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**THE NEW LABOUR LAWS IN TANZANIA:
IMPLICATIONS FOR EMPLOYERS, EMPLOYEES AND
THE ECONOMY**

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1. Introduction

For the past two decades the Government of the United Republic of Tanzania has been engaged in a far reaching economic, political and social reform programme focusing on, *inter alia*, broadening the role of market forces in the economy. The basic feature of this programme has been the creation of an enabling environment for private economic activities and for generally enhancing the role of the private sector. The new environment has in, consequence, shifted employment from the public to the private sector.

The reform programme has been carried out almost in all sectors of the economy including, among others, the foreign exchange, the financial, the agricultural, the business, and the public service sectors to mention but a few. However, in the course of implementing these reforms, it became increasingly clear that a major area of deficiency that was likely to undermine these reforms is the employment sector. There can be no meaningful market-oriented economic reforms without a strong and reformed employment sector which subscribes to a regulatory legal framework installed and administered by competent institutions capable of meeting the exacting challenges of a market economy. It is in this context that labour law reforms in Tanzania became inevitable.

This paper attempts to examine the new labour laws and their implications for employers, employees and the economy generally. It does this firstly, by looking into the background to the labour law reforms in Tanzania and the process adopted in carrying out the said reforms. Secondly, it examines the reasons, though in

brief, why these reforms were inevitable. Thirdly, the paper highlights the new salient features brought about by the new legislation and their implication for employers, employees and the economy. Fourthly, the paper points out some of the weaknesses of the new labour laws from the point of view both of employers and employees. Thereafter, the paper draws some recommendations before concluding the presentation.

2. Background to and Process of Labour Law Reforms

By mid 1980s the Government of Tanzania realized that the past development policies and strategies were not adequately responding to the changing market conditions not only in the regional, and global economy but also within the domestic economy. As a result the Government adopted and began to implement socio-economic reforms, as mentioned earlier, which continue to be implemented to date. For the labour law reforms these came in the early 2000s.

2.1 Process of Reform in Tanzania

The process of labour law reforms in Tanzania began in October, 2001 when the Minister for Labour, Youths Development and Sports appointed a Task Force chaired by Honourable Mr. Justice Mrosso of the Court Appeal of Tanzania to review labour market policies, labour laws and institutions and to make recommendations to the Minister. In particular, the Task Force was required to look into the following main areas of labour laws:-

- employment law;
- labour relations law;
- dispute prevention and settlement machinery;
- the legal structures and regulatory framework;

- occupational health and safety;
- workers` compensation; and
- employment promotion.

Having commenced business the Task Force then realized how big this task was. The members, thus, decided to carry out this task in two phases. The first phase addressed the first four areas listed above. Following the Task Force`s recommendations on those areas two Bills were prepared and finally enacted into the Employment and Labour Relations Act 2004 and the Labour Institutions Act 2004. The remaining areas were reserved for the second phase, which is now in progress. The two laws are yet to come into force.

3. Grounds for Reforms

The reforms in the employment/labour sector, like in other sectors, were dictated by various grounds within the employment sector but as well as external to this sector. We will consider the external factors first.

3.1 External Factors

3.1.1 Globalisation

Globalisation may be defined as a process of moving towards a world in which production, distribution, selling, financing, and investments take place without regard to national boundaries. This process has posed additional challenges to developing countries (economies) like Tanzania. With globalization:

- competitive pressures on trade, finance, production and market has increased, much to the disadvantage of developing countries;

- policies of privatization, and trade liberalization have been undertaken. These have undermined the effectiveness of labour laws on employment standards, but also eroded worker`s right and benefits.
- job insecurity and wage inequality has been intensified. This means that, a big number of workers in the formal sector and who are protected by labour legislation and social security schemes is being thrown out of employment as the majority enter the informal sector which enjoys few statutory rights and benefits.

3.1.2 Policy changes - from Planned to Market Economy.

Since 1980s there has been a fundamental policy change from a planned to a market economy. As a result employment has shifted from the public to the private sector.

