

**A COMPARATIVE STUDY OF THE UGANDAN AND SOUTH  
AFRICAN LABOUR DISPUTE  
RESOLUTION SYSTEMS**

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**A COMPARATIVE STUDY OF THE UGANDAN AND SOUTH  
AFRICAN LABOUR DISPUTE  
RESOLUTION SYSTEMS**

By

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## DECLARATION NOTE

I, Diana Ninsiima, student number 212226827, hereby declare that this treatise for a Master of Arts (Labour Relations and Human Resources) is my own work and that it has not previously been submitted for assessment or completion of any postgraduate qualification to another university or for another qualification.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

AATUF: All Africa Trade Union Federation

BTVET: Business, Technical, Vocational Education and Training

BGNEA: British Government Native Employees Association

CCMA: Commission for Conciliation, Mediation and Arbitration

COFTU: Central Organization of Free Trade Unions

EATUC: East African Trade Union Consultative Council

FUE: Federation of Uganda Employers

ICA: Industrial Conciliation Act

ICFTU: International Confederation of Free Trade Unions

ILO: International Labour Organisation

IMSSA: Independent Mediation Service of South Africa

JSC: Joint Staff Council

LRA: Labour Relations Act

MGLSD: Ministry of Gender Labour and Social Development

NEC: National Executive Committee

NRA: National Resistance Army

OATUU: Organisation of African Trade Union Unity

TLC: Trades and Labour Council

TUC: British Trade Union Congress

UACSA: Uganda African Civil Servants Association



UAWA: Uganda African Welfare Association

UNDP: United Nations Development Programme

UNLF: Uganda National Liberation Front

UPC: Uganda People's Congress

UPEU: Uganda Public Employees Union

UTUC: Uganda Trades Union Congress

## DEFINITION OF TERMS

**Adjudication:** Process of settling disputes in court before a judge or magistrate, in accordance with the formalities and procedures required by law (ILO, 2013).

**Award (determination):** Written decision of an arbitration hearing (ILO, 2013).

**Conciliation:** Process where an independent and impartial third party assists the disputing parties to reach a mutually acceptable agreement to resolve their dispute (ILO, 2013).

**Dispute:** Disagreement and conflict between two or more parties concerning a matter of mutual interest (ILO, 2013).

**Dispute resolution:** A situation where a dispute ends and an agreement is reached as a result of consensus-based behaviour of the disputing parties with or without the assistance of a third-party conciliator (ILO, 2013).

**Employers' organization:** this is an organization whose membership consists of individual employers, other associations of employers or both with a purpose of protecting and promoting the collective interests of members, to present a united front in dealing with organizations and/or representatives of workers, as well as to negotiate for and provide services to members on labour-related matters (ILO, 2013).

**Labour administration:** These are public administration activities in the field of national labour policy (ILO, 2013).

**Labour officer:** An employee of the labour administration system who may be engaged in labour inspection, industrial relations or employment service functions (ILO, 2013). In the case of Uganda it means the commissioner for labour, the district labour officer and the assistant labour officer.

**Trade union:** An organization of workers/employees that associate together to achieve their common goals particularly related to the protection and improvement of the terms and conditions of employment (ILO, 2013).

**Ugandan:** a citizen of Uganda.

## ABSTRACT

The purpose of the study is to compare the dispute resolution systems of Uganda and South Africa. The historical developments of both systems were discussed so as to understand the factors that contributed to their growth or demise. From the study, it is clear to see that the Ugandan system's development has been greatly affected with every regime change, between 1894 to the present. The developments that were tackled are closely related to various historical and political phases through which Uganda has passed and these significant periods are 1894-1962 (pre-independence), 1962-1971 (Obote 1), 1971-1979 (Amin), 1980-1985 (Obote II), 1986-2006 (NRM) and 2006 to the present Multi-party system. The South African system on the other hand is divided into four eras with the first one beginning from 1870 to 1948, the second era from 1948 to 1979, the third from 1979-1994 and the last era from 1994 to the present date. The South African system has been greatly influenced by the past government's move to create a dual system of labour relations that was eventually removed.

The two systems were compared using a framework created basing on literature by ILO (2013), Brand, Lotter, Mischke, & Steadman (1997) and Thompson (2010). The framework for comparison outlines the elements of a dispute resolution which include the nature of the dispute, coverage, processes, avenues and human resources. It further presents the criteria and possible indicators to evaluate the performance of the system which are legitimacy, efficiency, informality, affordability, accessibility, a full range of services, accountability and resources. The comparison highlighted the various differences between both countries. The study established differences in the nature of disputes as the Ugandan system does not differentiate between the different types of dispute unlike the South African system which differentiates them and has different avenues for their settlement, the fact that the South African system has a number of avenues to cater to the different types of disputes unlike the Ugandan system which only has one route beginning with the Labour officers and the Industrial court if unresolved. An evaluation of the performance of both systems brought to light the number of changes the Ugandan system has to undergo so as to meet the expectations of the International Labour Organisation and have an effective system. The South African system proves to be more legitimate, efficient, informal, affordable, and accessible than the Ugandan system. Further still the South African system provides a full range of services is more accountable and has enough resources when compared with the Ugandan system.

Recommendations have been proposed at the end of the study, mainly for the Ugandan system as the South African system appears to be more advanced and more effective in dispute resolution by international standards. The recommendations suggested are creating an independent dispute resolution system, mass sensitisation on labour rights, accreditation of private agencies, create a separate dispute resolution system for the informal sector, proper routing of disputes, creation of an independent body to monitor the national system, encouraging the creation of more democratic workplaces, re-establish the industrial court and finally, employing and training more labour officers.

## **INTRODUCTION**

### **1. THE THEORY OF LABOUR DISPUTE RESOLUTION**

Dispute resolution is an important part of labour relations and the ability to settle disputes guarantees labour peace in any setting. Most countries have labour legislation which provides frameworks for the effective and expeditious resolution of labour disputes (Smith, 2008).

Labour disputes and conflicts are part of our lives and part of any labour relations system and therefore cannot be eradicated, no matter how good the processes and techniques of dispute resolution are. Rather, conflict should be managed well without resorting to the use of power. Once conflict is handled, it ensures economic prosperity, labour peace and a mutually beneficial and enduring relationship for all concerned parties (Brand, Lotter, Mischke, & Steadman, 2008).

Labour dispute resolution systems are at different levels. They cover different parties and distinguish between the different types of disputes. The different types of disputes are disputes of interest and disputes of rights. However, the distinction between the two is not always an easy one. A dispute of right pertains to a right that is provided for by the legislation, collective agreement and contract while an interest dispute arises because of the differences over the determination of future rights and obligations due to the failed attempt at collective bargaining. Interest disputes are not provided for, for example wage increase. There's a further distinction made between individual and collective disputes. Individual disputes are those involving a single worker whereas collective disputes involve groups of workers usually represented by a trade union (Smith, 2008).

The responsibility for resolving collective industrial disputes usually lies with the parties involved in the dispute itself and that's why the parties to a dispute need to exhaust all the dispute resolution procedures available to them. For example, the procedures provided by the collective agreement, if it is a collective dispute and when it is an individual dispute, there are procedures in many organisations which can be used before opting for external dispute resolution. When the internal processes have failed, a dispute can be referred to alternative dispute resolution processes which include conciliation, mediation, arbitration, facilitation and adjudication (Brand et al., 1997).

According to the ILO (2013), for any dispute resolution system to be effective, it must have a set of goals it wishes to achieve. These goals should work hand in hand with each other to achieve

success. These goals can also be used as criteria for evaluating whether a system is actually performing as expected. The set of goals for a labour dispute resolution system would include legitimacy, efficiency, informality, affordability, accessibility, a full range of services, accountability and resources.

Labour Dispute Resolution would not be effective if it did not have the backing of the International Labour Organisation (ILO). The ILO has several conventions and recommendations which deal with dispute resolution. These provide guidance to member states through setting international labour standards and jurisprudence to help them establish and strengthen labour courts, industrial tribunals and dispute resolution mechanisms so that labour disputes are dealt with effectively.

## **2. LABOUR DISPUTE RESOLUTION IN UGANDA AND SOUTH AFRICA**

The Ugandan dispute resolution system has been shaped by the political history of the country. Uganda has had quite a number of regimes and they all came with different ideologies on how to manage labour and disputes within the country. This in turn deemed the country's system very unstable resulting in an unreliable system to-date. The historical development is discussed in six phases, that is, 1894-1962 (pre-independence), 1962-1971 (Obote 1), 1971-1979 (Amin), 1980-1985 (Obote II), 1986-2006 (NRM) and 2006- to-date (Multi-party system). Currently, the Ministry of Gender, Labour and Social Development (MGLSD) is responsible for labour in the country. It is divided into a number of Directorates, including the Directorate of Labour. The Directorate of Labour, in turn, has three departments which are the Employment Services, Occupational Safety and Health and Labour, Industrial Relations and Productivity. The Employment Services Department is in charge of the Labour officers who in-turn are called upon to facilitate the settlement of employment disputes and are empowered to institute criminal or civil proceedings in the Industrial Court. All different types of disputes, that is, private sector and public sector disputes, collective and individual disputes, Unionised and nonunionised disputes, disputes of rights and interests and disputes from the essential services are all covered under the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006.

The evolution of the South African labour dispute resolution movement can be divided into two eras. The first era is the pre-apartheid era which was from 1870 to 1994 and the second is the post-apartheid era which was from 1994 to today. The South African labour relations system is currently governed by the Labour Relations Act of 1995 which covers both interests and rights

disputes as well as covering both private and public sector employees. Dispute resolution is provided by institutions such as the CCMA which happens to be a government funded but independent body which provides conciliation and arbitration. Certain disputes must be referred to the Labour Court for adjudication if attempts at conciliation fail. Decisions from the labour court can be appealed at the Labour Appeal Court.

### **3. RESEARCH OBJECTIVE**

The South African dispute resolution system was established in 1995 after the fall of apartheid with the enactment of the Labour Relations Act of 1995. The system was developed through dialogue with the government and social partners. At the time the designers had the opportunity to build on the strengths of the past, benchmark against countries where the labour dispute resolution systems were effective, and draft in accordance to the International Labour Organisation (ILO) conventions. The subsequent governance of the system is executed by the social partners who are also very active in the day-to-day operations.

The Ugandan dispute resolution system, like South Africa with roots in the British legal system, was significantly overhauled in 2006 with a suite of new labour legislation. Pressure for the reforms came from the United States government. Prior to 2006, Uganda's labour legislation embodied significant dispute resolution machinery, however, it also sought to contain and weaken the trade union movement, thus compromising the effectiveness of the labour dispute resolution mechanisms. The 2006 legislation has enacted a labour dispute resolution system implemented through the Directorate of Labour. A report developed by the International Labour Organisation in 2004 recommended that a system like the South African dispute resolution system was too complicated for implementation in Uganda with one of the reasons given was that the trade union movement in Uganda was comparatively weak. The implementation of the 2006 dispute resolution system is however, only partial.

Using a framework outlining the elements and the performance of an effective dispute resolution system developed based on the International Labour Organisation's criteria and discussed in chapter one, this study aims to evaluate the dispute resolution systems of Uganda and South Africa against these criteria. Further, to compare the two systems in order to identify whether lessons from the South African system may be applied to the Ugandan system and lastly, to make recommendations for the strengthening of the Ugandan system.

#### 4. SCHEME OF THE PAPER

The paper is divided into five chapters with each focusing on a specific theme. The first chapter will focus on the theory of labour dispute resolution and offer a framework for the comparison of the two systems. The second chapter will look at Uganda's historical development of the trade dispute legislation, the trade union movement between the pre-independence period, 1894, to today and lastly a performance review of the dispute resolution system of the country. Chapter three will focus on the evolution of the South African labour dispute resolution movement and it will be divided into four eras which are from 1870 to 1948, the second era from 1948 to 1979, the third from 1979-1994 and the last era from 1994 to the present date. Lastly a review of the performance of the system will be discussed. Chapter four will be a comparison of the two systems and the last chapter will present conclusions and recommendations.

Chapter two and chapter three primarily utilise secondary data from the existing literature. However unlike the South African system where there is an extensive body of literature that has described and critiqued the system, there has been relatively little written reviewing the current Ugandan system. Therefore, this researcher undertook a small sample of interviews to ascertain the current perceptions and use of the system. The interviewees were purposively selected by the researcher from persons in a range of different businesses. The findings from the interviews are incorporated in Chapter two as case studies. The list of interviewees is shown in table 1 below.

Table 1: List of respondents

Number	Name	Job title	Date interviewed
1	Respondent 1	Liquor factory owner	05/11/2013
2	Ms Birungi R	Human Resources Manager	15/09/2013
3	Mr Agaba B	Employee	20/09/2013
4	Mr Niwamanya T	Employee	10/10/2013
5	Respondent 2	Entrepreneur/ retired lawyer	20/10/2013



## **CHAPTER ONE**

### **THE THEORY OF LABOUR DISPUTE RESOLUTION**

#### **1. INTRODUCTION**

Conflict is part of our lives and thus, it cannot be eradicated, no matter how good our processes and techniques of dispute resolution. Instead, conflict has to be managed as best as we can, and dispute resolution plays an important role in the management of conflict (Brand, Lotter, Mischke, & Steadman, 1997).

Conflict resolution is a very important part of any well-functioning labour market. Where there are employment relationships, one finds disputes and there is a need to resolve them efficiently, effectively and equitably for the benefit of all the parties involved and consequently the economy at large. Thus, the dispute resolution machinery that is put in place to deal with such disputes is a crucial component of any country's employment relations system. The dispute resolution options available to the social partners and to governments are numerous and range from informal negotiations all the way to formal litigation and may even include government intervention to resolve certain labour disputes in the public interest (ILO, 2007).

This chapter will discuss conflict in the workplace by firstly establishing the difference between complaints, grievances and disputes and identifying different types of disputes namely disputes of interest or disputes of rights, and collective or individual disputes. Secondly, the chapter will further look at the goals of the labour dispute resolution system, different dispute resolution processes such as conciliation, mediation and arbitration, and the institutions dealing with dispute resolution. The chapter will lastly propose a framework for analysing the elements of the dispute resolution system and criteria to evaluate the performance of the system.

#### **2. CONFLICT AT WORK**

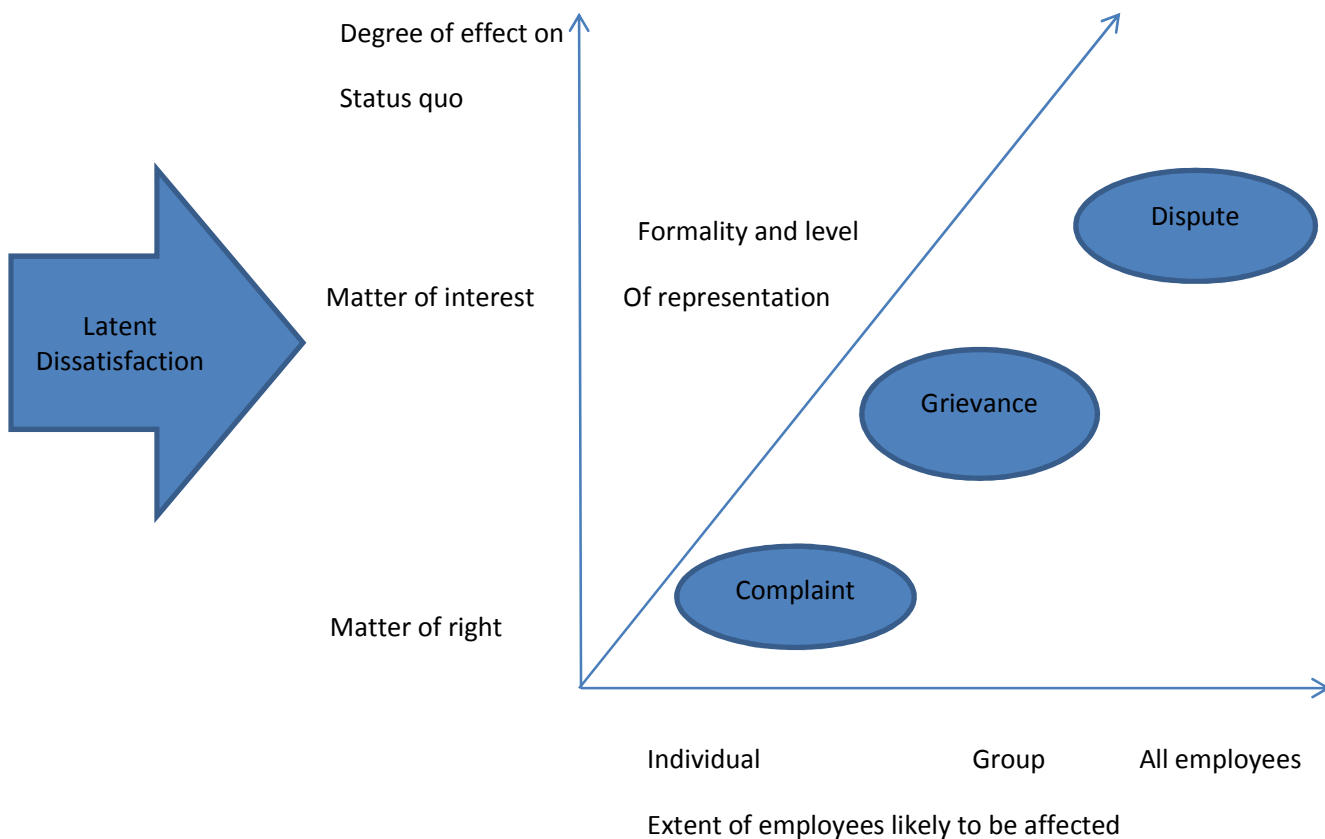
##### **2.1 Complaints, grievances and disputes**

According to Salamon (2000), all organisations require a process which allows employees to express, and seek to resolve dissatisfaction about their work situation, whether it is related to their terms and conditions of employment, working arrangement or managerial decisions. Although

management may have an obvious interest in ensuring that employees are not dissatisfied, the grievance and dispute resolution process is primarily an employee mechanism.

Conflict, grievances and disputes are indicators of a single process and should therefore be interconnected, not isolated from each other (Brand et al., 1997). However, a distinction among the three needs to be established. According to Salamon (2000), a complaint is where dissatisfaction is being expressed but not in a procedural way; a grievance is a partly formalised expression of individual or collective conflict, usually dissatisfaction in respect of workplace related matters and it may relate to a number of factors, for example the terms or interpretation of a collective agreement, managerial policies, actions of the employer or other employees, customs or practices in the workplace. A dispute on the other hand can be described as a highly formalised manifestation of conflict in relation to workplace related matters which may include the failure to address a grievance, or may be the outcome of negotiation or disciplinary processes.

However, the variety of issues, their importance to both employees and management and how they are presented make it difficult to get a universalistic and precise definition of grievances, disputes and complaints. Furthermore, the issue of matters of rights and matters of interests, individual and collective disputes make the definition much more complex (Salamon, 2000). The essential difference between grievance and dispute lies in the way they are initiated and in the degree of proposed change in status quo. Salamon (2000) suggests that it is useful to regard complaints, grievances and disputes as overlapping segments of a continuum based predominantly on the manner and formality of presentation of employee dissatisfaction. Whether a specific situation is likely to be regarded as a dispute rather than a grievance depends on the degree of formality of its presentation, the organisational level at which it is initially raised and the extent to which both parties regard the outcome as establishing new terms and conditions of employment. This relationship as outlined by Salamon (2000) is shown in figure 1 below.



**Figure 1:** Typology of employee dissatisfaction (adapted from Salamon, 2000 p.554)

Conflict and disputes can be reduced, but the nature of employee-employer interactions in a market economy points to the inevitability of conflict. Labour relations in a market economy accepts and recognizes that employees and management have different interests and thus conflict has to arise but has to be managed (ILO, 2013). Having different interests, however, does not have to mean constant disputes. Employees and employers can work together to resolve their differences and reach a common understanding without disagreements escalating into formal disputes.

## 2.2 Categories of disputes

### 2.2.1 Collective and individual disputes

Employment disputes are divided into two categories: individual and collective disputes. Individual disputes are those involving a single worker whereas collective disputes involve groups of workers usually represented by a trade union (ILO, 2007).

An individual dispute while usually a disagreement between a single worker and his or her employer, can also include situations in which a number of workers disagree with their employer over the same issue, but where each worker acts as an individual (ILO, 2013).

A collective dispute on the other hand, is a disagreement between groups of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers (ILO, 2013).

Individual disputes are usually seen as rights disputes whereas collective disputes can further be divided into two sub-categories: rights disputes and interests' disputes (ILO, 2007). The difference between rights and disputes is explained below.

### **2.2.2 Disputes of interests and disputes of rights**

Disputes of rights arise from breaches of existing rights brought about by the failure to implement or comply with rights granted by legislation, collective agreements or individual contracts of service. If no such source exists, its safe to assume that the dispute is one of interest (Anstey, Grogan, & Ngcukaitobi, 2011; Basson et al., 2005; Lotter & Mosime, 1993; ILO, 2007).

According to Anstey et al., (2011), disputes of interest should be resolved by negotiations and in the absence of agreements, dispute resolution processes and industrial action. Disputes of interest are, therefore, those arising from the effort to secure a right, for example when parties attempt to conclude, renew, alter or revise an existing agreement fails. One very common example of interest disputes are disputes over core economic issues such as wage disputes (Lotter & Mosime, 1993; ILO, 2007).

Conventionnal wisdom has it that disputes of right are amenable to adjudication and disputes of interest are best resolved by the respective power of the parties (Lotter & Mosime, 1993).

## **3. THE GOALS OF A LABOUR DISPUTE RESOLUTION SYSTEM**

According to Brand et al.,(1997), for any dispute resolution system to be effective, it must have a set of goals it wishes to achieve. These goals should work hand in hand with each other to achieve success.

Besides the contribution to labour peace and economic prosperity, the function of a labour dispute resolution system should allow for disputes to be resolved without resorting to the use of power

and further, once the dispute is resolved, the parties should feel able to continue to enjoy a mutually beneficial and enduring relationship (Brand et al, 2008).

According to Brand et al. (2008), the overall goal of a labour dispute resolution system differs perhaps from the outcome expectations of a normal civil dispute system because the parties may have to continue a relationship beyond the resolution of the dispute. Thus, the set of goals for a labour dispute resolution system would include legitimacy, efficiency, informality, affordability, accessibility, a full range of services, accountability and resources. These goals are further discussed below.

### **3.1 Legitimacy**

For any labour dispute resolution system to be effective, it must be a product of the consent of the parties whose interests are at stake. Further, the substantive standards to be applied should satisfy public interest norms and standards. There are many actors and many viewpoints in any given society and the system should take them into consideration plus understand the historical, cultural, and social contexts so as to reach a broad consensus on what is in the best interests of the entire community, and how this can be achieved (ILO, 2013;Thompson, 2010).

Independence is also a very important element in establishing legitimacy. That is, a legitimate system should not belong to or be controlled by any political parties, business interests, employers, or trade unions and it should operate without interference from Government. This is to avoid any conflict of interest in relation to the parties or subject-matter and to ensure that the laws are enforced impartially. However, independence often does not mean financial independence from the Government, as dispute management systems operating as statutory bodies will be dependent on State funding (ILO,2013;Thompson, 2010).

The protection of human rights, particularly those of minors, should also be the ultimate goal of a legitimate system, This can only be achieved by an independent judiciary, and transparent, impartial and incorruptible enforcement agencies (ILO, 2013)..

The principle of voluntarism is also important in establishing legitimacy. The disputing parties should be free to decide whether to use the services (ILO, 2013).

Lastly, the dispute resolution system, whether public or private, must be aligned or compatible with the wider system of workplace regulation and agreement. It should ultimately compliment and not undermine (Thompson, 2010).

### **3.2 Efficiency**

Efficiency is the most important goal of a dispute resolution system according to Brand et al (1997). Efficiency as desired by the parties to labour disputes, is the requirement that disputes be speedily resolved. That is, disputes should be addressed quickly with the least procedural technicalities as there is a need for the disputing parties to have the dispute resolved quickly and not drag on indefinitely.

The subject of time is also emphasised by the ILO (2013) with regards to the issue of responsiveness. That is, for efficiency to be achieved, the system needs to serve all stakeholders within a reasonable time frame. Besides, the requirement for speed of resolution, efficiency can also be achieved by decision makers being innovative; that is, being sufficiently flexible to respond to new situations and the needs of new stake holders.

However, efficiency becomes a problem if it is the main consideration and aim of the system. That is, when efficiency becomes an end in itself, the system may find that it is in danger of losing sight of its function (Brand et al., 1997).

### **3.3 Informality**

Informality means that parties involved should be able to approach the system virtually unaided. Procedures and operations should be clear, uncomplicated, and informal. The ideal of informality is based on the negative experience of legal proceedings being formal and technical in the extreme; in a perfect labour dispute resolution system, for example, a dismissed employee should be able to approach an institution unaided and where appropriate, obtain relief after having presented their case, in simple terms and using non-technical procedures. Thus, since the concept of informality includes the issue of legal representation, thought must be given to at which point in the process is legal representation desirable and allowed (Brand et al., 1997; ILO, 2013).

### **3.4 Affordability**

An ideal labour dispute resolution system should be free or at the very least inexpensive. That is, the least privileged or the poor should be able to access the system. The Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), article 3(1) states that voluntary conciliation procedures should be free of charge (ILO, 2013).

However, providing a free dispute resolution system is not easy and it comes at a heavy cost usually to the State. Commonly the system is paid for by the state as a service to its citizens, paid for by means of revenue obtained from the citizens themselves (Brand et al., 1997).

### **3.5 Accessibility**

A dispute resolution system should ensure that all parties, including the most vulnerable, have easy access. That is, they should know where to go, who to approach and how to involve the dispute resolution institutions in their dispute. Furthermore, the concepts of informality and speed are closely linked to accessibility as there should be minimum formalities in obtaining assistance of the dispute resolution mechanisms and the parties must be able to call upon and get a response in a short space of time (Brand et al., 1997).

The Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), article 3(2) provides that services should be made available at the request of any party to a dispute, and also be capable of being triggered at the initiative of the public institution with responsibility for overseeing labour relations (ILO, 2013). This is important because a state's legitimacy is derived from ensuring that all its citizens, especially the most vulnerable, feel that they have a stake in it and do not feel excluded from the mainstream of society.

### **3.6 Range of services**

An effective dispute resolution system should aim at providing a range of services related to the prevention and resolution of disputes for both private and public sector clients. Services may cover the full range of disputes including individual and collective disputes and disputes of rights and interests. Examples of disputes could be about organizational rights, recognition for bargaining, interpretation of collective agreements, discrimination, unfair labour practices, retrenchments, dismissals and disputes over wage bargaining.

