

Is There Labour Right Provision To Strike In Zimbabwe In Light Of The New Zimbabwe Constitution Of 2013 And The Labour Amendment Act Number 5 of 2015?

Dominic Uzhenyu

Lecturer, Faculty of Commerce and Law, Zimbabwe Open University Harare/Chitungwiza Regional Centre, 3rd Floor West, Main Post Office Building, Corner Nelson Mandela & Inez Terrace, P. O Box 8306 Harare ,Zimbabwe

Abstract: The purpose of the study was to find out if there was provision for employees to strike in Zimbabwe in the wake of recent legislation developments such as the New Constitution of 2013 and the Labour Amendment Act 28:01 Number 5 of 2015. The right to strike in Zimbabwe has been a contentious issue in both the public and private sectors. Those who have previously been engaged in strike or industrial action have been victims of decisions taken by employers either to dismiss them or harshly reprimand them. In the Public service, civil servants are not allowed to go on strike according to the Public Service Act 16:04 and even the Labour Act 28:01(Amended August 2015).The study was a survey which was largely qualitative and data was collected using an unstructured questionnaire as well as relevant pieces of legislation. The study established that it was generally difficult to strike in Zimbabwe as the procedures were cumbersome and the Minister of Public Service, Labour and Social Welfare had the prerogative of issuing a disposal order that would call off the strike as provided for by the law if he/she deemed it fit to do so. There were very few cases where strikes could take place such as violation of collective bargaining agreements, where there was exposure to hazardous working conditions and threat to life including discrimination and sexual harassment. The study recommended that the notification period to go on strike be reviewed to be as short as two days and to streamline the Minister of Public Service, Labour and Social Welfare 'veto' powers as well as aligning the New amended labour Act to the National constitution.

Definition of key terms :

- **Amended Labour Act(Labour Amendment Act 28: 01 No. 5 of 2015)**-the new labour legislation that became effective on 26 August 2015 and had been on the cards since 2006. It is 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.
- **Conflict** -the total range of behaviour and attitudes that express opposition and divergent opinions between managers on one hand and the workers and their organisations on the other. Conflict always involves two or more parties (individuals or groups), and occurs when one party feels its concerns are frustrated or about to be frustrated.
- **Industrial action**- is an action taken by employers or employees collectively to settle a workplace dispute about working conditions. It includes, when employees don't come to work, fail, or refuse to perform any work at all, delay or put a ban or limit on the work they do, or are locked out of a workplace by their employer.
- **Labour rights** or workers' rights- are a group of legal rights and claimed human rights having to do with labor relations between workers and their employers, usually obtained under labor and employment law. In general, these rights' debates have to do with negotiations involving issues of concern such as workers' pay, benefits, and safe working conditions.
- **National constitution** defines the principles upon which the state (Zimbabwe) is based, the procedure in which laws are made and by whom. It also acts as a limiter of state power, by establishing lines which a state's rulers cannot cross, such as fundamental rights.
- **Strike** is a form of labour unrest (industrial action) in which there is work stoppage caused by the mass refusal of employees to work usually in response to failure by the employer to address their grievances . It is done to force the employer to accede to employees demands and can be violent as a result of a confrontational approach by the employees.

I. Introduction

Conflict is an inherent and necessary 'evil' which streamlines the powers of industrial relations parties especially business (employers). Causes or sources of conflict are important to be identified, as they become the basis to the determination of the method(s) that could be used to resolve that conflict which could manifest into a retrogressive situation such as creating an uncondusive working environment or 'fuelling' emotions that could end up with confrontation e.g. strikes. Conflict is inevitable but it is also necessary and should not be viewed as destructive or harmful only. The traditional view of conflict views it as undesirable and can be avoided contrary to the modern view. Conflict levels range from intra-personal, inter-personal, intra-group and inter-group. Conflict brings change, creativity and adaptation. Conflict in its 'nasty' state culminates in industrial action such as boycotts, stay-aways and strikes. Conflict management strategies including third party intervention strategies namely conciliation, mediation and arbitration are discussed in detail. Challenges facing Zimbabwe employees to embark on an industrial action have been articulated making Zimbabwe one of the countries which does not easily allow industrial action to take place. Industrial action is mainly an avenue through which workers can express their dissatisfaction, either individually or collectively, over their working conditions by . Strike action is a recognized, fundamental right of workers which should, however, be exercised with responsibility. There is no single cause which can adequately explain strike activities of workers within the country.

II. Background Of The Study

The right to strike in Zimbabwe has been a contentious issue in both the public and private sectors for time immemorial. Those who have previously been engaged in strike or industrial action have been victims of decisions taken by employers either to dismiss them or harshly reprimand them. In the Public service, civil servants are not allowed to go on strike according to the Public Service Act 16:04 and even the Labour Act 28:04 (Amended August 2015).

