the health, safety and welfare of women workers.

STRIKES AND LOCK-OUTS

It is agreed that in future the Federation of Kenya Employers on the one hand and the Kenya Federation of Labour on the other hand, shall discourage and seek to bring to an end any strike or lock-out which may arise from or be caused by any question, difference or dispute, contention grievance or complaint with respect to work, wages or any other matter, unless and until the following steps have been taken and these shall have failed to settle such question of difference, etc.:

(i) the matter in dispute shall first of all be considered by the appropriate machinery as set out in the Recognition Agreement;

(ii) failing settlement at Joint Industrial Council such dispute shall be reported forthwith by the parties concerned therein to their representative National Officials and be immediately

jointly dealt with by them either by invoking Joint Disputes Commission procedure or by reference to the Labour Commissioner.

INTIMIDATION

It is hereby agreed that employees and management shall enjoy adequate protection against any acts of interference by each other or each other's agents or members. Such protection shall apply more particularly in respect of such acts as:

(a) will make the employment of an individual employee subject to the condition that he shall or shall not join a union;

(b) the dismissal of an employee by reason of union membership or acts of participation in union activities outside working hours or with the consent of the employer within working hours;

(c) the drawing up, issuing or publication of discriminatory lists or any action which will prevent a supervisor or shop steward from carrying out his normal functions.

JOINT CONSULTATION

Management and employees recognise that consultation and cooperation on the basis of mutual confidence render an essential contribution to the efficiency and productivity of an undertaking and also contributes to the social and economic well-being of all.

It is therefore agreed that:-

(i) full support will be given by both parties to the constitution and the regulations of the National Joint Consultative Council and to all other freely negotiated joint machinery set up under the Recognition Agreement in the various industries throughout Kenya;

(ii) encouragement shall be given to voluntary agreements between the parties;

(iii) management shall take appropriate measures to facilitate the proper functioning of joint machinery by making available facilities for meetings and in appropriate cases, the staff essential thereto. It shall also allow representatives of the employees the necessary

time within reason to attend such meetings without loss of pay;

(iv) it is clearly understood, however, that the employees representatives, not being full-time paid officials of the union, are first and foremost employees of industry and as such their first and prime responsibility is to carry out the duties assigned to them as employees of their employer Company during working hours;

(v) (a) that means should be readily available whereby any questions which may arise affecting all employees or any category of employees, covered by the Agreement can be fully and promptly considered with a view to a satisfactory settlement

(b) that the recognized procedure covering negotiations and discussions between both parties should be so far as is practicable fully known and understood by the employees and by all members of Management.

(c) that an essential factor in successful negotiations and discussions is the clear statement or report of the issues involved and of the resulting decision after mutual agreement between the parties.

PRESS STATEMENT

That during negotiations the Kenya Federation of Labour and the Federation of Kenya Employers agree to recommend to their affiliates that statements to the Press and the Kenya Boradcasting Corporation should be jointly made although the right of either party to communicate individually is accepted.

The Federation will also recommend that letters be not normally copied to the Press or to the Ministry of Labour.

CONCLUSION

Both the Federation of Kenya Employers and the Kenya Federation of Labour agree to observe and abide by this Charter of Industrial Relations.

SIGNED

SIR COLIN CAMPBELL
for and on behalf of the Federation of Kenya Employers

P.F. KIBISU
for and on behalf of the Kenya Federation of Labour

T.J. MBOYA
Minister for Labour

APPENDIX B

MEMORANDUM OF AGREEMENT BETWEEN THE FEDERATION OF KENYA EMPLOYERS AND THE KENYA FEDERATION OF LABOUR ON THE SETTING UP OF A NATIONAL JOINT CONSULTATIVE COUNCIL

1. TITLE AND COMMENCEMENT:

The National Joint Consultative Council for Kenya (hereinafter called "The Council") shall be deemed to have been established on the 13th of September, 1961.

2. SCOPE

The Council shall take such measures appropriate to conditions in Kenya to promote effective consultation and cooperation between Employers' and workers' organizations on such matters of mutual concern as the parties may determine.

Such measures should be applied without discrimination of any kind on grounds such as the race, sex, religion, political opinion or national extraction of their members.

Such consultation and cooperation should not derogate from freedom of association or from the rights of employers' and workers' organizations, including their right of collective bargaining.

