

The Labour Amendment Act Number 5 Of 2015, Not A Reprieve But A Thorn In The Flesh For Both Employers And Workers In Zimbabwe.

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Abstract: After several years of protracted progress to amend the Labour Act 28:01, the eagerly awaited Labour Amendment Act, 2015 became law on 26 August 2015. The Act came against a contentious landmark Supreme court ruling of 17 July 2015 based on common law, which also empowered employers to dismiss an employee by giving three months notice without need to justify. Statistics showed that over 30 000 had lost employment by end of August 2015. This even exacerbated the already strained Industrial relations among the parties, namely business, labour and state. The study which was based on library analysis and unstructured interviews, revealed that both workers and the employers were not happy with a number of amendments. Some of the areas for discontentment included failure to promote workers rights to organize eg. engage in collective job action, payment in full of retrenched workers and not in the form of staggered payment, still too much veto powers given to the Minister of Labour, forced payment of minimum retrenchment package by all employers regardless of size of firm, capacity or area of trade, omissions or alterations to certain originally agreed clauses by all three partners during consultations by the state and generally the failure to protect workers interests. The study recommended that most of the contentious issues would be addressed if Zimbabwe were to implement ILO Conventions since Zimbabwe was a member of ILO as well as allowing openness and transparency on labour matters by all the three major stakeholders (parties).

Definition of key terms

- **Labour Amendment Act**-the new labour legislation that became effective on 26 August 2015 and had been on the cards since 2006. It was supposed to address contentious labour issues such as Collective job action (labour unrest or strikes), Collective bargaining agreements, Streamlining ministerial powers, Harmonising private sector and public sector employment regulations and conditions of service to avoid dual legislation, Retrenchment procedures and benefits (packages) in light of the Supreme court ruling of 17 July 2015. Also known as Amended Labour Act, 2015.
 - **Industrial or Labour relations**-the general understanding and shared meaning on issues to do with employment contract usually between the employer and employees and at times the involvement of the state
 - **Worker**- a person employed to provide labour in return for reward or compensation in line with the agreed employment contract
 - **Reprieve**- a panacea or solution or great relief to an issue(s) of major concern
 - **Supreme Court ruling**-A landmark judgement made by the highest court that compelled employers to dismiss(retrench) employees by giving 3 months notice without need to justify which culminated in employers /dismissing/firing employees willy-nilly.
 - **Thorn in the flesh**- continued suffering as a result of unresolved issues as per expectation
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I. Introduction

This paper begins by giving an overview of the background of the study pertaining to how the eagerly awaited Labour Amendment Act, 2015 has transformed and shaped labour relations in Zimbabwe particularly in industry and commerce. A lot of literature reviewed has been included to enlighten the reader on the study and have better insights about the magnitude of the problems at hand. Methods and techniques used to facilitate data collection and analysis have been presented culminating in major findings and subsequent recommendations. The presentation has been made in such a manner that makes this paper exciting to anyone who reads it.

II. Background To The Study

After years of protracted progress to have the eagerly awaited Labour Amendment Act put in place, the piece of legislation finally came into existence on 26 August 2015 after the State president, Comrade Robert Gabriel Mugabe accented it into law according to legislative and parliamentary watchdog, *Veritas*. President

Mugabe signed the Labour Amendment Bill into law less than a week after it was stamped through Parliament.

The Act came against a backdrop of the highly controversial and infamous Supreme court ruling of 17 July 2015. The ruling was based on common law which empowered employers to terminate one's contract of employment by giving three months notice without need to explain or justify. That Supreme Court ruling culminated in over 30 000 new cases of unemployment in Zimbabwe as at the end of September 2015. This has since created poor and irreconcilable labour relations in the country particularly among employers and employees. Loss of employment has affected the livelihoods of those dismissed and their families, as well as creating uncertainty for the future of those currently employed including even the usually reserved and 'stable' public sector.