The new Zimbabwe Constitution (Amendment No. 20) of 2013 brought a bit of hope to workers to go on strike if certain conditions are met. Zimbabwe is also a member of the International Labour Organisation (ILO) and has ratified some conventions which promote workplace democracy such as convention No. 87 which describes a strike as a fundamental right to organise. Workers have been pressuring government to be clear on the right to strike and had proposed that such a right be included in the Labour Act 28:01 that has since been amended and became law last year on 26 August 2015 but to no avail.

In terms of best practice on *Dispute (Conflict) resolution*, a distinction is drawn between disputes of right and disputes about matters of mutual interest between employers and employees (Giles Files, www.gilesfiles.co.za accessed on 23 April 2016). This is also in line with International Labour Organisation (ILO) Conventions. A *dispute of right* is where, for example, an employee's claim is based on a legal or contractual right or a dismissal case. Such disputes of right can be settled by the Labour Court or, in some cases by the Commission for Conciliation, Mediation and Arbitration (CCMA).

On the other hand, *disputes of interest* have bearing on the creation of new rights such as higher wages or improved conditions of service such as health and safety concerns. If such disputes cannot be settled by means of negotiation, the employees may exercise their right to strike (industrial action) once the applicable procedure has been followed. Clearly the parties are also encouraged to agree to have the dispute resolved by some form of private arbitration, such as pendulum or 'final offer' arbitration (www.gilesfiles.co.za accessed on 23 April 2016).

III. Statement Of The Problem

There have been worrying cases of numerous threats to strike in Zimbabwe by both workers in the private and public sectors. Majority of those involved in such type of industrial action have been victimised in contrast to provisions of ILO convention number 87 which gives employees right to organise a strike as a fundamental right. Even the Zimbabwe New Constitution of 2013 (Amendment No. 20) has such provision which covers the right to resort to collective job action but it appears workers still remain disgruntled to date.

IV. Research Questions

The study which was qualitative intended to answer the following sub-problems after investigation

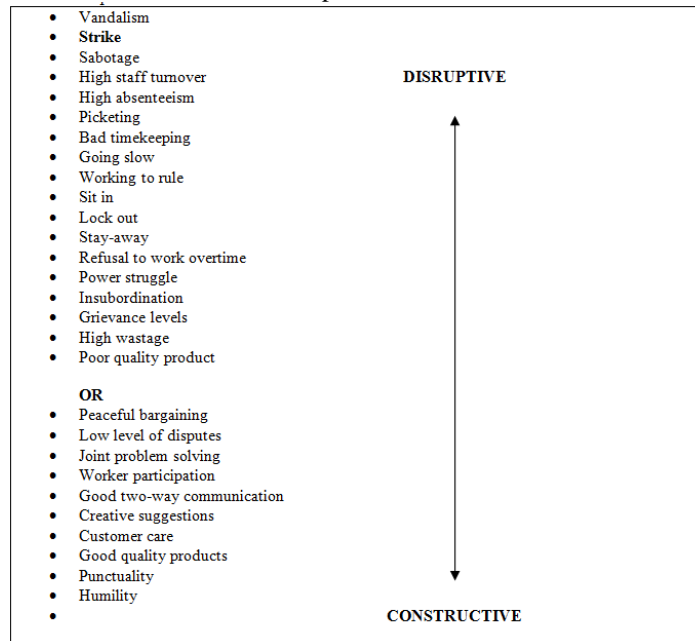
- 4.1 What do pieces of legislation in Zimbabwe say with regard to go on strike?
- 4.2 Which are the procedures required for workers to embark on strike?
- 4.3 What are the problems facing workers to embark on strike in Zimbabwe?
- 4.4 What should be done to accord workers in Zimbabwe the right to strike in line with ILO provisions?

V. Literature Review

5.1 Conceptual Framework

A labour strike which is a serious form of industrial action which is a culmination of organisational conflict (Sambureni, 2003). Organisational conflict can be expressed in a number of ways as shown by table below:

Table 1: Expression of conflict



Source: OTD Training Manual (1994)

5.2 Changing Views Of Conflict

According to Mudyawabikwa (20) supported by Uzhenyu (2015), in the last forty years, attitudes towards conflict in work organisations have changed significantly as shown by the table below.