The services should include the provision of information, advice, training, facilitation, investigations, conciliation, mediation, arbitration, adjudication as well as conciliation-arbitration, and arbitration-conciliation sequences where appropriate. Very importantly, the availability of services such as advisory information and training assists employers and employees to prevent disputes from arising in the first place (ILO, 2013; Thompson, 2010).

### **3.7 Accountability**

Accountability is an important goal of any institution and is not limited to only governmental institutions but also the private sector and civil society organizations. They must be held accountable to the public and those institutional stakeholders who will be affected by their decisions or actions (ILO, 2013).

### **3.8 Resources**

In order to achieve the above goals, one of the crucial goals of any dispute resolution system is to have sufficient financial resources to meet the capital and operating expenditure associated with providing services to its clients. Expenses will include sufficient professional and support staff, adequate space and equipment, including computer and telecommunication systems. The personnel of the dispute resolution institutions are the most important resources as they play a decisive role in determining how efficiently the whole system works. They must therefore, be well qualified, have sound knowledge of the legal framework within which they are functioning and be able to provide support and training to the other parties within the system for example, the employers and the organisations and the employees and their organisations (Brand et al., 1997). The level of professionalism of the institutional personnel is extremely important as the users of the system need to know that the institution operates under an ethically sound governance structure (ILO, 2013).

## **4. NORMATIVE INTERNATIONAL FRAMEWORKS**

This section deals with the various ILO conventions, recommendations and supervisory machinery relating to labour dispute resolution. These provide guidance to member states through setting international labour standards and jurisprudence to help them establish and strengthen labour courts, industrial tribunals and dispute resolution mechanisms so that labour disputes are dealt with effectively.

### **4.1 ILO conventions, recommendations and supervisory machinery**

There are several ILO conventions dealing with dispute resolution and settlement. One of the first is the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)



which emphasises the rights of both employers and workers to join organisations of their own choosing. Another convention is the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) which deals with the establishment of specific principles for arbitration in the context of collective bargaining. That is, that arbitration should be freely chosen and that the parties should be bound by the final decision. Compulsory arbitration which is imposed by the authorities is generally contrary to the principle of voluntary negotiation of collective agreements, and thus the autonomy of bargaining partners. There is an exception, however, in cases involving essential services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population (ILO, 2007). Both of the above conventions are among the eight conventions advocated as fundamental by the ILO.

Another important recommendation is the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92). It mentions that voluntary conciliation “should be made available to assist in the prevention and settlement of industrial disputes between employers and workers.” It emphasises that such procedures, which should be free and voluntary, should include equal representation of employers and workers. Parties should refrain from strikes or lockouts while conciliation or arbitration procedures are in progress, without limiting the right to strike (ILO, 2007).

Another instrument is the Collective Bargaining Convention, 1981 (No. 154) which insists that the bodies and procedures for the settlement of labour disputes should be designed to contribute to the promotion of collective bargaining (Article 5(2)(e)). Although this convention focuses on collective bargaining, it does not rule out the use of conciliation and/or arbitration as part of the bargaining process provided such processes are voluntary (Article 6). This is because one objective of dispute resolution is in fact to promote the mutual resolution of differences between workers and employers and, consequently, to promote collective bargaining and the practice of bipartite negotiation (ILO, 2007).

Communications within the Undertaking Recommendation, 1967 (No. 129) is concerned with communications between management and workers within an undertaking. It underlines the importance of both workers and management creating a positive environment within the enterprise. This can only be achieved through the rapid dissemination and exchange of information, showing mutual respect, recognizing workers as stakeholders, consultation between both parties, addressing misunderstandings and building trust (ILO, 2013).

The Examination of Grievances Recommendation, 1967 (No. 130) addresses dispute resolution at the enterprise level, including rights disputes over alleged violations of collective agreements. It sets out a number of recommendations on the development and implementation of workplace dispute mechanisms. It further recommends that where efforts to resolve the dispute have failed, there should be a possibility for final settlement either through the procedures set out by collective agreement, through conciliation or arbitration by the competent public authorities, through recourse to a labour court or other judicial authority, or through any other procedure which may be appropriate under national conditions (Paragraph 17) (ILO, 2007).

When it comes to the public sector, the Labour Relations (Public Service) Convention, 1978 (No. 151) renders that the settlement of disputes over the terms and conditions of employment is to be sought “through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved” (Article 8) (ILO, 2007).

Other ILO instruments refer to the role of the labour administration in resolving disputes. For example, the Labour Administration Recommendation, 1978 (No. 158) provides that the “competent bodies within the system of labour administration should be in a position to provide, in agreement with the employers' and workers' organisations concerned, conciliation and mediation facilities, appropriate to national conditions, in case of collective disputes” (Paragraph 10) (ILO, 2007).

A full list of relevant international labour standards pertaining to dispute resolution and taken from the ILO (2013) is attached as Appendix 2.

## **5. ELEMENTS OF A DISPUTE RESOLUTION SYSTEM**

The design of a labour dispute resolution system begins with the classification of the nature of the dispute. As discussed in Section 2 above, conflict can be informal or when formal, classified as disputes, which can be deemed to be collective or individual and concerned with rights or interests. The other elements that need to be considered in a system are considered below.

### **5.1 Coverage of the system**

Labour dispute resolution systems are at different levels (for example, national, industry, enterprise or plant) to cover different parties (for example, private or public sector, industry or

enterprise, particular bargaining unit) and different types of disputes (for example collective or individual, rights or interest)

The responsibility for resolving collective industrial disputes usually lies with the parties involved in the dispute itself, reflecting the principles of autonomy and voluntarism, which are important features of genuine collective bargaining and freedom of association. The social partners usually enjoy a great deal of latitude in settling their own disputes and in deciding upon the strategies for doing so, either through direct negotiation, conciliation, mediation or arbitration, or even through the use of industrial action (ILO, 2007).

However, it is common to encounter rules requiring compulsory conciliation, mediation or arbitration in certain circumstances, resulting in enforceable awards and agreements. Under Finnish law for example, mediation is compulsory although there is no obligation to reach an agreement. In some situations, dispute resolution may only be mandatory where the dispute arises in a particular sector such as the public sector or in cases where the dispute affects the delivery of “essential” public services (ILO, 2007).

In some situations, recourse to compulsory arbitration in cases where parties do not reach agreement through collective bargaining is permissible only in the context of essential services in the strict sense of the term that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (ILO, 2007).

## **5.2 The dispute resolution process**

### **5.2.1 Internal processes**

Complaints, grievances and disputes often arise within a workplace. Resolving conflict within the workplace requires both dispute prevention and dispute resolution processes. Dispute prevention is particularly relevant in the case of individual disputes and requires that there are policies and procedures to deal with grievances and discipline (ILO, 2013, p 180). The internal dispute resolution process requires some form of dialogue between employees and management. Management’s response will be determined by their perception of the employee’s dissatisfaction and their assessment of the likely implications of any solution for the maintenance of policies and strategies (Salamon, 2000).

Where there is an established relationship between employers or managers and employee representatives, and where negotiations take place, there will be a dispute settlement procedures

agreed upon by both the employers and their employees taking into consideration whether the dispute is a dispute of interest and dispute of rights and whether it concerns just a single employee or a group. This procedure usually covers details of how the dispute will be declared, time limits for the other party to reply, a number of conciliation meetings, the possibility of mediation or arbitration and finally details of what should happen if the dispute is unresolved. Normally, the dispute will go to arbitration, statutory machinery or strike or lockout if the parties have the right to do either. In disputes of rights, particularly those dealing with individual employees, details of support and representation would also be dealt with in the procedures (Salamon, 2000).

Best practice would also contend that even in the absence of employee organisations and representatives, organisations should have established clear grievance and disciplinary procedures to deal with individual and collective grievances and disputes that may arise (Bendix, 2010; Salamon, 2000, ILO, 2013).

### **5.2.2 Consensus-based processes**

Many laws place great emphasis on consensus seeking as a first step in dispute resolution. Most disputes are required to be dealt with in a consensus-seeking process before they become subject of industrial action or are decided either by an arbitrator or a judge. For example, some of the primary consensus-seeking processes contemplated in the South African Labour Relations Act 1995 are conciliation and facilitation (Brand et al., 1997).

#### **a) Mediation**

Mediation is a form of third party intervention into disputes which aims at assisting parties in a dispute to find a mutually acceptable settlement. Mediators don't have authority to make decisions but can facilitate settlement searches through the negotiation process. Mediation can be used in community conflicts, hostage crises, domestic and divorce situations, environmental conflicts, labour management relations etc. (Anstey et al., 2011).

In many instances mediation and conciliation are used interchangeably (ILO, 2013) however, Anstey et al (2011) draw a distinction.

The difference between mediation and conciliation is mediation refers to the intervention of a third party to resolve industrial disputes amicably while conciliation refers to working with two opposing parties, with the intention of reaching a mutual settlement to a dispute (Anstey et al., 2011). Conciliation is discussed further below.

## **b) Conciliation**

Conciliation is the preferred first stage in any dispute resolution process. Although in some instances, parties go straight to third party decision-making processes like adjudication or arbitration, it has been common for parties to initially conciliate rather than arbitrate disputes of interest (Brand et al., 1997).

Conciliation is very helpful for a number of reasons, for example when relationships, speed, confidentiality and communication are vital. It is also important when parties want to control the outcome but cannot find the solution themselves (Brand et al., 1997).

In private conciliation, as opposed to statutory systems, the choice of the conciliator is the most important issue on which parties need to agree. The factors which influence the choice of the conciliator include that the conciliator be independent of the parties and have no interest in the issues in dispute; the conciliator should be appropriately trained and have some knowledge of and experience in the labour relations field (Brand et al., 1997). They are chosen voluntarily by the parties and have the duties and powers that are assigned to them by agreement between the parties (Brand et al., 1997).

Conciliators are usually trained to follow a systematic problem-solving approach in conciliation. They do this both in joint-meetings with the parties and in side meetings with one party. Throughout the conciliation, the conciliator considers when to separate the parties into side parties. This is done if it is considered that a joint meeting is not conducive to consensus-building and the process may be better managed by having a side meeting. The conciliator can bring the parties together after the side meetings when a joint-meeting will be helpful to the process. The usual indications of a need to separate are high levels of anger, emotion or abuse, or a need for confidential discussions between the conciliator and a party. These side meetings can also be used to explore options, develop proposals, explore the potential for movements and to challenge the parties (Brand et al., 1997).

## **c) Facilitation**

Facilitation is similar to conciliation as it also involves the use of an independent third party with the purpose of helping both parties reach an agreement and deal with the conflicts and disputes. Facilitation aims at "getting both parties to the table" as the facilitator frequently finds himself/herself helping parties identify which other parties should join the facilitation. At times facilitations usually involve large numbers of participants and therefore require the use of more

than one facilitator. The issues dealt with in facilitation usually concern structures and relationships and a more cooperative approach is adopted. The issues may not arise from a disputes but may be seen as more preventative (Brand et al., 1997). The ILO (2013) view facilitation as a pre-conciliation process where the conciliator encourages the parties to interact with each other in order to obtain a better appreciation of the issues.

### **5.2.3 Referral-based processes**

#### **a) Arbitration**

Arbitration is a process whereby parties to a dispute agree to refer the issue to an independent and impartial third party (the arbitrator) to decide the matter and make an award which they accept as final and binding upon them. It is a form of adjudication and should therefore be distinguished from mediation and conciliation even though in both processes the two parties agree to refer a dispute to a third party (Lotter & Mosime, 1993; ILO, 2007).

This quasi-judicial process, in which a neutral party renders a decision, is generally considered to be an option of last resort in cases where the social partners cannot otherwise resolve their differences. More specifically, arbitration typically follows after attempts at mediation and/or conciliation between the parties have proven unsuccessful (ILO, 2007).

The arbitration process involves the three different actors, that is the representatives of the two opposing parties and the arbitrator getting together in what is referred to as a hearing. At the hearing, the representatives present all the relevant factual information to the arbitrator and also make submissions as to what conclusions the arbitrator should reach and having regard to the applicable legal principles, what the ultimate outcome should be. The arbitrator then proceeds to examine all the facts introduced through evidence and the submissions made by the different representatives. He considers the provisions of any collective agreement and any prior decisions by other arbitrators (or judicial system) that deal with similar problems and then makes an award (Lotter & Mosime, 1993).

#### **b) Adjudication**

According to Smith (2008), adjudication is a process where a judge reviews evidence and argumentation including legal reasoning set forth by opposing parties to come to a judgement which determines the rights between parties involved. Thus adjudication is part of the court and judicial system and subject to the formalities of the legal system (ILO, 2013).

## **5.3 Avenues of a dispute resolution system**

### **5.3.1 Legislation**

According to ILO (2007), every country has some legislative rules for dispute resolution covering all manner of individual and collective disputes. In certain cases, the framework is part of a country's general labour law or code or in other cases, the rules regarding dispute resolution are found scattered across a host of different statutes, regulations or decrees governing labour relations. Still other countries adopt singular pieces of legislation that deal primarily with labour dispute resolution; for example South Africa currently has the Labour Relations Act of 1995.

No matter what form they take, laws on dispute resolution commonly addresses a range of similar issues covering, for instance, the status of the parties involved in a dispute, their corresponding rights and obligations during the course of a dispute (for example cooling off periods in relation to industrial action) and detailing the different mechanisms and processes for resolving the dispute (ILO, 2007).

Though some countries have extensive legal rules and other countries have no specific provisions pertaining to dispute resolution, we must note that more rules do not automatically lead to a more effective dispute resolution machinery. This is because a system with many rules could tend to be very complex and bureaucratic (ILO, 2007).

### **5.3.2. Dispute resolution agencies**

Dispute resolution agencies vary from country to country. As noted in Article 1 of the ILO's Recommendation No. 92 concerning Voluntary Conciliation and Arbitration, dispute management systems must be appropriate to national conditions. This is essential to ensuring the system is effective and in engendering the confidence and trust of its users (ILO, 2013). In general, however, dispute management systems fall into three main categories, as follows.

#### **a) Ministries or Departments of Labour**

National and state labour administrators are responsible for labour dispute prevention and resolution as part of a public service. The processes of conciliation and arbitration are firmly in the hands of labour department officials though circumstances may allow for some limited involvement of private agencies in the dispute resolution process. This is evident in many African, Asian, European, Arab and American countries (ILO, 2013).

### **b) Independent statutory bodies**

Labour dispute prevention and resolution is the responsibility of these state founded bodies. These bodies however, operate with a degree of autonomy and independence from political parties, businesses, and trade unions and are not part of the central labour administration but rather part of the wider labour administration system. They fall under the responsibility of an independent commission, authority, or similar body operating under its own legislation, and with its own governing council or board. These bodies are regarded as modern independent as they support the involvement of private agencies in the dispute resolution process for example the Federal Mediation and Conciliation Service (FMCS) in the United States, the Advisory Conciliation and Arbitration Service (ACAS) in the United Kingdom, the Commission for Conciliation Mediation and Arbitration (CCMA) in South Africa, Tanzania's Commission for Mediation and Arbitration (CMA). As independent statutory bodies, such commissions are not part of the central labour administration but are part of the wider labour administration system (ILO, 2013).

### **c) Shared arrangements**

Labour dispute prevention and resolution is partly the responsibility of the labour administration and partly the responsibility of an independent body. Other types of shared arrangements can be the involvement of employers' organisations, trade unions or social partners (ILO, 2013).

### **d) Private dispute Resolution agencies**

Most countries give provisions in their labour related acts for parties to resolve their dispute through private processes which is commonly referred to as private dispute resolution. Parties to a labour dispute may at any time agree on their own dispute settlement mechanism for example mediation or arbitration maybe undertaken in private agencies and both parties will also determine their own terms of reference and powers (Smith, 2008). However private dispute resolution agencies have not been favoured by many. In the South African context for example, it is argued that they should be avoided because their continued use would undermine the legitimacy of the statutory system established by consensus. However the Labour Relations Act of 1995 tries to establish a relation between the statutory and private systems of dispute resolution whereby the statutory body may accredit private systems of dispute resolution (Anstey et al., 2011).



## **5.4 Human Resources**

The individuals or groups involved with a labour dispute resolution system and processes are legal personnel for example lawyers and judges; para-legal personnel for example case workers, commissioners for conciliation and arbitration, and consultants; and finally the users of the system, for example representatives of employee collectives and employers represented by management.

The following section deals with how individuals operating within dispute resolution structures may be selected and what should be their general competencies.

### **5.4.1 Human Resources attached to dispute resolution institutions**

For personnel within the system to be accepted and to have credibility, they are typically appointed through a bipartite or tripartite consultative process involving the State, employer organizations and trade unions (Thompson, 2010). For example, the Commission for Conciliation and Mediation and Arbitration (CCMA) in South Africa is required by statute to be independent of the State, any political party, trade union, employer, employers' organization, federation of trade unions or federation of employers' organizations. The governing body of the Commission is constituted on a tripartite basis. This body is charged with selecting the panels of professional managers and commissioners charged with carrying out the Commission's work. The management and commissioners selected must be independent and competent and representative in respect of race and gender. They are also required to operate under an exacting code of conduct.

Dispute resolvers have to have the right qualifications and knowledge of the legal framework within which they are functioning. The dispute resolution systems should also clearly and unequivocally formulate policy on certain issues to guide the resolvers within the framework. Consistency in approach to dispute resolution is proof of such a system (Brand et al., 1997).

One important skill that resolvers need to possess is the ability to negotiate. Negotiation requires insight, structure and a great deal of practice if it is to be undertaken to good effect. If bargaining is to be productive, then it is important that the resolvers undergo prior training in negotiation skills and also education in underlying bargaining perspectives. Only with knowledge of the choices available can the negotiators make informed and, better still, wise decisions on the best bargaining approaches to adopt (Thompson, 2010).

Dispute resolvers should also be sensitive to the nature, extent and consequence of the dispute. They should also never lose focus of the fact that their role is to attempt to resolve disputes in an appropriate manner with consideration to the both parties' relationships, their needs and interest regardless of the power they wield. Other personal characteristics include being fair, unbiased and independent. The way the resolvers handle the process and go about their work determines the trust the parties have in the system itself (Brand et al., 1997).

Although many of the statutory bodies involved in dispute resolution have a responsibility of information sharing and education e.g. South Africa's CCMA, awareness-raising and information-giving on dispute prevention and resolution matters is not the responsibility of the concerned government department or statutory authority alone. Trade unions and employers' organizations also have a vital role to play. Through their networks and direct contact with their members they should keep their members informed of new policies and laws, as well as operational procedures should a member become involved in a labour dispute (ILO, 2013).

#### 5.4.2 Trade Unions and their role in dispute prevention and resolution

Trade unions are organizations of workers who come together to achieve common goals such as protecting the integrity of its trade, achieving higher pay, increasing the number of employees an employer hires, and better working conditions. However their most important role is to maintain or improve the conditions of their members' employment. The trade union, through its leadership, bargains with the employer on behalf of union members and negotiates labour contracts with employers. They are highly structured organisations, aware of their strength and clear as to their position in relation to other social partners, employers and government (Bendix, 2010).

Trade unions and employers sign agreements which are legally binding after bargaining and these agreements, which are referred to as collective agreements, establish the rights and obligations of both parties. These agreements provide the essential reference point for any disputes that arise and how to prevent these disputes from escalating. They also include specific provisions for preventing disputes (ILO, 2013).

Shop stewards on the other hand are employees within organisations who have been elected to represent the collective interests of unionised employees. The shop steward represents the union in the organisation and in this capacity will hold meetings with employees and act as liaison between unions and employees. As employees, shop stewards may have a specific jobs in the organisation which they will be expected to perform, but, as a shop steward, will also be required

to meet with management and raise employee concerns, or to engage in negotiations on certain issues. The shop steward has a very important role to play in dispute resolution at the level of the organisation as they may be requested to represent individual employees or groups of employees, who have lodged complaints against management or are being disciplined by the employer or the manager. As part of negotiations and collective bargaining, shop stewards may also be involved in collective disputes requiring resolution (Bendix, 2010).

## **6. EVALUATION**

This section deals with the evaluation of a dispute resolution system. As discussed previously, to be effective, the dispute resolution system must have clearly stated goals which are measurable and attainable (ILO, 2013). The goals for an effective system were identified in section as legitimacy, efficiency, informality, affordability, accessibility, an appropriate range of services, accountability and adequate resource support.

However, the sign of an effective labour dispute system is one whose services are valued by its users and eventually earns their confidence and trust because it delivers services fairly and without discrimination to all who fall within its jurisdiction. A system which is shunned by its supposed users and is always being criticised needs to re-evaluate and revise its intended goals and make changes accordingly. The measures that could be taken to determine the extent to which the users of the service were satisfied could be through the means of regular client satisfaction surveys. Further indicators of support for the system would be to measure the level of support for the system from trade unions and employers and employers' organisations (ILO, 2013).

### **6.1 Legitimacy**

The key facets of legitimacy as discussed in section 3.1 dealt with the need for consensus, independence, the protection of human rights, the need for the use to be voluntary and aligned not only societal norms but workplace agreements and regulations (ILO, 2013; Thompson, 2010). The dimensions of legitimacy could be evaluated by examining the following; (Questions sourced from the ILO (2013)).

Consensus: Were employers' and employees' representatives consulted in setting up the system? Who else was consulted?

Independence: Is the system independent of the State for example the Ministry or Department of Labour (or the Ministry responsible for labour matters)? Is the judiciary independent of the state?

- Is the system transparent? Are rules and procedures generally well known?
- Is information concerning the application of rules and procedures available and accessible to those likely to be affected?
- Are regular reports on the system's operations made available to clients of the system?

Human rights: Are the human rights of all interested parties protected, particularly those of vulnerable groups?

Is the use of the system voluntary or mandatory?

Is there alignment in the system? Do the legislation and the workplace practices reinforce each other? Is the labour practice aligned with broader societal norms and standards?

Are services provided for atypical employees (e.g., home workers, seasonal workers, contract workers)?

## **6.2 Efficiency**

The key aspects discussed in section 3.2 under efficiency were the requirement for speed, flexibility and innovation. These could be evaluated by asking the following questions:

Does the system make every effort to respond to the interests of all stakeholders?

What is the average time taken to resolve disputes?

Is the system able to adapt to meet changing circumstances?

Do officers receive training on 'new' approaches to dispute prevention and resolution?

Does the system make use of computer and information technology?

## **6.3 Informality**

Informality is an important contributing factor to both legitimacy, in ensuring that even the most vulnerable groups can use the system and also to efficiency in that the more formal the system the more time consuming it is and also to cost as the formal the system the more cost implications there are. The specific aspects of informality that were highlighted in section 3.3 dealt with notion that individuals should be able to use the system, it should be easy to understand and use and there

should be no need for costly legal representation. Possible questions to evaluate informality could be:

What are the processes involved in lodging a dispute?

How easy are these processes to understand?

What level of assistance is available?

At what point in the dispute resolution process is it allowed to have legal representation?

#### **6.4 Affordability**

An ideal labour dispute resolution system should be free or at the very least be inexpensive. That is, the least privileged or the poor should be able to access this system (Brand et al., 1997; ILO, 2013). This could be determined by asking the following questions:

Does the system provide conciliation services free of charge to the disputing parties?

Does the system provide arbitration services free of charge?

Does the system provide advisory, training, and information services free of charge?

#### **6.5 Accessibility**

An accessible dispute resolution system should ensure that all parties, especially the most vulnerable, have easy means to make contact. Further, potential users should know who to approach with minimum legal and procedural formalities and how the system works. Services should also be available on short notice (Brand et al., 1997; ILO, 2013). Possible questions that could determine the levels of accessibility would be:

Who may use the system?

- Is the system available to all employer-employee situations, including disputes that arise in the informal economy?
- Does the system serve both the private and public sectors (including public corporations and statutory bodies)?

Contacting the service?

- Where are the services physically located? How is the system decentralized to enable access by persons outside the main centres?
- Are mobile services provided?
- What are the waiting periods for dispute resolution? Does the system differentiate in order to prioritise certain disputes?

Information of the service

- How is information disseminated to the potential users?
- How widely is the service understood among potential users?

## **6.6 Range of services**

For a dispute resolution system to be effective, it must be able to provide a range of services related to the needs of all stake holders. The system should also put emphasis on preventative measures to ensure that resources are available to assist employers and employees to prevent disputes from arising (ILO, 2013; Thompson, 2010).

Does the system provide the following services?

- Information
- Advisory
- Training
- Investigation

Does the system cater to all types of disputes as follows?

Individual and collective disputes

- Existing rights
- Future interests
- Unfair dismissal

## **6.7 Accountability**

As mentioned earlier, transparency is one important aspect of an effective system and transparency in this sense comes in the form of the system being able to accountable to the public

and to their institutional stakeholders (ILO, 2013). The level of accountability can be determined by asking the following questions:

How does the system account to its stakeholders and the public at large?

Is the system accountable for the use of the resources made available to it?

Is the system accountable not only for its decisions but also for the processes by which decisions are made?

## **6.8 Resources**

As mentioned earlier, one of the goals of an effective labour dispute resolution system is to have sufficient resources to meet the capital and recurrent expenditures associated with providing services to its clients, including sufficient professional, and support staff who have sound knowledge of the legal framework, adequate space and equipment, including computer and telecommunication systems (Brand et al., 1997; ILO, 2013). The issue of human resources however, goes beyond the staff of the dispute resolution institutions and also embraces the trade union movement and employers and employer organisations. The understanding and professionalism of these groupings is also required for the effective running of the system. The resources can be evaluated by asking the following questions:

Does the system receive sufficient funds to achieve its purpose and objectives to an acceptable level?

Are all the professional staff of the dispute resolution institutions at the required level of competency?

Are all the support staff of the dispute resolution institutions at the required level of competency?

Are there adequate physical facilities available to manage the proceedings?

Are the trade union representatives involved in dispute resolution competent?

Are the representatives of the employers and employers' organisations competent?

## 7. FRAMEWORK FOR COMPARISON

The framework for comparison outlines the elements of a dispute resolution which include the nature of the dispute, coverage, processes, avenues and human resources. It further presents the criteria to evaluate the performance of the system which are legitimacy, efficiency, informality, affordability, accessibility, a full range of services, accountability and resources. This framework will be used to structure chapters two, three and four.

Table 2: Framework for comparison, elements and performance criteria

<b>Elements of the system</b>	
	<b>Examples of questions to be asked regarding each element</b>
The nature of the dispute	Does the system differentiate between disputes of rights and disputes of interest? Do the disputes follow different dispute resolution pathways? Does the system have pathways for both individual and collective disputes? What are the pathways? Individual and collective, rights and interest
Coverage	Are all workers covered by the same labour legislation? If not what legislation covers private and what covers public? What dispute resolution system operates for private and what for the public sector? Are there special dispute resolution pathways for certain groups of employees e.g. essential workers Are any workers excluded from coverage by labour legislation and therefore from labour dispute resolution pathways? Public, private, workers excluded
Processes	What provision is made in legislation for internal dispute resolution processes of grievance and disciplinary procedures? Which consensus based processes are used and where and when? Which referral based processes are used, when and where? Internal processes, consensus based processes, referral-based processes,



Avenues of dispute resolution	Legislation, dispute resolution agencies Which are the dispute resolution agencies? Which type of dispute, for which employees and using what processes does each handle
Human Resources	Personnel within the system Trade union representatives
<b>Performance of the system</b>	
<b>Key criteria</b>	<b>Possible indicators</b>
Legitimacy	Stakeholders to the design of the system
	Independence of the institutions
	Respect of Human rights of all interested parties
	Voluntary or mandatory use of the system
	Services for atypical employees
Efficiency	Speed of dispute resolution within the system
	Flexibility of the system
	Innovativeness of the system
Informality	Is the procedure of dispute resolution understood by all parties
	Processes for lodging a dispute
	A minimum of legal and procedural formalities
Affordability	Free or inexpensive for the users
Accessibility	Availability of services on short notice
	Awareness and understanding of the system by employers, employees, and the general public
	Dispute resolution Offices within reasonable travelling distance
	Availability to all employer-employee situations
Full range of services	Catering for the needs of all stakeholders
	Catering for all types of disputes
Accountability	Accountability to the public and institutional stakeholders
Resources	Availability of funding for the system
	Competency for all the professional staff

## 8. CONCLUSION

In conclusion, dispute resolution is an essential part of any well-functioning labour market and industrial relations system. However, more importantly, it has been established that there is need to resolve disputes efficiently, effectively and equitably for the benefit of all the parties involved and the economy at large. Chapter one has covered the theory of labour dispute resolution. Conflict at work has been covered by firstly establishing the difference between complaints, grievances and disputes and also identifying different types of disputes namely disputes of interest or disputes of rights, and collective or individual disputes. As the term implies, individual disputes are those involving a single worker whereas collective disputes involve groups of workers usually represented by a trade union. Collective disputes can further be divided into two sub-categories: rights disputes and interests' disputes. With respect to resolving these different types of disputes, there are options such as conciliation, mediation and arbitration. All of these alternatives involve the intervention of a third party and it is rather the degree of intervention that differentiates one from the other.

For any dispute resolution system to be effective, it must have a set of goals it wishes to achieve and these goals need to work hand in hand together to be a success and they include legitimacy, efficiency, informality, affordability, accessibility, a full range of services, accountability and resources. The various ILO conventions, recommendations and supervisory machinery relating to labour dispute resolution were also discussed as they provide guidance to member states through setting international labour standards and jurisprudence to help them establish and strengthen labour courts, industrial tribunals and dispute resolution mechanisms so that labour disputes are dealt with effectively. Other elements of the system were also covered and these include who the system covers, the avenues of the system, human resources and the processes. Lastly, the specific benchmarks for an effective dispute management system were also covered and these will be used to evaluate the performance of a dispute resolution system. Chapter two is going to look at the evolution of the Ugandan Labour Dispute Resolution system, the history of trade unionism in Uganda and a review of the performance of the system.

## CHAPTER TWO

### **THE UGANDAN LABOUR DISPUTE RESOLUTION SYSTEM**

This chapter is going to deal with a description of Uganda, that is, its physical, political and economic aspects. In addition, it will describe the historical development of the trade dispute legislation, the trade union movement of Uganda between the pre-independence period from 1894 to the present; lastly a performance review of the dispute resolution system of the country.

#### **1. THE UGANDAN ENVIRONMENT**

##### **1.1 Physical**

Uganda is landlocked and borders with South Sudan in the North, Kenya in the East, Rwanda and Democratic Republic of Congo in the West. Lake Victoria forms a large part of the Southern border. Uganda's total area is 241,038 square kilometres of which 43,942 square kilometres is open water comprised of lakes, swamps and the river Nile. Given that Uganda is situated at the equator its climate is equatorial. And has two distinct wet and dry seasons each year. The wet seasons are from, March to May and September to November (Saida, 2005).

##### **1.2 Economic**

According to the Ugandan 2011 population survey, it is estimated that the country has a population of about 37 million people.

The agricultural sector which forms the cornerstone of the Ugandan economy accounts for about 40 per cent of the total Gross Domestic Product (GDP), over 70 per cent of total exports and about 80 per cent of employment. Eighty five per cent of Uganda's population live in rural areas and depend mainly on agriculture for their livelihood (Fashoyin, Herbert, & Pinoargote, 2003).

Although Uganda is not rich in minerals, oil was recently discovered in north western Uganda. In addition, gold was recently discovered in the very remote Karamoja district in North East Uganda (Cassibry, 2013).

Between 1960 and 1970, Uganda was considered to be one of the most prosperous countries in Africa. It enjoyed an average growth rate of 5.3 per capita and a GDP growth rate of 2.4 per

annum. This was followed by a collapse of the commercial and industrial sector. This sector was formally controlled by the Asian population who were forcefully deported by the President Idi Amin. This led to the collapse of the economy and the country has been struggling ever since (Barya, 1990; Saida, 2005).

### **1.3 Political**

Uganda gained political independence from Britain on 9 October 1962. From 1960 to 1970, it was considered one of the most prosperous countries in Africa. However, it has had a chaotic political history. Following independence, an undemocratic form of governance began. The first president was Kabaka Mutesa I who was later overthrown by Apollo Milton Obote (Obote) of the Uganda People's Congress (UPC). UPC led Uganda until it was overthrown by a military coup d'état in 1971 led by Idi Amin (Amin). The period under Amin has been termed by Barya (1990) as "the nine years of fascist military rule" and lasted until 1979. For a short period of time between 1979 and 1980 the Uganda National Liberation Front (UNLF) ruled Uganda until the 1980 general elections which brought Obote and his UPC back into power until he was overthrown by the Army again in 1985. This was followed by a short-lived military junta, under Lt-General Tito Okello Lutwa, which in turn was overthrown in 1986 by a guerrilla movement known as the National Resistance Movement (NRM). Its armed wing was the National Resistance Army (NRA) under the leadership of Yoweri Kaguta Museveni (Museveni). The NRM still rules Uganda in a decentralized system of governance (Barya, 1990; Saida, 2005).

## **2. THE EVOLUTION OF THE UGANDAN LABOUR DISPUTE SYSTEM**

### **2.1 Introduction**

This section describes the historical development of the trade dispute legislation and the trade union movement of Uganda between the pre-independence period from 1894 to the present. Uganda's labour movement history has had very dramatic turns of events. It is one of only a few countries where politics has played a significant role in its development, even after it gained its independence. The developments that will be discussed are closely related to various historical and political phases through which Uganda has passed; significant periods are 1894-1962 (pre-independence), 1962-1971 (Obote 1), 1971-1979 (Amin), 1980-1985 (Obote II), 1986-2006 (NRM) and 2006 to the present Multi-party system.

Colonised by the British in 1894, Uganda integrated into the emergent world capitalist system. However, it was not until the 1920s that labour began to collectively organise itself due to the introduction of a monetary economy rather than the barter system of trade previously used. In addition, the commodification of labour which was then semi-proletarian and immigrant also contributed to the organisation of Ugandan labour.

The British encountered opposition from Ugandan kingdoms when they tried to impose dominion. The Buganda kingdom cooperated with the British which resulted in the signing of The 1900 Agreement between them. This agreement redistributed land between the Buganda Kingdom hierarchy, private landlords and the British. It also created a “voluntary” supply of labour for the government, Christian missions, private settlers and planters. The voluntary supply of labour was later abolished and replaced by a paid forced labour system called “kasanvu” and this too was later abolished in 1922, because of its social effects. The abolishment of “kasanvu” resulted in further shortage of labour for the Ugandan economy which led to the establishment of a Labour Department in 1925 and a private recruiting organisation, approved by government, to oversee and recruit immigrant workers respectively which led to most of the labour being migrant.

The only employee-related Act was the Masters and Servants Ordinance, No.19 of 1913. Other legislations that were enacted were the Trade Unions Ordinance, No.18 of 1937, the Trade Unions Ordinance (Amendment) Ordinance, No.46 of 1941 and the Trade Unions and Trade Disputes Ordinance, No.9 of 1943 but these did not have practical significance on Uganda as they were results of other Colonial struggles throughout the world. However, this changed with the enactment of the Employment Ordinance, No.13 of 1946 which repealed the Masters and Servants Ordinance, No.19 of 1913. The 1945 general strike led to the enactment of the Trade Disputes (Arbitration and Settlement) Ordinance, No.19 of 1949 and the Trade Unions Ordinance, No.10 of 1952 (Barya, 1990). This period also reported the first trade unions as early as 1922 (Scott, 1966).

The post-independence era, 1962-1971 (Obote I), had an immediate and dramatic effect upon the relations between the trade union movement and the new government. The new government under Obote of the UPC wanted to redesign the industrial relations legal framework as set up under Colonialism by restricting its liberal, voluntary character and enhancing the state control aspects of the law; one way they could achieve this was through the legislations (Barya, 1990).

The acts that were passed under this new government were the Public Service (Negotiating Machinery) Act, No.78 of 1963; the Trade Unions Act, No.11 of 1965 and the Trade Disputes

(Arbitration and Settlement) Act, No.20 of 1964. A standing Industrial Court was also established (Barya, 1990). Obote also developed a “move to the left” strategy with the intent of creating a socialist society with the 1970 Act but this was not successful as Amin overthrew the government in 1971 (Barya, 2010).

The next significant period is from 1971 to 1979 under Idi Amin. The Obote I regime was overthrown by the army in a coup led by Idi Amin in January 1971. Initially, the Amin coup supported organisational autonomy of trade unions but later became repressive. The legislative changes were the Trade Unions Act (Amendment) Decree, No.29 of 1973; the Trades Disputes (Arbitration and Settlement) Act (Amendment) Decree of 1974 and the Trade Unions Decree, No. 20 of 1976 (Barya, 1990). The Uganda Labour Congress (ULC) was abolished and the Trade Unions Act established the National Organization of Trade Unions (NOTU) and all the unions had to affiliate to NOTU (Ananaba, 1979).

The Obote II era was the next significant period from 1980 to 1985. The UPC/Obote group returned to power after an election that was widely accepted as having been rigged. Although the majority of workers and trade unionists were opposed to the Obote II regime, they were not politically organized and had to either be for the UPC/Obote II regime or remain autonomous. This led to the failed attempts by trade unions to form a Labour Party in 1980. The trade unionists' ability to engage in parliamentary politics was made possible due to a 1973 amendment allowing trade unionists to become Members of Parliament (MPs) (Barya, 1990). This period was characterised by repression and imprisonment of many workers and union leaders and repression of the industrial court (Barya, 2010). There were no legislative changes during the Obote II regime.

The final leadership change was in 1986 under the National Resistance Movement (NRM) government led by Museveni. When NRM came to power it found a faction-ridden and polarised trade union movement and initially encouraged freedom of association for unions. However, it gradually shifted and became one of the leading ideologists of market forces, liberalisation and privatisation yet the nature of neo-liberalism negated the existence and functioning of trade unions. In addition, new investors and employers casualised the labour force and refused to recognise them adding to the divisions and leadership wrangles within the trade unions. The government also allowed the industrial court to operate independently until 1995. Worker MPs did not help the cause of workers (Barya, 2010).

In 2005, Uganda saw considerable political and legislative changes. The government held a referendum which decided that the country should move from a no-party to a multi-party system.

Legislatively, the trade union movement, with support from the Federation of Uganda Employers (FUE), spearheaded the labour law reforms in 2006. There were demands for the reform and modernisation of labour laws so as to bring them in line with ratified ILO ratifications and conventions. Thus the Employment Act, No.6 of 2006, the Labour Disputes (Arbitration and Settlement) Act, No.8 of 2006, the Labour Unions Act, No.7 of 2006 and the Occupational Safety and Health Act, No.9 of 2006 were all passed (Barya, 2010).

## **2.2 1894-1962 (Pre-independence)**

Uganda was incorporated into the emergent world capitalist system by British colonisation which formally began in 1894 but it was not until the mid-1920s that wage labour began to organize following the introduction of a monetary economy and the commodification of labour after World War II (Barya, 1990). From the time of colonisation up to about the end of World War II, Uganda's labour force was largely "semi-proletarian and immigrant" and thus there was no material basis for its collective organisation (Barya, 1990).

When the British tried to impose their dominion on Uganda, some kingdoms opposed them apart from the Kabaka (king) of Buganda. In return for that co-operation the British excised a considerable portion of Bunyoro land known as the "last counties" and gave it to the Kabaka. The last counties later became an important political issue which was eventually settled after independence (1962) when the vast majority of the Banyoro voted in a referendum in favour of being merged with the kingdom of Bunyoro (Ananaba, 1979; Scott, 1966).

The basis for the country's colonial exploitation only began with The 1900 Buganda Agreement. From 1900 to 1909 colonial policy created a "voluntary" supply of labour for government, Christian missions, private settlers and planters by the imposition of various taxes on the African population but this policy only had limited success in forcing Africans to work and thus labour shortage persisted. Therefore from 1909 to 1922, the colonial state introduced a paid forced labour system called "kasanvu" where every tax-payer was obliged to work "for the usual wages, for at least one month in each year - unless engaged in permanent employment". But this system was abolished in 1922 because of its social effects (Barya, 1990).

Wage labour mainly consisted of peasants who worked only part of the year essentially to fulfil "kasanvu" obligations prior to 1922. But the abolition of "kasanvu" aggravated the shortage of labour for the colonial state and economy. For this reason a Labour Department was established in 1925 and a private recruiting organisation was approved by government to oversee and recruit

immigrant workers. Therefore most workers in Uganda came from Rwanda and Burundi in order to fulfil the economic and state requirements in central Uganda namely Buganda. This situation would change after World War II. Apart from being immigrant, this labour was predominantly casual thus were not inclined to organize (Barya, 1990).

Initially, organisations and resistance against the British was against the 1900 Agreement over distribution of land. However this changed in the 1930s as resistance had widened to include opposition to racial discrimination in trade and employment especially in the Civil Service. Labour Organisations began to form in the 1930s. With the signing of The 1900 Buganda Agreement, peasants (bakopi) and Clan Heads (Bataka) opposed the land settlement. The clan heads formed the "Bataka movement" but this movement was compromised with the passing of the Buganda Parliament (Lukiiko) in 1927 of the "Busuulu" and "Envujjo" Law which gave security of tenure to peasants by fixing rent (busuulu) and tribute (envujjo). And as long as the peasants met these obligations and kept the land cultivated to satisfy the metropolitan demands for cash crops especially cotton, they could not be evicted except by court order. This law compromised the Bataka Movement by limiting the landlords' access to social surplus needs. For this reason, the landlords in Bulunge Bua Buganda organised but because of their narrow base, the organisation was replaced by the Uganda African Welfare Association (UAWA) in 1934 (Barya, 1990).

UAWA mainly wrote petitions and raised various complaints to the British. Although it advanced the grievances of peasants, traders and workers, UAWA was essentially a paper organisation that did not achieve much in 1938. The "Bana ba Kintu" (Descendants of Kintu) and the Uganda African Motor Drivers Association (UAMDA) were established in the 1930s. The Descendants of Kintu primarily voiced grievances of rich peasants and traders, and also general demands including those of wage-earners. The other organisation of wage earners was the Civil Servants' Association (CSA) but other groupings of wage earners in other sectors were developing (Barya, 1990).

But by 1938, the Inspectorate of Labour recognised only the Association of Civil Servants, the Uganda African Civil Servants Association, the Uganda Asiatic Civil Service Association and the European Civil Service Association. However, there were noted indigenous formations among Africans in the nature of guilds, craftsmen, artisans and bus drivers. The Uganda African Civil Servants Association (UACSA), originally called the British government Native Employees Association (BGNEA), when formed in 1922, championed the interests of African clerks and professionals trained at Makerere College such as medical, veterinary, agricultural and



engineering assistants. The main driving force of the UACSA was dissatisfaction with racial discrimination in the civil service terms and conditions of work (Barya, 1990).

However, many of the colonial civil servants were rising "petty bourgeoisie" and had little contact with unskilled labourers and many were eventually appointed as chiefs and ministers in the Buganda government. Many became successful farmers and traders because of their comparatively higher wages. UAMDA also happened to be a diffuse organization as its members were the young taxi drivers in Kampala and also taxi owners so, as it demanded higher wages, it would also demand high government subsidies for the owners (Barya, 1990).

### **2.2.1 Legislation**

Legislatively, the only employee-related Act was the Masters and Servants Ordinance, No.19 of 1913 which regulated the obligations of employees towards their employers and vice versa and placed certain restrictions on the recruiting of labour (University of Illinois, 2010). In 1937, the first trade union statute, the Trade Union Ordinance, No. 18 was enacted in Uganda. It was a simple Ordinance whose enactment had more to do with developments in British Colonies than with the organisation, at the time, of Ugandan workers. For example, there were strikes and disturbances in the Caribbean Territories in 1935 and 1937 thus the Colonial Office sent despatches to colonies urging them to improve labour conditions and set up or strengthen Labour Departments or Inspectorates. In April 1937 Indian artisans went on strike disrupting all construction work on new buildings in Nairobi, followed by several strikes by Kenyan workers in various companies and in different towns between April and May. Therefore, the Trade Union Ordinance, No. 18 was enacted to conform to similar enactments in Kenya and Tanganyika. It was not seriously opposed by employers nor was it applied because at the time labour was still largely unorganised (Barya, 1990).

The primary importance of the 1937 Ordinance is that for the first time in the history of wage labour in Uganda the right to form a trade union was granted. Following the United Kingdom 1871 Trade Union Act, restraint of trade would not be deemed criminal conspiracy nor would it be unlawful "so as to render void or voidable any agreement or trust". However these immunities would apply only to a registered trade union. The use of this law depended upon the level of organization and consciousness of the Ugandan workers (Barya, 1990).

In 1941, a model Trade Union Ordinance, based on British legislation and practice was sent to all colonies in a circular despatch by the Secretary of State. It was this despatch and the provisions

of the Colonial Development and Welfare Act of 1940 that led the colonial state to enact the 1941 and 1943 amendments. The Trade Unions (Amendment) Ordinance, No.46 legalised peaceful picketing and granted trade unions immunity from “tortious action” committed by or on behalf of a union in contemplation or furtherance of a trade dispute. This amendment followed the United Kingdom’s 1906 Trade Disputes Act (Barya, 1990).

The 1943 Trade Unions and Trade Disputes Ordinance No. 9 replaced the 1937 Ordinance. However with these new acts, there was no recorded evidence that trade union law between 1937 and 1943 had any practical importance, partly because it had been initiated by the colonial state and not by workers' demands or struggles as in Kenya (Barya, 1990).

Another major development was the Employment Ordinance, No.13 of 1946 which replaced the 1913 Masters and Servants Ordinance, No.19. The Employment Ordinance, No.13 of 1946 was meant to enact provisions protective of labour, that is, the full application of the Convention No. 65 of 1939 "in the progressive abolition of all penal sanctions for breaches of contracts of employment by indigenous workers", ensure that employers provided minimum housing, diet and medical care and also regulated the movement of recruited workers from places of employment, et cetera (Barya, 1990).

In 1949, the Trade Disputes (Arbitration and Settlement) Ordinance, No.19 replaced the Trade Unions and Trade Disputes Ordinance, No.9 of 1943. A statutory dispute settlement process was instituted for the first time with the new ordinance but the use of the dispute settlement process was voluntary for general dispute because both parties would have to consent to the appointment (ad hoc) of an arbitration tribunal by the Governor. Compulsory arbitration was also instituted for essential services. No employer would declare a lockout or any worker a strike unless the specified arbitration procedure had been followed. The essential services were water, electricity, public health, hospital and sanitary services (Barya, 1990).

In 1950, the 1949 Ordinance was amended and three innovations were made. The Trade Disputes (Arbitration and Settlement) (Amendment) Ordinance, No.23 increased essential services to include those similar services offered by the private sector, the Governor now had the power to reduce or increase the scheduled essential services and lastly, it was an offence for any person, whether a trade union official or not, to counsel or procure strikes before complying with the statutory dispute settlement procedure and this was added following the United Kingdom’s Trade Disputes and Trade Unions Act of 1927 (Barya, 1990).

An Act that was a direct result of Ugandan workers' struggles was enacted and it was the Trade Unions Ordinance, No.10 of 1952. It was a product of a strike that took place in 1945. Its provisions were divided by Barya (1990) into three categories. Firstly, were those provisions which guaranteed the formation of trade unions with specific positive rights. Secondly, there were provisions meant to ensure state control and thereby pre-empt a left-wing politicised trade union movement. Thirdly, there were paternalistic aspects meant to nurture some form of democratic administration of union affairs. In general, the 1952 act aimed at generating basic trade union rights and freedom of association but only under state control and guidance.

As mentioned, the 1952 Trade Union Ordinance, unlike the 1937-1943 legislation, were a result of the cumulative workers struggles in Uganda, Kenya, and other British Colonies. The first union to register under the 1952 Ordinance was the Kampala Local Government Staff Association. Although it claimed to be multi-racial, it was mainly composed of European and higher-paid Asians with only one African member although originally other Africans had joined (Scott, 1966).

In the six years that followed, thirteen trade unions representing 7,370 workers were organised. By 1961, the number of registered trade unions had increased to thirty-four representing a total membership of 39,862. In 1955, the unions founded the Uganda Trade Union Congress (UTUC) which existed in relative peace and unity until 1960 when there were periodical divisions over leadership (Ananaba, 1979; Scott, 1966).

Uganda's trade unions developed under the tutelage of the British Trade Union Congress (TUC) and the International Confederation of Free Trade Unions (ICFTU). They were at the centre of the Cold War and as such developed under what elsewhere was called "Cold War unionism". These organisations taught Ugandan unions to be apolitical from the end of the second world war to independence in 1962 (Barya, 2010).

### **2.3 1962-1971 (Post-colonial Obote I)**

Uganda gained independence from the British in 1962. The first post-independence election, held in 1962, was won by the alliance between the Uganda People's Congress (UPC) and the Kabaka Yekka (KY). These two formed the first post-independence government with Apollo Milton Obote as Executive Prime Minister and the Buganda Kabaka Edward Muteesa being the President. However in 1966, following a power struggle between the Obote-led party (UPC) and the Kabaka, the UPC-dominated parliament changed the constitution and removed the King without first calling an election. Obote was declared an executive president in 1967 (Barya, 1990).

According to Barya (1990), Obote sought to redesign the colonial industrial relations legal framework by restricting its liberal voluntary character and enhancing the state-controlled aspects of the law. This was because the government intended to restrict the militant political trade unionism that prevailed from 1962 to 1964 which explained the postcolonial industrial relations legislation enacted from 1963 to 1965. The second and long term aim of the government was to curb industrial disputes, enhance industrial peace and thereby attract foreign investment for economic development (Barya, 1990). This explains, as mentioned above, why Uganda was considered to be one of the most prosperous countries in Africa between 1960 and 1970 with an average growth rate of 5.3 per capita and a GDP growth rate of 2.4 per annum (Saida, 2005).

In 1961, the Uganda Trade Union Congress (UTUC) split because the Jinja-based unions accused the Kampala-based unions of dominion and neglect. Additionally, ideological and leadership differences reinforced the split. At this time, J. Reich and his supporters from the Jinja unions launched an alternative union centre called the Uganda Federation of Labour (UFL). Although the Labour Commissioner at the time would have preferred only one centre, the 1952 Trade Union Ordinance made no provision regulating national centres - thus there was nothing the Labour Commissioner could do about the development (Barya, 1990).

UFL and UTUC represented two opposing ideological concepts of trade unionism. UFL, which was formed due to UTUC's neglect of Jinja unions, began to associate itself with UPC after it had won the April elections preceding Uganda's independence in October, 1962. By the end of 1961, J. Reich had resigned and become a Deputy Mayor and a Personnel Officer at Madhivani Sugar Factory in Jinja. Some unions returned to UTUC and UFL declined. UPC, prior to the 1962 elections, did not have any commitment to either UTUC or UFL (Barya, 1990).

UFL began to shape its ideological character and allied itself with the UPC-Youth League (UPC-YL). In concert with UFL, UPC-YL encouraged political and militant unionism. It was this alliance of political and trade union organisation that fuelled the high expectations of workers from political independence - leading to numerous strikes and other industrial action (Barya, 1990).

Politically, the UPC-YL and UFL demanded respect for the new African government by the British and Asian capitalists. For example, they wanted to enforce the display of the President's and Prime Minister's portraits in business premises and removal of the Queen's portrait. The UPC-YL and UFL organised strikes and demonstrations against Asians who had previously clearly allied themselves with the colonial regime. In 1964 and 1965 the UPC-Youth League led demonstrations

against western embassies, in Kampala, on several issues affecting Uganda's interests (Barya, 1990).

The Labour Consultative Council (LCC) and the Industrial Relations Charter were the main institutions of the tripartite industrial relations system preferred by government. The LCC was inaugurated in 1962 replacing the colonial Labour Advisory Board. Its terms of reference were to advise the Minister of Labour on all matters affecting labour policy and legislation, to keep under review the state of industrial relations and such problems relating to employment that may arise (Barya, 1990).

Because of the endless feuds between the two unions, the Uganda Labour Council (ULC) was formed in 1962 in an endeavour to bring unity between both unions. However, this did not mean unity in the trade union movement as the UTUC virtually led the new ULC. ULC pledged to "strengthen the union movement by encouraging the formation of a few strong viable self-reliant national unions, to concentrate on workers' education, create Youth and Women's Wings and publicise the importance of trade unionism". Further, the ULC declared its support for tripartite institutions and the desire to seek membership on Boards of Directors of public and parastatal bodies. Finally, in conformity with government policy of positive non-alignment and support for a Pan-African union federation, ULC pledged to "support any moves and initiatives aimed at achieving a truly Pan-African trade union centre" (Barya, 1990).

However, the ULC did not achieve much in its one and half years' existence. Organisational and financial problems and ideological and leadership conflicts sparked off a crisis in April 1968 and thus the UPC government took advantage of the conflicts, suspended the ULC, closed its offices and took over its assets. On 1 May 1968 (Labour Day), Obote openly declared that, for the first time, the labour movement had entered a new era and therefore should be part and parcel of UPC.

### **2.3.1 Legislation**

In 1963, the Public Service Act was introduced to handle dispute settlement processes especially disciplinary action, appointments and dismissals of public officers. It also established a Joint Staff Council (JSC) which would be appointed from nominees of the Permanent Secretary and the relevant trade unions. The objectives of the JSC were "to secure the greatest measure of co-operation between the government, in its capacity as employer, and junior public officers, to provide machinery for dealing with grievances of junior public officers and to enable consultation

to take place in matters affecting the well-being and efficiency of the public service". The functions of the JSC were: to negotiate terms and conditions of service of junior public officers and those below them, to advise government on any matter and "generally to assist in the furtherance of good relations between the government and junior public officers" (Barya, 1990). The act prohibited any junior public officer from taking part in a strike.

The Industrial Charter of 1964, though originated from the Federation of Uganda Employers (FUE) at an LCC meeting in 1962, was derived from the Kenyan Charter of October 1962 and was encouraged by government. Discussions of the Industrial Charter arose because trade union leaders were looking for an alternative to restrictive labour legislation. Negotiations soon followed between FUE, UTUC and government, and the Industrial Relations Charter was signed on 1 June 1964 between FUE and UTUC with government as a witness and not a party (Barya, 1990).

According to Barya (1990), the Industrial Relations Charter set out three main principles.

The first principle was the recognition of union and employer rights of organisation which meant that the management and unions would respect each other's rights to freedom of association for example, management would recognise unions, accord reasonable facilities for normal union functioning while unions on their part acknowledged that management had the exclusive right and power to manage its undertaking and to engage, promote, transfer, demote or lay off employees and to discipline, suspend or discharge employees for just cause (Barya, 1990).

The second principle was the acceptance of legal, constitutional and peaceful dispute settlement procedures. That is both sides, in accordance with democratic principles, would settle all future differences, disputes and grievances by mutual negotiation according to the Trade Disputes (Arbitration and Settlement) Ordinance of 1952, abide by the spirit of agreements mutually entered into, settle industrial disputes at appropriate levels and according to the laid down procedure, failing which disputes would be referred to the government-established machinery (Barya, 1990).

The third principle was the acceptance of tripartite bodies. That is, labour and employers would participate constructively in tripartite bodies which may be formed by government in order to achieve a connection between them for the purposes of examining labour policy and legislation, fostering industrial co-operation, and raising industrial efficiency and productivity, so as to build up the economic prosperity of Uganda (Barya, 1990).

The Charter was a voluntary agreement which was not legally enforceable but simply an agreed reference point. In the Charter, both FUE and UTUC stated their belief that consultation, co-operation and mutual understanding were essential for the achievement of efficiency and productivity which would in turn be a foundation for good terms and conditions of employment (Barya, 1990).

In 1964, the Minister of Housing and Labour, G. B. K. Magezi presented the Trade Disputes (Arbitration and Settlement) Bill confirming government's encouragement of voluntary industrial relations and that the state would only get involved when the disputants could not reach an agreement. The main developments of the new Act were that the settlement procedure had been prolonged, the Minister of Housing and Labour was the overall supervisor, institutionalisation of industrial conflict resolution and to restrict strike action mainly in the essential services (Barya, 1990).

This Bill also established the formation of a standing Industrial Court, for the first time, in order to avoid the ad hoc appointments of arbitration tribunals for dispute settlement. The industrial court consisted of a President appointed by the Minister of Housing and Labour, an independent member and one representative for employers and workers respectively selected by the President (Barya, 1990; ILO/SLAREA, 2004).

Opposition to this Bill was widespread. Both UTUC and the opposition Democratic Party were concerned with the overwhelming powers of the Minister of Housing and Labour and the implications of the Bill for voluntary industrial relations. Even the media was not supportive of this Bill. Their reasoning for opposing the Bill was that the Industrial Relations Charter signed the previous month, and witnessed by the Minister of Housing and Labour introducing the new law had not been given a chance to foster voluntary industrial relations processes. However, such opposition did not change government's decision.

Another legislative change under this new government was the replacement of the Trade Unions Ordinance, No.10 of 1952 by the Trade Unions Act, No.11 of 1965 which came into force on 2 July 1965. Since independence in 1962, trade unions were governed by the Trade Union Ordinance, 1952. Firstly, the purpose of the Act was to amend and consolidate the law relating to the registration of trade unions. The Minister of Labour and the Registrar were given wide powers of control over unions to ensure that they were run in the interests of economic development. This was a consolidation of the "developmentalist philosophy" of the Trade Disputes Act and the Public Service Act. Secondly, government claimed it intended to foster the development of stable, viable

and financially - sound unions which would be less dependent on foreign aid as ULC never became self-sufficient. Its affiliates contributed only 10 percent of their income and many of them were always in arrears. ULC, like its predecessors UTUC and FUTU, continued to rely on foreign funds. Finally government claimed it intended to ensure democracy and accountability of union leadership. To encourage "responsible unionism", militant non-Ugandans would be excluded from leadership while, to encourage strong unions, employers would be required to some extent to recognise unions and a "check-off" system would be provided for. Basically, the new Act had taken away the liberalism and wider freedom of association of the Colonial Trade Unions Ordinance 1952 (Ananaba, 1979; Barya, 1990).

As mentioned above, the ULC was engaged in a phase of conflicts which eventually led to its collapse. There were quite a number of issues that caused splits within the Ugandan Trade Union movement. There was even a threatened trade union *coup d'état*. Issues on mismanagement of funds, bribery of union members by external sources, and failure to organise workers and co-operate with government in developmental efforts were some reasons for the collapse of the Ugandan Trade Union movement. In 1970, the Uganda Parliament passed a new Trade Unions Act which repealed the Act of 1965 (Ananaba, 1979).

After the publication of what was known as the Binasisa Commission Report on Trade Unions of 1968, this arrangement was brought to an end by the Trade Unions Act, 1970 which came into force on the 31st December 1970. The purposes of the new Act were stated to be: -

*"to establish and regulate an integrated employees' trade union, to dissolve the former Uganda Labour Congress and all other trade unions registered under the Trade Unions Act, 1965, to provide for the formation of branch unions, and for other purposes connected therewith."*

To explain the above, the new law dissolved all existing trade unions registered under the 1965 Act and reinstated the Uganda Labour Congress as a national trade union. Section 1 of the Act established a single trade union called Uganda Labour Congress which was to be the only trade union in Uganda. All the properties, rights, liabilities and obligations of the former Uganda Labour Congress and all other registered Unions were vested in the new Uganda Labour Congress by virtue of the Act. All the members of the abolished trade unions became automatic members of the Uganda Labour Congress and the new organisation was to have fourteen branches covering all categories of work in Uganda (Ananaba, 1979). The main aim of the 1970 Act was to destroy the organisational autonomy of the trade union movement.



Branch and sub-branch elections were to be held in January 1971, and ten delegates from each branch were to attend a conference in February 1971 at which the new ULC was to be formally launched. All the branches of the Congress were required to be registered with the Registrar as long as they had at least 1000 employees. Section 18(1)(e) of the Act provided:

*"a registered branch union, members of which are his employees, shall be the negotiating body with which the employer shall be bound to deal in respect of all matters relating to the relations between him and those of his employees who fall within the scope of membership of the registered branch union, if at least ten per Centum of such employees are members of the branch union"*

Unfortunately that conference could not be held because of the military coup d'état which toppled President Obote's government and brought Idi Amin to power (Ananaba, 1979).

#### **2.4 1971-1979 (Idi Amin Dada Dictatorship)**

1971 was meant to be the year for the implementation of the "Move to the Left" strategy where trade unions would be incorporated in the structure of the growing state bureaucracy under UPC dominion. However, the Idi Amin coup d'état halted the process and gave trade union leadership an opportunity to demand changes in the 1970 Act. Therefore, trade unionists were among the first elements of Ugandan society to welcome the Amin coup d'état, as they expected a guarantee of freedom of association. Ugandan trade unions went even further to disassociate themselves from the AATUF's call on world trade unions not to recognize the Amin government (Barya, 1990).

The importance of the Amin regime in the area of trade union and trade disputes legislation was its liberalisation while at the same time the practical utilization of this liberal law was denied. The period 1971 to 1974 saw a considerable liberalization of trade union and trade disputes legislation following the UPC-Obote I attempt to incorporate the unions into the economic structures of the "Move to the Left" and the erosion of many union rights (Barya, 1990).

Specifically, the Amin regime restored the organizational autonomy of the trade unions and made legal provisions guaranteeing a voluntary industrial relations system that included enforcement of legal rights which employers could otherwise deny unions or workers. However the coming into being of the 1973 to 1974 legislation was a result of the struggles of workers and trade unions with the backing of a liberal civilian Minister of Labour and Housing. The desire of the Amin regime to "cultivate a social base" created a favourable political context for the demands of the workers and unions to be met for the most part and therefore provided space for trade unions to regain

their organisational autonomy. This is why in 1973 and 1974, the legal amendments were not repressive (Barya, 1990).

Rumour has it that someone persuaded the new military government of Idi Amin that the 1970 Act had abolished freedom of employment and the right to form autonomous trade unions and that the name "Uganda Labour Congress" was not appropriate. So the new decree abolished the name and established the National Organization of Trade Unions (NOTU) and re-established the formation of trade unions whose minimum membership had to be at least 1000 members. All the unions had to affiliate to NOTU and to be registered by the Registrar. The decree provided that an employer would not be bound to recognise or negotiate with a union unless 51% of his employees were registered with the union. The decree conferred on NOTU more powers, beyond mere regulation of trade unions as had been the case (Ananaba, 1979). However, the role and importance of this new trade union came to depend upon the character of the state and the employers thus bringing to question its "liberality" (Barya, 1990).

According to Barya (1990), "liberal" trade union and trades disputes legislation was not used during Amin's era especially in the period from 1973 to 1979 because of the "Economic War" when Asians were expelled and the subsequent diplomatic and economic embargo from the West when Uganda's industrial base almost collapsed. This ultimately led to the weakening of trade unions as they lost members and the repressive industrial relations regime that employers and the state maintained. Additionally, the government's lack of legitimacy led to the adoption of repressive practices to ensure that there was no political opposition to it amongst the workers generally and trade unions in particular.

Although the Industrial Court always supported the rights of trade unions to exist and represent their membership, in practice the new employers, mafuta-mingi (both soldiers and civilians), who took over the Asians' seized properties generally ignored such awards, provisions of collective agreements and the law in general. This was expressed in the militarisation of industrial relations whereby managers and employers resorted to police and military force to resolve industrial conflict or simply to suppress any workers' opposition. To make matters worse, the President banned collective bargaining from 1974 to 1976 (Barya, 1990). This further undermined trade unionism and, in the end, working class gains of the 1960s were eroded in the 1970s and even the small labour aristocracy that existed was eradicated (Barya, 1990).

From 1974, leading members of the Amin regime reiterated the government's anti-freedom of speech and anti-freedom of political organisation openly and "*ad nauseam*". Due to the

atmosphere of repression, the Industrial Court was not unable to enforce its awards nor could unionists and workers (Barya, 1990).

Though the Minister of Labour continued to claim in public that the Amin regime was committed to voluntary industrial relations both in law and practice, that was not the case in reality. Industrial relations were militarised in the private and public sector, workers' protest at conditions of work brutally suppressed while union officials were constantly at risk of imprisonment, torture, dismissal and even death. These practices were not recorded and couldn't be reported in the official and private press (Barya, 1990).

One of the examples Barya (1990) was able to suffice was in one of the nationalised companies, the Manager transformed himself into transport officer, cashier, storekeeper, canteen supervisor and general supervisor. He did not follow the grievance procedures laid down but physically punished workers he considered at fault. In other cases, managers would use their employees as their home servants.

#### **2.4.1 Legislation**

The first legislative change under Amin's regime was the Trade Unions Act (Amendment) Decree, No.10 of 1971. This change was brought about during a period when the desire of the Amin regime was to get along with workers and unions. Trade union leaders called upon the new government to reverse the dissolution of autonomous trade unions and the centralisation brought about by the 1970 Act and, in response a temporary measure was adopted. The temporary measure was the Trade Unions Act (Amendment) Decree, No.10 of 1971 and it provided that "all trade unions registered under the Trade Unions Act 1965 shall continue as separate trade unions until such time as the Minister, shall, by notice published in the Gazette, dissolve them". The rest of the Act was active though (Barya, 1990).

The second legislative change was the Trade Unions Act (Amendment) Decree, No.29 in 1973. The 1973 Act was a true reflection of the government's intention to uphold principles of democracy in the trade union movement and to maintain the right of freedom of association of workers so as to enable them to negotiate with the employers on an equal basis. This Act was backed by the Ministry responsible for labour and the LCC but the cabinet was split over two different views regarding the very existence and rights of trade union, that is, the autocratic view and the liberal one pursued by the Ministry of Labour. Employers too objected to this act - however it was eventually enacted. This act was liberal as it reinstated the existence and autonomy of trade

unions on a permanent basis and also enhanced trade unions' freedom of association. It also reinstated the principle of voluntary industrial relations based on collective bargaining between autonomous unions and employers, overseen by the state. As mentioned above, this act also established NOTU (Barya, 1990; ILO/SLAREA, 2004).

The third major amendment during Amin's regime was the Trade Disputes (Arbitration and Settlement) Act (Amendment) Decree, No.18 of 1974 which repealed the Trade Disputes (Arbitration and Settlement) Act of 1964. The new Act aimed at relatively speeding up the dispute settlement procedures and this was because one of the loopholes of the 1964 Act was that both parties should agree to refer a dispute to the Industrial Court during the resolution process. The minister was now empowered to refer a dispute to the Industrial Court without the consent of both parties to a dispute. The act also aimed at making an award enforceable on a headstrong employer which therefore made it an offence for any employer to fail or refuse to implement an award of an arbitration tribunal or Industrial Court within twenty-eight days from the date of its publication. Lastly, the act aimed at making the Industrial Court more independent of the Minister as it was now empowered to announce its awards and have them gazetted without ministerial approval. This act also established for the first time a Trade Unions Tribunal to determine especially on some disputes within a union or between unions (Barya, 1990).

The 1974 amendment to the 1964 act was really a result of workers' struggles which had precipitated both trade union leaders and government to strive to improve the grievance handling machinery. This became possible due to the support of the liberal civilian Labour Minister's and the government's desire, before 1974 at least, to retain workers' support (Barya, 1990).

The final legislative change was in 1976, that is, the Trade Unions Decree, No.20. This decree was an amendment to the trade union's act and was a result of a cumulative pattern of embezzlement of union funds by some officials, bribery of union members by external sources and failure to organize workers and co-operate with government in development efforts. This therefore prompted the Minister of Labour to wage a lone battle against the practise and to ensure that the 1976 Amendment was made. Section 14(1) of the 1976 Decree empowered the Registrar of Trade Unions to interdict or suspend any officer or his representative of a trade union if satisfied that such officer had misused, misappropriated or mismanaged the funds or affairs of the trade union. This act was a positive attempt to protect trade unions from unscrupulous leaders (Barya, 1990).

## **2.5 1980-1985 (Obote II)**

The UPC/Obote group came back to power after an election widely accepted as having been rigged. Although the majority of workers and trade unionists were opposed to the Obote II regime, they were not politically organised and thus had to make choices, either become for the UPC-Obote II regime or remain autonomous. This led to the failed attempts by trade unions to form a Labour Party in 1980. An attempt by the trade union movement to draw out a political programme and even form a Labour Party was aborted by a section of the trade union leadership and one of the reasons was because they were not politically organised and lacked sufficient support among the workers and trade unions, in a situation where armed political opposition to the government now existed. The trade unionists' ability to engage in parliamentary politics was made possible due to the 1973 amendment allowing trade unionists to become MPs (Barya, 1990).

Because of the unsuccessful attempt to form a labour party, the trade union movement was open to political interference by government and the ruling Party, UPC. The ruling government continued to try and control the trade union movement for example to split and take over the union movement by sponsoring a rival trade union centre. This was unsuccessful as the trade union movement leadership was much more determined and resisted these ploys. The government therefore resorted to repression and illegal intervention in union affairs (Barya, 1990).

However, though trade unions tried hard to stay strong despite the political interventions, they were still largely responsible for the negation of union democracy and the consequent weakening of the trade union movement. This leadership struggle was fuelled by factors both internal and external to the unions (Barya, 1990).

In a move to further weaken the trade union movement, the government suppressed the Industrial Court. The government also feared that the Court personnel could be sympathetic to anti-government political organisations and the anti-government official trade union movement. The economic crisis and the Obote II regime's distrust of trade unions and workers thus generally coincided to make the legal dispute settlement process redundant (Barya, 1990).

Because the industrial court was inoperative, that meant that only conciliation and arbitration were formally available as remedies for trade disputes. But the finality of Industrial Court awards was not available because the terms of service, of most Panel members of the Court expired in 1980, and that of the President in 1981; thereafter no new Panels or President had been appointed.

Workers were therefore given no choice but to accept any outcome of collective bargaining where unions were recognised or to go on strike illegally (Barya, 1990).

In this period no changes in legislation took place and as such the legislation originating from the colonial era and the post-colonial period between 1974 to 1976 remained the framework of operation for the trade unions and workers in general (Barya, 1990).

## **2.6 1986- 2005 (National RResistance Movement- Y.K Museveni)**

When the NRM government came to power, it found a faction-ridden and polarised trade union movement (Barya, 2010). Despite NRM being the most radical political organisation to come to power in Uganda since independence it had no clear programme or role for workers. The government's basic policy document did not give them or trade unions any specific role. The reason for this was because the NRM organised itself as a guerrilla movement (1981-1986) mainly in the countryside and among the peasantry (Barya, 1990).the government initially encouraged freedom of association for unions and Trade unions played a role from 1986 to 2006. They participated through Boards of Directors of parastatals. Unions participated in different tripartite institutions and in parliament (Barya, 2010).

From 1997, workers through NOTU became part of the ruling movement structure; for example, they had a representative on the National Executive Committee (NEC) and five representatives at the National Conference but they failed to produce any policies, resolutions or programs for workers. The NRM also emphasised and supported womens' emancipation and thus NOTU and its affiliates created women's wings and ensured that women occupied top positions within NOTU (Barya, 2010).

However, the government radical views gradually shifted and became one of the leading forces for market forces, liberalisation and privatisation yet the nature of neo-liberalism negated the existence and functioning of trade unions. In addition, new investors and employers casualised the labour force and refused to recognise them adding to the divisions and leadership wrangles within the trade unions. The government also allowed the industrial court to operate independently until 1995. But because of the government's increasing entanglement in liberalization and privatization, it opposed the inhibiting force of the processes, for example it resisted the fixing of a minimum wage and it intimidated the industrial court. Disputes had, at times, been heard within the Ministry of Labour instead of being referred to the industrial court, especially those disputes

regarding non-recognition of unions by the so-called investors. Worker MPs did not help the cause of workers as they were members of the NRM and thus had to support NRM views (Barya, 2010).

### **2.7 2006 – to the present (Multi-party politics)**

In 2005, Uganda saw considerable political and legislative changes. The Museveni-led government held a referendum which decided that the country should move from a no-party system to a multi-party system (Barya, 2010).

Trade unions were further disempowered and their decision to take a political stand greatly undermined their ability to operate throughout Museveni's leadership. They entered a client-patron relationship with the government. Today, Trade union leadership has been thoroughly incorporated into the NRM regime structures, both in the party and in parliament. However, despite having worker MPs, NOTU and COFTU have no control over them and they do not seem to consider the plight of workers (Barya, 2010).

The presence of worker MPs has presented a number of challenges to the trade unions. That is, these MPs are not organisationally - linked to the NOTU constituents and their electorate; they are not catered for within NOTU structures, and NOTU has no control over them and gives them no instructions. They are therefore not accountable to NOTU or the workers. COFTU has one MP in parliament but the situation is no different from NOTU. At times, MPs have taken positions contrary to NOTU or other union interests and they have also acted in opposition to each other. Rather than representing workers, they have in fact represented government in parliament which is in opposition to what workers need. They have also represented government's positions and interests to workers rather than workers positions and interests to government. The MPs claim that they are unable to make an impact because their representation in government is so small (Barya, 2010). During the 2011 election, all five worker MPs contested on the NRM ticket. Therefore, due to their political affiliation workers' MPs are under pressure to support government interests in Parliament rather than workers' interests (Ainslie & Bunya, 2011).

The trade union movement, with support from the Federation of Ugandan Employers (FUE), spearheaded the labour law reforms in 2006. There were demands for the reform and modernisation of labour laws in Uganda to bring them in line with ratified ILO ratifications and conventions. The new laws were to overhaul the old laws, giving them meaningful and unrestricted rights and freedoms of association to workers, better dispute settlement processes, new rights for workers in the employment relationship. But government was reluctant to pass

these new laws as they regarded them as “anti-investor”. However, with added pressure from the United States of America (USA) and with threats of being banned from the African Growth and Opportunity Act (AGOA), the new laws were passed before March 2006. Thus the Employment Act, No.6 of 2006, the Labour Disputes (Arbitration and Settlement) Act, No.8 of 2006, the Labour Unions Act, No.7 of 2006 and the Occupational Safety and Health Act, No.9 of 2006 were all passed and they will be discussed below (Barya, 2010).

### **3. CURRENT STATE OF THE SOCIAL PARTNERS AND TRIPARTITE STRUCTURES**

#### **3.1 Trade unions**

The current number of registered trade unions in Uganda is approximately forty (40). Almost all of these trade unions are affiliated to one of the country’s two national federations of unions; the National Organization of Trade Unions (NOTU) and the Central Organization of Free Trade Unions (COFTU) (Ainslie & Bunya, 2011).

NOTU was established in 1973, under the regime of Idi Amin, and at that time all unions were required to affiliate with it. Together with their Kenyan and Tanzanian trade union counterparts, Uganda Trade Unionists formed the East African Trade Union Consultative Council (EATUC) in 1988. NOTU is itself affiliated to the international Confederation of Free Trade Union (ICFTU) and the Organization of African Trade Union Unity (OATUU), Accra (Saida, 2005).

COFTU was formed in 2003 by members who had split from NOTU as a result of differences of opinion on administrative and ideological issues (Ainslie & Bunya, 2011).

#### **3.2 Employers’ organizations**

The main employers’ organization is the Federation of Uganda Employers (FUE). FUE was founded in 1958 and registered in July, 1960. It was formerly known as the Society of Ugandan Employers but gained its current name in 1961 after its merger with the Federation of Industry. The FUE is affiliated to the East African Business Council and the Pan-African Association, and its membership comprises public and private sector companies, corporate bodies, schools, hospitals, sectoral associations and non-governmental organizations (NGOs). It represents employers in statutory bodies such as the Labour Advisory Board, the Board of the National Social Security Fund, the Minimum Wages Advisory Board and the Private Sector Business



Development Supervisory Committee (Fashoyin et al., 2003; Labour Administration and Inspection Programme, 2012).

FUE's mission is "to offer the most valuable advisory, training and consultancy services on employment, human resource management and development issues and promote members' competitiveness by improving productivity and quality of work life". FUE provides representation on questions of economic and social policy, guidance on employment relations, training for human resource development, training on HIV/AIDS and assistance on small enterprise and entrepreneurship development to all its members (Fashoyin et al., 2003).

### **3.3 Labour Advisory Board (LAB)**

The main structure of social dialogue is the Labour Advisory Board (LAB). It was established and appointed in April 2011 but inaugurated in October 2011. The Board was established to advise the Minister on employment and industrial relations matters, the International Labour Organization, implementation of Child Labour Policy, regulation of employment agencies and bureaus, and overseeing of the dispute resolution process et cetera (Labour Administration and Inspection Programme, 2012).

According to the Labour Administration and Inspection Programme (2012), the Board is made up of:

*"an independent chairperson, representatives of the Ministries responsible for the Public Service, Finance, Education, Local Government, Trade and Industry, and Justice; representatives of employers' organizations; representatives of trade union organizations; representative of persons with disabilities; and the government agency responsible for environmental protection. The Secretary of the Board is the Commissioner responsible for Labour."*

### **3.4 Minimum Wages Advisory Boards and Wages Councils**

Section 3 of the Minimum Wages Advisory Boards and Wages Councils Act, 1957 makes provision for the Minister to appoint a minimum wages board if he or she considers desirable to fix a minimum wage and determine other conditions of employment for any employees or group of employees in any occupation. Composition of the board is the "chairperson, two other persons, assessors appointed by the chairperson who shall be persons with expert knowledge of any of the matters with which the board's inquiry is concerned, and an equal number of persons representing employers and workers directly connected with the occupation". However, the

system of minimum wage-‘setting has not been functioning since 1996 when the last attempt to review minimum wages was made but failed due to opposition from the President and Minister of Finance (Labour Administration and Inspection Programme, 2012).

#### **4.INTERNATIONAL CONVENTIONS**

Uganda is also a signatory to a number of ILO Conventions which promote freedom of association and right to organize and collectively bargain:

- 1) Convention No. 98 concerning the Right to Organise and Collective Bargaining (1949).
- 2) Convention No. 154 on Promotion of Collective Bargaining (1981).
- 3) Convention No. 144 on Tripartite Consultation (1976).
- 4) Convention No. 29 on Forced Labour 1930.
- 5) Convention No.105 on the Abolition of Forced Labour, 1957.
- 6) Convention No.138 on Minimum Wage, 1973.
- 7) Convention No.182 on Worst Forms of Child Labour, 1999.
- 8) Convention No.87 on Freedom of Association and Protection of the Right to Organize, 1948.
- 9) Convention No.100 on Equal Remuneration, 1951
- 10) Convention No.111 on Discrimination (Employment and Occupation), 1958.

#### **5. THE 1995 CONSTITUTION OF THE REPUBLIC OF UGANDA**

The supreme law of the country is the Constitution of the Republic of Uganda. It contains provisions aimed at protecting workers’ rights. Article 40 of the Constitution makes provision for economic rights where Parliament is mandated to enact laws to provide for the rights of persons to work under satisfactory, safe and healthy conditions, to ensure equal payment for equal work without discrimination; and to ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay, as well as remuneration for public holidays. Article 40

further guarantees the right of every Ugandan to practise his or her profession and to carry on any lawful occupation, trade or business. The Constitution further provides for the right of every Ugandan to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests; to collective bargaining and representation and to withdraw his or her labour according to law (The Young Leaders Think Tank for Policy Alternatives, 2011).

## **6. THE LEGISLATION OF 2006**

The following are the current laws that relate to employee relations.

### **6.1 The Labour Disputes (Arbitration & Settlement) Act no. 8 of 2006**

This act was enacted to revise the law relating to industrial relations, to repeal and replace the Trades Disputes (Arbitration and Settlement) Act, 1964, as amended by Decree No. 18 of 1974 (The Young Leaders Think Tank for Policy Alternatives, 2011).

The main purpose of this Act is to provide avenues of resolving disputes involving workers. The Act provides for the establishment of the Industrial Court, which is required to arbitrate on labour disputes referred to it under the Act and to adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law. This court is however, not operational. The Act also provides for other dispute resolution mechanisms such as the labour officer or a board of inquiry (The Young Leaders Think Tank for Policy Alternatives, 2011).

According to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006 of Uganda, a dispute, whether existing or apprehended, may be reported in writing to a labour officer. However, a labour dispute may only be reported to the Commissioner for Labour, or the Commissioner may on his/her own motion take responsibility for any labour dispute if it is, or is likely to become, a national disaster. The labour officer should react to a report of labour dispute within two weeks and deal with the report in more than one way. He could endeavour to conciliate and resolve the dispute between the parties, appoint a conciliator, refer the dispute back to the parties with proposals on how to settle the dispute, reject the report with reasons and inform the parties accordingly or inform the parties that the report has matters which cannot be dealt with under the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006.

