



**PORTFOLIO COMMITTEE ON PUBLIC SERVICE, LABOUR AND SOCIAL
WELFARE**

**REPORT OF PUBLIC CONSULTATIONS ON THE LABOUR AMENDMENT BILL
[H.B. 14, 2021]**

NOTE BY VERITAS

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1.0 INTRODUCTION

The Labour Amendment Bill which was gazetted on 19 November 2021 seeks to align the Labour Act [Chapter 28:01] to section 65 of the Constitution of Zimbabwe and the International Labour Organisation (ILO) Conventions. It addresses emerging issues such as labour broking, violence and harassment at the work place with a view to close the gaps in existing legislation. At independence, the government of Zimbabwe introduced social reforms to placate the masses who were aggrieved by the debilitating effects of colonialism. The Constitution recognized Roman-Dutch common law as a source of law in Zimbabwe, thus allowing courts to protect individual labour rights based on constitutionalism. In June 1980 Zimbabwe joined the International Labour Organization (ILO), whose membership meant that the state undertook the obligation to protect all labour rights, including individual labour rights. Indeed, based on these obligations the state enacted Minimum Wages Act of 1980 and the Employment Act 13 of 1980. For all this progress, however, the fact that these rights were not constitutionally protected but included in several statutes resulted in the fragmentation of labour laws, which made it difficult to effectively protect individual labour rights. The enactment of a new Constitution in 2013 culminated in guaranteed several protections for individual labour rights. It is against this background that the amendment seeks to align the Labour Act to the Constitution and to promote the ease of doing business through streamlining and promoting timely conclusion of processes, particularly the labour dispute settlement and retrenchment processes.

2.0 METHODOLOGY

Parliament Administration in collaboration with the United Nations Development Programme (UNDP) and Silveira House, organised a workshop to unpack the Labour Amendment Bill for the Portfolio Committee on Public Service Labour and Social Welfare from 20 to 23 May 2022 in Inyanga. This workshop enabled the Committee to understand the technical provisions of Bill. Thereafter, the Committee conducted public hearings on the Labour Amendment Bill in line with Section 141 (2) of the Constitution which makes it mandatory for Parliament to involve members of the public in the legislative process. To this end, the Committee split into two groups which conducted public hearings in all the ten provinces of the country were conducted from 30 May to 4 June 2022. In addition, the Committee received and considered written submissions on the Bill from stakeholders such as the Employers Confederation of Zimbabwe (EMCOZ), Zimbabwe Congress of Trade Unions (ZCTU), PAAWUZ and Deaf Zimbabwe Trust, amongst others.

3.0 SUBMISSIONS AND FINDINGS ON THE LABOUR AMENDMENT BILL

3.1 Clause 1: Short Title

There were no comments from members of the public on this clause on the short title of the Act.

3.2 Clause 2: Definitions of Gender Based Violence and Harassment

The public raised concern that Clause 2 of the Bill failed to properly define sexual harassment and its various forms to avoid ambiguity, misinterpretation and abuse of the Clause. It was noted that the definition of harassment should be in line with the framework of the ILO Convention No. 111 and according to the General Observation of the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO Committee of Experts). Emphasis was also made on the need to insert a provision outlining the prosecution procedure of perpetrators of gender-based violence and sexual harassment. The public further recommended that the clause includes whistle blower protection for those who report gender-based violence and sexual harassment. Additionally, members of the public stressed the need to add a provision for the reinstatement of victims of sexual harassment in the event of an unfair dismissal. Finally, the public also appealed to the Minister of Public Service, Labour and Social Welfare to expedite the ratification and implementation of the ILO Convention No. 190 so as to shape the future of work based on principles of dignity, respect and freedom from violence and harassment. The ILO Convention 190 provides an international definition of violence and harassment in the world of work, including gender-based violence and harassment.

3.3 Clause 3: Definition of Forced Labour

This Clause exempts any work that is done as part of communal work or services from forced labour. No comments were made by stakeholders and members of the public on this clause.

3.4 Clause 4: Protection of Employees Against Discrimination

The Public welcomed the provisions of this Clause in strengthening laws against discrimination and harassment as it will create a conducive and safe environment within work spaces. Although commending the intention of the provision, the public noted with concern that the clause failed to protect the rights of persons with disabilities, in particular the right to reasonable accommodation, disability friendly infrastructure and equal pay. It was noted that the law should clearly articulate the rights of persons with disabilities considering their plight on issues relating to inclusivity and workplace accessibility. A recommendation was also made

to provide for a mandatory 15 percent employment quota of persons with disabilities in both public and private sector organisations in line with the National Disability Policy of 2021. This could go a long way in protecting persons with disabilities from discrimination when they seek for employment.