Table 2 showing contrasting views

Traditional view	Modern view
<ul style="list-style-type: none"> Conflict is avoidable Conflict is caused by the management methods or trouble makers Conflict disrupts the organisation performance Conflict should be eliminated. Optimum performance requires the removal of conflict 	<ul style="list-style-type: none"> Conflict is inevitable Conflict arises from many causes: differences in goals, perceptions, values, etc Conflict should be managed Optimum performance requires a moderate level of conflict

Source; Mudyawabikwa (2003)

5.3 Causes Of Conflicts

In brief conflicts may be caused by (Mudyawabikwa, 2004:Beaumont, 1995)

- Scarce resources e.g. money – ratio of profits to wages and the sharing formula,
- Job or work activities – how to share out activities,
- Differences in goals – managers are concerned with efficiency whilst workers are concerned with security of tenure,
- Values or perceptions,
- Environmental factors. Fluctuations in the market for a product can threaten workers’ jobs
- Authority and power. Workers seek more power on issues affecting their lives (vertical conflict). Subordinates may resent a superior above them. Horizontal conflict is that between individual managers or between workers.
- Nature of work itself may be tedious (boring) so that there is no control of the pace of work, no responsibility or group identity,
- communication problems
- Individual styles,
- Line and staff structures which are not very clear
- Ambiguities in the organization

1.4 Functions And Dysfunctions Of Conflicts

The desirability of conflict in social interactions is subject to debate. However, there are many elements that contribute to the destructive image of conflict (Uzhenyu, 2016; Salamon, 2000).

- i) Competitive processes** – when parties fiercely compete against each other. They believe goals are in opposition and that they cannot both achieve their objectives. This fierce competition may lead to further escalation of conflict.
- ii) Misperception and bias** – this usually happens when people begin to use stereotypes or ethnocentric ideas or notions about others in negotiation. These stereotypes may not necessarily be accurate.
- iii) Emotionality** –conflicts become emotionally charged as the parties become anxious, inflamed, angry or disgusted. Emotions impede rational thought and can further provoke escalation of the conflict.
- iv) Communication breakdown** – where there is conflict sometimes its due to communication breakdown. When communication does occur among the conflicting parties, one party may attempt to defeat, demean or castigate the other’s view and thus assert their view.
- v) blurred issues** – when a conflict degenerates into a long and unending crisis parties become less clear about how the dispute started, what it is really about or what it will take to solve it.
- vi) Rigid comments** –are usually caused by the fear, in both parties, of possible embarrassment and the consequent decline in stature.
- vii) Magnified differences and minimized similarities** – this occurs in the form of unnecessary polarization and dichotomization of issues. Similarities and commonalities between parties become oversimplified and are trivialized. Factors that distinguish and separate them from each other become highlighted.
- viii) Escalation of the conflict** –this occurs when there is further drifting apart between parties. They substantially reduce their ability to deal with each other again or to resolve the dispute. Every side believes that by adding a little more pressure it can make the other side concede defeat.

The above eight items seem to look at conflict as bad, dysfunctional or destructive. However, some scholars emphasize the productive aspects of conflict.

5.5 Benefits Of Conflict

Tjovold cited in Lewick et al (1997) by Mudyawabikwa(2004) pin-pointed a number of functions and benefits of conflict as indicated below. Consider his assertions listed below carefully and critique them.

- (i) Discussing conflict makes organisational members more aware of the situation and they want change to create incentives in order to try to solve inherent problem in their organisation.
- (ii) Conflict promises organisational change and adaptation. Procedures, assignments, budget allocations and other organisational practices are challenged. Conflict draws attention to those issues that may interfere with and frustrate employees
- (iii) Conflict strengthens relations and heightens morale. Employees realize that their relationships are strong enough to withstand the test of conflict, they need not avoid frustrations and problems. They can release their tensions through discussion and problem solving.
- (iv) Conflict promotes awareness of self and other. Through conflict, people learn about the causes of their anger, frustration and fear etc.
- (v) Conflict enhances personal development. Managers find out how their style affects their subordinates through conflict. Workers discover the technical and interpersonal skills they need to upgrade.
- (vi) Conflict encourages psychological development. Persons take each other’s perspectives and become less egocentric. Conflicts help people to believe that they are powerful and capable of controlling their own lives. They do not simply need to endure hostility and disgruntlement. They can act to improve their lives.
- (vii) Conflict can be stimulating and fun. People feel involved and active in conflict and it can be a welcome break from easygoing life. It invites employees to take another look and to appreciate the intricacies of their relationship.

It can be argued that conflict is both destructive and productive. As such the objective in human living is not to eliminate conflict but to learn how to manage it well. Destructive elements are controlled while the more productive aspects are enjoyed. From this perspective, negotiations present opportunities for the productive management of conflict.

5.6 Forms Of Industrial Action

There are two major forms of industrial action, that is, the unorganized individual forms of action and organized collective forms of action. Both forms of action express discontentment about certain issues at the workplace. The unorganized conflict is the way open to them as individuals, while organized conflict is part and

parcel of collective forms of consciousness that is utilized to change the situation which is unacceptable within the employment relationship.