3.1.3 Regional and Sub-regional Development

Of late there have been major developments within SADC and the East African countries to review their labour legislation and to develop labour market policies that meet the requirements of the new investment environment with a view of developing a common market and allow labour mobility within the member states. This calls for harmonization of social and labour policies and legislation.

3.1.4 De-linking Trade Unions From the Ruling Party

This move has opened a new era in terms of industrial relations. The Government has now been assigned a new role of balancing the interests of employers on one hand, and those of workers, on the other.

3.2 Internal Factors

These factors related specifically to the existing legal framework regulating employment and labour relations in Tanzania. The framework is characterized with the following weaknesses:

- the laws regulating employment standards are too many and old, some date back to colonial times and are based on the out-moded concept of master-servant (manamba system). These laws have undergone many amendments some of which are extremely difficult to comprehend.
- dispute resolution procedures are lengthy and complex. In some cases the Minister is ultimately responsible for deciding disputes involving termination of employment. Admittedly, it is not feasible for a single person to decide such cases in a growing economy without causing hardships to the parties. Moreover, it is not appealing in a market economy for labour disputes of this nature to be resolved at political level.
- there is a confusion of roles by labour officers. On the one hand, they are required to conduct labour inspections and investigations and, where necessary, prosecute employers in courts of law. On the other, they are required to chair conciliation boards and give decisions which are binding on employers. In such cases, their neutrality is sometimes doubted.
- the legislation does not permit free collective bargaining. Voluntary and negotiated agreements have to be registered by the Industrial Court of Tanzania before they become effective.

- although provision is made for strikes and lock-outs in the existing laws in practice, strikes and lock-outs are not permitted. The procedure for staging a strike or lock-out is lengthy and cumbersome. As a result, dissatisfied employees have ended up locking out or locking in their managers if there is an unresolved dispute.
- the industrial relations system is weak and bureaucratic incapable of adapting to the demands of a free market.
- some legislation are incompatible with the relevant ILO standards for example, senior employees in the Civil service do not enjoy some of the core rights e.g. the right to form and join trade unions.

4.0 Salient Features of the New Labour Laws and their Implications.

The labour law reform, was carried out with developmental objectives in mind. The reform sought to generally put in place policies and laws and regulatory structures which would promote good governance, poverty reduction, sound labour relations, labour productivity, job creation and employment promotion. These objectives have been enlisted in the provisions of the new laws as follows:-

4.1 Provisions which promote good Governance

The purpose of this specific objective is to have in place laws which promote and or are consistent with the basic human rights, such as, those enshrined in the Constitution of 1977. The presence of such provisions is meant to promote good governance and, possibly, sound labour relations. The relevant provisions here are those on fundamental rights of workers as derived from the eight core ILO Conventions. The rights relate to:-

- prohibition of child labour;
 - employers are prohibited to employ children below the age of 14 years.
 - Children of the age of 14 years but below 18 years may be employed to do light work. Light work means work which is not likely to be harmful to the child's health and development, and does not prejudice the child's attendance at school or participation in vocational training programmes. However, these children cannot be employed in mines, factories, ships or any other work sites where the conditions of work are hazardous. The construction industry might be one of those worksites.
 - It is a criminal offence to employ a child and it is the burden of the employer to prove that the child employed was above the prohibited age.

- prohibition of forced labour;
 - Forced labour is any work or service which is exacted from any person without consent and under menace of a penalty. Such labour is prohibited and it is a criminal offence to force a person to enter employment.

- Discrimination at places of work occurs in a variety of forms and in a range of different settings. Discrimination may be direct, indirect or take the form of harassment. Under the new laws employers are:
 - Prohibited to discriminate directly or indirectly against an employee or to harass any employee;

- required to promote equal opportunity in employment and eliminate discrimination;
 - required to take positive steps to guarantee equal remuneration for men and women for work of equal value;
 - required to prepare plans to promote equal opportunity and eliminate discrimination in work places;
 - it is a criminal offence to discriminate or harass an employee.
- Right to freedom of Association and Collective Bargaining.
The right to associate is also a constitutional right. This right is open to both employers and employees. Therefore, every employee has the right:-
 - to form and join a trade union
 - to participate in the lawful activities of the trade union.
 - Similarly, every employer has the right:-
 - to form and join an employers' association;
 - to participate in the lawful activities of the association.

