Legal Notes

International labour standards

PAUL BENJAMIN of the CENTRE FOR APPLIED LEGAL STUDIES (CALS) looks at the International Labour Organisation (ILO) and its role in setting international labour law standards

You often hear people saying that a law such as the Labour Relations Act is not up to international standards. What does this mean? Generally it refers to the standards adopted by the International Labour Organisation. In this legal note we look at how the International Labour Organisation (ILO) sets standards and give some examples of them.

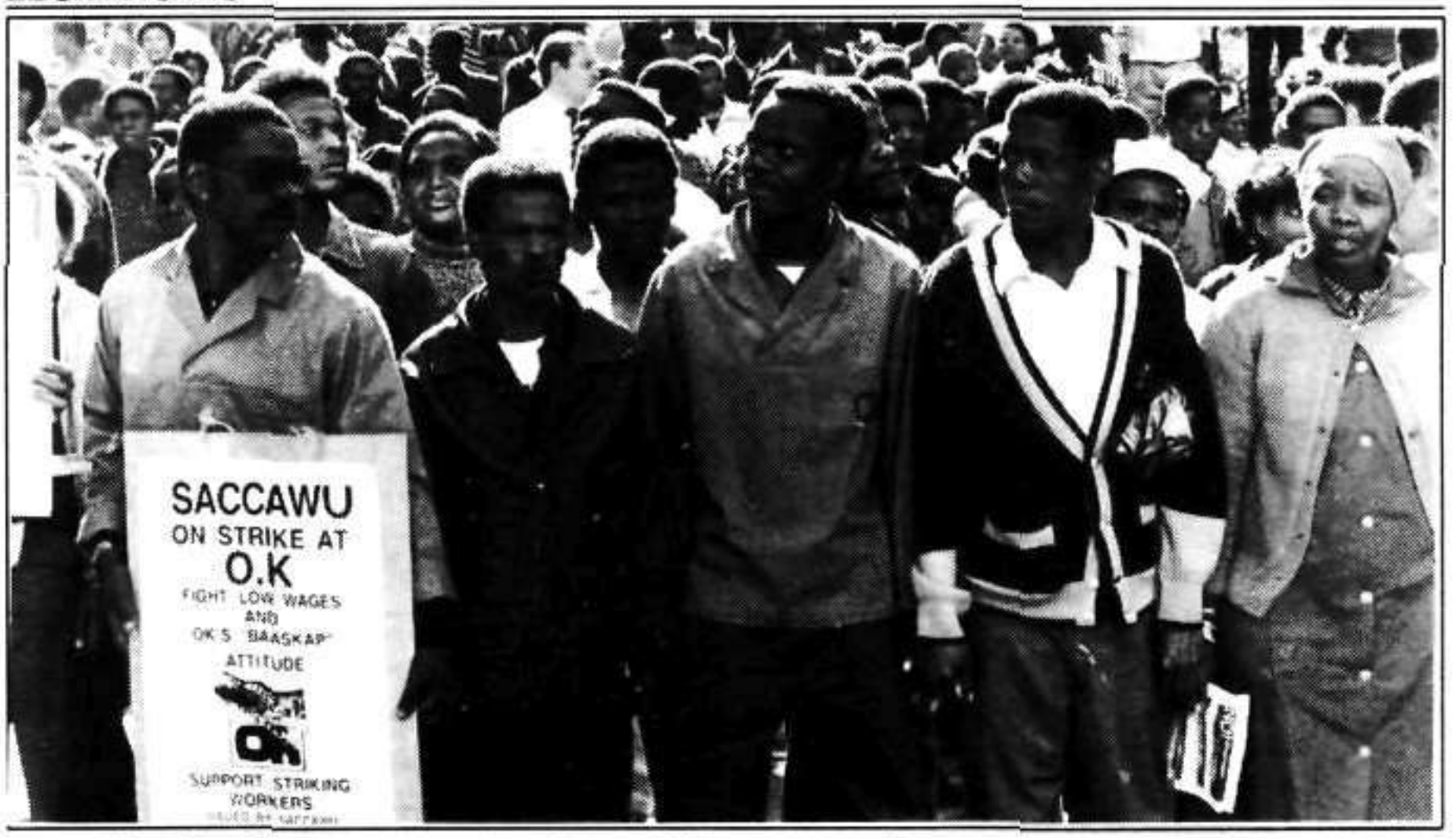
The International Labour Organisation

The ILO was formed in 1919, after the end of the First World War, with the hope of achieving universal peace. It was formed because of the belief that social justice is crucial to lasting peace and that the international regulation of labour matters would serve to improve the conditions of workers.