As a result, the industrial and labour relations in Zimbabwe have been at their lowest ebb, with a lot of court battles being the order of the day but largely to no avail especially on the part of employees. The Employers' Confederation Of Zimbabwe (EMCOZ) has since taken the government to court to remove some sections of the new Labour Amended Act which it felt were unconstitutional and inconsiderate to employers whose businesses were struggling under economic hardships. The hasty changes to the country's labour law were triggered by a July 17 Supreme Court judgment giving employers the same rights as workers in the cancellation of contracts. Approximately 30 000 people lost their jobs within 40 days after the 17 July 2015 Supreme court ruling as employers took advantage of the ruling to streamline their workforce in the midst of a debilitating economic crisis (www.herald.co.zw -26 August 2015).

This study therefore sought to find out in detail, the implications of that Supreme Court ruling and the subsequent Labour Amendment Act, whether it could be a panacea or remedy to the 'confusion' characterising the country's labour relations. Workers who had lots of expectations that the new Act would be a panacea to the detrimental Supreme Court judgement (ruling), still seem to be dissatisfied to date.

III. Statement Of The Problem

The Amended Labour Act 28:01 Number 5 Of 2015 also known as Labour Amendment Act, 2015 seems to have done more harm than good as both the employers and employees have been crying foul over drastic measures enshrined in some of its sections. This has plunged Zimbabwe's labour relations into turmoil. The amendments came at the backdrop of the Supreme Court ruling of 17 July 2015 which culminated in over 30 000 employees losing employment by end of September 2015. The judgement/ruling allowed Employers to give 3 months notice to terminate one's employment without explanation for doing that. Trade unions expected that the retrenched workers would get better packages but to no avail. Employers were also shocked as they were expected to pay in retrospect compulsory stipulated retrenchment amounts which they had not budgeted for. It is against this background that this study was conducted in order to establish the effectiveness and acceptance of this new Labour Amendment Act which remains a contentious issue.

IV. Research Questions (Sub-Problems)

The study which was qualitative, intended to address the following sub-problems at the end;

- (i) What was the rationale for coming up with an Amended Labour Act?
- (ii) To what extent has the Amended Labour Act been able to address the challenges arising from the contentious Supreme Court ruling of 17 July 2015?
- (iii) What are the prevailing contentious issues of the Amended Labour Act which are adversely affecting industrial relations in Zimbabwe?
- (iv) What should be done to improve labour relations in Zimbabwe in the wake of the recently Amended Labour Act.

V. Literature Review

This largely covers comments made by the Zimbabwe Congress Of Trade Unions (ZCTU) which is the largest labour body in Zimbabwe on some of the contentious amendments as provided for in the Amended Labour Act of 2015. There are also newspaper extracts concerning some of the sensitive issues arising from the Supreme Court ruling of 17 July 2015 and the Amended Labour Act, 2015.

5.1 Selected contentious issues of the Amended Labour Act Number 15 of 2015

5.1.1 Amendment of Section 12 of Labour Act 28:01

According to ZCTU comments; .

- This was a progressive amendment that attempted to address the abuse of workers employed on continuous fixed term contracts.
- Further the amendment was progressive as it curtailed unilateral termination of employment on notice. However according to ZCTU, the amendment must categorically mention the complete ban of the

employer's common law right to terminate on notice. Therefore the following was being proposed by ZCTU that there be an insert clause after clause (d) of subsection 4a to read:

(e) "for the avoidance of doubt, the employer's common law right to terminate an employment contract on notice is declared unlawful.

5.1.2 New Section substituted for Section 12 of Labour Act 28:01

According to ZCTU comments;

This section is about retrenchment procedure and seeks to set a minimum retrenchment package.

- The amendment is bad in Clause (2) which sets out a minimum retrenchment package of one month's salary for employees who have saved for two years and an equivalent lesser proportion for employees who saved for a lesser period.
- The amendment is ambiguously worded to hide the clear intention that a retrenchment package is simply two weeks' salary for each year served.
- Considering that the average minimum wage in the country is US\$246-00 (Reserve Bank of Zimbabwe, 2015), 2 weeks' salary will translate to US\$123-00 for year, can that be called a package?.
- There is no consideration of other components of a retrenchment package like severance pay and relocation allowance.
- International Labour Standards (Termination of Employment Convention No. 158, 1982) require payment of adequate compensation.
- This compensation is very little and will empower employers to terminate a contract willy-nilly.