4.2 Provisions which Promote Productivity/Economic Development

These provisions are intended to lay down the minimum terms and conditions of employment which employers and employees must respect when making, and during the subsistence of, a contract of employment. The standards are derived from various ILO Conventions. The standards include:

4.2.1 Hours of Work

- restricts maximum working time to 12 hours in a day;
- restricts maximum over-time hours to 50 in 4 weeks' time or 12½ hours in a week;
- restricts, at some stage, pregnant employees and nursing mothers to work at night;
- requires employers to pay night allowance to workers who work during the night;
- allows employers and employees to enter into flexible working arrangements e.g. averaging and compressed working week.

4.2.2 Remuneration

- wages must be paid during working hours at the place of work on the agreed pay day;
- pay should be either in cash or by cheque or by direct deposit in a bank account designated by the employee;
- employers may pay salary advances, but such advances shall not be treated as a loan and shall not attract interest.

4.2.3 Annual Leave

- annual leave is 28 days;
- it is now compulsory to take annual leave. The leave cannot be sold to the employer even in cases where the employee is willing to do so.

4.2.4 Sick Leave

- employees are now entitled to a paid sick leave of 126 days in a cycle of 36 months;
- the first 63 days are on full pay and the remaining 63 on half pay.

4.2.5 Maternity Leave

- employees are entitled to 84 days in addition to the annual leave. Leave may be increased to 100 days if more than one child is born.
- paid maternity leave to be given four times only;
- pregnant and nursing workers cannot work in hazardous places;
- it is prohibited to terminate an employee on grounds of pregnancy.

4.2.6 Paternity Leave

- male employees will be entitled to a paternity leave of 3 days in 3 years` time.

4.2.7 Termination

- unfair termination of employment is prohibited;
- termination shall be allowed on three grounds only - misconduct, incapacity and operational requirements;
- termination shall follow a fair procedure;
- termination based on operational requirements shall follow the procedure laid down in the Act;
- all workers terminated on grounds of incapacity and operational requirements shall be entitled to severance pay.

- termination on grounds of pregnancy or disability is prohibited;
- consequently, every employer will be required to develop his own disciplinary code.

4.3 Provisions which promote industrial harmony

Provisions of this nature are meant to establish an effective machinery and environment which promote the right to associate, work ethics, bipartite and tripartite dialogue between labour, management and Governments. These provisions are reflected in the following areas:-

4.3.1 Formation of Trade Unions/Employers' Associations

- any 20 workers and 4 employers can form a trade union or employers' association respectively;
- registration should be done within 6 months of formation;
- constitutions of trade unions or associations should not conflict with the basic rights in the Constitution, 1977 or any written law;
- cancellation of registered trade unions or associations shall be done by the Labour Court and not the Registrar of Organisations.

4.3.2 Organisational Rights

- trade unions shall have access to employers' premises to recruit new members;
- 10 members may establish a field branch;
- employer shall provide a recognized trade union with reasonable and necessary facilities to conduct its activities;

- employers shall deduct union fees from employees and remit them to the trade union. Delay in remittance may attract a penalty of 5% for each day the dues remain un-remitted.
- no service charges shall levied by the employer in providing this service.

4.3.3 Collective Bargaining

- employers shall be bound to bargain with recognized trade unions;
- it is the duty of the employers and employees to bargain in good faith;
- for effective bargaining employers must supply information to trade unions;
- in Tanzania collective agreements shall be binding on the last signature but copies must be lodged with the Labour Commissioner.

4.4 Provisions which facilitate effective and expeditious resolution of labour disputes

These provisions are designed to establish a dispute resolution machinery which is transparent, expeditious and easily accessible to users.

4.4.1 Dispute Resolution Machinery

- the procedure has been streamlined and shortened. It will apply to all labour disputes, disciplinary or otherwise;
- all disputes will be referred to the Commission for Mediation and Arbitration. The Commission will appoint a mediator to mediate the parties within 30 days. If the mediator fails then:

- if the dispute is one of interest a party to the dispute can give notice of its intention to commence a strike;
- if the dispute is one of right (complaint) the dispute must be referred to arbitration. The arbitrator then gives a decision;
- a party who is not satisfied with the decision of the arbitrator may refer the matter to the Labour Court;
- the Labour Court have been established to replace the Industrial Court. The Court is a division of the High Court;
- it will deal with all labour cases which are not criminal in nature. For criminal cases these will be referred to District or Resident Magistrates' Courts.

4.5 Provisions which establish vibrant labour institutions

Labour institutions are the primary mechanism for the formulation and implementation of Governments` labour market policies. They provide the institutional framework and machinery for effective labour market regulation. In Tanzania the new laws have established six institutions responsible for their administration:-

- the Labour Administration and Inspection – headed by the Labour Commissioner;
- the Labour, Economic and Social Council – replaces the Labour Advisory Board, it is an advisory organ to the government;
- the Commission for Mediation and Arbitration – responsible for dispute resolution;
- the Essential Services Committee – responsible for designating essential services in which strikes and lock-outs are generally prohibited;

- Wage Boards – they are ad hoc organs responsible for recommending sectoral minimum wages and terms and conditions of employment;
- the Labour Court – responsible for adjudicating all civil labour matters. Appeals may lie to the Court of Appeal of Tanzania.

5.0 Weaknesses of the Laws

The weaknesses of the new laws can be viewed from the employers' and employees' perspectives. Yet there are weaknesses which cut across the two perspectives.

5.1 Employers' Perspectives

From the employers' perspective the following provisions seem to be untenable, namely:-

- Section 20(4) of the Employment and Labour Relations Act 2004 which introduces a night pay (allowance) of 5% of the basic wage for each hour worked at night. This provision introduces a new cost on products and services to be rendered by employers in Tanzania. As a result Tanzania products and services may not be able to compete in the open market.
- Section 33(10) of the same Act which entitles a breast-feeding employee to a maximum of 2 working hours per day for purposes of breast feeding. The provision is open-ended as it does not specify when this right will come to an end. Employees are likely to abuse it.
- Section 37(5) of the above Act which prohibits an employer to take disciplinary action against an employee who has been charged with a criminal offence which is substantially the same until final determination of the case by the court and any

appeal thereto. This provision will have the effect of compelling employers to pay salaries to employees who otherwise contribute nothing to the enterprise particularly where the employer, for safety reasons, decides to relieve the employee of his/her duties pending the determination of the criminal case.

- Section 61(1) which requires employers to deduct dues of registered trade unions from employees' wages and remit the same to the trade unions within 7 days. Employers feel that they should be allowed to impose a service charge for rendering this service more so because the same provision imposes on employers a daily surcharge of 5% of the unremitted sum upon expiry of the 7 days.

5.2 Employees' Perspectives

Employees feel that the new labour legislation suffer from the following weaknesses:

- Application of the Act – Section 2 of the Employment and Labour Relations Act provides that this Act shall apply to all employees in the public and private sector. But employees in the public sector are also bound by the provisions of the Public Service Act 2002 some of which contradict the provision in the earlier Act. The need to harmonize the two pieces of legislation is, therefore, more than overdue.
- The new laws do not define what “a contract of service is”. This creates an element of uncertainty on the part of employees as they cannot legally determine in advance the status of the arrangements under which they work until there is a decision by a court on the same.
- The provisions on repatriation to places of recruitment are unfair as they tend to obscure the reality. Many employees are

recruited in places other than places of their domicile for various reasons. Therefore, the law should obligate employers to repatriate employees to places of domicile instead of recruitment where the employees may have no permanent base at all.

- The decision to decriminalise the new labour laws may have the consequence of withering down the level of compliance by employers. Civil remedies may have less impact than criminal sanctions.
- The presence of section 40(3) of the Employment and Labour Relations Act 2004 which entitles an employer to refuse to reinstate or re-engage an employee as duly ordered by a mediator or arbitrator runs contrary to the spirit of security of tenure of employees. The provision exposes employees to cases of unfair termination by employers who are willing to pay the twelve months' wages in addition to other terminal benefits due to employees if the employers refuse to reinstate or re-engage their employees. The provision seems to encourage employers to encroach upon the right to work.
- There are several provisions in the Employment and Labour Relations Act 2004 which appear to have been poorly drafted, such as, the provisions on repatriation. The provisions give an employer three alternatives for which he may choose to repatriate an employee to the place of recruitment. Unfortunately, all the three alternatives are not comprehensive and the packages for repatriation vary from one alternative to another. Variation in the packages may encourage biasness or unfairness by employers when handling cases of repatriation.

6.0 The New Labour Legislation and its Contribution to Poverty Reduction

The role of the employment sector in national development and poverty reduction cannot be over-emphasized. This is further buttressed by the provisions of the National Strategy for Growth and Reduction of Poverty (NSCRP) commonly known as MKUKUTA. Generally, MKUKUTA identifies employment as an important policy and strategic issue in poverty reduction. It recognizes that:-

- there is a high rate of unemployment and underemployment in the country;
- unemployment is worse among the youth, including the educated youth;
- employment opportunities for people with disabilities are limited;
- child labour, as distinguished from children's work in the household, is prevalent and worst in rural areas;
- the worst forms of child labour are in four major sectors/areas namely: commercial agriculture; mining and quarrying; domestic service and commercial sex.

Based on this recognition MKUKUTA seeks to create decent job opportunities for the unemployed by:

- creating jobs that are free from appalling working conditions;
- providing an income that is sufficient to cater for basic social and economic needs;
- balancing the needs and rights of both workers and employers;
- providing commitment to social dialogue etc.

The new labour laws have been enacted with the same objectives in mind. The provisions, such as, on fundamental workers' rights and employment standards whose legality and acceptability is

derived from international labour standards address squarely some of the fundamental labour issues raised by MKUKUTA. However, it remains to be seen how the implementation and enforcement of these laws will succeed to reduce poverty as envisaged by MKUKUTA.

7.0 Recommendations

The new labour legislation is yet to come into force. However, in view of the perceived weaknesses mentioned above, the Government, in collaboration with the other two social partners, that is, the workers' and employers' organizations should open up a dialogue on how to improve those areas in the law. Indeed, some of the weaknesses perceived by workers are the same weaknesses which were contained in a memorandum submitted to the Government and discussed in various fora before the Bills on the new laws were finally enacted into laws. In recommending dialogue we are, in fact, advocating one of the values of the new labour legislation, namely, promotion of bipartite and tripartite consultation in addressing labour issues.

8.0 Conclusion

The new labour legislation has entrenched in its provisions the core labour rights together with the employment standards. It also provides a framework for collective bargaining that permits employers, employers' associations and trade unions to develop their own frameworks. Besides, the new law regulates the right to strike and the use of lockout in resolving labour disputes. Further, the new law promotes mediation as a means for resolving labour disputes. Arbitration would be used as an alternative to adjudication. Equally important, prevention of disputes would be promoted by the publication of codes of good conduct,

administrative guidelines and model procedures and agreements by the Minister in consultation with the Labour Economic and Social Council, which is one of the new labour institutions established to replace the current Labour Advisory Board.

Admittedly, these are new and, indeed, fundamental innovations in the law. The social partners and other stakeholders in the employment sector are, therefore, urged to offer their total commitment in terms of implementation and enforcement when the laws come into force. In the absence of such commitment the new labour legislation would hardly live up to the expectations envisaged in the labour reforms.

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