3. MEMBERSHIP OF COUNCIL

The Council shall consist of not more than thirty members half of whom shall be Employers' Representatives and half Workers' Representatives apportioned among and appointed annually by the parties to this agreement and to take office at each Annual Meeting to be held in March each year.

Casual vacancies occuring during the year shall be filled by the body which appointed the members whose place has become vacant.

In the event of any member being unable to attend a meeting the organization he represents may appoint a substitute to attend in his place.

4. RULES

a. MEETINGS

Meetings of the Council shall be held quarterly in March, June, September and December. The March meeting shall be known as the Annual Meeting. Other meetings of the Council may be held at such other times as the Council may decide.

Fourteen days' notice shall be given of the Annual Meetings and at least seven days' notice of any other meeting of the Council.

Agenda papers and all relevant documents shall be circulated to members of the Council with the notice covering the meeting.

b. OFFICERS

The Officers of the Council who shall be ex-officio Members of all Committees shall consist of a Chairman and Vice Chairman, elected from among the Members of the Council, together with the Joint Secretaries, one appointed each by the Employers' and Employees' sides of the Council respectively.

c. COMMITTEES

Committees of the Council may be appointed from time to time to deal with such matters as the Council may determine. The constitution, personnel, duties and powers of Committees shall be such as may be determined by the Council.

d. COUNCIL'S EXPENSES

The expenses incurred by the Council shall be borne as to one-half by those represented on the Employees' side.

e. MEMBERS' EXPENSES

The expenses of Members of the Council attending meetings shall be met by the organisation whom they represent.

f. MINUTES

After each meeting the Joint Secretaries shall prepare and cause the Minutes to be printed and issued as soon as possible thereafter.

g. PRESS STATEMENTS

At the close of each meeting, and if instructed by the Council, the Joint Secretaries may prepare and issue to the Press an agreed statement of the outcome of the meeting.

h. QUORUM

A majority of the Members of the Council on each side shall constitute a quorum at any meeting of the Council.

i. VOTING

Ordinary voting shall be by show of hands but shall be by ballot upon request of either side. Any decision to be binding must be

carried by a majority of votes on each side of those present and voting. The Chairman shall have one vote only as a member of the Council.

j. PRIVATE CONSULTATION

Should either side desire to retire for private consultation during any sitting of the Council it shall be allowed to do so.

5. DISPUTES

The Council (either directly or through its appropriate Standing Committee) shall deal with all differences or disputes referred to it. Any such differences or dispute shall be dealt with in accordance with the procedure set out in Appendix "A" headed "National Emergency Disputes Agreement".

6. PROCEDURE IN THE CASE OF DEADLOCK

After the procedure for arriving at a decision on any matter before the Council has been carried out in accordance with this Constitution or in accordance with the National Emergency Disputes procedure without a settlement having resulted therefrom:

a. It shall be the duty of the Council to appoint a special committee to examine the position with a view to ascertaining upon what terms the question at issue might be settled. The Committee shall have full power of conference with the Executive or Management Boards of the Adherent Bodies and shall report to the Council within one month from the date of appointment.

b. Failing settlement by the means described in (a) above, it shall be the duty of the Council to refer the matter to arbitration. The method of arbitration shall be determined in each case by a majority of the Council present and voting.

NATIONAL AGREEMENT ON EMERGENCY DISPUTES

Machinery now exists at Industry level for dealing with disputes that may arise from time to time through the Joint Industrial Councils. That machinery is not intended to be superseded in any way by the agreement hereinafter set out.

The specific object of this agreement is to prevent disputes involving loss of time and money to all concerned, and, by establishing joint

machinery capable of dealing immediately and effectively with disagreements to prevent any unnecessary stoppage of work. The use of the machinery is entirely voluntary and is not intended to prevent parties who so wish utilising the processes provided under the terms of the Trade Disputes (Arbitration and Industry) Ordinance.

The agreement is set out in simple terms, and if administered in the spirit in which it is conceived, should encourage the spirit of confidence and goodwill which is essential to the maintenance of friendly and peaceful relations between employer and employee.