5.1.3 Amendment of Section 12D of Labour Act 28:01

This section deals with measures to avoid retrenchment

According to ZCTU comments the amendment has the following shortcoming;

- In clause (b) there is a deliberate ploy to remove the employment council so as to oust the trade union power in the negotiations for measures to avoid retrenchment. Allowing an employer to reach agreement with 'employees alone' without their trade union representative will lead to dictatorial tendencies by an employer taking into consideration the different power dynamics, between an employer and employee
- ZCTU was proposing to add the word trade union to read 'or with any workers' committee, trade union, or works council' and in subsection 8 to delete the word 'alone' and substitute after employee the phrase "and his representative"
- The amendment is also not good in Subsection 9 in as far as it seeks to have the agreement nullified if it is against 'public interest'. Public interest is a wide concept which may be abused by the Minister.
- In 9 (a) the Minister invites written submission from the employer without inviting submission from the employee or their representative which shows bias.'

5.1.4 Amendment of Section 55 of Labour Act 28:01

- The amendment limits the Minister's power in regulating union dues by repealing clause (e) which cover limitations on the salaries and allowances that may be paid to employees of trade unions; and (f) limitations on the staff that may be employed, and the equipment and property that may be purchased, by trade unions. This is progressive amendment
- However, the entire section 55 must be repealed as it deals with the interference in the administration of such organisations which is against the Convention on Freedom of Association and Protection of the Right to Organise (ILO C87) of which Zimbabwe is a member. The convention provides in article 3 that (1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. (2). The public authorities shall refrain from any interference which would restrict this right to impede the lawful exercise thereof.

5.1.5 Amendment of Section 59 of Labour Act 28:01

This section is about registration of employment councils fees.

- The problem is in clause (b) which empowers the Registrar to impose as he considers fit conditions limiting the manner in which the employment council may expend its funds. The phrase as the Registrar 'considers fit to impose' is too wide and subject to abuse of power by the Registrar. Considering that the employment council is a voluntary organisation formed by the trade union and the employer's organisation, allowing the Registrar to impose conditions as he considers fit is interference in the administration of such organisations. ZCTU therefore proposed that there is need to delete this clause (b)

5.1.6 Amendment of Section 79 Labour Act 28:01

The section deals with submission of collective bargaining agreement for approval or registration. The amendment seeks to insert sub clause (b) contrary to public interest as a ground that the Minister may refuse to register a collective bargaining agreement.

- The public policy interest is a wide concept that can be abused by the Minister to refuse to register an agreement.

The right to engage in collective bargaining is protected by Section 65 (5) (a) of the constitution and limiting such is unconstitutional.

The amendment is an additional violation of the ILO Convention on the Right to Organise and collective bargaining, 1948 (No.98)

According to the ZCTU commenting on this Section 79, the ILO Commission of Inquiry, Zimbabwe 2009 report stated the following:

“The Committee recalls that in its previous comments, it had raised concern with regard to the following legislative provisions, also by the Commission of Inquiry in its report (paragraph 580 that Sections 78 and 79, which empower the Minister to direct the Registrar not to register an agreement “if any provision appears to the Minister to be inconsistent with legislation or unreasonable or unfair.”

- Accepting such amendment is total defiance of the commitment Zimbabwe made to the ILO to align its legislation with the convention principles.

According to ZCTU report, this amendment must be deleted together with section 79 (2)

5.1.7 Amendment of Section 104 Right to resort to collective job action

Section 65 (3) of the Zimbabwe’s New Constitution, 2013 provides

‘Except for members of the security services, every employee has the right to participate in collective job action, including the right to strike, sit in, withdraw their labour and to take other similar concerted action, but a law may restrict the exercise of this right in order to maintain essential services.’