3.5 Clause 5: Protection of Employee’s Right to Fair Labour Standards

The public supported the proposed amendment which prohibits violence and harassment in the work place which was deemed to be an advancement of the country’s labour laws to comply with international best practices. However, the public proposed a raft of fair labour standards that the clause should comply with in terms of section 65 of the Constitution of Zimbabwe. The public recommended that the Bill should include the following employee rights;

- i. Right to fair and safe labour practices and standards and to be paid a fair and reasonable wage that ensures a dignified life and satisfies the basic needs of livelihood of every worker and their family consistent with the breadbasket or poverty datum line.
- ii. The right to participate in collective job action including the right to strike, sit-in and labour withdrawal.
- iii. The right to engage in collective bargaining and freedom of association without fear of being victimised.
- iv. The right of employees from forced labour, in particular, being forced to work overtime.

3.6 Clause 6: Amendment of Section 8 of the Labour Act

The Committee did not receive any comments on this Clause which amends section 8 of the Labour Act by including the actions by employers who engage in actions that amount to violence and harassment as an unfair labour practice.

3.7 Clause 7: Employment of Young Persons

The public applauded this provision which outlaws the labour of persons under the age of 18 years and increasing the penalty of persons found guilty of conducting child labour from 2 years to 10 years. However, concerns were raised regarding the blanket cover of the clause on child labour which failed to set out exceptions for holiday work done by school going children to contribute to their school related expenses. On this note, the public recommended that exceptions should be made on holiday work for school going children considering the different social and economic structures within the society. It was also suggested that the government

allow a 16-year-old to work since he /she would normally have finished the Ordinary level of education.

3.8 Clause 8: Duration and Termination of Employment Contract

The public welcomed Clause 8 mainly on the basis of its intent to address the rampant casualisation of work. However, the public noted that there should be clarity on whether the 12 months defined in the Clause includes the 3-month probation period to avoid scenarios where an employer finds a loophole in the provision. Furthermore, the public suggested that a provision should be made in the Bill on the conversion of fixed term contracts of the Bill after 12 months. It was further noted that, there is need to put to an end to casualization of labour, there should be a law put in place, governing the duration of how long one should be on fixed term contract or maintain the one in the labour act which says that if one works for 6 consecutive weeks in 4 consecutive months, he/she should be deemed a permanent employee.

3.9 Clause 9: Retrenchment and Compensation for Loss of Employment

Members of the public registered their concern at the amendment's failure to review the minimum retrenchment package of which currently stands at one months' wages for every two years served in terms of the Labour Amendment Act of 2015. In this regard, a proposal was made to make the retrenchment package 3 months' pay for each year of completed service. Further suggestions from the public were to the effect that the 60-day period slated as the timeline for the payment of retrenchment package be reduced to 30 days bearing in mind the volatility of the current economic environment. Although the public welcomed the provision for an agreement on an enhanced retrenchment package between the employer and employee representatives, it however expounded on the need for in-depth consultations to be done with employee representatives in the event that an employer sought to retrench 5 or more employees. The public also indicated that loss of employment does not change whether an individual has lost their job in whatever manner they still have to be compensated.

3.10 Clause 10: Non-Payment of Retrenchment Packages

The public supported the amendment and emphasised that no exemptions should be made on the payment of retrenchment packages.

3.11 Clause 11: Maternity Leave

There was general consensus with the proposal to remove all qualifying periods for maternity leave. Members of the public further proposed that the 3 months maternity period should be flexible to allow extension in cases of birth complications, caesarean operations and still birth. Additionally, the public called for the introduction of paternity leave for a period ranging

between 14 and 30 days. It was also suggested that the Clause provides for interval leave days for pregnant women separate from the stipulated maternity leave.

3.12 Clause 12: Contracts for Hourly Work

The public applauded the new provision on labour broking, emphasising that it will ensure that there is equality in the workplace and that employees engaged through a labour broker have the same benefits as other employees. Nonetheless, the public expressed reservations on the Clause's regulations which were left open ended with no time restrictions. On this note the public suggested that the Bill should ensure that labour brokers meet a certain criterion in order to allow employees to recover damages that may arise from an employment contract. Secondly the public recommended that the clause should provide the conversion of maximum caps on period and frequency of labour broking arrangements.