1. An Agreement, made the 13th day of September, 1961, between the Federation of Kenya Employers and the Kenya Federation of Labour for dealing with emergency disputes by providing for:

a. Joint official endeavours to prevent stoppages of work, or if those fail, then for joint official action to obtain a resumption of work, pending reference:-

i. to an appropriate Joint Industrial Demarcation Committee, hereinafter referred to as "existing machinery

for dealing with disputes", or

ii. to the Joint Emergency Disputes Commissions hereinafter provided.

b. Failing reference as above report to the respective National Executives of Federation of Kenya Employers and Kenya Federation of Labour for their appropriate action.

2. The parties hereto being agreed that in the event of any dispute or difference arising between their respective members or any of them, every means for affecting an amicable settlement should be exhausted before resorting to direct action, hereby undertake to advise their members not to strike or lock-out or otherwise to take such action as would involve cessation of work without complying with all the agreements then in existence between the parties and giving the customary notice to terminate the employment. They further undertake to do all that is possible to prevent any unauthorised action upon any particular work.

3. Therefore it is hereby further agreed that as and from the date hereof, should any dispute or difference arising between the parties hereto or between any member of any of them threaten to cause

a stoppage of work, such dispute, hereinafter referred to as an emergency dispute, may be reported forthwith by the parties concerned therein to their respective national officials, and be immediately dealt with jointly by such officials in the manner provided in the Regulations attached to this Agreement or any subsequent agreed modification thereof.

4. This agreement and the Regulations referred to may be terminated by six months' notice in writing on either side expiring in any year, but the Regulations may be modified at any time by mutual agreement after one month's notice by either side.

Signed on behalf of

The Federation of Kenya Employers

D.G. ALLEN - President
D. RICHMOND - Secretary

The Kenya Federation of Labour

P. MUINDE - President
J.J. MBOYA - General-Secretary

APPENDIX C

INDUSTRIAL RELATIONS CHARTER

The Government of Uganda, the Federation of Uganda Employers and the Uganda Trades Union Congress:

1. Realising that it is in the national interest for the Government, Management and Workers to recognize that consultation and cooperation on a basis of mutual understanding render an essential contribution to the efficiency and productivity of an undertaking and that progress can only be made on a foundation of good terms and conditions of employment which include security of service and income also the improvement of workers' conditions of service;

2. Desiring to make the greatest possible contribution to the success and prosperity of Uganda.

Hereby agree together as follows:

1. AGREED RESPONSIBILITIES OF MANAGEMENT AND UNIONS

i. that the statutory machinery for settlement of disputes should be utilised as quickly as possible;

ii. that both sides undertake to settle any or all industrial disputes at the appropriate level and according to the procedure laid down hereafter;

iii. that affirming their faith in democratic principles, they agree to settle all future differences, disputes and grievances by mutual negotiation and according to principles laid down in the Trade Disputes (Arbitration and Settlement) Ordinance.

iv. that neither party will have recourse to intimidation or victimisation or conduct contrary to the spirit of this Charter;

v. that they undertake to promote maximum cooperation in the interests of good industrial relations between their representatives at all levels and abide by the spirit of agreements mutually entered into;

vi. that they undertake to observe strictly the agreed grievance procedure which will ensure a speedy and full investigation

leading to settlement;

vii. that they will educate the Management Personnel and Employees regarding their obligations to each other for the purpose of good industrial relations.

viii. that they respect each other's right to freedom of association;

ix. that they will deal promptly with all correspondence that arises between them.

2. MANAGEMENT AGREES

i. to recognise the Union appropriate to its particular undertaking or industry provided that the Union is acceptable to workers in that undertaking or industry and to accord reasonable facilities for the normal functioning of the Union in the undertaking.

ii. to discourage such practices as (a) interference with the rights of employees to enrol or continue as Union members; (b) discrimination, restraint or coercion against any employee because

of recognised activity of trade unions; (c) victimisation of any employee and abuse of authority in any form (d) abusive or intemperate language; and (e) generally to respect the provision of the I.L.O. Convention No. 98.

iii. to take action for (a) settlement of grievances and (b) implementation of settlements, awards, decisions and orders, as speedily as possible;

iv. to investigate all cases of misconduct strictly in accordance with the grievance procedure laid down in the recognition agreement;

v. to impress upon their staffs the contents of this Charter and to take appropriate action where Management inquiries reveal that the spirit or contents of this Charter have been contravened and to give full publicity on their Notice Boards to this Charter;

vi. to discourage any breach of the peace or civil commotion by Employers or their Agents;

vii. to encourage: (a) diligence at work;
(b) punctuality
(c) strict observance of provisions for safe working

3. UNION(S) AGREE:

i. that Management has the exclusive right and power to manage its undertaking and to engage, promote, transfer, demote or lay off employees and to discipline suspend or discharge employees for just cause provided that this does not preclude the Union's right to raise any grievance through the accepted grievance procedure;

ii. not to engage in any activities which are contrary to the spirit of the Charter;

iii. to discourage any breach of the peace or civil commotion by Union members,

iv. to discourage such practices as:

(a) negligence of duty;

(b) careless operation;

(c) damage to property;

(d) interference with or disturbance to normal work;

(e) insubordination;

(f) abusive or intemperate language;

(g) "go-slow";

(h) intemperance;

and to encourage:

(a) diligence at work;

(b) punctuality;

(c) strict observance of provisions for safe working

v. to take action to implement awards, agreements, settlements and decisions as speedily as possible;

vi. in the event of a stoppage for any reason to ensure the maintenance of essential services as shall be provided for in any recognition agreement but the employee concerned shall not be called upon to perform any other duties than the maintenance of the service concerned;

vii. to display in conspicuous places in the Union offices the provisions of this Code and to impress upon their officers and members the contents of this Charter and to take appropriate action where Union inquiries reveal that the spirit or content of this Charter have been contravened.

4. GOVERNMENT AGREES

to maintain or introduce legislation providing for machinery of conciliation, arbitration and inquiry suitable for dealing with different kinds of industrial disputes. Representatives of the employers and workers concerned including representatives of the Federation of Uganda Employers and Uganda Trades Union Congress shall be associated where practicable in the operation of the machinery, in such manner and to such extent, but in any case in equal numbers and on equal terms, and may be determined by the Government. Such determination will take into consideration the views expressed by the parties to the dispute. The Government further agrees to ensure that already exist such as the Labour Consultative Council meet regularly at least twice a year at definitely stated intervals.

5. SETTLEMENT OF DISPUTES

In the event of failure to achieve settlement by negotiation the Uganda Trade Union Congress and the Federation of Uganda Employers agree that:

a. where it is appropriate for Management and Unions to use mutually-established conciliation and arbitration machinery such machinery shall be used;

b. where such mutually-established machinery cannot be quickly set up or used, or where it appears to either side to be inappropriate for the matter under dispute, the Management and the Union concerned will refer the dispute to the government-established machinery;

c. in referring a dispute to government each party to the dispute will describe the issues and the points of difference between them, and will express its views as to the kind of body or bodies which it considers will most efficiently deal with the matter under dispute.

6. TRIPARTITE COOPERATION

The Uganda Trades Union Congress and the Federation of Uganda Employers agree to participate constructively in tripartite bodies which may be formed by government in order to achieve liaison between them for the purposes of examining labour policy and legislation, fostering industrial cooperation and raising industrial efficiency and productivity so as to build up the economic prosperity of Uganda and its peoples.

7. REDUNDANCY

In the event of redundancy, the following principles will apply:

a. the Union concerned shall be informed as far in advance as possible of the reasons for and the extent ff intended redundancy;

b. the principle should be adopted of "Last in, First out" in the particular category of employees affected subject to all other factors such as ability to do the job and a satisfactory work record being equal;

c. the redundant employee will be entitled to the appropriate period of notice or pay in lieu which shall be not less than one month.

8. EMPLOYMENT POLICY

The provisions of the I.L.O. Convention adopted June, 1962, Article 14, shall apply as follows:-

i. It shall be an aim of policy to abolish all discrimination among workers on grounds of race, colour, sex, belief, tribal association or trade union affiliation in respect of:

(a) labour legislation and agreements which shall afford equitable economic treatment to all those lawfully resident or working in the country;

(b) admission to public or private employment;

(c) conditions of engagement and promotion;

(d) opportunities for vocational training;

(e) conditions of work;

(f) health, safety and welfare measures;

(g) discipline;

(h) participation in the negotiation of collective agreements;

(i) wage rates, which shall be fixed according to the principles of equal pay for work of equal value in the same operation and undertaking.

ii. All practicable measures shall be taken to abolish, by raising the rates applicable to the lower-paid workers, any existing differences in wage rates due to discrimination by reason of race, colour, sex, belief, tribal association or trade union affiliation.

iii. Workers engaged outside Uganda for employment in Uganda may be granted, in addition to their wages, benefits in cash or in kind to meet any reasonable personal or family expenses resulting from employment away from their homes. This is to apply in cases of special skills not available in Uganda.

iv. The foregoing provisions of this Article shall be without prejudice to such measures as the competent authority may think it necessary or desirable to take for the safeguarding of motherhood and for ensuring the health, safety and welfare of women workers.

9. INTIMIDATION

It is hereby agreed that employees and management shall enjoy adequate protection against any acts of interference by each other or each other's agents or members. Such protection shall apply more particularly in respect of such acts as:

a. will make the employment of an individual employee subject to the condition that he shall or shall not join a Union;

b. the dismissal of an employee by reason of union membership or acts of participation in union activities outside working hours or with the consent of the employer within working hours;

c. the drawing up, issuing or publication of discriminatory lists or any action which will prevent a supervisor or shop steward from carrying out his normal functions.

10. JOINT CONSULTATION

Management and employees recognise that consultation and cooperation on the basis of mutual confidence render an essential contribution to the efficiency and productivity of an undertaking and also contribute to the social and economic well-being of all. It is therefore agreed that:

i. encouragement shall be given to voluntary agreements between parties;

ii. management shall take appropriate measures to facilitate the proper functioning of joint machinery by making available facilities for meetings;

iii. it is clearly understood, however, that the employees' representatives, not being full-time paid officials of the union, are first and foremost employees of industry and as such their first and prime responsibility is to carry out the duties assigned to them as

employees of their employer Company during working hours. It is agreed that this does not prejudice the managements undertaking under Clause 2(i) above.

iv. (a) that the recognised procedure covering negotiations and discussions between both parties should be so far as is practicable fully known and understood by the employees and by all members of management;

(b) that an essential factor in successful negotiations and discussions is the clear statement or report of the issues involved and of the resulting decision after mutual agreement between the parties;

v. the Federation of Uganda Employers and Uganda Trades Union Congress agree to set up a joint body to meet at regular intervals to consider common problems and to decide any changes or amendments which may prove necessary to this Charter in the light of experience gained after it has come into operation.

11. PRESS STATEMENTS

The Federation of Uganda Employers and Uganda Trades Union Congress agree to dissuade their affiliates issuing to the Press and to Radio Uganda during negotiations statements which might prejudice matters under negotiation.

12. RECOGNITION

It is agreed that the items set out in Appendix 'A' should normally be included in any recognition agreements.

i. No employer will negotiate with a Union until the Union has been registered and gazetted in the normal manner;

ii. If either the Employer or the Union considers that an agreement has been breached it should give notice in writing to the appropriate side calling for a discussion before making a complete break in the agreement;

iii. That these principles be brought to the notice of parties who are not affiliated to Federation of Uganda Employers or Uganda Trades Union Congress.

13. THE PUBLIC SERVICE

For the avoidance of doubt it is hereby declared by the Government of Uganda and recognised by the Federation of Uganda Employers and the Uganda Trades Union Congress that this Charter is not intended to apply and does not apply to the public service of Uganda or matters relating thereto.

Dated this first day of June 1964.

SIGNED: F.W. Reynolds
For and on behalf of the
Federation of Uganda Employers.

H.M. Luande
For and on behalf of the
Uganda Trades Union Congress

WITNESS: G.B.K. Magezi
Minister of Housing and Labour.

APPENDIX D

SUMMARY OF TRIPARTITE AGREEMENT-1964

The Agreement stated that:

"In acceptance of the fact that the unemployment problem has become so serious as to constitute a national emergency....Sacrifices must be made if a potentially explosive situation is to be averted and the political stability of the state preserved....."*

The sacrifices that were to be made included the following:-

a. Private employers pledged to increase their Labour force by 10%.

b. The trade unions agreed to a 12 month wage freeze after the expiration of the existing negotiated agreements.

c. No strikes or go slow was permitted during that period.

d. The government undertook to increase employment in the public sector by 15%.

e. The government undertook to establish an Industrial Court to settle disputes unresolved by voluntary negotiating machinery.

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* See FKE, Copy of Agreement on Measures for the Immediate Relief of Unemployment, 10th February, 1964 (Mimeographed).

f. Prices of essential commodities were to be controlled.

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