The different forms of action which workers take when confronted by difficult circumstances according to Sambureni (2001) are.

- 1) **Unorganized forms of action** – These include absenteeism, theft, high labour turnover, go slow, deliberate destruction of property or machinery, feigned illness, self-inflicted injuries, lack of commitment to the organisation, loafing, job-hopping etc. These forms of action are what we normally call hidden forms of resistance, which have always tended to be hidden and silent rather than dramatic and articulate).
- 2) **Organised forms of action** – employee discontentment may be expressed in a variety of organized collective action that includes withdrawal of co-operation, work to rule, overtime ban, collective go slows, strike action, work-in/sit-in, etc.

5.7 Strike Patterns

There are three main indices that are used to assess strike activity (Sambureni & Mudyawabikwa,2003).

- 1) number of stoppages
- 2) number of workers involved
- 3) number of working days lost

It is important to state that the statistics measure the extent rather than the effect of strike activity. However, we could possibly talk about the causes of strikes here in order to broaden our understanding of the issues involved. One could possibly place the causes of strikes into three groups:

- 1) Basic issues (i.e. wages, hours of work, benefits)
- 2) Solidarity issues (i.e. worker rights, sometimes union recognition, closed shop, inter-union disputes, sympathetic action)
- 3) Frictional issues (i.e. working arrangements, discipline, redundancy, employment of certain classes of people, etc)

There is need to take cognizance of the fact that no single causal factor can adequately explain strike action in different organisations or workplaces. One has to analyse the motives, attitudes and perceptions of the participants. Furthermore, strike action does not perform exactly the same function in all organisations and may, therefore, have different meanings and significance.

5.8 Conflict Management Approaches

Five strategies have emerged that could be adopted to manage conflicts at workplaces (Salamon,2000). These are:

- i) **Contending/competing or dominating** –Here the negotiator pursues his/her own outcomes strongly. He/she has little concern for whether the other party obtains his desired outcomes. Parties which adopt this strategy maintain their own aspirations and try to persuade the other party to yield. Threats, punishment, intimidation etc, are typical of the contending approach.
- ii) **Yielding/Accommodating or obliging** –. Negotiators here show little interest in or concern about whether they attain their own outcomes, but are keen to see to it that the other party attains her/his outcomes. This involves the negotiator lowering his aspirations to “let the other win”. This strategy may seem strange but it has its own advantages in some disputes, for example, if the conflicting parties are going to have a lasting relationship.
- iii) **Inaction/Avoiding** – Those in this band show little concern about whether they attain their own outcomes, nor do they show much concern about whether the other party obtains his outcomes. Inaction is the same as withdrawal or passivity or retreat.
- iv) **Problem solving/collaborating or integrating** –Here negotiators show high concern for attaining their own outcomes and great concern for whether the other attains her/her outcomes. Both parties actively pursue approaches to maximize their joint outcome from the conflict, so that both sides win.
- v) **Compromising** -It represents a moderate effort to pursue one’s own outcomes and a moderate effort to help the other party achieve his outcomes.

5.9 Approaches By Use Of Third Parties

5.9.1 Third Parties

If the parties cannot resolve a dispute on their own, a third party can be called upon to help them determine the appropriate thing to do. Third parties are often used in both commercial and labour disputes. **Third parties** are people outside the conflicting parties who are called in or who offer to harmonise the tense relations of the negotiating parties. They come in either as arbitrators, or mediators or process consultants at the

time when the negotiation gets rough. They are the go-betweens whose main task is to see the conflicting parties back on the negotiation table (Uzhenyu, 2016 ; Sambureni; 2001).

5.9.2 Advantages Of Third Parties

Third parties can be productive when they succeed in providing the stability or rapport among conflicting parties and create momentum essential for the negotiators to readdress the problems at stake. They can:

- offer breathing space to cool off excess heat
- re-establish or enhance communication
- refocus on substantive issues
- remedy or repair strained relationships.
- recommitment to time limits
- salvage the damage of stalled negotiations
- Increase levels of negotiator satisfaction with and commitment to the conflicting resolution process and its outcomes.

5.9.3 Disadvantages Of Third Parties

- Third party intervention may reveal the following
- Evidence of a failure of the negotiation process
- Failure to cultivate or build relationships between the conflicting parties
- Possible loss of control by the parties to the issues at stake.

5.9.4 When Is Third Party Intervention Necessary?

Ideally, negotiators must solve their problems on their own without the need for a third party. However, when one party suggests the need for third party intervention, both parties must agree if they cannot persuade each other. In some instances, however, interventions may be imposed by someone with power or authority over the negotiators when their failure to resolve the dispute threatens to spill over others outside the conflict. