

Trade unionism and politics in Africa: the South African experience*

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Abstract

This paper reflects on trade unionism and politics in Africa in general and South Africa in particular, from colonisation to post-colonial Africa and constitutional democratic order. It first deals with the origins of trade unions, their relationship with political parties, their critical role in the struggle for independence, and their contribution to present day struggles for democracy. Special emphasis is on South Africa as an illuminating case of the African experience with trade unionism and politics, particularly because South African trade unionism is the most developed on the continent and post-apartheid South Africa is one of the few democratic and constitutional states in Africa. The paper then focuses on the particular origins of trade unionism in South Africa, its relationship with political parties, its contribution to the struggle against apartheid, and the current status, strengths and weaknesses of the South African trade unionism with reference to the Congress of South African Trade Unions (COSATU), which is the largest federation of trade unions in South Africa. It argues that trade unions remain critical for democratic consolidation and will continue to play a meaningful role in this process. However, despite their relationship with political parties, trade unions should remain autonomous.

Introduction

The issue of trade unionism and politics in Africa in general, and in South Africa in particular, is complex. Based on the right to freedom of association in the workplace, which entitles employees and employers to organise, bargain collectively, strike, or lockout, in order to promote or protect their rights and interests, the concept of trade unionism is not easy to define. The issue of politics is generally related to the access and exercise of power in society, and to the activities of those involved in this process. In a nutshell, trade unionism relates to the principles, methods, and practices of trade unions, or it may refer to trade unions considered collectively. Trade

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unionism presupposes the existence of trade unions or organised labour. A trade union is traditionally defined as ‘a continuous association of wage-earners for the purpose of maintaining or improving the conditions of their working lives’.¹ Adapted to capitalist and individualist industrial societies,² and restricting unions to wage-earners, this definition has, unfortunately, demonstrated its limits in the African and South African contexts, where unions could or should also promote the interests of society at large without transforming themselves into political parties.

According to Marxist writers such as Engels, Lenin, Trotsky, Gramsci and, of course, Marx himself, a trade union is ‘an expression of the common interest of the working class’ and should contribute to radical or revolutionary social change.³ For Schilling, ‘trade or labour unions can be described as organised groupings of wage and salary earners with the purpose of bringing to bear the economic, social and political interests of their members in labour relations and the political system’.⁴ According to Milbrun, strong trade unions come into existence only after significant industrialisation has occurred within a country.⁵ However, countries like New Zealand, Australia,⁶ South Africa, and other African countries,⁷ where unions were powerful even before they could reach the industrialisation phase, prove that this is not invariably the case.

The origins of modern trade unionism can be traced back to the late 17th and early 18th centuries in England.⁸ Trade unions became popular in many countries during the Industrial Revolution, especially from the 1870s onwards.⁹ The struggle for workers’ rights led to the creation of the

¹ See Webb *History of trade unionism* (2ed 1920) 1; Martin *Trade unionism. purposes and forms* (1989) 8.

² See Walter *Trade union democracy in Western Europe* (1961); Moore & Arnold (eds) *Labour commitment and social change in developing areas* (1960) 8; Milbrun ‘Trade unions in politics in Australia and New Zealand’ *The Western Political Quarterly* 672.

³ Jackson *Trade unions* (1982) 133–135.

⁴ Schillinger ‘Trade unions in Africa: weak but feared’ *International Development Cooperation: Occasional Papers* 2005 2.

⁵ Milbrun n 2 above at 672.

⁶ *Id* at 672.

⁷ See Meynaud & Bey *Trade unionism in Africa* (transl Brench) (1967). Beckman & Sachikonye ‘Introduction: trade unions and party politics in Africa’ in Beckman, Buhlungu & Sachikonye (eds) *Trade unions & party politics* (2010) 1.

⁸ Pannekoek ‘Trade unionism’ in *International Council Correspondence* (January 1936) 2/2 2; *id* at <http://www.marxists.org/archive/pannekoek/1936/union.htm> (last accessed 8 June 2012);

<http://www.britannica.com/EBchecked/topic/432094> (last accessed on 8 June 2012).

⁹ Pannekoek n 8 above.

International Labour Organisation (ILO) in 1919. The Constitution¹⁰ of the ILO embodies the right to freedom of association in the workplace, and the ILO has adopted several Conventions¹¹ and Declarations¹² in this regard.

The right to join a trade union is enshrined in the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948.¹³ With colonisation, trade unionism was also exported to colonies, although it was reserved for European citizens. Colonised people were denied the right to freedom of association in the workplace that could result in the formation of trade unions.

Since Roper published his article on overseas labour relations in 1957, there has been considerable scholarly interest in trade unionism in Africa.¹⁴ According to Allen, 'academic attention has focussed on labour as a commodity rather than as a social movement'.¹⁵ In South Africa, trade unionism is generally approached from a labour law perspective. Many contemporary labour law studies focus on the Labour Relations Act (LRA), and on different manifestations of the right to freedom of association in the workplace. Few are undertaken from a comparative perspective. From this perspective, reference is generally made to the labour laws of common law countries such as the United States, Britain, Canada, Australia, and India. Comparative reference to labour law and trade unions in other African countries is unfortunately often overlooked.

On the other hand, African labour law scholars in general, and South Africans in particular, tend to monopolise the intellectual discourse on trade unionism. Many other legal scholars, including constitutional and human rights lawyers, seem intimidated by the subject. Despite its multidisciplinary and interdisciplinary nature, the non-labour law legal scholars refrain from engaging in this field, leaving it to labour law scholars. In Africa, perhaps more than elsewhere, trade unionism cannot be studied successfully in isolation from its association with national politics.

¹⁰ See the Declaration of fundamental principles and rights at work (1998) 37 *ILM* 1237.

¹¹ These Conventions include Freedom of association and protection of the right to organise convention (No 87 of 1948), Right to organise and collective bargaining convention (No 98 of 1949).

¹² Budeli 'The protection of workers' right to freedom of association in international and regional human rights systems' 2010 *De Jure* 144–153.

¹³ Universal declaration of human rights (1948) art 23, sub s 4.

¹⁴ Allen 'The study of African unionism' (1969) 87/2 *The Journal of Modern African Studies* (1969) 293–294.

¹⁵ *Id* at 289.

Beckman and Buhlungu have reflected on the involvement of trade unions in African and South African politics since colonisation.¹⁶ Milbrun argues that individual unions have usually been concerned primarily with improving working conditions and providing services to their members, while federations have tended to be more involved in relations with political parties and in national politics. None of the groups has, however, devoted itself exclusively to a particular area.¹⁷

Buhlungu rightly takes issue with Berg and Butler¹⁸ who argue that unions played no meaningful political role in colonial and independent Africa.¹⁹ Rather he aligns himself with Davies²⁰ who argues that African unions have always been deeply involved in politics.²¹ This view is corroborated by studies conducted by Bienefeld²² in Tanzania, Sandbrook²³ in Kenya, Ndiaye²⁴ in Senegal, Akwetey and Dorkenoo²⁵ in Ghana, Beckman and Lukman²⁶ in Nigeria, Barya²⁷ in Uganda, Matombo and Sachikonye²⁸ in Zimbabwe, Jauch²⁹ in Namibia, and Southall and Webster³⁰ in South Africa.

¹⁶ Beckman & Sachikonye n 7 above at 1–22; Buhlungu ‘Trade unions and the politics of national liberation in Africa: an appraisal’ in Beckman, Buhlungu & Sachikonye n 7 above at 191.

¹⁷ Milbrun n 2 above at 674.

¹⁸ Buhlungu n 16 above at 191–206.

¹⁹ *Id* at 191; Berg & Butler ‘Trade unions’ in Coleman & Rosberg (eds) *Political parties and national integration in tropical Africa* (1964).

²⁰ See Buhlungu n 16 above at 191; Davies *African trade unions* (1966) 11–12.

²¹ Buhlungu n 16 above at 191.

²² Bienefeld ‘Socialist development and the workers in Tanzania’ in Sandbrook & Cohen (eds) *The development of an African working class* (1975).

²³ Sandbrook *Proletarians and African capitalism: the Kenyan case 1960–1972* (1975).

²⁴ Ndiaye ‘Autonomy or political affiliation? Senegalese trade unions in the face of economic and political reforms’ in Beckman, Buhlungu & Sachikonye n 7 above at 23–38.

²⁵ Akwetey & Dorkenoo ‘Disengagement from party politics: achievements and challenges for the Ghana Trade Union Congress’ in Beckman, Buhlungu & Sachikonye n 7 above at 39–57.

²⁶ Beckman & Lukman ‘The failure of Nigeria’s Labour Party’ in Beckman, Buhlungu & Sachikonye n 7 above at 59–83.

²⁷ Barya ‘Trade unions, liberalisation and politics in Uganda’ in Beckman, Buhlungu & Sachikonye n 7 above at 85–107.

²⁸ Matombo & Sachikonye ‘The labour movement and democratisation in Zimbabwe’ in Beckman, Buhlungu & Sachikonye n 7 above at t 109–130.

²⁹ Jauch ‘Serving workers or serving the party? Trade unions and politics in Namibia’ in Beckman, Buhlungu & Sachikonye n 7 above at 167–190.

³⁰ Southall & Webster ‘Unions and parties in South Africa: COSATU and the ANC in the wake of Polokwane’ in Beckman, Buhlungu & Sachikonye n 7 above at 131–166.

According to Beckman and Sachikonye, a strong tradition of close union-political party relations exists not only in Africa, but also in the rest of the world.³¹ Trade unions were affiliated to Labour, Liberal, and Democratic parties in Western capitalist countries such as Great Britain, Australia, France, Germany, Italy, Sweden, and the United States.³² They were also integrated into single political parties in communist and socialist countries like the former Union of Soviet Socialist Republics (USSR) and China.

In most cases, political parties financed and served as the vehicles for the expression of the political objectives of trade unions, alternatively, trade unions did the same for political parties.³³ Accordingly, trade unionism has influenced politics and *vice versa* and oscillated between ‘autonomy’ and ‘political affiliation’. Certain scholars have called for the disengagement of trade unions from party politics in order to protect or preserve their autonomy.³⁴

The aim of this article is to contribute to the debate on the relationship between trade unionism and politics in Africa with specific reference to South Africa. Several objective and subjective reasons justify the choice of South Africa as a case study reflecting the African experience with trade unionism and politics. South African trade unionism is the best developed on the African continent. South Africa is the most industrialised sub-Saharan African country, and its labour force is equally the largest and most powerful in Africa – bar the Nigerian Labour Congress (NLC) which claims a membership of three million.³⁵

From the onset, a word of caution needs to be sounded. Most observations on trade unionism in South Africa relate to COSATU. However, trade unionism in South Africa is fragmented. There are many trade unions or federations of trade unions in South Africa, although COSATU³⁶ remains the

³¹ Beckman & Sachikonye ‘Introduction: trade unions and party politics in Africa’ in Beckman, Buhlungu & Sachikonye n 7 above at 1.

³² Jackson n 3 above at 123–127; Clegg *Trade unionism under collective bargaining* (1976) 55–67, 102–105.

³³ Jackson n 3 above at 127.

³⁴ Akwetey & Dorkenoo n 25 above at 39–58.

³⁵ Webster & Buhlungu reported that there were around 3.5 million members in 485 registered unions in South Africa. There were also 16 union federations registered with the Department of Labour in 2002. See Webster & Buhlungu ‘Between marginalisation and revitalisation: the state of trade unionism in South Africa’ (2004) 100 *Review of African Political Economy* 231; Schillinger n 4 above at 3.

³⁶ Webster & Buhlungu also reported in 2003 that COSATU had 19 affiliates with more than a 100 000 members each, which represented a membership of 1 864, 121 and around

largest and most important federation in the country. A study may be conducted on the political involvement of each trade union or federation of trade unions in South Africa.³⁷

The relationship between trade unionism and politics in South Africa recalls the relationship that existed, or still exists, in other parts of the world, especially in Africa. Trade unionism and politics in South Africa present some particularities due to the country's historical, social, political, legal, and economic contexts. There are, indeed, many questions that may be raised with regard to trade unionism and its relationship with politics in Africa.³⁸

TRADE UNIONISM AND POLITICS IN AFRICA

The flirtation of trade unionism with politics is a worldwide phenomenon.³⁹ I fully agree with Buhlungu that trade unionism, which is not foreign to Africa, has been involved and played an important role in the politics of Africa.⁴⁰ According to Webster, '[T]rade unions in Africa have a long tradition of political engagement, beginning with their involvement in the anti-colonial movements through present day struggles for democracy'.⁴¹

This engagement is a history of both 'affection' and 'disaffection' and may be divided into several phases.⁴² The first phase coincided with the colonial era and was marked by a common struggle against colonialism. It was during this phase that close ties were established between trade unions and national liberation movements. Trade unions acted largely autonomously in their opposition to colonialism.

half of the total number of union members in South Africa. The second and third largest federations are FEDUSA (527, 628) and NACTU (300, 000) respectively (Webster & Buhlungu n 35 above at 231–233).

³⁷ The Federation of Unions of South Africa (FEDUSA), for instance, which is predominantly white unlike COSATU, which is predominantly black, is non-aligned politically and relies heavily on lobbying to influence the political process. NACTU, the South African third federation of trade unions has also its origins in Pan-Africanism and Black Consciousness but is non-aligned and relies on lobbying as a strategy (Webster & Buhlungu n 35 above at 231–232).

³⁸ Beckman & Sachikonye n 7 above at 1.

³⁹ In the case of Australia and New Zealand, see for instance Milbrun n 2 above at 674–677.

⁴⁰ Buhlungu n 16 above at 191.

⁴¹ Webster 'Trade unions and political parties in Africa: new alliances, strategies and partnerships' (2007) *3Briefing Papers* available at <http://www.fes.de/gewerkschaften> (last accessed 15 June 2012).

⁴² *Ibid.*

The second phase began with independence. Military and one-party regimes were established during this period, which was also characterised by the Structural Adjustment Programmes (SAPs) imposed on African states by the International Monetary Fund (IMF) and the World Bank as a condition for securing loans from these international financial institutions and Western governments. During this period, trade unions were subordinated to governments or ruling parties, and lost their capacity to intervene autonomously in politics. This changed with the failure of western-sponsored 'dictatorships of development'⁴³ and the SAPs implemented by them which contributed to the 'development of underdevelopment' and poverty on the African continent. Many trade unions then asserted a measure of autonomy and disengaged from the state and ruling parties. They opposed retrenchments, cuts in wages, privatisation, and the deterioration of social services resulting from the strict implementation of the SAPs.⁴⁴ Trade unions demanded democracy and good governance.

The third phase started with the collapse of the one-party state and the establishment of new political and constitutional orders based on multiparty systems. During this phase, trade unionism had to negotiate a new deal with politics as trade unions re-engaged with political parties to promote and protect the rights and interests of their members, together with those of the rest of society interested in economic development and democratic consolidation.

Trade unionism and politics in colonial Africa

The history of trade unionism and politics in Africa can be traced back to colonisation. In some instances, the formation of trade unions was initiated by political parties. In other instances, trade unions were instrumental in the creation and development of political parties. The first trade unions were modelled on those operating in Europe. During the first phase of colonisation, membership of trade unions was denied to Africans and reserved for Europeans. It was only later that trade unionism was extended to the colonised people of Africa. In this context, African trade unions became involved in politics shortly after their creation.

⁴³ Mangu 'The road to constitutionalism and democracy in post-colonial Africa: the case of the Democratic Republic of Congo (unpublished LLD thesis, University of South Africa, 2002) 44–45; Sklar 'Developmental democracy' in Nyang'oro (ed) *Discourses on democracy: Africa in comparative perspective* (1996) 1–30.

⁴⁴ Webster n 40 above.

As trade unions were protagonists in the struggle for political emancipation and independence, they could hardly claim to be a-political. Contrary to the view expressed by European colonial masters that trade unions in Africa had to remain purely economic institutions concentrating on labour issues, and discouraging union leaders from involving themselves in national politics,⁴⁵ trade unions rapidly turned political – their members came to realise that the full enjoyment of the right to freedom of association was incompatible with the maintenance of the colonial order. Accordingly, they had to contribute to – and even take a leading role in – the struggle for independence. Unlike the European colonial authorities, Americans believed that, given the colonial setting, African trade union leaders would inevitably become involved in nationalist politics, and that the most important task was not to prevent this, but to ensure that their politics were of the broadly non-Communist variety.⁴⁶

The role of trade unions and their leaders in the struggle for national independence in Africa is well documented in the literature.⁴⁷ Senghor, one of the fathers of Negritude and the first Senegalese President, paid tribute to the Negro-African labour movement. According to the Poet-President, it fought simultaneously on the political and economic levels. It played a vital part in liberation and produced the best political minds in black Africa.⁴⁸ Wallerstein argued that African leaders, such as Julius Nyerere of Tanzania and Sekou Toure of Guinea, felt that the participation of trade unions in the nationalist struggle was not only desirable, but inevitable.⁴⁹

Nyerere referred to the union movement and the party as ‘two legs of the same nationalist movement’, while Sekou Toure stated that ‘the necessarily 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’.⁵⁰ Trade unions were also instrumental in the fight by Dr Kwame Nkrumah to achieve independence in Ghana.⁵¹

In their respective studies on ‘Labour in the tropical territories of the Commonwealth’ and ‘Labour training in developing countries’, Roberts and

⁴⁵ Scott ‘Are trade unions still necessary in Africa’ (1967) 33 *Transition* 27–31 at 27.

⁴⁶ *Ibid.*

⁴⁷ Scott n 45 above at 27; Jackson n 3 above at 1.

⁴⁸ Senghor *On African socialism* (1964) 95.

⁴⁹ Wallerstein ‘Voluntary associations’ in Coleman & Rosberg *Political parties and national integration in tropical Africa* (1964); Scott n 47 above at 27.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

Zack argued that trade unions played an important role in the growth of political nationalism and the struggle for independence.⁵²

Schilling argues that

as the most important African mass organisations of that time, unions very often had a decisive share in the national liberation struggle... Their actions usually occurred under the auspices of the national liberation movements, even though in many cases the unions had to be credited for accelerating change via protest actions and political strikes.⁵³

The first generation of African leaders who led the struggle for independence in their countries and presided over them at independence, started as trade unionists. This was the case with Leopold Sedar Senghor in Senegal, Houphouët Boigny in Côte d'Ivoire, Sekou Toure in Guinea, Jomo Kenyatta in Kenya, Julius Nyerere in Tanzania, and Patrice Lumumba in the Democratic Republic of Congo (DRC), to name but a few. Even more recently, the late President Chiluba of Zambia was the Secretary General of the Zambian Congress of Trade Unions (ZaCTU) that mutated into the Movement for Multiparty Democracy (MMD), which, in turn, catapulted him to the presidency. Similarly, Morgan Tsvangirai, the current Prime Minister of Zimbabwe, was the Secretary General of the Zimbabwean Congress of Trade Unions (ZiCTU).⁵⁴

There was some harmony between trade unions and political parties in the struggle for political emancipation and independence. Trade unions enjoyed autonomy and played a more important role, especially when political parties were banned and their leaders and militants persecuted, arrested, or condemned to exile. However, political parties were progressively recognised during the last decade of colonialism. This meant that trade unions – which were less political than associational – were ‘sucked into’ political parties and, as affiliates, sacrificed a large measure of their autonomy.

⁵² *Ibid*; Roberts *Labour in the tropical territories of the Commonwealth* (1964) 48; Zack *Labour training in developing areas* (1964) 5.

⁵³ Schilling n 4 above at 2.

⁵⁴ Hungwe ‘An analysis of the emerging political dispensation in South Africa – parallels between ZCTU – MDC and COSATU’s relationship to ANC’ available at: <http://concernedafricascholars.org/bulletin/79/hungwe> (last accessed 23 June 2012).

Trade unionism and politics in post-colonial Africa

The roles played by political parties and trade unions under colonial rule changed on independence. Leaders of the newly independent states had learnt from the past. Having operated within trade unions, and being aware of their contribution to the struggle against colonial authoritarianism, most of them realised that they had to prevent trade unions from turning against their own regimes if they hoped to consolidate their power. This required their recruiting among members of trade unions or subjecting trade unions to the writ of government. The governments of the newly-independent African states were unwilling to tolerate the existence of autonomous institutions that could later challenge their authority and provide an alternative supply of political leaders.⁵⁵

According to Scott, the character of trade unionism in Africa has changed since independence, and the initiative has shifted to politicians, especially those of the ruling elite.⁵⁶

When the ‘military regime’ and the ‘single-party phenomenon’ took root a few years later, it was not only the opposition parties which were to be banned, but also trade unions that were seen as a threat to the regimes. Military regimes were incompatible with the existence of independent trade unions. Similarly, when the state was transformed into a one-party state as the only official institution, existing trade unions became its branches or sections vested with the imperative mandate to mobilise labour in support of the regime. Single-party regimes left little or no room for free and independent labour unions.⁵⁷

Trade unions had to be kept under the strict control of the single party and its authoritarian government. As with many other rights, the right to freedom of association in the workplace was severely limited. Furthermore, only one trade union was allowed to operate – which reflected the merger of different trade unions that had operated during the last decade of colonisation. Despite their incorporation into the one-party state, trade union members remained active underground and became the only opposition to government and to the SAPs that proved particularly anti-social, anti-poor, and anti-labour. Despite the strict limitation of the right to freedom of association, trade unionists linked up with human rights and democracy militants opposed to the one-

⁵⁵ Scott n 45 above at 28.

⁵⁶ *Ibid.*

⁵⁷ Schillinger n 4 above at 2.

party system, and demanded recognition of democracy and respect for human rights. International financial institutions and western governments could no longer remain deaf to the demands for change from the masses of the African people whose clarion call was ‘good governance’.

Change was in the air for the continent. This happened within a context of several ‘winds’, namely the ‘Wind of the East’, the ‘Wind of the West’, and the ‘Wind of Africa’ itself, which resulted in the collapse of the one-party state and led to political liberalisation or democratisation in Africa. In many countries, trade unions became political actors for democratic change.⁵⁸

Trade unionism was instrumental in this change and was involved in politics, as trade unionists allied with the leaders of the unauthorised opposition to counter state authoritarianism and one-party politics and establish constitutional democratic rule that would respect human and peoples’ rights – including the right to freedom of association in the workplace.

Trade unionism and politics in Africa since the establishment of a constitutional and democratic order

Trade unions re-emerged with the resurgence of constitutionalism and democracy in the 1990s. Almost all African countries adopted new constitutions protecting human rights, including the right to freedom of association in the workplace. This entails the right of workers, employees and employers to organise freely and to unite in order to champion their interests. This allowed for trade unionism to prosper anew on the continent with many trade unions being established *de jure*. This also provided an opportunity for trade unions and their members to re-engage with politics. As in the last years of colonialism, certain trade union leaders became political leaders and formed their own parties or affiliated to those that already existed. Faced with a plurality of parties, unions had to choose between supporting either the ruling or the opposition parties. In a few cases – Zambia and Zimbabwe, for example – confederations of trade unions morphed into opposition parties before taking power in the country. The Zambian Congress of Trade Union (ZCTU-Zambia) led by Frederick Chiluba, mutated into the Movement for Multiparty Democracy (MMD) and won the 1991 election and secured its Secretary General’s election as the second President of Zambia. Almost a decade later, the Zimbabwean Congress of Trade Union (ZCTU-Zimbabwe) also re-invented itself as the Movement for Democratic Change (MDC), which is alleged to have won the 2009 elections in

⁵⁸ *Id* at 3–4.

Zimbabwe. Its former Secretary General, Morgan Tsvangirai, is currently Prime Minister and leads Zimbabwe's coalition government.⁵⁹

Generally, the tendency among ruling parties has been to seek affiliation with trade unions to avoid their being used by opposition parties. Most trade unions and unionists chose to be pragmatic, and to support ruling parties or ally with incumbent governments as the best way to champion their interests. New legislation was adopted to enforce workers' right to organise, establish, and adhere to trade unions freely, to strike, and to bargain collectively to preserve or promote the interests of their members. The question of whether this has resulted in the improvement of labour conditions still needs to be fully investigated.

The same applies to the question of whether the improvement of conditions through the promotion and protection of the rights and interests of the workers and employers, could not be achieved through the autonomy of trade unions rather than their affiliation. An a-political trade unionism remains a fallacy. In many African countries, trade unions have been playing an important political role since the end of one-party rule and the establishment of new constitutional and democratic orders. The political involvement of trade unions is clearly greater than it was under the previous dispensations.

From colonialism to the post-apartheid constitutional and democratic order, the history of trade unionism and politics in South Africa bears testimony to the major political role played by trade unions in Africa, and to the affection or disaffection that regularly occurs in the relationship between trade unions and political parties or governments in Africa. It also raises the need for trade unions to continue to engage government and champion the rights and interests of their members without necessarily subjecting themselves to the ruling party. Below, I discuss trade unionism in South Africa, from colonisation to the democratic constitutional order.

TRADE UNIONISM AND POLITICS IN SOUTH AFRICA

Scholars like Webster, Buhlungu, Johnson, and Schillinger have reflected on trade unionism and politics in South Africa.⁶⁰ The history of trade unionism and its political involvement in South Africa may be divided into

⁵⁹ Hungwe n 54 above.

⁶⁰ See Webster & Buhlungu n 35 above at t 229–245; Johnson 'The political role of the trade unions in South Africa' available at: <http://www.africa.fnst.org/resource?the-political-role-of-trade-unions-in-south-africa> (last accessed 13 June 2012).

four periods, namely the colonial period from Dutch settlement during the 17th century to the formation of the Union of South Africa in 1910; the period from 1910 to the establishment of apartheid (1948); from then to the end of apartheid (1993); and the post-apartheid, democratic period (1994 to date).

Trade unionism and politics in colonial South Africa

South Africa's gradual colonisation started around 1652 when the Dutch East India Company established a provisioning station at the Cape.⁶¹ The creation of the Union of South Africa formally ended the colonial era in South Africa. However, the majority of the people would legitimately disagree that they acceded to independence in 1910 as only the white minority enjoyed the rights enshrined in the 1910 Constitution.

According to Scheepers, the first unions were established in the late 1870s.⁶² Finnemore and Van der Merwe write that one of the first documented trade unions in South Africa was the Carpenters and Joiners Union founded in 1881.⁶³ This trade union represented skilled white workers mainly recruited from Australia and Europe. On the other hand, Van Jaarsveld and Van Eck argue that the first trade union in South Africa was founded in Johannesburg in 1892.⁶⁴ Attempts were made in 1894 to establish a trade council in Johannesburg to co-ordinate some of the trade unions. Although the trade council did come into existence in the latter part of 1895, it soon became defunct.

The skilled mineworkers and artisans who poured into South Africa from overseas – principally Great Britain – during the latter half of the 19th century, brought with them their peculiar style of unionism.⁶⁵ Between 1889 and 1902, attempts were made to secure cheap labour. These attempts were relatively unsuccessful as many blacks did not return to the mines after the Boer War.⁶⁶ This led to the recruiting of a large number of Chinese workers

⁶¹ See Budeli 'Workers' right to freedom of association and trade unionism in South Africa: an historical perspective' (2009) 15/2 *Fundamina* 57–74 at 58.

⁶² Scheepers 'The challenges facing trade unions' in Coetzee (ed) *Industrial relations in South Africa* (1976) at 150.

⁶³ Finnemore & Van der Merwe *Introduction to labour relations in South Africa* (1996) 22.

⁶⁴ Van Jaarsveld & Van Eck *Principles of labour law* (2002) 254. See also Budeli n 62 above at 59.

⁶⁵ Jones *Collective bargaining in South Africa* (1982) at 26. See also Budeli n 61 above at 59.

⁶⁶ Brassey *Employment and labour law Vol 1* (1998) A1:20.

in 1904.⁶⁷ Numerous problems arose, and the Chinese workers were repatriated in 1907 in the wake of pressure from the British government. After the Anglo Boer War, mine owners resumed their search for ways to reduce labour costs. Unskilled black labourers were deployed to do the work previously reserved for skilled miners. Threatened white miners began to organise themselves and went on strike over wage-cutting in one of the mines. After the strike, miners decided to form the exclusively white Transvaal Miners' Association.⁶⁸ Trade unionism was largely irrelevant, not only because the trade unions that were allowed to operate excluded black and unskilled workers who constituted the overwhelming majority, but also because trade unions played only a marginal political role.

Trade unionism and politics in South Africa after independence

The 1910 Constitution of the Union of South Africa ignored the rights and freedoms of black South Africans and protected only those of the whites. Labour legislation enacted under this Constitution also favoured trade unionism by white employees from South Africa and abroad.⁶⁹ Only whites were entitled to the right of freedom of association in the workplace, to organise, form and join trade unions, to bargain collectively, and to strike. Accordingly, the Mines and Works Act⁷⁰ was passed on the insistence of skilled white miners who were, at the time, immigrants from overseas countries who insisted that they should not face competition from the large number of blacks employed mainly in unskilled and menial work. Thus, the 1911 Native Labour Regulations Act prohibited strikes by blacks and reinforced criminal sanctions for breach of employment contracts by black workers.⁷¹ It also instituted the 'colour bar' and the control of movement by the blacks in white occupied urban areas.

In 1912, amid the discrimination suffered by black employees, the South African Native National Congress (SANNC), the forerunner of the African National Congress (ANC), was established. The SANNC embarked on a campaign against the 1910 Constitution and against legislation that reserved jobs for whites and coloured people while denying blacks the right to

⁶⁷ Stahl 'Migrant labour supplies, past, present and future with special reference to gold-mining' in Bohning (ed) *Black migration to South Africa* (1981) 13. See also Finnemore *Introduction to labour relations in South Africa* (2002) 22.

⁶⁸ *Ibid.*

⁶⁹ Doxey *The Industrial colour bar in South Africa* (1961) 1. See also Budeli n 61 above at 60.

⁷⁰ Act 12 of 1911.

⁷¹ Brassey n 67 at A1: 23. See also Budeli n 61 above at 62.

organise in the workplace. This explains the support the ANC came to enjoy from South African black employees and the majority of the population.

In late 1918 and early 1919, black mineworkers embarked on a strike for higher pay and the abolition of the colour bar instituted by the Natives (Urban Areas) Act.⁷² In 1919, the Industrial and Commercial Workers' Union (ICU) was established, but could not be registered. The ICU collapsed and did not survive the depression of the 1930s. The period between 1917 and 1924 was marked by incidents of industrial unrest caused by white workers who rejected employers' attempts to introduce cheap black labour and hence downgrade wages for certain occupations. When some white workers were to be retrenched in 1922, large scale labour unrest and violent strikes took place on the Witwatersrand.

This labour unrest was termed the 'Rand Rebellion'⁷³ and precipitated changes to the labour legislation. The Industrial Conciliation Act (ICA) was passed in 1924 and became South Africa's first comprehensive labour legislation. This Act recognised the trade union movement in South Africa. It protected trade unions and their members against employers. Under the Act, trade unions and employers' organisations were obliged to register. However, only white and coloured workers were permitted to form and join registered trade unions.⁷⁴ The ICA of 1924 established a dual, racially-determined, system of industrial relations and excluded black workers from the statute's definition of 'employee' and therefore from membership of registered trade unions.⁷⁵ Outside the system, however, industrial unions emerged.

A high point in the history of the struggle for freedom of association and trade unionism in South Africa, was reached in 1926 when the South African Trade and Labour Council (SATLC) was formed. The SATLC pursued a policy of open membership for all trade unions in its efforts to achieve national unity. It promoted the establishment of parallel black unions. The ICA of 1924 was amended in 1930.⁷⁶ The Amendment Act authorised the Minister of Labour to specify, on the recommendation of an industrial council or conciliation board, the minimum wage rates and maximum

⁷² Act 21 of 1923.

⁷³ Van Jaarsveld & Van Eck n 64 above at 254.

⁷⁴ Jones n 65 above at 27.

⁷⁵ *Ibid.*

⁷⁶ Du Toit *et al Labour relations law: a comprehensive guide* (2000) 6.

working hours for ‘persons excluded from the definition of ‘employee’, namely the black people.

The ICA of 1924 was replaced by the consolidated ICA 36 of 1937, which provided for an inspector of the Department of Labour to represent pass-bearing African workers at industrial council meetings. However, neither the 1930 amendment nor the new Act, solved the problems of the dual industrial relations system. In 1941, the Landsdown Commission advised against the recognition of black trade unions on the ground that they had not come about on the initiative of workers themselves, but that workers were being manipulated by communists within the ANC.⁷⁷ Towards the end of 1946, a strike by black miners broke out resulting in many people being injured. The government’s response to the strike was to table amendments to the ICA to prohibit strikes by blacks and shatter the black trade union movement.⁷⁸

Trade unionism and politics during apartheid rule

In 1948, the National Party (NP) was elected largely due to conservative white workers’ fear of the perceived growth of the power of black labour and the growing support of the blacks for socialism. The NP entered history as the party that institutionalised apartheid. Shortly after taking office, the NP government established the Botha Commission of inquiry to investigate the whole spectrum of labour relations in South Africa.

As recommended by the Botha Commission in its findings released in 1951, the government passed the Suppression of Communism Act⁷⁹ which suppressed any collective organisation or movement by blacks, including black trade unions. The Commission held that ‘Blacks lacked the skills to participate in a modern industrial relations system’. It, however, recommended that they be given some role in the industrial relations system.

The Suppression of Communism Act also proposed that black trade unions be recognised, but kept separate and on a tight rein, and that registered trade unions be prohibited from engaging in political activities. The Native Labour (Settlement of Disputes) Act passed in 1953, was contradictory in that it absolutely prohibited union strikes while permitting black trade unions to operate. The South African Trade Union Council, which later became the

⁷⁷ Finnemore n 68 above at See also M Budeli *Freedom of association and trade unionism in South Africa: from apartheid to the democratic constitutional order* (unpublished Phd thesis, University of Cape Town, 2007) at 124.

⁷⁸ Brassey n 67 above at A1:36.

⁷⁹ Act 44 of 1950. See also Budeli n 61 above at 65.

Trade Union Council of South Africa (TUCSA), was formed in 1954. Black unions were initially excluded from this federation, but their members were encouraged to form parallel unions with which they could liaise and maintain a close working relationship. In 1955, some erstwhile affiliates of TUCSA came together with some members of the Council of Non-European Trade Unions to form a new body called the South African Congress of Trade Unions (SACTU). SACTU was to a large extent a federation of black trade unions formed on a non-racial basis. The federation rejected the system of parallel unionism and was determined to mobilise the black working class in order to secure political liberation.

SACTU maintained close political ties with the ANC and was active in promoting a political role for trade unions. SACTU advocated what Southall and Webster refer to as ‘political unionism’.⁸⁰ It was suppressed and driven into exile after the apartheid regime’s clampdown on liberation movements in 1960.⁸¹

On the other hand, the ICA 28 of 1956 replaced the ICA of 1924. This Act completed the construction of a racially exclusive industrial system in South Africa by entrenching the racial division of workers, prohibiting the registration of new unions having both white and ‘coloured’ members, and reserving certain work exclusively to ‘persons of specified race’. It was the first statutory enactment to deal extensively with the freedom of association and trade union rights for workers. It prohibited forced membership of trade unions or similar associations of employees. The ICA of 1956 redefined the term ‘employee’ to include black persons. The Act prohibited the registration of multi-racial unions, and obliged those which were already formed to subdivide into segregated unions. In many areas, job reservation was introduced to protect white workers from competition from their black counterparts.

In 1957, the South African Confederation of Labour (SACOL) – which was allied to the apartheid government – was formed. After the Sharpeville massacre in March 1960, banning orders were served on some political parties such as the ANC, Pan Africanist Congress (PAC), and all SACTU leaders. As a result, black trade union activities virtually disappeared from the scene during the 1960s. The Union of South Africa became the Republic of South Africa under the NP government in 1961 and adopted a new

⁸⁰ Southall & Webster n 30 above at 132.

⁸¹ *Ibid.*

constitution. Read with the Electoral Laws Consolidation Act, the Republic of South Africa Constitution of 1961 made provision for social and political participation in the highest affairs of the state by 'whites' only.⁸²

In 1962, TUCSA also reversed its decision by opening its doors to black trade unions, only to exclude them once again in 1967 under pressure from the apartheid government. In 1964, due to its apartheid policies, South Africa withdrew from the International Labour Organisation.

In 1973, black workers embarked on a strike over wages. After the strike, they started organising themselves into trade unions referred to as 'independent trade unions'. In response, the Bantu Labour Regulations Act⁸³ was passed in 1973 to regulate the conditions of employment for black employees. This Act undermined the development of black trade unionism. Under the Act, blacks were confined to mainly employer-initiated committees with little if any bargaining power. In addition, not all blacks were covered by the provisions of this Act. Those employed in agriculture, gold and coal mining, and government services were excluded from its provisions.

Despite some facade of stability, the apartheid regime was to face new challenges from the mainly black working class who flocked to join new unregistered unions that emerged and grew rapidly in the wake of the strike. The dual system of industrial relations became unworkable and required reform to shift the paradigm from exclusion to inclusion.

As a result of pressure from the international community, the government appointed the Wiehahn Commission of Inquiry into Labour Legislation in 1977. In its 1979 report to the government, the Commission proposed fundamental changes to the industrial relations system and recommended that freedom of association be granted to all employees regardless of sex, race, or creed, and that trade unions be permitted to register irrespective of their composition in terms of colour, race, or sex.⁸⁴ The Commission further recommended that trade unions be free to determine their rules, and that the contractual exclusion of an employee's right to union membership or participation in union activities by an employer, should be defined as an unfair labour practice. Finally, the Commission called for the abolition of job

⁸² Burdzik & Van Wyk 'Apartheid legislation 1976–1986' 1987 *Acta Juridica* 123.

⁸³ Act 70 of 1973.

⁸⁴ Roos 'Labour law in South Africa 1976–1986: the birth of the legal discipline' 1997 *Acta Juridica* 96–98.

reservation and the establishment of an Industrial Court. Most of the recommendations and findings of the Wiehahn Commission were accepted and labour legislation amended accordingly to provide more substantial protection of freedom of association to all employees regardless of their origin or race.⁸⁵ Trade unions were granted full autonomy in respect of their membership, and all racial restrictions were removed and the Bantu Labour Regulations Act of 1973 was repealed. To facilitate the admission of blacks into registered trade unions, the definition of ‘employee’ was changed to avoid any reference to race or any other basis of discrimination. As a result, there was a rapid growth of in the number of trade unions representing black workers.

Accordingly, a number of trade unions were formed in the 1980s on the principles of non-racialism and industrial unionism. Some black and mixed trade unions were formed and registered. This constituted a virtual revolution in industrial relations in South Africa. In 1983, a new constitution for the Republic was adopted. Like its predecessors, the 1983 Constitution entrenched and enforced racial discrimination and classification, which was at the heart of apartheid. It kept the black majority outside of state politics by denying them political rights. In accordance with this Constitution, in 1984 the government created a tri-cameral parliament which extended limited political rights in central government to coloureds and Indians, but continued to exclude blacks. The black labour movement organised further to fight the entrenched apartheid government.⁸⁶ And yet simultaneously, the Basic Conditions of Employment Act was adopted in 1983, laying down a limited range of employment rights and duties. It was through the jurisprudence of the Industrial Court that the entrenched content and ethos of many ILO instruments were integrated into the South African labour law regime.

In 1985, the Congress of South African Trade Unions (COSATU) was formed with strong support from the ANC, which had been banned since 1960 for furthering the struggle against apartheid.⁸⁷ COSATU came out openly in support of the political struggle and called for international sanctions and boycotts against the apartheid government. In 1986, the United Workers Union of South Africa (UWUSA) was also formed under the umbrella of the Inkatha Freedom Party (IFP). In the same year, the Azanian Council of Trade Unions (AZACTU) and the Council of Unions of South

⁸⁵ Wiehahn Report (1979) parts 1–6.

⁸⁶ Finnemore n 68 above at 26.

⁸⁷ Southall & Webster n 30 above at 132.

Africa (CUSA) joined forces to establish the National Council of Trade Unions (NACTU), which later developed strong links with the Pan African Congress (PAC). Between 1988 and 1990, the maintenance of apartheid in South Africa led to further harassment of trade unions and labour leaders. In 1990, President FW De Klerk announced the release of Nelson Mandela and other political prisoners. The government lifted the ban on various political organisations including the ANC, PAC, and the United Democratic Front (UDF). In September 1990, the government entered into a broad-ranging agreement with the South African Consultative Committee on Labour Affairs (SACCOLA), COSATU, and NACTU, and committed itself to modifying those provisions in employment law statutes which labour found most offensive. The black working class became an overt driving force in the struggle against apartheid. The struggle for freedom of association and trade union rights in South Africa was part and parcel of the struggle against apartheid that denied many fundamental rights to the overwhelming majority of the population.

In their study of union-party relations in South Africa since the 1950s, Southall and Webster found that each generation of organised labour has engaged with the nationalist movement.⁸⁸

The South African Communist Party (SACP) played a central role in the organisation of black workers into trade unions during the 1920s, 1930s, and 1940s.⁸⁹ However, it was only during the 1950s that labour began to engage seriously in party politics, especially after the creation of the South African Congress of Trade Unions (SACTU) in 1955 which advocated ‘political unionism’.

Aligned with the ANC after the suppression of the Communist Party⁹⁰ and its emergence underground as SACP, SACTU suffered the same fate when this party and other anti-apartheid movements were banned and driven into exile from 1960 into the 1970s.⁹¹ The South African Allied Workers’ Union (SAAWU) followed SACTU’s tradition when it was formed in the late 1970s. It advocated that unions had an obligation to take up community

⁸⁸ *Id* at 134.

⁸⁹ *Id* at 135; for a historical account see Simmons & Simmons *Class and colour in South Africa 1850–1950* (1981).

⁹⁰ The Communist Party was dissolved by the Suppression of Communism Act (No 44 of 1950) and reformed underground as the SACP in 1953.

⁹¹ Southall & Webster n 30 above at 132, 135, 136.

issues under the leadership of the ANC.⁹² COSATU was formed in 1985 as a ‘strategic fusion’ between the national democratic and shop-floor traditions of trade unionism in South Africa.⁹³ According to Webster and Buhlungu, during the late 1980s, COSATU was the *de facto* leader of the internal anti-apartheid movement.⁹⁴

Southall and Webster argue that ‘COSATU committed itself to participation in the national democratic struggle under the leadership of the ANC and joined the tripartite alliance, not as a subordinate partner (as had SACTU) but, formally, as an equal player with an independent power base, strategy, and leadership’.⁹⁵ This changed with the unbanning and the return from exile of the leaders of the two other tripartite alliance partners, namely the ANC and the SACP. There was a power shift to the political parties that had to play the central role in the transition process, in the main the ANC, which was to lead the post-apartheid government.⁹⁶ COSATU was excluded from the Convention for a Democratic South Africa (CODESA), the forum which negotiated the making of a new Constitution.⁹⁷ The ANC took the lead and dominated the alliance. Webster and Buhlungu observe that the dominance of the ANC inside the alliance increased significantly after the passage of the Growth, Employment and Redistribution (GEAR) strategy in June 1996.⁹⁸

As Southall and Webster observe, COSATU was neither demobilised nor tamed during the transition period of 1990–1994, and its ability to mobilise mass support for the ANC’s position during the negotiations was critical.⁹⁹ However, according to Webster, with the ANC asserting its hegemony and set to lead the post-apartheid government, COSATU’s position within the alliance drifted into one of subordination.¹⁰⁰ This recalls post-colonial situations elsewhere where political parties had to prevail and suppress other freedom movement actors, including unions, after having joined with and used them during the struggle.

⁹² *Id* at 136.

⁹³ *Id* at 151.

⁹⁴ Webster & Buhlungu n 35 above at 236.

⁹⁵ Southall & Webster n 30 above 139–140, 153.

⁹⁶ Webster & Buhlungu n 35 above at 236.

⁹⁷ Southall & Webster n 30 above at 140.

⁹⁸ *Id* at 236.

⁹⁹ *Id* at 140.

¹⁰⁰ Southall & Webster n 30 at 140; Webster ‘The politics of economic reform: trade unions and democratization in South Africa’ (1998) 16/1 *Journal of Contemporary African Studies* 39–64.

Trade unionism and politics in post-apartheid and democratic South Africa

Despite the shift of power in the alliance to the ANC, trade unionism continued to play a critical role to ensure labour benefits under the new democratic order. Although COSATU was excluded from CODESA, the ANC and the SACP – its partners within the alliance – had to ensure that COSATU's interests were secured. Accordingly, the 1993 or 'Interim' Constitution, that resulted from the negotiations, contained a Bill of Rights that protected the rights of all the people in the country, including the right to freedom of association in the workplace. These rights were consolidated in the 1996 Constitution.

Later, after the first democratic elections in 1994 and 1995, twenty of COSATU's leaders featured on the ANC's national lists, and several others appeared on its provincial and local lists.¹⁰¹

COSATU also participated actively in the National Economic Development and Labour Council (NEDLAC), where consensus was reached between government, business, labour, and community interests on economic and social policy issues before their discussion in parliament where COSATU was already represented through the ANC.

The Labour Relations Act 66 of 1995 (LRA), the first piece of post-apartheid legislation to promote workers' rights and interests through a new vision of work and industrial relations in South Africa, was a product of the close relationship between trade unionism and party politics.¹⁰² Followed by the Basic Conditions of Employment Act 75 of 1997, the LRA was far more favourable to workers than any labour legislation that had preceded it.¹⁰³

Despite its affiliation to the ANC and its association with the SACP, COSATU remained an important social and political force in South Africa – a 'king maker' – and strategically succeeded in promoting the rights and interests of its members through its participation in the tripartite alliance. However, its senior leaders deployed to government and parliament rapidly

¹⁰¹ Southall & Webster n 30 above at 141; Johnson 'The political role of the trade unions in South Africa' available at: [PERLINK"http://www.africa.fnst-freiheit.org?resource/the-political-role-of-trade-unions-in-south-africa"](http://www.africa.fnst-freiheit.org?resource/the-political-role-of-trade-unions-in-south-africa) <http://www.africa.fnst-freiheit.org?resource/the-political-role-of-trade-unions-in-south-africa> (last accessed 20 June 2012).

¹⁰² Southall & Webster n 30 above at 141.

¹⁰³ *Id* at 153.

lost their close ties with labour. Their allegiance, therefore, lay primarily with the ANC. Southall and Webster consider this a ‘brain drain’ for COSATU.¹⁰⁴ Like most SACP leaders deployed to cabinet, most COSATU leaders themselves tend to behave like ‘petty bourgeois’, being more preoccupied with their personal interests than those of the masses they claimed to represent and fight for. Some end up becoming careerist politicians much like those whom they formerly criticised. This has also contributed to reinforcing COSATU’s subordination to the ANC and its impact on the determination of economic and social policies remains minimal.

COSATU itself has regularly and bitterly complained about its marginalisation within the alliance.¹⁰⁵ However, could it expect better treatment when it had become a ‘party-ancillary movement’ – or a ‘party-surrogate movement’, to borrow from Martin’s characterisation¹⁰⁶ of trade unions? As in communist or one-party states, COSATU is used as an instrument¹⁰⁷ by the ANC to mobilise the vote at elections, but is otherwise ignored.¹⁰⁸

Tensions within the tripartite alliance emerged clearly in the run-up to the 2002 national conference that elected the leadership of the ANC. They culminated during the 2007 ANC national conference when COSATU and the SACP, together with the ANC Youth League, openly campaigned to dislodge the incumbent President Mbeki. This trio even succeeded in replacing Mbeki with Jacob Zuma – whom they considered was closer to the masses and the workers – after accusing Mbeki of pursuing neo-liberal policies which led to greater poverty and unemployment.¹⁰⁹ According to Southall and Webster, although COSATU was not formally represented at the conference, it was ‘the elephant in the room’ – ‘a force which was not visible but which nonetheless had a powerful presence’.¹¹⁰ They argue that ‘it was a – and probably *the* – crucial factor which provided for systematised backing for a Zuma slate of candidates, as well as for Zuma himself’ after COSATU and the SACP had succeeded in infiltrating ANC branches across the country and achieving what Southall and Webster consider ‘an internal

¹⁰⁴ *Id* at 141.

¹⁰⁵ Southall & Webster n 30 above at 142–143.

¹⁰⁶ Martin n 1 above at 103–234.

¹⁰⁷ *Id* at 38–50.

¹⁰⁸ Southall & Webster n 30 above 142.

¹⁰⁹ *Id* at 142, 147–150.

¹¹⁰ Southall & Webster n 30 above at 150.

capture of the party'.¹¹¹ These authors further feel that this signalled the re-emergence of a powerful trade union movement in South Africa which had been marginalised under Mbeki's presidency.¹¹² This 're-emergence' of COSATU promised to be short-lived, as the ANC did not take long to assert its dominance over its two partners within the tripartite alliance and imposed its macro-economic neo-liberal policy that Mbeki had been blamed for, and which cost him the presidency. Southall and Webster argue that contrary to the discourse for public consumption, much of Zuma's backing was opportunistic rather than ideological, as his populist campaign offered no coherent alternative to the government's economic programme.¹¹³

As the ANC prepares for its 2012 national conference in Mangaung, the feeling is that there has been little change in economic policy since Mbeki's departure. Rather, it has been business as usual considering the fact that some of the very people who voted Mbeki out did not take time to call him back as they rightly or wrongly judge him better than his successor.

What is the future of the tripartite alliance? Will COSATU withdraw and establish its own party, enter into opposition against the ruling party that led the struggle against apartheid, and have its Secretary General elected as president – as the ZaCTU and the ZiCTU did in Zambia and Zimbabwe respectively? Is it in the best interest of labour for COSATU to remain indefinitely within the alliance as a client and affiliate instead of asserting its own autonomy and disengaging from party politics, especially ANC and SACP politics? Is so high a politicisation of trade unionism that could be justified during the struggle, justified in post-apartheid and democratic South Africa without undermining labour and democracy in this country? Is it also beneficial to the ANC as a political party? For how long should the ruling party expect to retain power while subjecting its policies to one confederation of trade unions and partnering with it, without alienating the support of other trade unions, labour, and other components of the electorate who do not belong to this confederation of unions?

According to Southall and Webster, 'whatever their discontents with government strategy, leadership elements within both COSATU and the SACP were caught up in networks of relative advantage to take the risk of abandoning ship.'¹¹⁴ Perhaps a question can also be posed whether the ANC

¹¹¹ *Id* at 150, 154.

¹¹² *Id* at 131.

¹¹³ *Id* at 142–143.

¹¹⁴ Southall & Webster n 30 above at 142.

itself can win any national election without the massive COSATU muscle?

Many reasons account for why a trade union may continue to ally with and support a ruling party rather than following the example of the Ghana Trade Union Congress which moved from a relationship of close connection with the ruling nationalist party due to marginalisation and repression, to one of autonomy.¹¹⁵ COSATU's rumblings – with the SACP – to create a socialist party¹¹⁶ proved to be an empty threat and never materialised. However, as stressed earlier, the ANC should be warned that such a mutation cannot be ruled out, and COSATU may follow the example set in the same Southern African region by two other confederations of unions, namely ZaCTU and ZiCTU which transformed into opposition parties (MMD in Zambia, and MDC in Zimbabwe) to ruling parties that led the struggle (Kaunda's United National Independence Party, UNIP, in Zambia, and Mugabe's ZANU-PF in Zimbabwe) and won elections.¹¹⁷ The ANC should also learn from history and abandon its 'state party mentality'.

Between the alliance's members, divorce is not excluded in the long run with its dire consequences for each of the three 'partners'. As in Australia, New Zealand,¹¹⁸ and Great Britain, an important part of ANC membership and affiliation comes from COSATU. However, the tripartite alliance stands firm in the short term.

Despite the fact that the level and intensity of its support has declined significantly over the years and is set to decline further, COSATU's membership in general, and leadership in particular, has on balance benefited significantly from ANC rule, and will continue to remain loyal to the ANC, at least for some time.¹¹⁹ However, no earthly relationship or alliance is eternal. This is a lesson that COSATU can learn from other trade unions. There is certainly a need for the revitalisation of South African trade unionism in the face of its marginalisation through its political affiliation to the ruling party.¹²⁰ On the other hand, ANC leaders and militants should not be amnesic and make the same mistake as their NP counterparts and their supporters, who had wrongly thought that apartheid was eternal and they

¹¹⁵ Akwete & Dorkenoo n 25 at 39–57.

¹¹⁶ Southall & Webster n 30 above at 154.

¹¹⁷ Hungwe n 54 above.

¹¹⁸ Milbrun n 2 above at 677.

¹¹⁹ Southall & Webster n 30 above at 143.

¹²⁰ Webster & Buhlungu n 35 above at 229–245.

would rule for ever. It is unlikely that the ANC will beat the record set by the NP and remain in power for more than four decades.

One may also wonder whether the political involvement of a trade union like COSATU, and the promotion of the interests of its members and society at large, necessarily require it to belong to a political alliance, or to affiliate to a political party. It would also be ingenuous to argue that COSATU would not have achieved anything outside the alliance. Nevertheless, such a close association or excessive politicisation of trade unionism, which is common in Africa and perhaps more pronounced in South Africa than in other parts of the continent, presents us with a difficult problem relating to the autonomy, the politicisation of trade unions, the unionisation of political parties, and the demarcation between a trade union and a political party.

CONCLUSION

Trade unions are important and influential bodies. According to Clegg, they are 'one of the most powerful forces shaping our society and determining our future'.¹²¹ They are not only social and economic, but also political powers. In Africa, as elsewhere, trade unions have been and will always be involved in politics of some kind and therefore fulfil a political role.¹²² As pressure groups, trade unions will always strive to influence politics or government in favour of labour, principally and accessorially to promote the interests of society at large. On the other hand, political parties will always woo trade unions with promises of improvement in the living conditions of their members in order to be voted into power during elections.

For a cohort of historical, political, social and economic reasons, there has been a close relationship between trade unionism and politics in Africa since the colonial era in the struggle for independence or apartheid. Harmonious at some times, and conflicting at others, this relationship continues and it is likely that trade unionism will always flirt with politics and *vice versa*.

To respond to the question on the state of trade unionism and its relationship with politics in Africa, one may say that even in South Africa where it appears stronger than in other parts of the continent, trade unions are weak¹²³ and marginalised,¹²⁴ but they are feared and remain forces to be reckoned

¹²¹ Jackson n 3 above at 1.

¹²² Schillinger n 4 above; Milbrun n 2 above at 672–687; Webster n 40 above.

¹²³ Schillinger n 4 above.

¹²⁴ Webster & Buhlungu n 35 above at 229–245.

with.¹²⁵ The relationships between trade unions and governments are complicated, and the pattern varies and has varied over time and between countries. Unions have sought the assistance of governments in achieving safeguards for their members. Governments have also taken an interest in the conduct of trade unions.¹²⁶ Are there new directions for the relationships between trade unions and governments?¹²⁷

Today's partnership with government may become tomorrow's opposition when unions believe the interests of their members are no longer protected or *vice versa*. Parties will also strive and succeed in gaining or retaining support from trade unions. There will always be a tendency for politics and political parties, especially ruling parties, to control trade unions, while the unions will fight to increase their influence on and in politics to lead policies in a direction that will better promote and protect the interests of their members. The relationships of trade unions with governments, whether they remain simply at the discussion and consultation level, or whether they extend to formal social contract-type arrangements, raise both problems and opportunities for trade unions.¹²⁸

A refusal to enter into discussions or agreements may mean that unions lose the opportunity to influence events in a way that would benefit their members. On the other hand, a willingness to do so may lead to their incorporation into the capitalist state and a loss of independence.¹²⁹

Democratic consolidation in Africa, including South Africa, demands a new role for trade unions and to fulfil this role trade unions need to be autonomous. A consolidated democracy is based on both strong political parties and strong trade unionism. Trade unions' affiliation to or strong dependence on a single ruling party, especially when this party is as ultra-dominant as in South Africa, may be a threat to democratic consolidation.

According to Jackson, there is not necessarily any single answer to the dilemmas facing union/government relationships. The nature and type of these relationships will depend on the historical, social, legal, and political contexts of each particular country. Furthermore, these relationships are not

¹²⁵ Schillinger n 4 above att 7.

¹²⁶ Jackson n 3 above at 148.

¹²⁷ Southall & Webster n 30 above at 148–169.

¹²⁸ Jackson n 3 above at 179.

¹²⁹ *Ibid.*

static¹³⁰ – politics remains a dynamic phenomenon. As Jackson points out, ‘trade unions never have been, nor ever could be, static organisations. They have changed and developed and will continue to do so. In part the way they change will be a response to the environment in which they operate’.¹³¹

I also agree with Southall and Webster who hold that in truth there can be no single, programmatic, and final answer to the dilemmas posed by union-party relationships, for they are shaped in different countries by different historical and national circumstances.¹³² Some answers are better than others. The ones that I have attempted to provide in this paper are definitely amongst the best, but as I undertook at the outset, I have intentionally left certain questions which may not be familiar to all legal scholars and political scientists, unanswered in the hope that they will generate further debate.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² Southall & Webster n 30 above at 160.