3.13 Clause 16 and 17: Formation and Registration of a Trade Union

Members of the public welcomed clause 16 and 17 but proposed an insertion of paragraph (h) which reads *'the name of the applicant or its shortened form may not so closely resemble the full name of the shortened form of an already existing trade union or employer's organisation'*. This was emphasised as critical in addressing confusion in the registration of trade unions. Furthermore, submissions from the public proposed that a provision be made in the clause to outline 1000 members as a minimum requirement for a trade union to be registered to avoid the mushrooming of incompetent trade unions.

3.14 Clause 18: Application for Registration of Trade Union

The public opposed the provision of this clause, indicating that it warrants too much interference on the affairs of Trade Unions or employers organisations by the Minister. This concern was cited to be in contravention of the freedom of association and the right to organise.

3.15 Clause 19: Considerations Relating to Variation, Suspension or Rescission of Registration of Trade Unions or Employers Organisations

On clause 19, the public argued that the removal of the word *'registration'* from section 45 of the Labour Act fails to abate the fear of infringement into the rights and freedom of trade unions and employers' organisations. The requirement to consider the representation of multiple stakeholders was deemed to be too wide and could result in the infringement on the affairs of trade unions.

3.16 Clause 20: Supervision of Election Officers

Concern was raised on section 51(1) under clause 20 which gives right to any person directly involved in a trade union or employers' organisation election to complain to the Minister about the conduct of the election on grounds of fraud, coercion or unfairness. An argument was made to the effect that subjecting election disputes of Trade Unions or employers' organisations to the Minister or Registrar amounts to interference in the affairs of a trade unions which is a violation of Article 3 of C87 of the ILO Convention. In this regard, Clause 20 was opposed by the public.

3.17 Clause 21: Collection of Union Dues

The amendment to repeal subsections 2, 3, 4 and 5 of section 54 of the Labour Act was supported by members of the public. However, specific concern was raised on the need to repeal subsection 5 of section 54 as it was an appeal against the Minister's decision arising from the repealed subsection 4 of section 54.

3.18 Clauses 22: Regulation of Union Fees

Members of the public had no objection on this clause which repeals the Minister's power to regulate union fees.

3.19 Clause 23: Formation of Employment Councils

Members of the public supported this Clause which seeks to ensure that all employment councils are governed as statutory employment councils. On a different note, some stakeholders called for the repeal of Part VIII of the Labour Act on Employment Councils citing that they were no longer serving their mandate or duties according to section 62 of the Act. It was highlighted that NECS were only bleeding the already struggling workers of their hard-earned salaries by forcing every worker to contribute and failing to serve the interests of workers i.e. to negotiate Collective Bargaining Agreements and resolve labour disputes in their sectors. NECS were noted to be negotiating salaries that are way below poverty datum line. Instead, a recommendation was made that collective bargaining be done at Ministry level under the supervision of Labour Officers, for instance, the Ministry of Mines and Mining Development should necessitate meetings between employers' organisations and trade unions in the sector to negotiate working conditions for employees.

3.20 Clause 24: Constitution of National Employment Councils

This clause was noted to be progressive, particularly the provision of bringing together unions for bargaining. In so doing, this provision grants workers under the National Employment Council (NEC) a powerful collective voice. However, the public suggested that guidelines for admission to the NEC be provided by the Clause. Furthermore, the public suggested that paragraph (g) of section 58 under this Clause be repealed and substituted by the following provision; *“The NEC Board shall determine the minimum threshold for admission into the NEC”*. This was highlighted to be fundamental in curtailing briefcase unions and the multiplicity of unions.

3.21 Clause 25: Designated Agents of Employment Councils

The public was of the view that Designated Agents in Labour Offices should have the power of the Labour Officer to expedite the process of labour disputes. Furthermore, the public recommended that designated agents of Employment Councils be decentralised in order to address the backlog of labour disputes. However, some stakeholders highlighted that the Designated Agents of NECs were failing to finalise labour disputes on time due to corruption. Thus, a proposal was made to disband the Designated Agents and leave the labour dispute resolution role to Disciplinary Committees at shop floor level while appeals would be directed to the Labour Court or Labour Officers. In this regard, the Ministry of Public Service, Labour and Social Welfare should ensure that every organisation have a properly constituted Disciplinary Committee.

3.22 Clause 26: Scope of Collective Bargaining Agreements

The public were of the view that the proposed amendment omitted the right to collective bargaining.

3.23 Clause 27: Submission of Collective Bargaining Agreements for Approval or Registration

On this clause the public raised concern over the amendment’s substitution and repetition of the same provision that requires the Minister to specify the public interest concerned that would have caused the refusal to register a collective bargaining agreement. Concern was specifically raised on section 79(2)(a), (b) and (c) which provide provisions for interference with the rights of parties to free collective bargaining. In highlighting these concerns the public argues that the discretionary power of the authorities to approve collective agreements through this section was contrary to the principle of voluntary bargaining enshrined in article 4 of the Convention.

In this regard the public proposed for the repealing of section 79(2)(b) of the proposed amendment and 79(2)(c) of the Labour Act.

3.24 Clause 28: Amendment of Collective Bargaining Agreements by the Minister

The public called for the repeal of section 81(1) of the labour Act and its substitution with,

*‘Where a collective bargaining agreement which has been registered contains any provision which is or has become inconsistent with this Act **or any other enactment**, the Minister may direct the parties to the agreement to negotiate within such period as he may specify for the amendment of the agreement in such manner or to such extent as he may specify.’*

However, the public proposed for the removal of the phrase *‘or any other enactment’* in the proposed amendment to make sure that the amendment is in line with the Labour Act.

3.25 Clause 29: Binding Nature of Registered Collective Bargaining Agreements

The public acknowledged this clause and proposed an addition of paragraph (c) to section 82 that provides the following; *‘any portion of a collective bargaining agreement which has been ratified by the parties thereto shall be binding on the parties notwithstanding that any other portion of the agreement has not been ratified.’*

3.26 Clause 30: Powers of the Labour Officer

The public welcomed the provisions of this Clause which replaces section 93 of the current Act to allow for registration with a Court a dispute or unfair labour practice settlement and for the labour officer to issue a certificate of settlement which will have the effect of a civil judgment.

3.27 Clause 31: Compulsory Arbitration

The Clause was criticised for failing to strengthen the Labour Court’s functions, powers and enforcement of decisions. Reference was made to section 98(13) and (14) which still recognise the Magistrate’s Court and the High Court in enforcing the decisions of the labour court and the arbitrator. This was raised as a serious concern that will be detrimental to the enforcement of decisions of the Labour Court in common law administered courts and worst still prolong the dispute resolution process and cause congestion in other courts. In this regard the public recommended the substitution of the phrases *‘magistrate court’*, *‘high court’* and *‘appropriate court’* with **labour court** in section 98 (13) and (14) in order to accord the labour court with the prerogative and power in decisively dealing with all labour related cases.

3.28 Cause 33: Liability of Persons Engaged in Unlawful Collective Action

Vast submissions were made on this clause which seeks to enforce criminal charges and penalties on those involved in unlawful job action by workers in essential services and other services. The public argued that the proposed amendment was ultra-vires to section 65(3) of the Constitution which provides for the right to collective action to every employee except for the security forces. Further arguments pointed out that the amendment fell short in decriminalising legitimate strikes. The public expressed concern over the amendment's failure to recognise that the right to strike is an intrinsic corollary of the right to organise protected by Convention No. 87 of the ILO. The public further voiced out that the provisions of this clause was an infringement on the rights of the people alluding to the fact that;

- Workers' rights should be prioritised and strengthened
- Reprisal for collective job action be regarded as an infringement on workers' rights
- The Bill should be cognisant of the rights of workers for collective action

Concern was further raised on this clause's discriminatory approach to those working in essential services, highlighting that the Clause appears to be a targeted piece of legislation to those working in the essential services such as in health and education sectors.

- The public proposed for the amendment of sections 107, 109, and 112 of the Labour Act to remove excessive penalties in the case of an unlawful collective job action.
- Secondly, the public proposed for clear provisions to be set out in the Bill that protect workers and their representatives against anti-union discrimination.
- Thirdly the public proposed that penal sanctions be imposed only in the event of a strike causing violence against persons or damage to property.

3.29 Clause 36: Investigation of Trade Unions and Employers Organisations

The public opposed the provision of this clause, indicating that it warrants too much interference on the affairs of Trade Unions or employers organisations by the Minister. The public was of the opinion that outside control of workers organisations and employer's organisations should only take place in *exceptional cases*.

