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ON

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“Core labour standards and their impact on trade and development in Botswana.” A paper prepared for presentation at the University of the Witwatersrand, Johannesburg, South Africa.

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Core Labour Standards and their impact on trade and development in Botswana*

INTRODUCTION

This paper addresses the issue of core labour standards and their impact, positive or negative in relation to trade and socio-economic development. The implications of this debate on social standards will be addressed.

The main idea in the paper is that the International Labour Organisation (ILO) is the competent body to set and deal with internationally recognized core labour standards. Assuming that there is a correlation between labour standards and trade, what role should the ILO play in promoting those standards? What are the experiences of trade unions (labour) regarding these standards and their preferences. It will be argued in the paper that respect for these standards provides a basic framework for stable industrial relations, which in turn will lead to social justice and peace.

Core labour standards

A small number of standards, referred to as core labour standards or core conventions have been identified and given prominence in the conclusion of the World Summit for social Development in 1995.¹ These standards were chosen because they form an integral part of human rights.² They are to be found in a number of United Nations texts such as the Universal Declaration of Human Rights (December 10, 1948) International Covenant on Economic, Social and Cultural Rights (December 1966) and the International Covenant on Civil and Political Rights (December 1966). These core conventions apply like other

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¹ World Summit for Social Development 1995.

² Raymond Torres, Special Edition of the OECD Observer for the WTO Ministerial Conference in Singapore, December 1996.

human rights (right to life, freedom of expression etc) in all countries, whatever their degree of economic development.³ These core conventions are as follows:

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

This grants the right to all workers and employers to form and join organizations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by public authorities.

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

This provides for protection against anti-union discrimination, for protection of workers' and employers' organizations against acts of interference by each other, and for measures to promote collective bargaining.

Forced Labour Convention, 1930 (No. 29)

This requires the suppression of forced labour or compulsory labour in all its forms. Certain exceptions are permitted, such as military service, properly supervised convict labour, emergencies such as wars and fires amongst others.

Abolition of Forced Labour Convention, 1957 (No. 105).

It prohibits the use of any form of forced labour as a means of political coercion or education, punishment for the expression of political or ideological views, workforce mobilization, labour discipline, punishment for participation in strikes or discrimination.

³ Note 2

Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

It addresses the call for a national policy to eliminate discrimination in access to employment, training and working conditions on grounds of race, color, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity and treatment.

Equal Remuneration Convention, 1951 (n. 100)

This convention calls for equal pay for men and women for work of equal value.

Minimum Age Convention, 1973 (No. 138)

It is intended to abolish child labour, stipulating that the minimum age for admission to employment should not be less than the age of completion of compulsory schooling and in any case not less than 15 years (14 for developing countries).

Core Labour Standards, trade and development

An OECD⁴ study has revealed that there is nothing to show that countries with weak standards have globally better export performance than those with high standards. On the contrary, failure to observe core labour standards can hamper a country's economic efficiency and the growth of its exports.⁵ It is argued that the exploitation of child labour, discrimination in employment, slavery and exploitation of labour in general are liable to perpetuate an inefficient economic situation over the long term.⁶ It is argued in the study that child labour hinders the development of human capital, thus retarding productivity gains and that discrimination in employment results in situations in which certain workers are

⁴ Note 2 pg32

⁵ Note 2 pg 32

⁶ Note 2 pg 32

not employed in the positions where they would be most productive. The study shows a mutually reinforcing relationship between trade liberalization and improvements in core Labour standards.⁷

The preamble to the ILO constitution states that poverty anywhere constitutes a danger for prosperity everywhere and the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries⁸ Humane conditions of labour can be achieved if International Labour Standards are observed, particularly core labour standards. Concerns have been raised, whether adherence to International labour standards is the only way to achieve them.⁹ While strong economic arguments can be made, the social arguments for labour standards are even more compelling. The primary objective of the ILO is social justice as enunciated in the preamble to the ILO Constitution.¹⁰ Removal of conditions of labour involving injustice, hardship and privations to large numbers of people is the ideal.¹¹

“Respect for these fundamental principles and rights is both an objective in itself and a basic means of achieving the other objectives of social policy. These rights are an objective because they are an important part of universally recognized basic human rights and respect for them is thus a moral imperative... these are the enabling conditions without which workers cannot exercise countervailing power to achieve improvements in working conditions.”¹²

⁷ Note 2 pg 32

⁸ ILO Constitution, Geneva 2001. See Werner Sengenberger, *The role and impact of International Labour Standards*, Bonn, July 2005.

⁹ Note 8, Sengenberger at page 37

¹⁰ ILO, Geneva Bureau for Workers' Activities. *Trade Unions and the informal sector: towards a comprehensive strategy*, 1999.

¹¹ Note 10

¹² Note 10

Justifications for labour standards

Labour standards are a good thing *per se*; they are an element of civilized social relationships, both national and international.¹³ Core labour standards are seen as part and parcel of fundamental human rights.¹⁴ They contribute to democracy and political stability, helping to contain forces of social disintegration, social uprising and political upheaval.¹⁵

Proponents of international coordination of core labour standards articulate the fear that, in the absence of such coordination, a prisoner's dilemma will emerge over labour standards.¹⁶ Countries will each lower their own standards in order to gain a competitive advantage over foreign exporters.¹⁷ The prisoner's dilemma may also emerge as a by-product of the competition over international allocation of capital.¹⁸

The moral and political justifications for the existence of labour standards and their enforcement especially (core labour standards) are widely accepted, but the economic rationale is not.¹⁹ Given this criticism, it is argued that labour standards are an indispensable precondition of sustainable economic growth and efficiency.²⁰ It is argued further, that they are conducive for economic performance, independently from the level of economic development of a country.²¹ Moreover, the moral, political and economic effects of labour standards are mutually supportive.²²

¹³ Werner Sengenberger; Labour Standards in the Global Trade and Investment System. The trade union Advisory Committee. 1996

<http://www.itcilo.it/english/actrav/telearn/global/ilo/standard/tuacinv.htm>

¹⁴ Note 13

¹⁵ Note 13

¹⁶ Drusilla K. Brown, International trade and core labour standards. Occasional paper No. 43, 2000.

¹⁷ Note 16

¹⁸ Note 16

¹⁹ Note 13

²⁰ Note 13

²¹ Note 13

²² Note 13

Labour standards level the playing field. They prevent that some country gains a presumptive economic advantage from the suppression of trade union activity, the use of forced labour, the use of child labour and discrimination amongst other issues. Core labour standards if properly observed create the foundations of a sound system of labour relations in which trade unions, together with employers and governments, can play a constructive role in working to ensure that progress goes hand in hand with the progressive opening up of international trade and investment.²³

Labour standards are essential for eliciting and promoting constructive competition. Companies should not compete through lower wages, benefits or lower social security standards, but should seek competitive advantage in more positive ways such as better products, higher quality products, better production processes and new market opportunities.

Labour standards are perceived by their critics as a cost and not as a benefit.²⁴ The view is that such standards are harmful because they raise the cost of production and squeeze companies out of the market. This poses one of the greatest obstacles to advancing labour standards. It cannot however, be assumed that absence of standards or non compliance with them is costless.

Critics against labour standards point out that unrestricted competition, unfettered market – determined income distribution necessarily create the best economic results, including employment and work.²⁵ International labour standards would distort the market mechanism, and prevent it from delivering optimal outcomes. Contrary to the above contention, proponents of international labour standards subscribe to the view that such standards define universal rules of the game for all competitors thus preventing destructive competition.

²³ International confederation of Free Trade Unions, Social Policy, Good Governance, core labour standards and Development. Discussion Paper, 1999

²⁴ Note 8. See Sengenberger.

²⁵ Note 8. See Sengenberger pg 45

Promoting standards

The International Labour Organization is tasked with the creation and promotion of labour standards. International Labour Organization standards are intended to be universal in nature.²⁶ They are intended to be applicable to and capable of attainment by countries with very different social structures and at different stages of industrial development.²⁷ In framing any conventions or recommendation, the International Labour Organization has “due regard to those countries in which climatic conditions, the imperfect development of industrial organization or other special circumstances, make the industrial conditions substantially different and shall suggest the modifications, if any which it considers may be required to meet the case of such countries.”²⁸ Systematic efforts are made in the standard setting process to give effect to this constitutional principle.²⁹

International labour standards, particularly core standards, have exerted and continue to exert their influence in every corner of the world, in industrialized countries and developing countries alike, that the policy constantly pursued by the ILO of adopting standards designed to be universally applicable would appear to be still valid today.³⁰

ILO standards may either take the form of a convention or recommendation. A convention is designed to be ratified. Like an international treaty, a ratifying state undertakes to discharge certain binding obligations, and there is regular international supervision of the way in which these obligations are observed. A recommendation on the other hand gives rise to us binding obligations but provides guidelines for national policies and actions. It is essentially for this

²⁶ International Labour standards. A workers education manual. ILO, Geneva, 2nd edition pg 22.

²⁷ Note 26.

²⁸ Note 26

²⁹ Note 26

³⁰ Note 26

reason that workers delegates to the International Labour conference often press for the adoption of conventions whereas the employers' delegates are more in favour of recommendations.³¹

There is fairly general agreement that the International Labour Organisation procedures play a useful role in promoting labour standards. Although some countries may not yet have ratified these conventions, they seem to endorse the underlying philosophy. As indicated earlier, core labour standards are human rights. Their promotion not only improves working conditions but contributes to social justice and good industrial relations.

Implications of debate on development and social standards in Botswana

When the country obtained independence in 1966, it was classified as amongst the least developed countries in the world.³² Today it is a middle income developing country with a highly segmented labour market.³³ There is a high wage formal sector coexisting with a low wage, high underemployment informal sector³⁴ The institutional framework governing the labour market makes provision for collective bargaining and other core conventions. Trade unions are recognized and their operations are facilitated by the Trade Unions and Employers Organization's Act.³⁵ The informal sector remains unorganized. There is a low and undocumented incidence of child labour in the informal sector.

According to our common law, contracts of employment entered into by persons under the age of seven years are void, while those entered into by minors between the ages of seven and twenty one years are voidable at the instance of

³¹ Note 26.

³² Botswana Government; National Development Plan 9, Gaborone, 2003.

³³ Note 32

³⁴ See, Daniel Montinga, should core labor be imposed through international trade for situation in Namibia. (Situation in Namibia)

³⁵ Chapter 48:01 Laws of Botswana

the minors guardian. The Employment Act of Botswana³⁶ makes a distinction between a child and a young person. It defines a child as a person who has not yet attained the age of 15 years while a young person refers to a person who has attained the age of 15 years but is under the age of 18 years. The Employment Act considers the contract of employment entered by children to be void *ab initio*. Consequently the employment Act of Botswana prohibits the employment Act of Botswana prohibits the employment of a child in any capacity whatsoever.³⁷

The section however permits the employment of children who have attained the age of 14 years and are not attending school on light work that is not harmful to their health and development. This work must be provided by a member of the child's family.

Young persons are allowed by the Act to freely enter into contracts of employment as long as they are not required to work underground or during the night. The provisions are consistent with the Minimum Age Convention No. 138 of 1973.

Conclusion

Botswana has ratified all the International Labour Organization core conventions. Workers enjoy relatively good labour standards which exist in the formal sector although their enforcement in the informal sector remains a challenge. Given the prevailing conditions in the labour market the country's economic performance is more than satisfactory. It is therefore contended that core labour standards impact on trade and development. The existence and indeed enforcement of core labour standards significantly contribute to sound labour relations and resultant social justice.

³⁶ Chapter 47:01 Laws of Botswana

³⁷ Section 107, Employment Act. Chapter 47:01. An assessment of the debate on globalization and labour standards. Occasional paper No. 2/2002 Hans Seidel Foundation Namibia.