The General Assembly of the ILO, the International Labour Conference, meets annually in Geneva. It is attended by delegations representing the governments, workers and employers of all countries belonging to the ILO. Most countries in the world are members of the ILO. South Africa is not. It withdrew in 1964 rather than face expulsion because of apartheid policies.

Every year the International Labour Conference adopts a number of conventions and recommendations. These documents are the major source of international labour law. Both embody standards. Conventions are designed to be ratified, like international treaties, by the member countries. Once a country has ratified a convention, it must ensure that its laws comply with the Convention. There is a system of international supervision to ensure that countries that ratify conventions meet their obligations. The recommendations of the International Labour Conference, on the other hand, do not create binding legal obligations but are intended to provide guidelines for national policies and action.

To date, the ILO has passed 171 conventions and more or less the same number of recommendations. The conventions and recommendations cover subjects such as freedom of association, collective bargaining, the prohibition of force labour, equality of opportunity and



'... striking is a legitimate trade union activity ...' according to a ruling by the Committee on Freedom of Association of the International Labour Organisation

Photo: Rodger Bosch/Southlight

treatment, occupational safety and health, social security and the employment of women, children and young persons. We will look at a few of these conventions.

Freedom of association

The best known and most important ILO conventions are those dealing with freedom of association and collective bargaining. Convention 87 of 1948 (Freedom of Association and the Protection of the Right to Organise Convention) establishes the right of workers and employers to form organisations for occupational purposes and guarantees their free functioning.

Convention 98 of 1949 (Right to Organise and Collective Bargaining Convention) protects workers against anti-union discrimination at work and provides that worker organisations shall enjoy adequate protection against interference by employers. These conventions reflect the view of the ILO that 'freedom of association is essential to sustained progress'.

The ILO has created special institutions to deal with complaints concerning freedom of association. The ILO will investigate these complaints and its Committee on Freedom of Association *will decide whether the law is* in compliance with the convention. In 1988, the British trade unions lodged a complaint against laws introduced by the Thatcher government to curb the ability of employees to strike. A committee of experts appointed by the ILO ruled that a number of aspects of the British laws were not up to ILO standards on the freedom of association. Despite this the British government did not change the law but, in fact, made it worse. In 1988 COSATU referred a complaint to the ILO about the proposed amendments to the Labour Relations Act that took effect on 1 September 1988. Because South Africa is not a member of the ILO, the ILO could only investigate the complaint if the South African government *consented. The government* has refused to do so.

The ILO conventions do not deal expressly with strikes. However, the Committee on Freedom of Association has ruled that striking is a legitimate trade union activity and the dismissal of workers for participating in a strike is a serious violation of the

freedom of association. Recent decisions by the Labour Appeal Court have endorsed the right of employers to dismiss strikers even where strikes are legal. The ILO would undoubtedly regard this approach as a violation of the freedom of association.

The ILO and dismissal

One of the areas in which the ILO's standards have had the most impact on South African law is fair dismissal. In its early cases on unfair dismissal the industrial court made frequent reference to the Termination of Employment Convention no. 158 of 1982 which requires that dismissal must be both procedurally and substantively fair and states that there are only three valid grounds for dismissal: serious misconduct, incapacity of the employee and operational reasons (such as retrenchment). The COSATU - NACTU - SACCOLA agreement proposed that this provision should be incorporated into the definition of the unfair labour practice.

Are South Africa's laws up to international standards?

It is clear that many of South Africa's labour laws are not in compliance with international standards. For instance, the Night Work Convention 171 of 1990, requires countries to take measures to protect the health of employees engaged in night work and assist them to meet their family and social responsibilities. For instance, employees doing night work should be able to obtain a free medical assessment and advice on how to reduce or avoid health problems associated with night work. There are no such provisions in South African law.

There are many ILO conventions on occupational safety. All state that employers must deal on matters of safety with elected worker representatives. Neither the Machinery and Occupational Safety Act nor the Mines and Works Act in South Africa require this and, in fact, do the exact opposite by requiring management to appoint safety representatives. These conventions also state that workers should not be penalised for refusing to do dangerous work; this type of provision is not found in the South African safety statutes.

The industrial court's attitude to dismissal for misconduct or retrenchment was initially more or less in line with ILO standards but recent trends, particularly on retrenchment, are well short of international standards.

Conclusion

South Africa is keen to re-enter the international community and to participate once more in organisations such as the International Labour Organisation. If South Africa does, the trade unions will have to ensure that the country adopts all of the most important conventions and incorporate their standards into South African law.

In conclusion, it must be remembered that the ILO standards are not ideals. They are reached by compromise at the International Labour Conference by employers, governments and trade unions from all over the world. Many countries' legislation contains higher standards than those in ILO conventions.

Incorporating ILO standards into South African law will be a start. But it is not the end of the road. ☆

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