- **According to the ILO Commission of inquiry, Zimbabwe 2009** the Commission observed that the right to strike was not fully guaranteed in law or practice. In particular, the Commission was concerned that the legislation included disproportionate sanctions for the exercise of the right to strike and an excessively large definition of **essential services**, and that in practice, the procedure for the declaration of strikes was problematic and that it appeared that the security forces often intervened in strikes in Zimbabwe. The Commission wished to confirm that the right to strike was a fundamental right to organize protected by ILO Convention No. 87.

ZCTU noted that the period of 14 days’ notice before going on strike in subsection (2) (a) was too long and proposed that it be reduced to 48 hours as provided for by the South African Labour Relations Act

5.2 Selected media reports arising from the Supreme Court Ruling of 17 July 2015 and the subsequent Amended Labour Act, 2015

5.2.1 An article in the Independent newspaper

Employers challenge labour law amendments, October 2, 2015

The article stated that *battle lines* were drawn between government and employers after the Employers’ Confederation of Zimbabwe (EMCOZ) filed an appeal in the High Court on 1 October 2015 against clauses in the amended Labour Act, which could have far-reaching implications on labour relations in Zimbabwe.

EMCOZ was complaining about a new **Section 12 C(2)** which sets a minimum mandatory/compulsory retrenchment cost for every employer who retrenches one or more employees. Employers were fighting the minimum mandatory retrenchment cost of every employer pegged at three months’ notice and two weeks salary for every year served, without considering the ability of employers to pay, among other factors. The use of a pro-rata basis was according to them unrealistic since firms were in different industries and trades and were therefore not homogenous.

In the court application filed by Lunga Gonese Attorneys in which Labour minister Mrs Prisca Mupfumira was the respondent, EMCOZ executive director John Mufukare said the amendments were unconstitutional.

“This is an application for a declaration of the constitutional invalidity of certain provisions of the Labour Amendment Act No. 5 of 2015,”

Mufukare said in his founding affidavit.

“I am prepared to go further to reveal that this limitation came about through an arbitrary process of legislating, a knee-jerk reaction by the state to what it perceived as a social ill. That the process of legislating,

the amendment Act, was reactionary is evidenced in the lack of thinking, consultation and research required to guide government action and law-making.”

Furthermore the blanket forcing of a minimum retrenchment cost was being perceived by EMCOZ as contrary to the rule of law principle as enshrined in the new Constitution which prohibits arbitrary laws and arbitrary law making. For that clause, Section 12(C)(2) EMCOZ declared it unconstitutional and invalid.

After the waves of employees dismissals at a “lightning pace”, politicians quickly moved to avoid more catastrophic and debilitating consequences by fast tracking the Labour Amendment Bill in Parliament which had been the subject of debate for five years, but finally accented to law by the State president, Cde Robert. Gabriel Mugabe on 26 August 2015, more than five weeks after the Supreme Court ruling.

A lot of changes were made including the need to apply the law in retrospect.

Clause 18 of the amendments to the Labour Act Chapter 28:01, now provides for the retrospective application of the amendments. A retrospective law is one that operates on matters taking place before the law was enacted. A Constitutional and labour expert, Professor Madhuku said that there was nothing illegal in retrospective implementation of some of the clauses when the Bill had been passed into law. “*There was no general law that says laws can or cannot be made in retrospect. The principle that an act must not be made in retrospect was a presumption and not rule of law*” he said. He added that such laws could be enacted as long as they do not violate provisions of the Constitution.

Violation of the constitution by the Labour Amendment Act, 2015

The Parliamentary Legal Committee on the Labour Amendment Bill published an adverse report on the proposed amendments, pointing out that Clause 18 violated a section of the Constitution. The adverse report read in part:

“Clause 18 provides for the retrospective application of section 12 of the Act to every employees whose services were terminated on three months’ notice on or after 17th July. “The committee unanimously agreed that the clause violates Section 3(2) (e) of the new Constitution regarding the separation of powers in that the judgement made by the Judiciary was correct at law and in seeking to nullify that by an insertion of the respective clause, Parliament will have violated the principle of separation of power.”

The legal experts said the major changes on the Labour Law were made to Section 12 of the original Labour Act 28 :01, and in the process, removed the common law position that allowed the termination of contracts on three months’ notice.

5.2.2 Article from The Zimbabwe Independent ZNCC upholds Supreme Court ruling -29 July 2015

In that article it was surprising that the Zimbabwe National Chamber of Commerce (ZNCC) said by then that the recent Supreme Court labour ruling would help revive struggling companies operating under the current harsh economic environment.

“*There is absolutely nothing special about this ruling except that it was long overdue. Before (this ruling) companies could not dismiss excess workers, a situation which was bleeding and affecting performance,*” ZNCC chief executive said.

“*We have always talked about how inflexible the country’s labour laws are, and now, the Supreme Court acted on one of the resolutions from our recently ended congress, which is that of aligning labour laws to accommodate streamlining measures.*” he said.

In addition on 26 July, 9 days after the first ruling, the same Supreme court made another **landmark labour ruling giving employers the right to withdraw employees’ allowances and benefits saying these were not a right or entitlement.**

In that ruling/ judgment, in a matter involving the National Railways of Zimbabwe (NRZ) against all its employees’ associations who were demanding payment of outstanding housing and educational allowances, it was ruled that the NRZ had no obligation to pay such allowances since issues of allowances were based on collective bargaining agreements.

5.2.3 Article in www.herZimbabwe.co.zw Is Job safeguarded ,13 August 2015

According to the article, the Supreme Court had in the last few weeks by then, handed down two Labour Law decisions that had left many feeling justifiably rather nervous. The first decision that sent shock waves amongst the relatively few employed Zimbabwean workforce, was the ruling that employers had a **common law right** to terminate employment on notice, and this right was not hampered in any way by S12B in the Labour Act dealing with unfair dismissal.

Essentially, because the Act does not explicitly do away with the right to terminate on notice, the right still exists and can be used by employers and employees alike.

The second decision made by the Supreme court on 26 July 2015, stated that the court could not and would not read benefits and allowances into employment contracts, where these are not provided for (*source* ; Daily news July 27, 2015) This judgment has also been seen as giving employers further powers to take ever what employees felt was theirs.

VI. Methodology

- 6.1** A Survey design was used as it was the best to establish social implications of the problem or issue at hand (Njaya & Choga, 2011)
- 6.2.1** Quota sampling technique was used to choose and determine number of participants for each category/group based on this researcher's judgement/discretion..
- 6.2.2** Library analysis (desk research) was largely used especially the Amended Labour Act, 2015. Unstructured interviews were held with different stakeholders and numbers shown in brackets, labour experts (2), Zimbabwe Congress of Trade Unions (3), Zimbabwe Federation of Trade Unions(3), Ministry of Public Service ,Labour and Social Services(3), Companies that had applied the ruling (5) and affected employees by the Supreme Court ruling (20).
- 6.2.3** Results were analysed using the content analysis method, involving categorization of data, classification, summarization and coding (Cresswell, 2003).

VII. Results/Findings

These were made with direct reference to research questions (sub-problems) shown as IV in this report.

I.1 What was the rationale for coming up with an Amended Labour Act, 2015?

The results showed that the Amended Labour Act 2015 was supposed to address some issues which were contentious in Zimbabwe's labour relations and to align it to the Zimbabwe new constitution of 2013 and also ILO Conventions on best practices. Among the issues that needed to be addressed included;

- Collective job action (labour unrest or strikes)
- Collective bargaining agreements
- Streamlining ministerial powers
- Harmonising private sector and public sector employment regulations and conditions of service to avoid dual legislation
- Retrenchment procedures and benefits (packages) in light of the Supreme court ruling of 17 July 2015.

I.2 To what extent has the Amended Labour Act, 2015 been able to address the challenges arising from the contentious Supreme Court ruling of 17 July 2015?