The Labour officer may refer the dispute to the Industrial Court if, four weeks after receipt of a labour dispute, the dispute was not resolved and if the conciliator appointed by the Commissioner

does not see a likelihood of reaching any agreement. Therefore, the labour officer shall refer the dispute, at the request of any party, to the industrial court. If there are any arrangements for settlement by conciliation or arbitration between a trade union and an employer - regardless of number- the labour officer should not refer the matter to the industrial court but should ensure that parties follow the procedures for settling the dispute laid out in the conciliation or arbitration agreement.

### **6.1.1 Coverage**

Unfortunately, the Act does not differentiate between the different types of disputes that it covers. Therefore, all different types of disputes, that is, private sector and public sector disputes, collective and Individual disputes, Unionised and nonunionised disputes, disputes of rights and interests and disputes from the essential services are all covered under the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006.

According to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006, an employee means anyone who enters into a contract of service or an apprenticeship contract including, without limitation, a person who is employed by or for the government of Uganda, a local government or a parastatal organisation, but does not include a member of the Uganda People's Defence Force.

### **6.2 Employment Act No. 6 of 2006**

Employment relations in Uganda are primarily governed by the Employment Act No. 6 of 2006. Section 6 (1) of the Employment Act provides that "it shall be the duty of all parties including the minister, labour officers and the Industrial Court to promote equality of opportunity with a view to eliminating any discrimination in employment". In relating this provision to employment and the youth in Uganda, the law presupposes that the youth are entitled to access employment opportunities in the same manner as senior citizens in the country, because youth unemployment is a very big issue in Uganda.

The Employment Act of 2006, also has broad application as it covers all employees employed by an employer under a contract of service apart from exceptions for an employer's relatives, the military and possible ministerial exceptions. The Employment Act also established the Labour Advisory Board as per Section 22 (4) (The Young Leaders Think Tank for Policy Alternatives, 2011).

### **6.3 The Workers' Compensation Act 225**

The Workers Compensation Act 225 entitles employees to automatic compensation for any personal injury from an accident arising out of and in the course of his employment, whether the injury was as a result of his own mistake or not and, if it is an injury that leads to death, the compensation should be equivalent to an employee's monthly pay multiplied by 60 months (The Young Leaders Think Tank for Policy Alternatives, 2011).

### **6.4 The Occupational Safety and Health Act No. 9 of 2006**

This Act applies health and safety measures to every public and private sector workplace or working environment as defined in Section 2 of the Act. It requires the employer to provide compensation for any injuries sustained, diseases contracted or death suffered in the course of and as a result of employment and it also provides for general health and welfare provisions, including the provision of sound construction sites, proper ventilation of working environment, cleanliness, proper lighting, water, toilet services and first aid facilities for the workers (The Young Leaders Think Tank for Policy Alternatives, 2011).

### **6.5 The Labour Unions Act No. 7 of 2006**

Under the Labour Unions Act 2006, employees have the right to organize themselves into labour unions and participate in the management of the said unions, collectively bargain, engage in other lawful activities for the purpose of collective bargaining or any other mutual aid practice and withdraw their labour and take industrial action without interference from employers, as violation of this legal position is an offence on the part of the employer according to Section 5 of the Act (The Young Leaders Think Tank for Policy Alternatives, 2011).

However, even with the existence of this Act, many companies have refused to acknowledge the existence and function of trade unions besides eradicating any attempts to create them within the very companies. In addition, the existence of casual labourers have also proved to be a major challenge in formation of "sustainable trade unions" as their employment security is not guaranteed. According to the Employment Act, a casual labourer is defined as a person who works on a daily and hourly basis where payment of wages is due at the completion of each day's work (The Young Leaders Think Tank for Policy Alternatives, 2011).

### **6.6 The Minimum Wages Advisory Boards and Wages Councils Act Cap.164**

As mentioned on above, this Act provides for the establishment of Minimum Wages Advisory boards and wage councils, and for the regulation of the remuneration and conditions of employment of employees. The issue of the minimum wage remains a challenge in Uganda as the set minimum wages applying to various sectors of the economy are not reflective of the current economic state. The Mimmum Wages Advisory Board recommended that the economy could support a minimum wage of Shs. 75,000 per month for the unskilled labour uniformly applicable throughout Uganda; however the President and the Minister of Finance opposed this suggestion (The Young Leaders Think Tank for Policy Alternatives, 2011).

### **6.7 Business, Technical, Vocational Education and Training (BTVET) Act 2008**

The BTVET Act exists to address the redundancy of the different institutions for vocational training in Uganda and unemployment which has been a result of the scholar-oriented education system that provided minimal or no practical skills for students. It has steered the equitable distribution of vocational and skills training centres in Uganda but faces a major obstacle of limited government funding, absence of sufficient training and practice facilities/equipment, very expensive equipment to facilitate the work (The Young Leaders Think Tank for Policy Alternatives, 2011).

### **6.8 The Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, No. 62 of 2005**

This Act aims at promoting full employment and equality of employment opportunities for all and to uphold the dignity and rights of Ugandan migrant workers. It futher allows the deployment of Ugandans to countries which have existing labour and social laws or are signatories to international agreements protecting the rights of migrants and to protect every Ugandan desiring to work abroad by securing the best possible terms and conditions of employment (The Young Leaders Think Tank for Policy Alternatives, 2011).

## 7. STRUCTURE OF THE MINISTRY OF LABOUR

At this stage, it is also necessary to provide a brief description of the bodies responsible for the administration and enforcement of the country's labour laws. The ministry responsible for labour administration in the country is the Ministry of Gender Labour and Social Development (MGLSD) (Ainslie & Bunya, 2011). The government underwent structural reform programs and with a view of improving its efficiency and effectiveness, wanted fewer Ministries with smaller and effective management teams which led to the formation of the Ministry of Labour and Social Affairs through mergers of several Ministries. However, with government's decentralization policy and more structural reforms, more ministries were merged together to form the present Ministry of Gender, Labour and Social Development (MGLSD) (Labour Administration and Inspection Programme, 2012).

According to the Labour Administration and Inspection Programme (2012), the MGLSD is made up of:

*“A political head of the Ministry who is a Cabinet Minister who is assisted by four Ministers of State responsible for Gender and Culture, Disability and Elderly Affairs, Youth and Children Affairs, and Labour, Employment and Occupational Safety, respectively. At the administrative level, there is a Permanent Secretary who is the Chief Executive and Accounting Officer of the Ministry who is also supported by three Directors and ten Heads of Department. The Ministry has administrative and policy units to support the technical Directorates and other related agencies and bodies which fall under its political mandate.”*

The Ministry has three Directorates, namely, the Directorate of Labour, Employment and Occupational Safety and Health; the Directorate of Gender and Community Development; and the Directorate of Social Protection. The Directorate of Labour, Employment, Occupational Safety and Health is the main focus of this study as it relates to labour administration. This Directorate is responsible for the implementation of labour laws and policies and some of its functions include the formulation, implementation and enforcement of labour policies and laws, development and dissemination of national guidelines on labour and employment and inspection of workplaces to ensure compliance with labour laws, regulations and standards; participation in negotiations concerning national, regional and international treaties on labour and employment as well as overseeing their implementation; liaise with international and national organizations on matters of common concern et cetera (Labour Administration and Inspection Programme, 2012).

The Directorate of Labour, in turn, has three departments (Labour Administration and Inspection Programme, 2012):

- 1) **Employment Services:** this department is responsible for promoting employment and labour productivity and some of its functions include the formulation and review of guidelines, programmes and policies relating to employment; registration and placement of job seekers; regulation and monitoring of private employment agencies.
- 2) **Occupational Safety and Health:** to ensure a safe and healthy environment at the workplace for example through the formulation and review of guidelines, programmes, policies and laws on occupational health and safety.
- 3) **Labour, Industrial Relations and Productivity:** This department is responsible for labour relations function such as handling of individual labour complaints; labour inspections; child labour; dispute resolution; registration of trade unions et cetera.

### **Labour officers**

Labour officers are responsible for conducting workplace inspections and ensuring compliance with the employment standards set out in the Employment Act. They are also called upon to facilitate the settlement of employment disputes and are empowered to institute criminal or civil proceedings in the Industrial Court in respect of any violation of the Employment Act. They operate under the Employment Services Department but are appointed and administered by the individual districts as part of the country's shift towards decentralization. Responsibility for labour inspectors, however, has not been delegated to the districts and their appointment and facilitation remains with the Directorate of Labour (Ainslie & Bunya, 2011).

According to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006, a Labour officer means the Commissioner for labour, the district labour officer and the assistant labour officer.

## **8. INDUSTRIAL COURT**

The Industrial Court is the top organization for resolving labour-specific disputes. It was established by law under Section 7 of the Labour Disputes (Arbitration and Settlement) Act, 2006 (No. 8) with the mandate to arbitrate on labour disputes referred to it; and to adjudicate all trade disputes referred to it. As mentioned above, if a dispute arises between an employee and



his or her employer, it should first be referred to a labour officer and if the labour officer is unable to resolve it, then the matter should be referred to the Industrial Court (Ananaba, 1979).

The Industrial Court is supposed to consist of the Chief Judge, a Judge, an independent member, a representative of employers and a representative of workers. They are all appointed by the Minister of Labour, but the employers' organisations and trade unions each nominate five persons from whom the minister must choose (Labour Administration and Inspection Programme, 2012).

The Court is set up in a manner intended to be more accessible and expedient than when one proceeds through the civil court system. Its procedures are simplified and legal representation is optional. The industrial court is however not operational as no Judge has been appointed. According to Ainslie & Bunya (2011), the tenure of the judges and independent panelists expired and replacements were not appointed in 2006. When the Minister of Gender, Labour and Social Development, Hon. Gabriel Opio, was appointed, he was tasked to re-establish the court and therefore he appointed an interim judge and also secured funding for the interim judge's training. However, he was advised by the JSC that any case heard under the interim judge was at risk of being appealed, since the appointment did not follow the statutory procedure for judicial appointments to the Court. The minister then submitted a request to the JSC to make the required recommendation to the President and up to now, no recommendations have been submitted and the court has not been operational. In the Industrial Courts absence, labour matters have been taken to the High Court (Labour Administration and Inspection Programme, 2012).

Additionally a majority of these cases are often referred to the in-operational Industrial Court or the Ministry responsible for labour, and consequently remain unheard which is quite distressing. There have been calls for the removal of the Industrial Court because of its inability to operate is prejudicing labour issues that are being raised by people (Ainslie & Bunya, 2011).

## **9. ESSENTIAL SERVICES**

The following services are regarded as essential services according to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006.

- a) Water services

- b) Electricity services
- c) Health, sanitary and hospital services
- d) Fire services
- e) Prisons services of the administrations of districts
- f) Air traffic control services
- g) Civil aviation telecommunications services
- h) Meteorological services
- i) Transport services necessary to the operation of any of the services set out in the Schedule
- j) Supply and distribution of fuel, petrol and oil services
- k) Teaching services
- l) Public transport services
- m) Services relating to rail, road and inland waterways transport and inland waterways ports
- n) Services relating to civil aviation

## **10. CASE STUDIES**

### **Case study one: (5<sup>th</sup> November, 2013)**

“A liquor manufacturing company in Uganda had a case of a male employee beating up a female employee. When the matter was taken to management, the female employee was accused of being the provocateur of the beating as she had been taunting the male employee for quite some time. Management decided to take the matter to the local police in the area who advised that the female employee be dismissed and the male employee be suspended. When the researcher inquired as to whether the management was aware of the formal dispute process, they claimed the police were more responsive and effective to the matter, and worse still, they were not aware of the existence of labour officers in the area”

This case study is a very clear example of how the public is not aware of an existing dispute resolution system and would rather involve the police in settling dispute issues as they are quicker and effective.

### **Case study two**

The researcher talked to the HR manager of multinational company, Mott MacDonald in Uganda who provided the dispute resolution procedure for the company.

“Employees are encouraged to first resolve the grievances on an informal basis by raising it with the appropriate line manager. If the grievance involves another employee, the matter should be raised directly with that person. However, if an employee does not feel able to speak directly to the person concerned, or if the grievance is of a serious nature, the employee should instigate the formal procedure. However, it is intended that the majority of concerns will be resolved at the informal stage. The formal process is the employee should report the dispute in writing to his/her immediate manager or appropriate divisional/departmental manager describing the issue within three months. Once the company has received a formal written grievance letter, the complainant will be asked to attend the meeting with a relevant senior manager which take place within ten working days of receipt of grievance letter. A colleague may accompany the employee to this meeting. Following the meeting, the employee will be advised within 10 working days of the senior manager’s determination which is confirmed in writing. If the matter is not resolved to the employee’s satisfaction, there’s a right to a written appeal to the senior manager nominated by the company who in-turn invites the employee to a meeting to discuss the matter. The director or authorised deputy will give a decision confirmed in writing within 10 working days of this grievance meeting. This decision is final.”

The HR manager shared that she was aware of the national dispute resolution system but could not use it because of its unreliability. However, the Mott Macdonald system is well known to the staff of the company and there is training so as to ensure that every individual has access to fair justice in case of disputes arising.

### **Case study three (Stanbic bank, Uganda)**

According to an employee of Stanbic bank, Uganda, Mr Bruno Agaba, the company makes an effort to respond to the disputes of all employees and the average time taken to resolve disputes is, Critical - 4 hours, High -16 hours and Medium -72hours. The company has an issues tracker that is used to lodge and track the progress which is simple to use as all one needs is a summary

and description of the dispute. The other items such as names, job titles et cetera are automated as long as you log in with your credentials. An employee is allowed to have legal representation when the dispute has a revenue impact to the institution and customer. Stanbic bank discourages unionisation of its employees

#### **Case study four (MTN Uganda)**

According to an employee of the telecommunication giant MTN, all disputes are handled by the HR department and one is entitled to bring legal representation as the company is represented by their own. The company uses its own dispute resolution procedure. If the case is not resolved, one can take it to the public courts. According to Ainslie & Bunya (2011), MTN is one company that does not allow unionisation of its members.

#### **Case study five (entrepreneur)**

The researcher interviewed an entrepreneur with a couple of businesses who insisted that he encourages his employees to report their matters to the labour officers in the area in case the HR manager was unable to resolve it. However, he said because of the labour officers' reluctance to do follow ups on the cases lodged by his employees, the employees always lost out. He expressed disdain with the system as the industrial court was not operational thus forcing fellow entrepreneurs and employees to pursue expensive court cases which they would eventually give up on. He also stated that an employee earning about Ugandan Shs. 80, 000 (R 280) per month would be discouraged from pursuing a labour dispute in the courts of law as it would be too expensive.

All in all, from the case studies discussed above, it is evident that though the new and updated labour system has brought Uganda in line with the ILO expectations, there still quite a number of significant obstacles which continue to impede the effectiveness of the Ugandan system.

## **11. REVIEW OF THE PERFORMANCE OF THE UGANDAN DISPUTE RESOLUTION SYSTEM**

### **11.1 Elements of the system**

The Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006 does not differentiate between the different types of disputes that it covers. Therefore, all different types of disputes, that is, private sector and public sector disputes, collective and individual disputes, Unionised and

nonunionised disputes, disputes of rights and interests and disputes from the essential services are all covered under the Act and they all follow the same path.

According to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006, a dispute, whether existing or apprehended, may be reported in writing to a labour officer. However, a labour dispute may only be reported to the Commissioner for Labour, or the Commissioner may on his/her own motion take responsibility for any labour dispute if it is, or is likely to become, a national disaster. The labour officer should react to a report of labour dispute within two weeks and deal with the report in more than one way. He could endeavour to conciliate and resolve the dispute between the parties, appoint a conciliator, refer the dispute back to the parties with proposals on how to settle the dispute, reject the report with reasons and inform the parties accordingly or inform the parties that the report has matters which cannot be dealt with under the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006.

The Labour officer may refer the dispute to the Industrial Court if, four weeks after receipt of a labour dispute, the dispute was not resolved and if the conciliator appointed by the Commissioner does not see a likelihood of reaching any agreement. Therefore, the labour officer shall refer the dispute, at the request of any party, to the industrial court. If there are any arrangements for settlement by conciliation or arbitration between a trade union and an employer - regardless of number- the labour officer should not refer the matter to the industrial court but should ensure that parties follow the procedures for settling the dispute laid out in the conciliation or arbitration agreement. The Court is set up in a manner intended to be more accessible and expedient than when one proceeds through the civil court system. Its procedures are simplified and legal representation is optional.

## **11.2 Possible indicators**

### **11.2.1 Legitimacy**

Uganda's legislative system has been marred by controversy from the very beginning. With every political regime, all the changes to the dispute resolution system were made with very limited consultation. The need to change the legislative system was spear-headed by the Ugandan trade union movement and the Federation of Ugandan Employers (FUE) in 2006 (Barya, 2010). However, government only passed the laws when it was pressured by the United States of America (USA) and with threats of being banned from the African Growth and Opportunity Act (AGOA).

After many failed studies, a final study supported by the ILO, the United Nations Development Programme with the participation of two local consultants and tripartite partners (government, unions, and employers) was made which resulted in new proposals to overhaul the old laws. Some of the proposals were unrestricted rights and freedom of association to workers, better dispute settlement processes et cetera. However, the president and the Ministry of Finance were opposed to them and tried to undo them. This therefore puts to question the actual validity of the laws as the government was forced to pass laws it did not believe in thus jeopardizing their implementation and enforcement (Barya, 2010).

Government has let market forces determine the employer-employee relationship in Uganda and has failed to enforce recognition of unions in the private sector, failed to recognise and bargain effectively in the public sector. Government has also failed to enforce laws on minimum wage which has left vulnerable groups unprotected from the forces of liberalisation. Many private employers have refused to recognise unions such as textile, accommodation and building industries, mobile phone companies et cetera. Casualization of labour has the most effect on the rights of employees as they have no written contracts, get no leave or termination pay, they don't receive workers' compensation and health and safety protection while at work and their social security contributions are not made. Worse still is the general lack of awareness on the part of labour officers on the content and application of the law which generally means that the general public will also be clueless about the application of the laws yet use of the system is mandatory (Labour Administration and Inspection Programme, 2012).

According to Barya (2010), most labour institutions have been non-functional for many years. The Labour Advisory Council has not been dealing with issues under the Employment Act of 2006 or the Workers' Compensation Act (Cap.225 Laws of Uganda). The Minimum Wages Advisory Board recommended a minimum monthly wage in 2005 which was rejected by the President and the Ministry of Finance despite the law and Uganda's ratification of the ILO convention (No.26) on minimum wage fixing. The government has also been accused of intimidating the Industrial Court for example when the court awarded a 60% pay rise to bank workers in 1995, the President and government media attacked the court and its president. Though the court's independence was defended, the official government onslaught continued. The court's administrative attachment to the MGLSD has also limited its independence as it is subject to budget cuts. The decentralisation of labour officers also subjects them to government control as districts are run by government representatives, Chief Administrative Officers (CAOs). This is evidence of government control of the labour institutions in Uganda.

### **11.2.2 Efficiency**

The Ugandan system has been designed to respond to disputes within the shortest time possible. That is, the labour officer should react to a report of labour dispute within two weeks and he/she may refer the dispute to the Industrial Court if, four weeks after receipt of a labour dispute, the dispute was not resolved and if the conciliator appointed by the Commissioner does not see a likelihood of reaching any agreement.

However, according to Ainslie & Bunya (2011), the system is not efficient because of the “chronic” shortage of labour officers and the un-operation of the Industrial Court, which is the only avenue for appealing the decision of a labour officer

According to the Employment Act No. 6 of 2006, every district should have at least labour officer appointed by the District Service Commission. They are responsible for conducting workplace inspections and ensuring compliance with employment standards. They are also called upon to facilitate the settlement of employment disputes and are empowered to institute criminal or civil proceedings in the Industrial Court in respect of any violation of the Employment Act. However, a number of districts lack adequate funding to hire, train and pay full-time labour officers and this has left many districts without this first line of recourse in the event of a labour dispute proving to be a disadvantage to the system. Some labour officers are not qualified and are clueless on what their position entails. According to Ainslie & Bunya (2011), there are over 120 districts in Uganda and only 35 labour officers.

The Industrial Court on the other hand has not been operational as no Judge has been appointed. In the Industrial Courts absence, labour matters have been taken to the High Court (Labour Administration and Inspection Programme, 2012). However, according to Ainslie & Bunya (2011), a majority of these cases are often referred to the un-operational Industrial Court or the Ministry responsible for labour, and consequently remain unheard which is quite distressing. There have been calls for the removal of the Industrial Court because its inability to operate is prejudicing labour issues that are being raised by people.

### **11.2.3 Informality**

According to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006, the process of lodging a dispute that arises between an employee and his or her employer is first referred to a labour officer. In the event that the labour officer cannot resolve it, the matter is referred to the Industrial Court. This process is quite easy however the system is not understood by all. According

to the Labour Administration and Inspection Programme (2012), majority of the labour officers are not qualified and are not sure on what their position entails. This is because they have not been properly trained in key labour administration activities such as labour inspection, employment services, dispute resolution and labour law. This therefore means that if the system is not understood by the labour officers, chances are high that there is limited assistance available for those who need to use the system which in the long run complicates the process for the users.

#### **11.2.4 Affordability**

The services offered by the labour officers and the Industrial Court are free of charge. According to Ainslie & Bunya (2011), Labour officers are civil servants and are financed by the government thus disputants should not pay them. However, the fact that cases which are unresolved by the labour officers are being sent to the normal court which are quite costly because of the inactive industrial court means that the system is not affordable for majority of workers. In addition, due to budgetary limitations and differing political priorities at the district level many districts do not have labour officers in place. Therefore the MGLSD faces a difficult challenge in functioning as a central authority to guide labour inspection action throughout the country.

#### **11.2.5 Accessibility**

As mentioned above, disputes are initially referred to a labour officer who then refers them to the industrial court and according to the Employment Act of 2006, labour officers should be appointed in each of the country's 111 districts. However due to budgetary limitations and differing political priorities at the district level many districts do not have labour officers in place. This therefore means that not all parties, especially the most vulnerable, have easy means to make contact and using the court system is quite complicated for a country with a high rate of illiteracy. Keep in mind the fact that the government is proposing 20 more new districts which will bring the number to 131 (Lumu, 2012).

According to the surveys carried out by the researcher, many of the respondents were not aware of the existence of labour officers and the industrial court which proves there's not enough information out there about the system.



### **11.2.6 Range of services**

As mentioned above, the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006 caters for all the different types of disputes, that is, private sector and public sector disputes, collective and individual disputes, unionised and nonunionised disputes, disputes of rights and interests and disputes from the essential services. The Industrial Court is tasked with promoting equity, effective and expeditious settlement of labour disputes, industrial harmony and improved working conditions. Labour officers on the hand are responsible for labour inspection, dispute resolution and because the Industrial Court is not operational, they have been conducting hearings and delivering rulings on matters which would ordinarily be done by the specialized court. This contradicts the ILO duties of labour inspectors according to Convention No. 81 which are enforcement of legal provisions relating to conditions of work and protection of workers, supplying technical information and advice to employers and workers and their representative organizations on the most effective means of complying with legal provisions; and bringing to the notice of the competent authorities any legal deficits affecting workers.

Because of limited funding from the government, high staff turnover of labour officers, untrained labour officers, the system is unable to provide all the required services expected of a dispute resolution system such as provision of information, advice, training, facilitation, investigations, conciliation, arbitration et cetera.

### **11.2.7 Accountability**

According to the indicators discussed in the framework in chapter one of this study, transparency is one important aspect of an effective system and transparency in this sense comes in the form of the system being able to accountable to the public and to their institutional stakeholders. However, history has proven that the Ugandan system is not transparent and does not feel accountable to the Ugandan public. Some examples of its lack of accountability are the refusal of government to set a minimum wage for the country without a credible explanation (their excuse is that they are trying to maintain foreign investors), refusal to reopen the industrial court even with the backlog of unresolved labour disputes. According to Mudoola (2013), there are over 300 labour disputes that are pending in the courts of law.

The Ugandan government has proved to only be accountable to the western world and international bodies which was portrayed when the government refused to implement the new

acts with pressure from the public but only did so after the US government threatened to ban Uganda from the African Growth and Opportunity Act (AGOA).

### **11.2.8 Resources**

Funding has been a critical issue with the dispute resolution system of Uganda. Local district governments have been faced with budget and staffing constraints and are thus forced to make decisions based on priorities and available resources. Issues such as health and education consistently rank high on the list of policy priorities for district governments, often leaving labour and employment matters on the side-line. According to the Labour Administration and Inspection Programme (2012), the Chief Administrative Officers' (CAOs) have been known not to allocate sufficient funding for the functions of labour officers in the districts which could be because of a lack of knowledge on labour and employment issues or the benefit provided by these services. Another issue was the limited knowledge among employers and workers in the district about the contents of the labour laws and the untrained labour officers who are not up to date with the current legislative system.

Uganda's Trade Union movement on the other hand is still struggling to get the recognition it is entitled to according to the labour laws. According to Ainslie & Bunya (2011), it is a common practice in both the private and public sectors for employers to simply refuse to recognize trade unions and/or engage in collective bargaining. For example, representatives from the National Union of Educational Institutions (NUEI) stated that private schools are often resistant to the unionization of their workforce. Ugandan labour laws are adequate to protect the rights of the workers, but the enforcement is not there. For example there is an avenue of complaint if employers refuse to deal with registered unions. However, unions have reported that their complaints are not followed up on.

According to Barya (2010), the trade union leadership has been incorporated into the current regime structures, that is in parliament and in the NRM party and considering the autocratic nature of the government, it is unlikely the trade unions will take independent and pro-worker stands as they are now forced to conform to the government's expectations. The presence of worker MPs was thought to be a good step to advancing the workers needs and the trade union power however they have proved to be more problematic. They are not organisationally-linked to the trade unions and are therefore not accountable to the trade unions. At times, MPs have taken

positions contrary to NOTU or other union interests and they have also acted in opposition to each other. Rather than representing workers, they have in fact represented government in parliament which is in opposition to what workers need. They have also represented government's positions and interests to workers rather than workers positions and interests to government. The MPs claim that they are unable to make an impact because their representation in government is so small (Barya, 2010).

### **11.2.9 Summary of the evaluation**

The evaluation of the Ugandan labour dispute resolution system is an indication of the need for a strong dispute resolution system. Uganda has a modern system however, it has failed use it. The system is faced with a number of challenges such as budget and staffing constraints and is thus forced to make decisions based on priorities and available resources and it is thus not efficient in its processes. The system's legitimacy has been questioned as the government has been branded as dictatorial and lacks accountability to the Ugandan public for example its refusal of government to set a minimum wage for the country without a credible explanation (their excuse is that they are trying to maintain foreign investors), refusal to reopen the industrial court even with the backlog of unresolved labour disputes. The failure of the Ugandan trade union movement to get the recognition it is entitled to according to the labour laws by the employers and government shows that Uganda has a long way to go in regards to realising its labour rights.

## **12. CONCLUSION**

This chapter has dealt with a description of Uganda, that is, its physical, political and economic aspects. In addition, the historical development of the trade dispute legislation and the trade union movement of Uganda between the pre-independence period from 1894 to the present was discussed. It is evident that Uganda's labour movement history has had very dramatic turns of events. It is one of only a few countries where politics has played a significant role in its development, even after it gained its independence. The developments that were discussed were closely related to various historical and political phases through which Uganda has passed; significant periods are 1894-1962 (pre-independence), 1962-1971 (Obote 1), 1971-1979 (Amin), 1980-1985 (Obote II), 1986-2006 (NRM) and 2006 to the present Multi-party system. The current state of the social partners was also discussed, that is, the trade unions, employer organisation and tripartite bodies where labour related issues are tabled. The current laws that relate to

employee relations were also covered and they included Employment Act, No.6 of 2006, the Labour Disputes (Arbitration and Settlement) Act, No.8 of 2006, the Labour Unions Act, No.7 of 2006 and the Occupational Safety and Health Act, No.9 of 2006. This was followed by a discussion of the bodies responsible for the administration and enforcement of the country's labour laws. A discussion of the ministry responsible for labour administration in the country followed and it is the Ministry of Gender Labour and Social Development (MGLSD) and is in charge of recruiting labour officers who are the first step in resolving disputes according to the dispute resolution act, the Labour Disputes (Arbitration and Settlement) Act, No.8 of 2006.

Five case studies were also covered and they were a result of unstructured interviews that the researcher carried out to understand what really goes on in the country as research proved that though there is a labour dispute resolution system with recently updated laws, it was not being utilised by the employers and the employees. Lastly, a review of the system was carried out basing on the goals for an effective system which were set in chapter one. These goals are legitimacy, efficiency, informality, affordability, accessibility, an appropriate range of services, accountability and adequate resource support

The next chapter deals with the South African dispute resolution system

## CHAPTER THREE

### THE SOUTH AFRICAN DISPUTE RESOLUTION SYSTEM

#### 1. INTRODUCTION

This chapter is going to deal with firstly, the historic evolution of the South African dispute resolution system and the influence of the South African trade union movement, secondly the current dispute resolution system and lastly a review of the performance of the current dispute resolution system.

#### 2. EVOLUTION OF THE SOUTH AFRICAN LABOUR DISPUTE RESOLUTION SYSTEM

The evolution of the South African labour dispute resolution system can be divided into four eras. The first era is from 1870 to 1948, the second era from 1948 to 1979, the third from 1979-1994 and the last era from 1994 to the present date.

##### 2.1 The period 1870-1948

The discovery of diamonds and gold in 1870 and 1872 respectively was the beginning of industrialisation in South Africa. It created a need for engineering and mining skills to extract the minerals. Therefore, these new mining companies had to recruit the skilled personnel from Europe and Australia. Because of the scarcity of their skills, these new workers were highly paid. Africans on the other hand were still subsistence farmers and successful traders. Indian labour was also imported to work on the sugar plantations in 1859. However, some Africans went to look for work in the mines (Finnemore, 2009).

According to Nel, Kirsten, Swanepoel, Erasmus, & Poisat (2012), South Africa did not evolve its own labour relations. One reason was because the skilled employees were all immigrants and they imported foreign employment relations systems. Secondly, was the cultural heterogeneity of the country's population. This was further aggravated by the white skilled workforce unwillingness to join forces with the unskilled.

By 1900, the mining sector had grown so much that it needed more skilled labour as the white labour wasn't enough to provide the necessary skills. Therefore more black workers and

immigrant workers from other countries like China were brought in and some were put in skilled positions but with unskilled wages (Nel et al., 2012). Due to pressure from workers, the Ordinance No.17 was promulgated in 1904 and it was a discriminatory legislative action against the non-South Africans and the non-white workers as it placed non-white employees in skilled jobs but at unskilled wages.

However, the mines continued hiring black workers for semi-skilled positions as they did the same work but at cheaper rates. This infuriated many white workers and made them believe they needed protection from the competition of cheap black labour. This happened mainly with the mines because of the gold price crash in 1922 where mines sought large scale measures to cut costs. This led to the reduction of wages for white workers and large scale retrenchment of white workers for the employment of black workers (Bendix, 2009).

White miners and artisans became more militant and began to participate in violent strike action. The government promulgated the Industrial Disputes Prevention Act No. 20 of 1909 to manage employer and worker relations but it was unsuccessful in achieving its objectives. More militant strike action was instigated by white workers in the period 1913/1914 such as the 1913 miners' strike and the 1914 general strike. The government tried to manage these strikes and unrest by passing the Workmen's Compensation Act No. 25 of 1914, and the Riotous Assemblies and Criminal Law Amendment Act No. 27 of 1914, which gave it wider powers to restrict public unrest caused by individuals and trade unions (Bendix, 2009; Nel et al., 2012).

The Black Labour Regulations Act No.15 of 1911 was also promulgated to regulate black labour matters. This act afforded protection to black workers who worked in the mines but made no provision for collective bargaining and negotiation and redress of grievances. By 1919, black workers were now beginning to organise and were even holding strikes.

The replacement of white workers by the black workers was the main reason for the infamous bloody Rand rebellion of 1922. This rebellion was the turning point of South African labour relations as it marked the beginning of statutory racial segregation and also led to the conciliation system (Nel et al., 2012). It was the biggest and bloodiest industrial upheaval in South African labour history, which took on the features of a civil war on the Witwatersrand and was characterized by pitched battles between the armed forces of labour and the state (Bendix, 2009; Nel et al., 2012).

### **Dispute settlement between 1920 and 1948**

After years of an inadequate statutory legislative framework, the 1922 Rand Revolt was the impetus that drove the South African government to highlight the need for a comprehensive piece of labour legislation (Bendix, 2009). Therefore in 1924, the government passed the Industrial Conciliation Act (ICA) No. 11 of 1924 which repealed the Industrial Disputes Act of 1909 (Nel et al., 2012).

#### **Private sector (white workers) under the ICA of 1924**

The Industrial Conciliation Act No. 11 of 1924 benefited the white private workers the most. According to Nel et al., (2012), the Industrial Conciliation Act basically aimed at creating industrial peace between employers and white workers. Under this Act, employers' organisations and trade unions could register but since the definition of employee excluded the pass-bearing African and indentured Indian workers they were excluded. The Act also established Industrial Councils by agreement between an employers' organisation and a registered trade union and these councils promoted voluntary centralised bargaining. The Act also provided for the formation of an ad hoc Conciliation Board for bargaining and dispute resolution between trade unions or employees and employer organisations or employers if there was no Industrial Council. All agreements reached between parties at both bodies were legally binding and it was considered a criminal offence if they were not complied with and could be extended to other employees and employers within their jurisdiction. The main emphasis was on the settlement of collective-interest disputes rather than individual-rights disputes. The Industrial Councils and Conciliation Boards were not limited to conciliation only, they could also arbitrate but to a limited extent. This act also limited the right to strike as strikes and lock-outs were illegal (Du Toit, Woolfrey, Murphy, Godfrey, Bosch, & Christie, 2000).

According to Majinda (2007), a majority of employer representatives and a majority of employee representatives on an Industrial Council or Conciliation Board had voluntary arbitration of disputes of rights in non-essential services by agreeing to the appointment of one or more arbitrators to arbitrate disputes of right. On the other hand, compulsory arbitration of disputes of right and of interest was introduced only in essential services, where strikes were forbidden. Therefore, many disputes of right had to be referred to the ordinary courts to be adjudicated on the basis of the law of contract.

### **Private sector (Black workers) under the ICA of 1924**

The most important ramification of the Act was the exclusion of black workers (pass bearing natives, individuals regulated by any black pass regulations and the Black Labour Regulations Act) from the definition of employee which laid the basis for a racially determined dual system of industrial relations in South Africa. Therefore, black male workers were excluded from the provisions of the Act and in turn excluded from registered trade unions and were not entitled to collective bargaining. They could also be employed on terms inferior to those set by the Industrial Council or conciliation board agreements. However, it provided freedom of association to all other employees who did not carry passes, that is, African women, Indians and coloureds (Nel et al., 2012; Du Toit et al., 2000).

### **Public sector workers**

The Industrial Conciliation Act provided for workers in the private sector, the public sector employees were covered by a different suite of regulations.

According to Koorapetse (2011), the Public Service commission (PSC) was in charge of the employment relationship in the public sector from 1912. The Public Servants Association was also established for white public servants in 1920 after the Public Service act of 1920 provided for the recognition of staff associations which depended on majority representation of the permanent employees in the various divisions of the public service.

The Industrial Conciliation Act No. 11 of 1924 was largely embraced by white workers and their unions but protested against by black workers and their unions however, they were simply repressed by government (Finnemore, 2009). It was a major instrument of racial discrimination as it was designed for the protection of interests of white workers from cheaper and often better skilled black workers. It also marked the beginning of dual system of labour relations in South Africa. What resulted was the separate development of white and black unions in South Africa and the stance of "racial corporatism" held by the South African government (Bendix, 2009; Finnemore, 2009).

In 1930 the Act was amended to specify minimum wage rates and maximum working hours for persons excluded from the definition of 'employee'. The main aim of the amendment was to protect the highly paid white workers from being undercut by cheaper African labour. The functions of the Industrial Councils and Conciliation Boards were widened with the Industrial Councils now being obliged to deal with all disputes within their jurisdiction and the removal of



limitations on the jurisdiction of Conciliation Boards. Dispute resolution remained conciliation and not adjudication and strikes and lockouts were prohibited during the currency of an agreement made within an Industrial Council or Conciliation Board (Du Toit et al., 2000).

The 1930 amendment was replaced by a new consolidated Act, the Industrial Conciliation Act 36 of 1937. This Industrial Council Act did not solve the problems that resulted from the dual industrial relations system such as intense competition for unskilled jobs and huge pay gaps between the well-organised skilled workers and the semi-skilled/unskilled workers (Du Toit et al., 2000). It provided an extension of Industrial Council agreements to cover African employees though they were still not allowed to be represented in Industrial Councils and Conciliation Boards (Koorapetse, 2011).

However, in 1935 the government formed the Van Reenen Commission to review existing employment legislation and the commission encouraged the formation of industrial unions to represent all classes of employees and proposed two government officials to represent the interests of African workers. Therefore the 1937 Act made a provision for an inspector of the Department of Labour to represent pass-bearing African workers at Industrial Council meetings (Du Toit et al., 2000).

## **2.2 The period 1948-1979**

In 1948, the National Party (with its ideology of apartheid brought an even more rigorous and authoritarian approach than the segregationist policies of previous governments), won the general election (Bendix, 2009; Finnemore, 2009). The government therefore appointed the Botha Commission in 1951 to investigate the existing employment legislation so as to align the legislation with the ideology. It ignored most of the Botha commission recommendations, for example for the formation of a coordinating body to which Industrial Council agreements would be referred for scrutiny, taking into account interests of all parties concerned, prior to ratification and extension by the Minister. The National Party further entrenched the racial divide by prohibiting the registration of new mixed- race unions. The already existing mixed race unions had to create separate branches for their “coloured” members and only white members could hold executive office. Job reservations where certain work could be reserved for “persons of a specified race” were also introduced in the Act (Du Toit et al., 2000).

### **Dispute settlement between 1948 and 1979**

Legislatively, as a result of the Botha commission, the Native Labour Settlement of Disputes Act No.48 of 1953 was promulgated to prevent and settle disputes affecting the natives. Later on came the Industrial Conciliation Act No.28 of 1956 which repealed the 1937 Act for white employees (Du Toit et al., 2000).

#### **Private sector (white, coloureds and Indians)**

Some of the changes brought about by the Industrial Conciliation Act No.28 of 1956, as mentioned above, were the job reservations and tighter controls on registering mixed trade unions. With regard to dispute resolution, the Minister could appoint a permanent industrial tribunal that would hear appeals against decisions of the Registrar in respect of a wide range of matters as the registrar had powers of investigation, intervention and dissolution relating to the registration of trade unions and employer organisation. The minister could also “undertake arbitrations requested by parties to Industrial Councils or conciliation boards as well as compulsory arbitration for essential services; determine demarcation disputes; and conduct investigations and make recommendations on the desirability of job reservation determinations” (Du Toit et al., 2000, p.9).

#### **Private (African workers)**

After the World War II, black trade unionism increased steadily and therefore the government decided to formalise the position of black worker representation by introducing the Industrial Conciliation Act for blacks in 1947. This act aimed at providing machinery for mediation and arbitration for blacks in certain areas and cases. However, the proposed bill did not become a law and was shelved by the National Party government when it came to power in 1948 (Bendix, 2009; Finnemore, 2009).

The National Party government however passed the Native Laws Amendment Act 54 of 1952 so as to bring the labour legislation in line with their apartheid policy. The Act removed African women from the definition of “employee” which had previously been accorded to them by the Industrial Conciliation Act thereby closing the loophole which had previously been exploited. The Native Labour (Settlement of Disputes) Act 48 of 1953 was also passed to create a “separate dispensation for African workers with plant-based works committees, regional native labour committees and a Central Native Labour Board.” These government controlled bodies were confined to reporting and dispute resolution functions. African workers were still not allowed to form or join registered trade unions or strike. The 1953 Act applied to all blacks who were

employed in every trade besides the domestic workers in private households, those employed in farming operations and those who were working for government (Nel et al., 2012; Du Toit et al., 2000). The 1953 Act also allowed black workers to establish workers committees which would enable black workers to report their grievances. However, these committees were largely ineffective as only one worker committee with five members was allowed per plant thus limiting effective representation and blacks lacked expertise to represent themselves effectively (Bendix, 2009).

The 1953 Act stated that if a native labour officer believed there existed a dispute in his appointed area, he had to report that particular dispute to the regional committee concerned and to the inspector defined by the regulation. The native labour officer with the assistance of the regional committee and in collaboration with the inspector had to attempt to effect a settlement of the labour dispute failing which the matter would be referred to the Central Native Labour Board which in collaboration with such an officer and inspector had in effect to endeavour to effect a settlement to the dispute (Koorapetse, 2011).

The Industrial Conciliation Act No.28 of 1956 created a racially segregated industrial relations system which also happened to coincide with a long period of global economic expansion. Therefore, the skilled workers, who were mainly white, had significant rewards; employers faced few challenges from labour, low wage bills and the country benefited from the world-wide economic boom. Because all this success was as a result of unjust and repressive political dispensation, the apartheid regime would in fact face opposition and challenges from the excluded majority of the working class. This was followed by a number of strikes like the Durban strike of 1973 (Du Toit et al., 2000).

Government's response was the amended Bantu Labour (Settlement of Disputes) No.70 in 1973 (formerly known as Act Native Labour (Settlement of Disputes) Act 48 of 1953) which introduced liaison and works committee in an effort to improve communication between employers and employees. However this move also aimed at restricting African workers from organising in unions. The Act also gave black employees limited freedom to strike just like the 1965 Act. The process of dispute resolution was that the disputes arising from employers and black employees were first channelled to the Black labour officer responsible for that area and if the labour officer was unable to resolve the dispute, it went to the regional Labour Committee. If that avenue failed, the dispute would be sent to the Divisional inspector and then the Black Labour Board. Employees

could engage in legal industrial action only after all these channels had been exhausted (Koorapetse, 2011).

The committees were rejected by the African workers and they flocked to join new unregistered trade unions. These unions focused on building strong shop steward structures to negotiate plant-level agreements at the workplace as they had been excluded from Industrial Councils. Despite opposition from employers and the state, these trade unions continued to grow and the racially segregated industrial relations system started to decline (Du Toit et al., 2000).

The government made a last attempt to encourage the committee system as an alternative to unionism by promulgating the Black Labour Relations Regulations Amendment Act No.84 of 1977. This Act made it possible for the blacks to be in a position to negotiate with employers also allowed them to occupy positions previously held by whites. This Act was however very ineffective (Nel et al., 2012).

### **Public sector workers**

A Joint Public Service Advisory Council for the white public sector was established by the government in the late 1960s. It was representative of all categories of white public servants and its role was to advise the Minister of Public Service on human resource matters (Koorapetse, 2011).

### **2.3 The period 1979-1994**

The early 1970s have been described as the “strike wave” as they were characterised by major strikes which had a huge impact on the labour environment of South Africa (Bendix, 2009). The statutory procedures were regarded as ineffective, lengthy and full of technicalities. The Durban strike of 1973 followed by the Soweto uprisings of 1976 prompted the government to appoint a Commission of Enquiry. It is better known under the name of its chairperson, Professor Nicolaas Wiehahn. This was to investigate the status of black workers within the South African labour relations system (Finnemore, 2009; Basson et al. 2005). Wiehahn’s recommendations were translated into the legislation between 1979 and 1983 (Basson et al., 2005).

### **Dispute settlement between 1979 and 1994**

This commission recommended a number of reforms which would change the dual system of labour legislation. The government accepted most of the recommendations with a hope of incorporating the militant new unions into the system so as to tame them. These changes were enacted in a series of amendments over a period of four years which eventually led to the name of the statute changing to Labour Relations Act (LRA) (Du Toit et al., 2000).

#### **Private sector employees**

Some of the Wiehahn Commission's recommendations were freedom of association to all employees, to amend the Industrial Conciliation Act to include black workers within the definition of the employee and hence include them in collective bargaining, and to create an Industrial Court for dealing with labour disputes. Black trade unions would also be allowed to register and all statutory provisions would include them as well as white unions. This also allowed for blacks to work with whites and to fill positions that were previously exclusive to whites. In other words all employees now were equal in terms of labour relations. However while these reforms gave black workers industrial citizenship it did not grant political or economic rights equal to their white counterparts (Finnemore, 2009; Bendix, 2009; Smith, 2008).

The Industrial Court was introduced to replace the Industrial Tribunal which had been established by the Industrial Conciliation Act on 1 January 1957 (Smith, 2008). The Industrial Court gave an option instead of industrial action. Before when a dispute was not resolved, parties would resort to industrial action or let the matter rest. Now the industrial court provided a channel through which disputes could be referred as all disputes could now be referred to the Industrial Court (Bendix, 2009). The functioning of the Industrial Court was now premised on a distinction between disputes of right and disputes of interest (Du Toit et al., 2000).

Initially, the government thought that they could still co-opt and control the militant unions by accepting most of the recommendations. But the black trade unions were aware of this and registered after a lot of pressure but rejected the Industrial Council participation in favour of bargaining at enterprise or plant level thus maximising their power. Though statutory bargaining and dispute resolution were now opened to the black unions in 1979, they did not jump into seeking to join Industrial Councils or Conciliation Boards as anticipated but continued to organise, seek recognition and bargain at non-statutory plant level which they used under the committee

system. Thus they were able to establish plant level collective bargaining and dispute resolution to supplement the Industrial Council system (Koorapetse, 2011).

The Industrial Conciliation Act, which later came to be known as the Industrial Conciliation Amendment Act of 1979, introduced a new era in South African Labour Relations. Because it did not add all the recommendations made by the Wiehahn Commission, more amendments were made in 1980, 1981 and finally 1983 (Bendix, 2009). More importantly, this new Act repealed the Black Labour Relations Regulation Act No.48 of 1953. The new changes meant that all registered and unregistered trade unions had the same provisions; committees were given “new life” and were now referred to as works councils. They couldn’t be removed as they ensured proper communication at a workplace (Nel et al., 2012).

In 1988, there were further amendments and the government passed the Labour Relations Amendment Act. Some reasons for the amendment were inconsistencies in dismissals and retrenchments, contradictory concepts on fairness. However, the new amendment was rejected by unionists because of the restrictions to strike and the definition of the term “unfair labour practice”. Unions saw this as a move towards limiting their power and rights by government (Finnemore, 2009). Therefore, COSATU mounted a strong well supported campaign against the act. The period of the late 1980s was characterised by strikes, high unemployment, high rate of crime and violence. In 1987 alone, 1148 strikes were recorded (Bendix, 2009).

### **Public sector workers**

The 1979 reforms did not change the situation of the public servants despite the calls for a formal bargaining mechanism. The Wiehahn Commission proposed that public servants be extended freedom of association rights but this was rejected by the government. Associations that were formed in the public sector were formed along racial lines, for example the Institute of Public Servants (IPS) for African Employees, Public Service Union (PSU) for Indian workers and Public Service League (PSL) for coloured workers. They wrote submissions which were recommendations to the Joint Advisory Council but they were not helpful as the government (as the employer) was not obliged to respond or even consider them when making decisions around conditions of service. However in 1988, after years of consultations and pressure from trade unions, like the Congress of South African Trade Unions (COSATU) through the international body, the International Labour Organisation, the government committed itself to collective bargaining in the public sector (Koorapetse, 2011).

In the early 1990s, there were struggles for recognition of union organisations in the public sector. Additionally, there were also divisions among the public service especially the health and education sectors. This led to the passing of two pieces of legislation in 1993, the Public Service Labour Relations Act (PSLRA) and the Education Labour Relations Act (ELRA), to deal with the public service labour relations. The PSLRA extended rights such as the right to strike and to organise and also established the Public Service Bargaining Chamber (PSBC) while the ELRA established a sector specific bargaining council for educators whose role was to prevent and resolve disputes and the regulation of settlement of matters of mutual interest through negotiation (Koorapetse, 2011).

The 1990s heralded in a new era of transition. Nelson Mandela was released from life imprisonment by President De Klerk. This development marked the beginning of the “rearrangement of South Africa’s socio-economic and political sphere” (Nel et al., 2013, p.90). This definitely meant changes would be made to employment relations. This transition was marked by a lot of political transition, such as the unbanning of the ANC and other political parties, several proceedings (Groote Schuur, Laboria and Pretoria), CODESA (Convention for a Democratic South Africa). Finally an interim Constitution and the Bill of Rights were developed 6 months before the first election in 1994 (Finnemore, 2009).

One of the important minutes was the Laboria Minute which was signed in September, 1990. It was one of the policy documents addressed through the negotiated compromise between Labour and employers. It set the tone and practice of tri-partism giving labour an institutionalised voice enabling it to shape the broader transition agenda. Among the key issues discussed was the repealing of the controversial features introduced into the Labour Relations Act (LRA) by the 1988 amendments and extending the legislation to the public service, agriculture and domestic workers sectors. The agreement also proposed the establishment of the National Economic Forum (NEF) which was the predecessor of National Economic Development and Labour Council (NEDLAC). The NEF operated as a tripartite forum from 1992 to 1994. It had input into constitutional negotiations and economic and social policy issues (Bendix, 2009).

In 1994, the Africa National Congress (ANC) came to power and started by undoing the apartheid laws to transform the legislative framework and bring it in line with the international standards set by the ILO. There was extensive consultation with all social partners and the public so as to implement laws that were fair for all (Nel et al., 2013). According to Nel et al., (2012), the ANC focused on all the apartheid laws and realigned the labour legislation by primarily drawing on

Australian, New Zealand and Canadian and related labour laws. This is because all these countries are Commonwealth nations which inherited the British industrial relations system and South Africa's history and labour relations structure is closely linked to the constitutional and socioeconomic developments of these countries.

## **2.4 Dispute resolution 1995 to the present date**

The Labour Relations Act No.66 of 1995 was the first legislative item to be promulgated. It was fully negotiated between the state, labour and business at NEDLAC and came into force on November 11 1996 (Nel et al., 2012). This Act regulated individual and collective employment relations and brought all employees in South Africa under a single piece of legislation since as discussed above public sector employees in the past were under administrative law. The Industrial Councils were replaced by Bargaining Councils which would now be responsible for collective bargaining and dispute resolution when accredited. The new Act also created the institutions and processes for dispute resolution. These institutions include the Commission for Conciliation, Mediation and Arbitration (the CCMA) and the Labour Courts (the Labour Court and the Labour Appeal Court) which replaced the Industrial Court (Bhorat, Pauw, & Mncube, 2009).

Other acts that were enacted were the Basic Conditions of Employment Act No. 75 of 1997, the Employment Equity Act No.55 of 1998 and the Skills Development Act No.97 of 1998. These applied to all workers irrespective of race or sector, these rights were the foundation of the unified system, sweeping away the legal basis of for the apartheid labour market (Donnelly & Dunn, 2006).

It is therefore safe to say that the Labour Relations Act No .66 of 1995 has given workers of all races and sectors and their representative unions' equal rights, and free access to the statutory bargaining and dispute settlement machinery.

## **3. INTERNATIONAL CONVENTIONS**

South Africa is also a signatory to a number of ILO Conventions which promote freedom of association and right to organize and collectively bargain:

- a) Convention No. 98 concerning the Right to Organise and Collective Bargaining (1949).
- b) Convention No. 154 on Promotion of Collective Bargaining (1981).



- c) Convention No. 144 on Tripartite Consultation (1976).
- d) Convention No. 29 on Forced Labour 1930.
- e) Convention No.105 on the Abolition of Forced Labour, 1957.
- f) Convention No.138 on Minimum Wage, 1973.
- g) Convention No.182 on Worst Forms of Child Labour, 1999.
- h) Convention No.87 on Freedom of Association and Protection of the Right to Organize, 1948.
- i) Convention No.100 on Equal Remuneration, 1951
- j) Convention No.111 on Discrimination (Employment and Occupation), 1958.

#### **4. DISPUTE RESOLUTION INSTITUTIONS**

The following section is going to discuss the various institutions for dispute resolution in South Africa.

##### **4.1 The Commission for Conciliation, Mediation and Arbitration (CCMA)**

The LRA established the CCMA as a statutory but independent body, although it is funded by the state. It is governed by tripartite committee chaired by an independent person. It has jurisdiction all over South Africa and has offices in all nine provinces. According to Benjamin (2013, p.6), the CCMA's functions include "dispute resolution, dispute management, and institution-building within the labour arena and the provision of education, training and information to employers and employees and their organizations". However the primary function of the CCMA is to conciliate and arbitrate disputes referred to it in terms of the LRA and other labour statutes such as the Basic Conditions of Employment Act of 1997 (BCEA), Employment Equity Act of 1998 (EEA), the Skills Development Act of 1998 and the Unemployment Insurance Act of 2001 (UIF) free of charge (Bhorat et al., 2009).

According to Benjamin (2013), all disputes concerning unfair dismissals, trade union organizational rights, interpretation of collective agreements and certain individual unfair labour practices, interest disputes arising from collective bargaining, must be referred to conciliation. The

commissioner should attempt to resolve the dispute within 30 days of the date the referral was received by the CCMA. However, the 30 day period can be extended through the consent of the disputing parties. At the end of the 30 days, a certificate must be issued indicating whether or not the dispute was resolved, a copy of the certificate should be served to each party to the dispute or his representative, the original of the certificate must be filed with the CCMA (Nel et al., 2012)

However, if the dispute is unresolved, it may be referred either to arbitration or to adjudication by the Labour Court. Arbitration may be conducted with the backing of the CCMA, an accredited bargaining council or, by agreement, a private arbitrator appointed by collective or other agreement. CCMA arbitrations are conducted either by full-time Commissioners who are employees of the CCMA or by part-time commissioners (Benjamin, 2013).

#### **4.2 Bargaining Councils**

Bargaining Councils are joint employer and union bargaining institutions whose functions and powers are set out in the LRA. One of the LRA's main objectives is to promote collective bargaining as a means of regulating relations between management and labour and as a means of settling disputes between them. A Bargaining Council has the responsibility to negotiate collective agreements that regulate terms and conditions of employment in the sectors in which they operate. Bargaining Council agreements deal with issues such as minimum wages, hours of work, overtime, leave pay, notice periods, and retrenchment pay. A bargaining council does not need to be accredited with the CCMA to perform dispute resolution services regarding parties to that council. If a bargaining council applies to the CCMA for accreditation, the CCMA may, as a term of accreditation, give council conciliators similar powers to CCMA conciliators. Their jurisdiction may be sectoral, regional or industry wide and hence they vary in size and quality of dispute resolution (Bhorat et al., 2009; Finnemore, 2009).

#### **4.3 Labour Courts**

The LRA established the Labour Court as a specialist court of law and equity. It has jurisdiction in all provinces with the same status as a division of the High Court of South Africa. NEDLAC plays a significant role in the appointment of Labour Court judges so as to enable the social partners to play an active role in determining the composition of the Court. The Labour Court can hear cases concerning dismissals for operational requirements, strike dismissals, dismissals due to discrimination, contractual or BCEA or EEA disputes without going through conciliation first (Benjamin, 2013).

The Labour Appeal Court is the court of final appeal in respect of labour disputes. The LRA created the Labour Courts to deal with complex labour issues. The Labour Courts have been faced with a problem of over reliance on acting judges with little experience in labour law due to their inability to attract sufficient judges of high calibre. The Labour Courts have the responsibility to exercise a supervisory authority over the CCMA but due to the huge case loads and human resource constraints, it has been unable to (Bhorat et al., 2009). Benjamin (2013) however states that in the last few years, many highly regarded labour law specialists have taken permanent appointments to the Labour Court bench.

#### **4.4 Workplace forums**

Workplace forums are a product of the Labour Relations Act of 1995. They are established upon the request of a majority union or unions in any workplace employing more than 100 persons (Bendix, 2009). Their primary objective is to facilitate a shift at the workplace, from adversarial collective bargaining to joint problem-solving and participation on certain matters.

According to Finnemore (2009) and Bendix (2009), workplace forums are designed to promote the interests of all employees by;

- a) Providing a forum for the representation of all employees at the workplace
- b) Facilitate a shift from adversarial bargaining at the workplace to joint problem solving by employees and employers.
- c) Promote employee participation at the workplace.
- d) Provide employees with institutionalised voice in managerial decision-making.
- e) Benefit employers by raising productivity and profitability.
- f) Supplement collective bargaining and not undermine it, by relieving collective bargaining of functions to which the process is not well suited.

#### **4.5 Private dispute resolution**

South African labour law has a provision for parties to resolve their dispute through private processes and this is referred to as private dispute resolution. Private arbitration that is part of the private dispute resolution system is conducted by agreement between the disputing parties in which they choose their arbitrator and by agreement also determine their own terms of reference

and powers. The powers of the arbitrator and the process to be followed are governed by the agreement between parties (Basson et al., 2005).

The Independent Mediation Service of South Africa (IMSSA), formed in 1984, was the first private dispute resolution agency that set out to provide mediation arbitration services that were more expeditious, informal and less adversarial in nature than the courts. In 2000, IMSSA closed down and Tokiso Dispute Settlement was formed and it has grown to be the largest and most active private dispute resolution service in South Africa. The CCMA has however, not accredited private agencies, despite the demand for private dispute resolution services by agencies such as Tokiso (Bhorat et al., 2009).

## **5. DISPUTE RESOLUTION PROCESSES**

### **5.1 Conciliation**

According to Smith (2008), conciliation is the first step in the dispute resolution process. Most endeavours for resolving labour disputes in South Africa start with conciliation, irrespective of whether the issue concerns a matter of right or interest. The only deviation from this approach is in private dispute resolution where parties are allowed to agree to refer disputes straight to the arbitration process. The CCMA is bound by the LRA to attempt to resolve disputes referred to it through conciliation and any private agency or bargaining council may be granted accreditation to conduct conciliations by the CCMA (Smith, 2008). However, the CCMA has not to date accredited any private dispute resolution agencies (Benjamin, 2013).

If a dispute is referred to the CCMA according to section 133 of the LRA, a commissioner should be appointed to try and resolve the dispute within 30 days. According to Nel et al., (2012), the 30 day period can be extended with the consent of both parties. The commissioner is entitled to see how to proceed with the dispute and this can be through mediating the dispute, conducting a fact finding exercise and making recommendations to the parties.

Afterwards a certificate is issued indicating whether the dispute was resolved or not. In terms of section 135(5) of the Act, even if 30 days lapse without the matter being conciliated, the referring party has a right to a certificate of non-resolution in order to take the next step, whether being arbitration, adjudication or industrial action, depending on the issues involved. However, if the dispute is settled, the Commissioner will draw up a settlement agreement which both parties sign

and a certificate issued recording that the dispute is settled. A conciliation agreement is final and binding on both parties, and if either party fails to uphold the agreement, it can be made an award and thereafter certified as an order of court (Basson et al., 2005).

If a dispute is not settled at conciliation, there are options available. If it is a probation dispute, it must go to Conciliation-Arbitration (Con-arb) according to section 191(5A) of the LRA. If it is a dismissal (conduct or incapacity) or unfair labour practice and the parties do not object to the process, the matter may also continue to Con-arb or a commissioner may issue a certificate showing that the matter was not resolved and the applicant then apply for arbitration. If it is an automatically unfair dismissal according to section 187(1) of the LRA Act and unfair discrimination in terms of section 6 of the Employment Equity Act, then the matter must be referred to the Labour Court for adjudication. However, parties may opt for arbitration at the CCMA for unfair discrimination disputes. If it is an interest dispute, then employees may serve a strike notice and employers respond by issuing out lock-out notices (Basson et al., 2005; Smith, 2008).

## **5.2 Conciliation-Arbitration (con-arb)**

This process is the combination of conciliation and arbitration. According to the LRA, an arbitration hearing must immediately follow the conciliation proceedings once a certificate on non-resolution has been issued in disputes concerning dismissals or unfair labour practices relating to probation. If no objection is received from either party, con-arb may be used for any other dispute for example conduct, capacity, continued employment intolerable, less favourable terms of section 197 or section 197A transfers, reason for dismissal unknown, or an unfair labour practice. The core of the process is that conciliation is immediately followed by arbitration (Smith, 2008). The con-arb process is similar in many ways to the conciliation process.

If the dispute is alleged unfair dismissal, the disputant must refer the matter to the CCMA of Bargaining Council for con-arb within 30 days of the date of dismissal. If it is alleged unfair labour practices, the dispute must be referred to con-arb within 90 days. If any of the referrals are late, an application for a pardon for the lateness must be submitted by the referring party (Smith, 2008). Con-ab starts with conciliation and if the dispute is certified as unresolved, then the dispute is taken for arbitration where an arbitration award is issued to both parties. Such award is final and binding cannot be subjected to an appeal process but can be referred for review (Smith, 2008).

However, before going for arbitration, a commissioner is allowed to postpone the matter for arbitration. If parties settle by themselves at the conciliation stage, an agreement is signed by both parties and a certificate of resolution is issued (Smith, 2008).

### **5.3 Arbitration**

Section 115(1)(b) of the LRA grants the CCMA permission to conduct arbitrations if a dispute remains unresolved after conciliation and according to section 127(1)(b) of the Act, any private agency or bargaining council may be granted accreditation to conduct arbitrations by the CCMA. However, Smith (2008) asserts that certain disputes can only be dealt by the CCMA and not the accredited agencies.

According to Nel et al., (2013), there are two types of arbitration: compulsory arbitration and voluntary arbitration. Compulsory arbitration can take place in terms of a collective agreement which stipulates arbitration as part of the collective bargaining process or in terms of the LRA which says arbitration is compulsory where conciliation has failed. Voluntary arbitration, on the other hand, is when parties choose to refer a dispute to arbitration. However, arbitration is compulsory regardless of the council's right to select its own panel of arbitrators.

A party must refer a dispute for arbitration with CCMA or Bargaining Council within 90 days after certificate of non-resolution from the conciliation process is issued. If such referral is late, then the party should apply for a pardon for the lateness because the arbitration process and award thereof becomes null and void if the late referral of the dispute for conciliation has not been condoned. A dispute may be arbitrated by the CCMA only if it has been conciliated, or if 30 days lapse without a date being set for conciliation. A certificate of non-resolution is a legal prerequisite for arbitration by the CCMA or Bargaining Councils. In terms of section 138(7), a Commissioner must issue an award within 14 days of the conclusion of the arbitration proceedings and the award cannot be subject to an appeal process but to review. In terms of section 134 of the Act, an arbitration award can be enforced as if it was an order of the court if there is non-compliance to it (Smith, 2008).

### **5.4 Adjudication**

According to Smith (2008), adjudication is “a process where a judge reviews evidence and argumentation including legal reasoning set forth by opposing parties to come to a judgement which determines the rights between parties involved.”

Adjudication is a compulsory process once appropriately referred by one of the parties to the dispute. The judge hears the parties' cases and determines the dispute. However, there are certain disputes that must be referred to the Labour Court for adjudication according to section 191(5) (b) of the LRA.

## **6. DISPUTE RESOLUTION IN ESSENTIAL SERVICES**

According to section 213 of the LRA, Essential Services refers to “a service an interruption of which endangers life, personal safety or health of the whole or any part of the population, parliamentary service and the South African Police Service”.

The Essential Services Committee has declared 18 services to be essential; Air Traffic Control, Blood Transfusion Services, Court Services, Department of Correctional Services, Department Defence Civilian Services, Fire Fighting, Key-point Computer Services, Local Authority Services (municipal traffic services and policing, health and security), Power, Private Health Services funded by the public (emergency health services and health facilities for the community, nursing and paramedical services), Private health Services funded by the public (boiler and water purification), Public Health Services, Public Health Support Services, Sanitation Services, Social Pensions Payments, water etc. (Van der Walt et al., 2012).

Section 65(1)(d) of the LRA puts limitations on the right to strike if the person is engaged in essential or maintenance services. Section 74(1) states that a party engaged in an essential service may refer the dispute in writing to the CCMA or Bargaining Council for conciliation and arbitration who must attempt to resolve the dispute through conciliation. If the dispute remains unresolved, then any party to the dispute may refer it for arbitration by the council or commission. If a dispute of mutual interest in essential service is referred to the CCMA in terms of section 135(6) of the Act, parties must agree on the terms of reference. But if they don't, then the commissioner can determine the terms of reference (Smith, 2008).

## **7. REVIEW OF THE PERFORMANCE OF THE SOUTH AFRICAN DISPUTE RESOLUTION SYSTEM**

### **7.1 Elements of the system**

The institutions for dispute resolution in the South African labour relations system are the Commission for Conciliation, Mediation and Arbitration (CCMA), the Labour Court, the Labour Appeal Court, Bargaining councils and private dispute resolution agencies. The CCMA is one of the major and most successful innovations of the Labour Relations Act. The LRA established the CCMA as a statutory but independent body, although it is funded by the state. It is governed by tripartite committee chaired by an independent person. It has jurisdiction all over South Africa and has offices in all nine provinces. The primary function of the CCMA is to conciliate and arbitrate disputes. These are disputes referred to the CCMA in terms of the LRA and other labour statutes such as the Basic Conditions of Employment Act of 1997 (BCEA), Employment Equity Act of 1998 (EEA), the Skills Development Act of 1998 and the Unemployment Insurance Act of 2001 (UIF) (Nel et al., 2012).

According to Smith (2008), the South African Labour law distinguishes between disputes of right and of interest (matters of mutual interest) which isn't always an easy distinction to make. According to the Labour Relations Act No.66 of 1995, disputes of interest may be resolved through power by way of either lockout or strikes, which are protected only if the process prescribed by the Act, including conciliation, has been exhausted while disputes of rights are normally settled through direct negotiations or during conciliation, through either arbitration or Labour Court adjudication. According to Venter & Levy (2013), dismissals make up the largest percentage of referrals amounting for 81% of the case load at the CCMA and Bargaining Councils with the exception of the Public Sector Bargaining Council.

The CCMA has the power to licence Private Agencies and Bargaining Councils to perform any or all of its functions. This allows parties in dispute the choice of which institutions to assist them, although the Bargaining Council where it exists for parties, is always the first institution of engagement and if there is no Bargaining council then the CCMA has jurisdiction. However as mentioned above, the CCMA has not accredited any private agencies (Benjamin, 2013).

Bargaining councils on the other hand do not need to be accredited with the CCMA to perform dispute resolution services regarding parties to that council. However if a bargaining council applies to the CCMA for accreditation, the CCMA may, as a term of accreditation, give council



conciliators similar powers to CCMA conciliators. Their jurisdiction may be sectoral, regional or industry wide and hence they vary in size and quality of dispute resolution (Bhorat et al., 2009).

In terms of usage of the South African system, Bendeman (2006) argues that the LRA has created a sophisticated system of dispute resolution in which most of the role players are not capacitated to operate. The guidelines in Schedule 8 of the LRA have become the norm for dealing with conflict within an enterprise, creating complex and technical processes for dealing with disputes. However, most of the employers and individual employees do not have the knowledge and skills to operate effectively in the system. The very technical nature of the internal conflict resolution mechanisms, the incapacity of the parties and the adversarial nature of the labour relationship have resulted in the high referral rate and consequent problems for the CCMA.

## **7.2 Possible indicators**

### **7.2.1 Legitimacy**

When the ANC came to power in 1994, it started change by undoing the apartheid labour laws so as to transform the legislative framework and bring it in line with the international standards set by the ILO. There was extensive consultation with all social partners and the public so as to implement laws that were fair for all (Nel et al., 2012). The ANC focused on all the apartheid laws and realigned the labour legislation by primarily drawing on Australian, New Zealand and Canadian and related labour laws. This is because all these countries are Common wealth nations who inherited the British industrial relations system and South Africa's history and labour relations structure is closely linked to the constitutional and socioeconomic developments of these countries.

The LRA establishes the CCMA as a statutory but independent body, although it is funded by the state. The CCMA is also independent of political parties, trade unions, employer organizations, employers, federations of trade unions, and federations of employer organizations. It is governed by tripartite committee chaired by an independent person. It has jurisdiction all over South Africa and has offices in all nine provinces. This means that though the system is under government funding, it is an autonomous body that is free from government influence/ interference (Benjamin, 2013).

When it comes to awareness of the system, a large percentage of employees have no, or little schooling and the largest proportion of employers are in small to medium sized businesses with practically no skills or training in labour relations and labour law. It could thus be assumed that

the parties the South African labour relations system aims at protecting lack knowledge or are not equipped to deal with and make proper use of this system (Bhorat & Van der Westhuizen, 2008).

However, Venter & Levy (2013) argue that the increased figures in terms of referrals are proof of the degree of public knowledge, understanding and reach of the system. The number of referrals was 161,588 in the 2011/2012 financial year which was a 4.7% increase from the previous year. This figure involves the number of cases referred to bargaining councils and private agencies.

### **7.2.2 Efficiency**

According to Koorapetse (2011), efficiency of the South African system relates to how much time is spent during conciliation, con-arb or arbitration. According to the LRA, conciliations should be conducted within 30 days of referral of disputes and arbitrations within 90 days. The CCMA has set an internal efficiency target of 60 days for arbitrations rather than the statutory 90 days. The CCMA has even instituted mechanisms to notify parties of processes more effectively for example by using SMS notices.

However, the CCMA has been accused of putting too much emphasis on the speedy resolution of cases which means that the CCMA commissioners don't even have time or inclination to deal with the underlying issues of a dispute (Bhorat & Van der Westhuizen, 2008). When efficiency becomes an end in itself, then the system is in danger of losing sight of its function which is to resolve the dispute (Brand et al., 1997).

Bendeman (2006) however argues that the CCMA are not as expeditious as they hoped for with many disputes being referred to arbitration and not settled at conciliation as was intended.

### **7.2.3 Informality**

The CCMA has been lauded for having un-complicated referral procedures when complainants want to report their disputes. According to Koorapetse (2011), the only procedural requirements that an applicant has to fulfil are two referral forms for conciliation and arbitration and one does not even need legal representation during the whole dispute settlement process. Brand et al., (1997) further add that legal representation inevitably brings about formalised and technical arguments and procedures. However, Venter & Levy (2013) argue that having representation (trade union, consultant or a practicing attorney) really makes no significant difference to the outcome of the case and therefore parties should have the flexibility to choose representation as long as that representation does not obstruct the process.

According to Borat & Van der Westhuizen (2008), the the dispute resolution system is being let down by the strict interpretation of the labour laws by the CCMA and the Labour courts. For example the CCMA has been accused of continuously applying and demanding procedural rights beyond those required by the Code of Good Practice. This is worsened by the lack of proper supervision and clear guidance from the Labour Courts which has also placed huge burdens on CCMA commissioners to determine the correct process to follow in resolving disputes.

Applicants also do not have knowledge of the system or their rights and obligations. Bendeman (2006) further argues that applicants are poorly advised by trade unions, labour consultants and the Department of Labour, who lead them to believe that they have a good case and that they should pursue the matter further at the CCMA.

#### **7.2.4 Affordability**

The CCMA does not charge anyone for referring disputes to it. This is attributed to the fact that it is funded by the national government (Benjamin, 2013). This is an advantage as the poor are also availed the opportunity of fair labour justice.

#### **7.2.5 Accessibility**

A dispute resolution system should ensure that it is accessible to all parties. The absence of a requirement for formal pleadings and complicated referral procedures are one of the successful features that make the CCMA more accessible. This simplicity of the processes is often cited as an important factor in making the CCMA accessible to a large number of workers. For example, it has ensured that literacy, lack of skills and resources are not hindrances preventing entry to the system.

According to Bendeman (2006), the CCMA's accessibility is further evidenced by the high number of cases it gets, even frivolous ones.

#### **7.2.6 Full range of services**

According to Benjamin (2013), some of the services offered by the CCMA include dispute resolution, dispute management, and institution-building within the labour arena and the provision of education, training and information to employers and employees and their organizations. Bargaining councils on the other hand have traditionally negotiated collective agreements that

regulate terms and conditions of employment in the sectors in which they operate. They are also authorized to appoint designated agents who have powers similar to those of labour inspectors to enforce compliance with collective agreements.

The South African system caters for all types of disputes. However, there have been calls for a reduction on individual disputes as they are time consuming and others tend to be frivolous. According to Borat & Van der Westhuizen (2008), the CCMA is faced by a very high number of referrals compared to its capacity. A delay in the settlement of cases has proved to be an even bigger challenge for the CCMA.

### **7.2.7 Accountability**

Every effective system should be held accountable to the public and to their institutional stakeholders and the South African system has a high degree of transparency. All the dispute resolution institutions release monthly reports to account for the resources that they have used and this information is available to the public. Good examples are the CCMA and Tokiso who release annual reports on the number of cases they have solved, their financial statements et cetera.

The governing body which exercises significant executive and oversight function over the management and operations of the CCMA plays an important role in accounting for the CCMA. It represents the CCMA in hearings before the Parliamentary Portfolio Committee and in dealings with the Department of Labour and the Auditor-General who has oversight of the CCMA's financial management where it promotes the purpose of the CCMA and jointly argues for its continued relevance and funding. It also galvanises support for the CCMA from their constituencies and responding publicly to the criticism (Benjamin, 2013).

### **7.2.8 Resources**

When it comes to resources, the South African dispute resolution system is faced by a number of challenges. It is faced with financial and human resource constraints. This is further aggravated by the immense case-load pressure and the need to meet case efficiencies for CCMA commissioners. According to Benjamin (2013), the daily efficiencies for commissioners are: 2 con-arbs per day, 3 conciliations per day, 2 arbitrations per day, 4 rescissions per day. Because of this load, this may, in some cases, lead to hasty settling of disputes and possibly also in superficial settlements which fail to address the underlying causes of conflict or the real needs of the parties.

There have been issues of limited funding for the system and implementation of the various acts. That is, the different acts like the Skills Development Act and the Employment Equity Act among several others in the labour system require funding for them to be implemented correctly. This funding is usually obtained from the employer in the organisation who pays a percentage to the Department of Labour to implement the acts. This is however still not considered to be enough for the correct implementation of the system therefore presenting a further challenge to the system (Webster & Sikwebu, 2006).

The Labour Court's reliance on acting judges has also proved to be a challenge to the effective performance of the system. Initially, three fulltime judges were appointed to the court, supplemented by acting judges. No new full time judges have been appointed since 2002, and since 2006 only two full time judges have been serving on the bench of the labour court. As a result, the most severe problem facing the Labour Court is its reliance on acting judges, some of whom have little experience in labour law (Bhorat & Van der Westhuizen, 2008).

The CCMA has introduced mentoring for entry-level commissioners which makes their transition into the organisation much easier. The CCMA has also started to invest more in the Training Development Unit (TDU), which has been in existence for two years and forms part of the CCMA Capacity Building and Outreach Cluster, as it believes this unit will provide design and developmental support for the CCMA's capacity building and qualifications development activities. The impact of the training goes beyond the immediate function of ensuring skilled mediators and arbitrators, serving also to enhance the body of dispute resolution skills available in the labour market as a whole (Benjamin, 2013).

## **8. CONCLUSION**

This chapter has covered the historic evolution of the South African dispute resolution system and the influence of the South African trade union movement, secondly the current dispute resolution system and lastly a review of the performance of the current dispute resolution system. The evolution of the South African labour dispute resolution system was divided into four eras. The first era is from 1870 to 1948, the second era from 1948 to 1979, the third from 1979-1994 and the last era from 1994 to the present date. The first comprehensive piece of legislation that changed the face of Labour Relations in South Africa was the Industrial Conciliation Act of 1924 which introduced a system that catered to white workers in the private sector only as male black

workers were excluded from the definition of “employee”. Public workers were not included in the act as well. After periods of labour unrest, the Wiehahn commission introduced a new era and recommended changes to the system which were introduced in the Industrial Conciliation Act, which later came to be known as the Labour Relations Amendment Act of 1979 and because not all recommendations were added, more amendments were made in the years to come leading to the passing of the Labour Relations Amendment Act in 1988.

It was in the final piece of legislation, the Labour Relations Act 66 of 1995 that the dual system of labour relations was removed. All employees whether public or private, black or white are currently covered under the same piece of Labour Relations Act. The LRA has also established institutions to make the system more efficient and accessible to the South African public and they are the Commission for Conciliation, Mediation and Arbitration (CCMA), the Labour Court, the Labour Appeal Court, Bargaining councils and private dispute resolution agencies.

Lastly a review of the performance of the South African dispute resolution system was carried out and it was clear that though the system has made a number of achievements compared to other national systems, it is currently under strain.

The next chapter deals with the comparison of the Ugandan and South African dispute resolution systems.

## **CHAPTER FOUR**

### **COMPARISON BETWEEN THE UGANDAN AND SOUTH AFRICAN DISPUTE RESOLUTION SYSTEMS**

#### **1. INTRODUCTION**

This chapter will establish the differences and similarities between the Ugandan and South African dispute resolution systems. This will be undertaken through using the framework developed in chapter one and used in chapters two and three, that is, by looking at the elements of the systems which include nature of disputes, coverage, processes, avenues of dispute resolution, human resources, and secondly, the two systems will be compared using the goals of the systems which are legitimacy, efficiency, informality, affordability, accessibility, a full range of services, accountability and resources.

#### **2. COMPARISON OF THE SYSTEMS**

##### **2.1 Elements of the systems**

###### **2.1.1 Nature of the disputes**

According to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006 of Uganda, both disputes of rights and disputes of interest, whether existing or apprehended, maybe reported in writing to a labour officer. However, a labour dispute may only be reported to the Commissioner for Labour, or the commissioner may on his/her own initiative take responsibility for any labour dispute if it is, or is likely to become a national disaster. The labour officer should react to report of labour dispute within two weeks and deal with the report in more than one way. He could endeavour to conciliate and resolve the dispute between the parties, appoint a conciliator, refer the dispute back with the parties with proposals on how to settle the dispute, reject the report with reasons and inform the parties accordingly or inform the parties that the report has matters which cannot be dealt with under the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006.

The Labour officer may refer the dispute to the Industrial Court if four weeks after receipt of a labour dispute, the dispute wasn't resolved and if the conciliator appointed by the commissioner doesn't see any likelihood of reaching any agreement. Therefore, the labour officer shall refer the

dispute at the request of any party to the Industrial Court. If there are any arrangements for settlement by conciliation or arbitration between a trade union and employers' regardless of number, the labour officer shouldn't refer the matter to the industrial court but should ensure that parties follow the procedures for settling the dispute laid out in the conciliation or arbitration agreement.

In the South African system, disputes of interest are referred to either a bargaining council or CCMA for conciliation and when the dispute remains unresolved, it can either go to arbitration at the CCMA or adjudication in the Labour court. Disputes which go to the Labour Court include unfair labour practices entailing discrimination, automatically unfair dismissals, dismissals relating to retrenchment. Dismissals relating to incapacity, incompetence or misconduct are the ones which go to arbitration.

When it comes to disputes of interest, they are referred to conciliation in either a bargaining council or CCMA. Only disputes of interest in essential services are referred to arbitration if they remain unresolved after conciliation. For disputes of interest if they are not resolved at conciliation the next step is strike action or lock out (Bendix, 2009).

The difference here is the fact that the Ugandan system does not differentiate between the different types of dispute unlike the South African system which differentiates between rights and interest them and has different avenues for their settlement.

### **2.1.2 Coverage**

In the Uganda, both private and public employees are covered by the dispute resolution system. According to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006, an employee means anyone who enters into a contract of service or an apprenticeship contract, including without limitation, a person who is employed by or for the government of Uganda, a local government or a parastatal organisation, but doesn't include a member of the Uganda people's defence force. However the Trades Disputes (Arbitration and Settlement) Act 1964 did not apply to members of the Uganda Peoples' Defence Forces, members of any police force established by the Constitution or Act of Parliament, public officers or persons otherwise employed by the Government.

In South Africa, the promulgation of the Labour Relations Act 66 of 1995 united the South Africa workforce which was divided by the apartheid regime as only private sector workers were covered by the Industrial Conciliation Act of 1924. The 1924 Act and its follow up Acts excluded male



African workers but that was to change when the Wiehahn commission in 1979 recommended that African workers were included in the dispute resolution system. Public sector employees took longer to have their own dispute resolution mechanism and it was only in 1993 that the Public Service Labour Relations Act (PSLRA) was promulgated together with the Education Labour Relations Act (ELRA) who established bargaining councils. The new Labour Relations Act of 1995 covered all workers in South Africa under a single piece of legislation. Those who are not covered are the members of the South African Defence Force, National Intelligence Agency and the South African Secret Service (Smith, 2008).