3.30 Clause 37: Schedule of Minor Amendments

There were no comments from members of the public and stakeholders on this clause.

3.31 Application of the Labour Act

The public expressed their concern on the application of the Labour Act arguing that, Section 3(2) Labour Act provides that Act does not apply to Public Service. The Bill is silent on this matter and there is need to amend the clause to allow Labour Act to apply to public servants so as to achieve harmonisation of labour laws between public and private sectors. Public Service workers constitute a very large proportion of formal employees, hence there is need to ensure all persons are equal before the law and have the right to equal protection and benefit of the law according to section 56(1) of the Constitution.

3.32 Age of Retirement

Members of the public bemoaned that the retirement age of 65 years was too high in view of the low life expectancy in Zimbabwe. This resulted in most people passing on before enjoying their retirement or pension benefits. A proposal was therefore, made to review the retirement age to 50 years.

4.0 COMMITTEE OBSERVATIONS

- 4.1 There was generally low attendance of the public hearings by members of the public which can be attributed to lack of awareness of the activity due to poor publication.
- 4.2 In terms of international best practice, fathers are granted paternity leave to support mothers and their families upon child birth and Zimbabwe is lagging behind in this regard.
- 4.3 Child labour is still rampantly practised in some parts of the country, especially in agricultural plantation areas which can be partly attributed to lack of government support for vulnerable children such as orphans and child headed families.
- 4.4 Persons with disabilities generally experience extreme difficulties when seeking employment in Zimbabwe.
- 4.5 It is commendable that Clause 2 of the Bill covers sexual harassment which is an issue affecting people in the work place across the country however, the Clause does not penalise the perpetrator of this vice or provide counselling services for the survivor.
- 4.6 The life expectancy of Zimbabweans has declined over the years to an extent that a majority of people pass on before attaining 65 years of age. According to the World Health Organisation (2020), the life expectancy of Zimbabweans stands at 57.7 years for males and 63.6 years for females which translates to an average of 60.7 years.

- 4.7 Employers were noted to be in the habit of stripping their organisations of assets before declaring bankruptcy in order to avoid paying workers' retrenchment packages.
- 4.8 According to the Labour Amendment Act (2015), the retrenchment package is a paltry one months' worth salary per every two years.

5.0 RECOMMENDATIONS

- 5.1 The Management of Parliament should revamp the institutional public relations strategy, particularly public awareness methods of activities such as public hearings in line with modern means of communication.
- 5.2 The Bill should provide for paternity leave for a period of 1 month upon the birth of a child to enable the father to take care of the mother during recovery, newly born baby and family. This right to paternity leave should only be granted to a father in respect of children born to the same mother.
- 5.3 The Committee strongly supports Clause 7 which provides stiffer penalties for perpetrators of child labour from level 7 or 2 years to level 12 or 10 years imprisonment. In this regard, the Committee calls upon the government to provide adequate support for vulnerable children.
- 5.4 The Bill should provide for a 15 percent employment quota for persons with disabilities in both public and private sector organisations in line with the National Disability Policy of 2021.
- 5.5 Clause 2 of the Bill should stipulate stiffer penalties for perpetrators of sexual harassment with a maximum of 10 years imprisonment and prosecution should even apply to persons who committed offences before retirement.
- 5.6 In addition, the Bill should provide for counselling services to survivors of sexual harassment through the Police Service's Victim Friendly Unit.
- 5.7 The Bill should reduce the voluntary retirement age from 60 to 55 years to afford pensioners time to enjoy their benefits. This should also be the age at which retirees start accessing their pension benefits.
- 5.8 Provision should be made for the government to investigate companies that retrench workers due to bankruptcy in order to safeguard the interests of the workers

6.0 CONCLUSION

The Bill is a progressive piece of legislation as it seeks to sanitise the labour sector and align the country's labour laws with the Constitution and international best practices. Although the Bill has noble proposals, several grey areas that need special attention were observed by the Members of the Portfolio Committee on Public Service, Labour and Social Welfare,

stakeholders and member of the public. The Committee implores the House and the Minister of Public Service, Labour and Social Welfare that all raised observations and recommendations therein be given due diligence so that we transform Zimbabwe's labour sector towards the achievement of National Vision 2030 and the Sustainable Development Agenda.