The study revealed that the Act was progressive in restoring the rights of workers eroded by the Supreme Court judgment of 17 July 2015. The provision has a retrospective application and employers who cannot reinstate are compelled to pay compensation to the employee of two weeks' pay or wages for each year served. However the compensation is very little considering that the average salary is US\$246-00 per month and two weeks' pay is just US\$123-00 per each year of service.

There is no consideration of other components of a retrenchment package like severance pay and relocation allowance. This contradicts best practices as enshrined in the International Labour Standards (Termination of Employment Convention No. 158, 1982) which require payment of adequate compensation. This compensation is very little and will licence employers to terminate a contract willy-nilly. **The amendment is bad in subsection (3) in** that it allows an employer/organisation to apply for an exemption if it cannot afford to pay the minimum retrenchment package. If an employer applies for exemption and the retrenchment board fails to respond within 14 days, the application is deemed successful. How can the inefficiency of the retrenchment board or its administrative challenges become an approval of an exemption by default. This is only serving the employer's interest.

The amendment is also bad in Subsection 4(a) which empowers the retrenchment board to propose a scheme to pay the minimum retrenchment package by instalments over a period of time. This is only in favour of the employer. This Subsection must be repealed. It does not consider the plight of the employees retrenched. The employee must be paid in full and leave without any hard feelings..

7.3 What are the prevailing contentious issues of the Amended Labour Act, 2015 which are adversely affecting industrial relations in Zimbabwe?

The study revealed that areas which remained contentious included;

Retrenchment packages/benefits

Employees were not happy with the meagre retrenchment benefits while employers disagreed with the payment based on minimum retrenchment package. Most employers complained that Zimbabwe remained expensive country on labour issues compared to other Southern Africa Development Community (SADC) countries as there was hardly any employment flexibility due to prohibitive legislation (labour related acts).

Collective job action

Employees felt that the duration of notice to conduct a collective job action was rather too long and there were also a lot of procedures that needed to be followed. Majority of these procedures had lots of challenges and had bureaucratic tendencies. Majority felt these were put in place to either delay the industrial action or kill off the spirit or enthusiasm (frustration) of workers to proceed. Employers seemed to be satisfied with the current legislation that made collective job action (industrial action) almost impossible in Zimbabwe in majority of cases. In few instances, collective job action was authorised eg. demonstration or strike against sexual harassment/violence, threat to human life or racial/tribal discrimination

Too much ministerial powers

Both employers and employees were not happy with the provision for the finalisation of lots of decisions by the Minister of Public Service, Labour and Social Services, which they felt were a threat to industrial harmony and workplace democracy. Not much had been done to remove some of the retrogressive powers bestowed on the Minister

Failure to accommodate civil servants on collective bargaining

Although the Labour Act largely covers the private sector and parastatals, some stakeholders had lobbied for the inclusion of government workers (civil servants) on issues particularly of engaging government on collective bargaining and not on the current consultation capacity. The same Act makes it clear that civil servants and those in the military (uniformed forces) can not participate in industrial action. The failure to have a collective bargaining platform in government has resulted in government making unilateral decisions eg. Whether to increase salaries and benefits or pay bonuses or not, shifting salary dates even at the last minute like the 29 December 2015 date which was moved to 5 January 2016 for majority of civil servants except teachers and uniformed forces (army, police, prisons, central intelligence) who were paid in December 2015.

Failure to comply with best practices

The results showed that there was almost total disregard or ignorance of the commitments Zimbabwe made to the International Labour Organisation (ILO) concerning alignment of some provisions of the Labour Amendment Act, 2015 to ratified conventions, in particular the right to collective bargaining and freedom of association. There was total refusal to align collective job action to the New Constitution of Zimbabwe of 2013. According to several stakeholders particularly the ZCTU, although consultations with social partners were done during the crafting of the Act at the Bill stage, some inputs agreed to were deliberately omitted like the right to strike, maternity leave and strengthening the labour court to enforce its decisions and those of arbitrators among others.

VIII. Conclusions

The study concluded that the Labour Amendment Act, 2015 had not done much to improve Industrial and Labour relations in Zimbabwe as it had brought new complex problems to both employees and employers and had almost total disregard of ILO Conventions.

IX. Recommendations

What should be done to improve labour relations in Zimbabwe in the wake of the recently Labour Amendment Act, 2015.

9.1 Eliminate employer's unilateral decision to terminate using employer's common law right

Given that most employers used the Supreme court ruling of 17 July 2015 for their selfish and inconsiderate needs which culminated in over 30 000 workers becoming jobless in just about 11 weeks (as at September 30, 2015), there is need to amend after clause (d) of Section 12 subsection 4a to read:

(e) "for the avoidance of doubt, the employer's common law right to terminate an employment contract on notice is declared unlawful." This should be made public to all stakeholders as some were not aware of such a development.

9.2 No exemption to the payment of a minimum retrenchment package or staggering of payment.

Section 12C subsection (3) must be repealed. There should be no exemption to the payment of a minimum retrenchment package. The retrenched employee must simply be paid what is due to him or her. The amendment is also bad in subsection 4(a) which empowers the Retrenchment board to propose a scheme to pay the minimum retrenchment package by instalments over a period of time. This is only in favour of the employer. This subsection must be repealed. It does not consider the plight of the employees put on retrenchment. The employee must be paid in full and leave without too much 'stress'.

9.3 Reasonable payment of other allowances in line with best practice

There is no consideration of other components of a retrenchment package like severance pay and relocation allowance in line with the International Labour Standards (Termination of Employment Convention No. 158, 1982) which require payment of adequate compensation taking into account contemporary management in which the worker is the most important organisational asset despite being forced to leave not according to his/her will or under uncontrollable factors.

9.4 Retrenchment Board to expedite processing of an application for retrenchment and be point of finality

The amendment is bad in subsection (3) in that:

- It allows an employer to apply for an exemption if it cannot afford to pay the minimum retrenchment package.
- If an employer applies for exemption and the retrenchment board fails to respond within 14 days, the application is deemed successful.
- How can the inefficiency of the retrenchment board or its administrative challenges become an approval of an exemption by default. This is only serving the employer's interest.

9.5 Involving trade unions in all forms of agreement involving an affiliated member

- Allowing an employer to reach agreement with 'employees alone' without their trade union representative will lead to dictatorial tendencies by an employer taking into consideration the different power dynamics, between an employer and employee.
- In subsection 8, there is need to delete the word 'alone' and substitute after employee the phrase "and his representative"

9.6 Removal of Minister's powers on an issue of Collective bargaining agreement (Amendment of Section 79)

The section deals with submission of collective bargaining agreement for approval or registration. The amendment seeks to insert sub clause (b) contrary to public interest as a ground that the Minister may refuse to register a collective bargaining agreement.

- The public policy interest is a wide concept that can be abused by the Minister to refuse to register an agreement.
- The right to engage in collective bargaining is protected by Section 65 (5) (a) of the constitution and limiting such is unconstitutional.

The amendment is an additional violation of the Convention on the Right to Organise and collective bargaining, 1948 (No.98)

9.7 Amendment of Section 104 Right to resort to collective job action

- The period of 14 days' notice before going on strike in sub-section (2) (a) is too long and proposes that it be reduced to 48 hours; Comparatively, (48hrs South African Labour Relations Act, s64). (Australia, Fair Work Act S414 (2) 3day notice).
- Furthermore, there is a tendency by employers to provoke employees to resort to illegal actions. This includes the failure to pay wages on due date. It should be noted that a failure to pay wages though called a dispute of right constitutes a serious breach of an employment contract. Employees must be given the right to engage in collective job action without following the above procedure. An employer cannot be rewarded to discipline employees for an act the employer has caused. This is an injustice
- Should read "if the employer fails to pay wages and benefits as agreed or under a collective bargaining agreement, employees can resort to collective job action"

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