Both systems are quite similar as they both exclude their national armies from being covered by the Act. However, the South African system also excludes its National Intelligence Agency and the South African Secret Service from being covered by the Act.

### **2.1.3 Avenues of dispute resolution**

According to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006 of Uganda, both disputes of rights and disputes of interest, whether existing or apprehended, maybe reported in writing to a labour officer. However, a labour dispute may only be reported to the Commissioner for Labour, or the commissioner may on his/her own motion take responsibility for any labour dispute if it is, or is likely to become a national disaster. The labour officer should react to report of labour dispute within two weeks and deal with the report in more than one way. He could endeavour to conciliate and resolve the dispute between the parties, appoint a conciliator, refer the dispute back with the parties with proposals on how to settle the dispute, reject the report with reasons and inform the parties accordingly or inform the parties that the report has matters which cannot be dealt with under the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006.

The Labour officer may refer the dispute to the Industrial Court if four weeks after receipt of a labour dispute, the dispute wasn't resolved and if the conciliator appointed by the commissioner doesn't see any likelihood of reaching any agreement. Therefore, the labour officer shall refer the dispute at the request of any party to the Industrial Court. If there are any arrangements for settlement by conciliation or arbitration between a trade union and an employer, regardless of number, the labour officer shouldn't refer the matter to the industrial court but should ensure that parties follow the procedures for settling the dispute laid out in the conciliation or arbitration agreement. However, the Industrial Court has been un-operational for quite some time.

According to Koorapetse (2011, p.62), “all types of disputes go for conciliation at the CCMA or Bargaining councils in south Africa. If after conciliation they remain unresolved, the legislation prescribes the route. For example, freedom of association goes to the Labour Court; disputes of interest in essential services goes for arbitration; dismissals due to incapacity, incompetence or misconduct goes to arbitration; automatically unfair dismissals go to Labour Court, dismissals relating to participating in strike for reasons linked to closed shop go to Labour Court, dismissals relating to reasons for retrenchment go to the Labour Court, unfair labour practices (excluding discrimination) go to arbitration; unfair labour practices entailing discrimination go to Labour Court and interest disputes go to strike action unless if it is a dispute about refusal to bargain”.

The major difference here is the fact that the South African system has a number of avenues to cater to the different types of disputes unlike the Ugandan system which only has the Labour officers and the Industrial court. Because the Industrial Court is un-operational in Uganda, most disputes are sent to the Ministry responsible for labour or the High Courts.

#### **2.1.4 Human resources**

In Uganda, the ministry responsible for labour in the country is the Ministry of Gender, Labour and Social Development (MGLSD). The MGLSD is divided into a number of Directorates, including the Directorate of Labour. The Directorate of Labour, in turn, has three departments; Employment Services; Occupational Safety and Health; and Labour, Industrial Relations and Productivity. The Directorate of Labour appoints and facilitates Labour Officers though they are supposed to be appointed and administered by their individual districts as part of the country’s shift towards decentralisation but that hasn’t happened yet. Labour officers are responsible for conducting workplace inspections and ensuring compliance with the employment standards set out in the Employment Act. They are also called upon to facilitate the settlement of employment disputes and are empowered to institute criminal or civil proceedings in the Industrial Court in respect of any violation of the Employment Act (Ainslie & Bunya, 2011). According to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006, a Labour officer means the Commissioner for Labour, the district labour officer and the assistant labour officer.

In South Africa, the governing body of CCMA appoints the commissioners according to the LRA of 1995 and they are appointed on the strength of their expertise and experience in labour matters particularly in labour dispute resolution to conduct conciliation, arbitrations, and con-arbs. Complete impartiality is expected from commissioners. Commissioners are employed on either full time or part time basis. There are several categories of commissioners for example senior

commissioners who manage other commissioners and monitor the conciliation and arbitration hearings and they are all expected to have a certain level of education to carry out their tasks.

The LRA established a specialist system of labour courts with an exclusive labour law jurisdiction, that is the Labour Court and the Labour Appeal Court is the court of final appeal in respect of labour disputes to deal with complex labour issues. Because of the inability to attract sufficient judges of high calibre in the field of labour law, these courts rely on acting judges who have little experience in labour law.

### **3. PERFORMANCE OF THE SYSTEM**

#### **3.1 Legitimacy**

Legitimacy of a dispute resolution system involves key factors like need for consensus, independence of institutions, the protection of human rights, need for the use to be voluntary and aligned not only societal norms but workplace agreements and regulations, delivery of just and fair decisions as well as clear and consistent decisions.

Uganda's legislative system has been marred by controversy from the very beginning. With every political regime, all the changes to the dispute resolution system have been made with very limited consultation with the concerned stakeholders. The Ugandan government has let market forces determine the employer-employee relationship in Uganda and has failed to enforce recognition of unions in the private sector, failed to recognise and bargain effectively in the public sector. Government has also failed to enforce laws on minimum wage which has left vulnerable groups unprotected from the forces of liberalisation. Further still, most labour institutions have been non-functional for many years for example the Industrial Court. The decentralisation of labour officers also subjects them to government control as districts are run by government representatives, Chief Administrative Officers (CAOs). This is evidence of government control of the labour institutions in Uganda.

The South African system on the other hand carried out extensive consultation with all social partners and the public so as to implement laws that were fair for all. The LRA establishes the CCMA as a statutory but independent body, although it is funded by the state. The CCMA is also independent of political parties, trade unions, employer organizations, employers, federations of

trade unions, and federations of employer organizations. Furthermore, the South African system has very well qualified and professional staff by the world standards.

### **3.2 Efficiency**

Efficiency is a very vital goal for every dispute resolution system. Efficiency as desired by the parties to labour disputes, is the requirement that disputes be speedily resolved. That is, disputes should be addressed quickly with the least procedural technicalities as there is a need for the disputing parties to have the dispute resolved quickly and not drag on indefinitely.

The Ugandan system has been designed to respond to disputes within the shortest time possible. Labour officer are expected to respond to labour dispute within two weeks and he/she may refer the dispute to the Industrial Court if, four weeks after receipt of a labour dispute, the dispute was not resolved and if the conciliator appointed by the Commissioner does not see a likelihood of reaching any agreement. However the system is not efficient because of the “chronic” shortage of labour officers and the un-operation of the Industrial Court, which is the only avenue for appealing the decision of a labour officer. According to Ainslie & Bunya (2011), a majority of labour cases are often referred to the un-operational Industrial Court or the Ministry responsible for labour, and consequently remain unheard which is quite distressing. This is further worsened by the alternative ordinary courts that choose not to handle labour disputes as they lack knowledge on labour laws.

The South African system is much more efficient. The CCMA has set an internal efficiency target of 60 days for arbitrations rather than the statutory 90 days set by the LRA. The CCMA has even instituted mechanisms to notify parties of processes more effectively for example using SMS notices. According to Koorapetse (2011), there has been an increase of the settlement rate of disputes over the years.

Therefore the South African system is more efficient than the Ugandan system as it has institutions which respond to labour disputes in a short period of time unlike the ugandan system that lacks institutions which would be handling these didputes.

### **3.3 Informality**

Informality means that parties involved should be able to approach the system virtually unaided. Procedures and operations should be clear, uncomplicated, and informal.

The Ugandan system is designed in an easy way that could be understood by all. However, majority of the labour officers are not qualified and are not sure on what their position entails as they haven't been well trained in key labour administration activities such as labour inspection, employment services, dispute resolution and labour law. This therefore means that if the system is not understood by the labour officers, chances are high that there is limited assistance available for those who need to use the system which in the long run complicates the process for the users, mainly the vulnerable groups.

The South African system on the other hand is committed to informality. This is shown by the absence of complicated referral procedures during the whole dispute resolution process as the only requirements that an applicant has to fulfil are two referral forms for conciliation and arbitration and one does not even need legal representation during the whole dispute settlement process. However, the CCMA and the Labour Courts have been accused of strict interpretation of the labour laws.

Both systems do not require the parties to have legal representation which simplifies the process. However, the South African system is more informal than the Ugandan system as its staff is more acquainted with the system unlike the Ugandan labour officers who have not been well trained to use it. The CCMA commissioners are up to date with the current legislative and policy changes and offer assistance to parties where necessary.

### **3.4 Affordability**

An ideal labour dispute resolution system should be free or at the very least inexpensive. That is, the least privileged or the poor should be able to access the system.

The Ugandan system offers free services through labour officers and the Industrial Court. However because cases which are unresolved by the labour officers are being sent to the High court which is quite costly, because of the inactive industrial court, this means that the system is not affordable for majority of workers. In addition, due to budgetary limitations and differing political priorities at the district level many districts do not have labour officers in place. This

therefore means that anyone with a dispute will be forced to report it to the normal court which is highly unlikely for low income earners.

The South African system on the other hand is free of charge. The CCMA does not charge for referring disputes to it as it is a government funded institute. Comparing both systems indicates that the South African system is affordable for every type of employee, more importantly the vulnerable ones. However, when the cases end up at the South African Labour Courts, the disputants will need to hire a lawyer.

### **3.5 Accessibility**

Brand et al., (1997) assert that a dispute resolution system should ensure that all parties, including the most vulnerable, have easy access in terms of where to go, who to approach and how to involve the dispute resolution institutions in their dispute. Furthermore, a system needs to have minimum formalities in obtaining assistance for the parties.

According to the Ugandan Employment Act of 2006, labour officers should be appointed in each of the country's 111 districts so that everyone has access to the system. However due to budgetary limitations and differing political priorities at the district level many districts do not have labour officers in place. This therefore means that not all parties, especially the most vulnerable and inhabitants of rural areas, have easy means to make contact and using the court system is quite complicated for a country with a high rate of illiteracy. According to the Labour Administration and Inspection Programme (2012), there were only 26 districts with labour officers. The Researcher discovered that many of Ugandans were not aware of the existence of labour officers and the Industrial Court which proves there's not enough information out there about the system.

The South African system however, ensures accessibility for every employee. The CCMA has a very simple system for referral procedures which is often cited as an important factor in making the CCMA accessible to a large number of workers as it has ensured that literacy, lack of skills and resources are not hindrances preventing entry to the system. Its accessibility is further evidenced by the high number of cases it gets, even frivolous ones.

Therefore the South African system is much more accessible than the Ugandan system as it has less complicated procedures and has staff available to assist the users of the system unlike the Ugandan system which is facing a problem of staff shortage per district.

### **3.6 Range of services**

According to the ILO (2013), an effective dispute resolution system should provide a range of services related to the prevention and resolution of disputes for both private and public sector clients. Some of these services include the provision of information, advice, training, facilitation, investigations, conciliation, mediation, arbitration, adjudication as well as conciliation-arbitration, and arbitration-conciliation sequences where appropriate. Services such as advisory information and training to assist employers and employees to prevent disputes from arising in the first place should also be made available.

The Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006 of Uganda caters for all the different types of disputes, that is, private sector and public sector disputes, collective and individual disputes, Unionised and nonunionised disputes, disputes of rights and interests and disputes from the essential services. The Industrial Court is tasked with promoting equity, effective and expeditious settlement of labour disputes, industrial harmony and improved working conditions while Labour officers on the other hand are responsible for labour inspection, dispute resolution and because the Industrial Court is not operational, they have been conducting hearings and delivering rulings on matters which would ordinarily be done by the specialized court. Because of limited funding from the government, high staff turnover of labour officers, untrained labour officers, the system is unable to provide all the required services expected of a dispute resolution system by the ILO such as provision of information, advice, training, facilitation, investigations, conciliation, arbitration et cetera.

In South Africa the CCMA offers services like dispute resolution, dispute management, and institution-building within the labour arena and the provision of education, training and information to employers and employees and their organizations. Bargaining councils on the other hand have traditionally negotiated collective agreements that regulate terms and conditions of employment in the sectors in which they operate. They are also authorized to appoint designated agents who have powers similar to those of labour inspectors to enforce compliance with collective agreements. South African labour law also has a provision for parties to resolve their dispute through private processes and this is referred to as private dispute resolution.

Therefore, the South African system offers more services compared to the Ugandan system as the Ugandan system is held back by limited funding from the government, high staff turnover of labour officers, untrained labour officers.

### **3.7 Accountability**

According to the ILO (2013), any institution needs to be held accountable to the public and those institutional stakeholders who will be affected by their decisions or actions regardless of whether it's a government, private or civil society organization.

As mentioned in chapter two, the Ugandan governance system has a history of lacking transparency and accountability to the public and this has affected the dispute resolution system. For example the reluctance to re-establish the industrial court, set minimum wage. In fact, it has only been accountable after pressure from international bodies such as the ILO and western countries. Additionally, there are no labour reports from the institutions to account for the resources used or updates on what they are doing.

By international standards, the South African system has a high degree of transparency and accountability through releasing monthly reports to account for the resources that they have used and this information is available to the public. Good examples are the CCMA and Tokiso who release annual reports on the number of cases they have solved, their financial statements et cetera. The CCMA also has a governing body which accounts for it, represents the CCMA in hearings before the Parliamentary Portfolio Committee and in dealings with the Department of Labour and the Auditor-General and to the public.

Therefore, the South African system is generally more accountable to all the stakeholders than the Ugandan system.

### **3.8 Resources**

For any dispute resolution to achieve any of the goals discussed in chapter one, it needs to have sufficient financial resources to meet the capital and operating expenditure associated with providing services to its clients. Furthermore, it needs sufficient professional and support staff who have sound knowledge of the system, adequate space and equipment, including computer and telecommunication systems.

The Ugandan system has been faced with a serious issue of budget and staffing constraints and is thus unable to carry out the range of services it is expected to provide. According to the Labour Administration and Inspection Programme (2012), the Chief Administrative Officers' (CAOs) have been known not to allocate sufficient funding for the functions of labour officers in the districts. Furthermore, the limited knowledge among employers and workers in the district about the



contents of the labour laws and the untrained labour officers who are not up to date with the current legislative system have proved to be an obstacle to the success of the system.

The South African system is faced with financial and human resource constraints which are further aggravated by the immense case load pressure and the need to meet case efficiencies for CCMA commissioners which leads, in some cases, to hasty settling of disputes and possibly also in superficial settlements which fail to address the underlying causes of conflict or the real needs of the parties. The Labour Court's reliance on acting judges has also proved to be a challenge to the effective performance of the system. However, the CCMA is investing more into training of its staff through mentoring for entry-level commissioners which makes their transition into the organisation much easier, investing in the Training Development Unit (TDU) which provides design and developmental support for the CCMA's capacity building and qualifications development activities (Benjamin, 2013).

The South African system has better resources as its major issues are more to do with lack of support staff and caseloads unlike the Ugandan system where the issue is with untrained staff. Further still, the South African government seems more responsive to the plight of the system unlike Uganda where the government has attempted and succeeded at suppressing the system.

#### **4. CONCLUSION**

The comparison has revealed a lot of differences in the Ugandan and South African system which has indicated how much the Ugandan system needs to change in order to have an effective system. The South African system is more legitimate, efficient, informal, affordable, and accessible than the Ugandan system. Further still the South African system provides a full range of services is more accountable and has enough resources than the Ugandan system.

The next chapter deals with recommendations and conclusions.

## CHAPTER FIVE

### RECOMMENDATIONS AND CONCLUSION

#### 1. INTRODUCTION

Chapter four has established that there are more differences than similarities between the Ugandan and South African labour dispute system. It is evident that the South African system is more advanced than the Ugandan system which explains why it is very successful. Both systems have roots in the British legal system and it would appear more obvious that the Ugandan system would adopt the same system as South Africa but this isn't the case. The ILO developed a report in 2004 (Strengthening Labour Relations in East Africa (SLAREA)) and recommended that a system like South Africa's was too complicated for implementation in Uganda with one of the reasons being the weak trade union movement. However, Uganda can still learn from South African system and the following are some recommendations to improve the system.

#### 2. RECOMMENDATIONS

##### **2.1 Liberalising the Directorate of Labour, Employment, Occupational Safety and Health**

The Ugandan dispute resolution system is still under government control and has been unable to make fair and just decisions with or without government intervention. The ministry responsible for labour administration in the country is the Ministry of Gender Labour and Social Development (MGLSD) and has a department, the Employment Services Department, which appoints and administers Labour Officers. As part of the Country's shift towards decentralization, these Labour Officers are supposed to be administered by individual districts but responsibility has not yet been delegated.

However, to make the system more effective, the Ministry can liberalise the Directorate of Labour, Employment, Occupational Safety and Health. The directorate is currently responsible for the formulation and implementation of labour laws and policies. Liberalisation of the Directorate would enable it to give a more accurate and unbiased account of the labour situation in Uganda. Additionally, the Directorate will be able to have supervised control of its resources so as to strengthen labour administration and inspection services in Uganda as one of the systems major

challenges was limited funding and issues such as health and education consistently ranked higher on the list of policy priorities for the government, often leaving labour and employment matters on the side-line. The role that the MGLSD can play is to guide, advice and fund the directorate as it carries out its duties. In South Africa, the labour law implementation has greatly improved largely because an independent mechanism has been relied on and more pressure to operationalize the law is placed on its government.

## **2.2 Mass sensitisation on labour rights**

One of the obstacles to Ugandans enjoying their rights as workers is the fact that they are not aware of them. Therefore carrying out labour campaigns would be one way the trade union movement would enable Ugandans to know the laws and how the system operates. Government should play a pivotal role in ensuring these campaigns are a success by for example sponsoring them.

Additionally, including labour education to the education system of Uganda is one way to create awareness. From the interviews carried out and from the researcher's own personal experience, including labour education to the education system in Uganda would create a great awareness of the system as the Ugandan education system doesn't seem regard the role the trade union movement played in the political and economic transitions in the country and the impact the labour laws and policies have on workers. This explains why many Ugandans, even the educated ones are not aware of the existence of labour laws and trade unions.

## **2.3 Accreditation of private agencies**

There's currently not much that is written on private agencies and the Ugandan law doesn't say anything on their establishment or accreditation. However, to solve the problem of unresolved labour cases that are piling up at the un-operational Industrial Court, Ordinary Court and the MGLSD, the government should encourage the establishment of these agencies to take up the role of dispute resolution as the country waits for the re-opening of the Industrial Courts. In South Africa, private agencies like Tokiso have reduced the work load placed on the CCMA and bargaining councils.

## **2.4 Create a separate dispute resolution system for the informal sector**

According to the Labour Administration and Inspection Programme (2012), the population in Uganda is predominantly rural and agricultural based. In 2010, 25.5 per cent of the working poor

were employed in agriculture, earning an average of Shs.50, 000 per month, about 33.5 per cent of the employees in the private sector earned less than Shs. 50,000 per month in nominal terms, while the median monthly income for paid employees was Shs. 90,000. Only 20.8 per cent of the employees in the private sector have written contracts and only 9.5 per cent are covered under pension schemes that guarantee them social security.

A separate dispute resolution system needs to be created to cater for the vulnerable atypical workers in Uganda. This system should be accessible, informal and efficient. Currently, vulnerable workers are being subjected to harsh working conditions and they lack job security therefore a new system would establish policies and laws that would ensure that these workers are rights are not mistreated in the work environment and their rights are met. This system should be formed with the guidance and involvement of all the stakeholders, that is, the employer organisation, trade unions and the state.

## **2.5 Proper routing of disputes**

According to Koorapetse (2011), the dispute resolution path is clearly prescribed by the LRA in South Africa. Several types of disputes are taken for conciliation at the CCMA or bargaining council, but if after conciliation they remain unresolved, they take slightly different routes. Therefore, it would be better if the Ugandan system would first and foremost differentiate between the different types of disputes like the South African system and also clarify where different types of disputes would go when conciliation fails. This is because disputes in Uganda are generalised and they all take the same path, that is, the dispute is reported to a labour officer who then forwards it to the Industrial Court if he/she cannot resolve it. This process is too general as different types of disputes should be dealt with differently.

## **2.6 Creation of an independent body to monitor the national system**

Government, trade unions and employers need to create an independent body to monitor the usage of the system in Uganda. This system should act more as a “watch dog” and should monitor whether the system is being utilised by every Ugandan, the number of cases being reported, the number of settlements et cetera. I believe this system should be comprised of worker representatives, employer organisations, the state and foreign representatives (from the ILO preferably). A foreign representative would be an important addition as the government seems to respond more to foreign pressure so he/she would be handy when government is not being fair in its labour policies.

In addition to the an independent body, all the social partners need to create “pressure groups” to forge relationships with the western world and international bodies with a purpose of exerting force on government to enforce the labour laws. Pressure groups also help in creating nation wide awareness of the system.

## **2.7 Encouraging the creation of more democratic workplaces**

Both international and national companies need to create more democratic workplaces. From the interviews carried out and other social interactions, it was evident to see that so many Ugandan employees are not confident at expressing their opinions and don't feel entitled to labour rights as they risk their job security. Many were safe with having a job rather than demanding their rights as they believe there was no protection for them if they requested for less work hours, leave days et cetera. The policy of hire and fire in uganda has not been protested. A democratic workplace ensures that employees have a voice and are in the long run motivated in their jobs in addition to other intrinsic and extrinsic incentives.

## **2.8 Re-establish the Industrial Court**

The Industrial Court needs to be a re-established so as to deal with all the labour matters that are not resolved by the labour officers. According to the Labour Disputes (Arbitration & Settlement) Act No. 8 of 2006, the Industrial Court is supposed to be established by law under Section 7 with the mandate to arbitrate on labour disputes referred to it and to adjudicate all trade disputes referred to it. However, it has not been operating for quite some time in the country therefore labour matters have been brought before the High Court which most times fails to handle them or refers them to the Industrial Court meaning they remain unheard. Therefore, I recommend that the MGLSD should re-establish the Industrial Court as it is the only judicial body that has the expertise to ensure that there is effective application of labour legislation. More importantly, it serves as an important recognition of workers' need for access to justice. In addition, the government should also provide financial support and independence for the court to fulfil its obligation as government control and limited funding were reasons for its closure in the first place.

## **2.9 Employing and training more labour officers**

One of the obstacles to a success of the Ugandan dispute resolution system has been its human resources. Labour officers have been accused of having limited knowledge of the content and application of the labour laws and how the dispute resolution system should operate. Therefore the MGLSD needs to create and implement a training policy for both the old and new recruits on

the legislation and how to enforce it. Labour officers should also be trained in conciliation and mediation so as to avoid conflicts being sent to court.

The government should also employ more labour officers as there is also a shortage of labour officers in the country. According to the Labour Administration and Inspection Programme of 2012, there were only 34 labour officers for the 111 districts meaning many districts do not have access to the legislative system. Additionally, the MGLSD needs to employ them in better working conditions so as to reduce the turnover as the ILO reports that there is a high turnover attributed to poor working conditions and unfavourable human resource policies such as low salaries, limited career advancement.

### **3. CONCLUSION**

From this chapter, it is evident that though Uganda cannot certainly adopt the South African system entirely, it can still learn some aspects so as to become more effective. It is clear from Chapter two that Uganda needs to start from the grassroots to create a system that is efficient and well known by the public. The ILO has carried out various studies and made recommendations on how to make the system better but these have been largely ignored by the government. As the Labour Administration and Inspection Programme (2012) suggest, there needs to be intensive training of all labour employees, the government needs to embrace and implement the 2006 Acts, the system needs to establish a standing court to deal with labour issues only et cetera. However, it is up to the Ugandan government to accept that workers have rights to and therefore work with all the stakeholders to implement the proposed changes.

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## **APPENDIX A: LIST OF STATUTES**

### **UGANDA**

- 1913 The Masters and Servants Ordinance, No.19.
- 1937 The Trade Unions Ordinance, No.18.
- 1941 The Trade Unions Ordinance (Amendment) Ordinance, No.46.
- 1943 The Trade Unions and Trade Disputes Ordinance, No.9.
- 1946 The Employment Ordinance, No.13.
- 1949 The Trade Disputes (Arbitration and Settlement) Ordinance, No.19.
- 1950 The Trade Disputes (Arbitration and Settlement) (Amendment) Ordinance, No.23.
- 1952 The Trade Unions Ordinance, No.10.
- 1963 The Public Service (Negotiating Machinery) Act, No.78.
- 1964 The Trade Disputes (Arbitration and Settlement) Act, No.20, Cap 200, Laws of Uganda 1964.
- 1965 The Trade Unions Act, No.11.
- 1970 The Trade Unions Act, No.40.
- 1971 The Trade Unions Act (Amendment) Decree, No.10.
- 1973 The Trade Unions Act (Amendment) Decree, No.29.
- 1974 The Trade Disputes (Arbitration and Settlement) Act (Amendment) Decree, No.18.
- 1976 The Trade Unions Decree, No.20.
- 1995 Constitution of Uganda
- 2006 The Employment Act, No. 6
- 2006 The Labour Disputes (Arbitration and Settlement) Act, No. 8
- 2006 The Labour Unions Act, No. 7

## **SOUTH AFRICA**

1904 Ordinance No.17

1911 Black Labour Regulations Act No.15

1914 Workmen's Compensation Act No. 25

1914 Riotous Assemblies and Criminal Law Amendment Act No. 27

1924 Industrial conciliation Act No.11

1937 Industrial Conciliation Amendment Act No.36

1952 Native Laws Amendment Act 54

1953 Native Labour Settlement of Disputes Act No.48

1956 Industrial Conciliation Act No.28

1973 Bantu Labour (Settlement of Disputes) No.70

1977 Black Labour Relations Regulations Amendment Act No.84

1979 Labour Relations Amendment Act

1988 Labour Relations Amendment Act

1993 Public Service Labour Relations Act No.102

1993 Education Labour Relations Act No.146

Labour Relations Act No.66 of 1995

1997 Basic Conditions of Employment Act No. 75

1998 Employment Equity Act No.55

1998 Skills Development Act No.97

## **APPENDIX B: LIST OF RELEVANT INTERNATIONAL LABOUR STANDARDS PERTAINING TO DISPUTE RESOLUTION (ILO, 2013)**

### **Conventions**

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

The Workers' Representatives Convention, 1971 (No. 135)

The Labour Administration Convention, 1958 (No. 150)

The Labour Relations (Public Service Convention), 1978 (No. 151)

The Collective Bargaining Convention, 1981 (No. 154)

The Termination of Employment Convention, 1982 (No. 158)

### **Recommendations**

Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)

Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94)

Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113)

Communications within the Undertaking Recommendation, 1967 (No. 129)

Examination of Grievances Recommendation, 1967 (No. 130)

Labour Administration Recommendation, 1978 (No. 158)

Labour Relations (Public Service) Recommendation, 1978 (No. 159)

Collective Bargaining Recommendation, 1981 (No. 163)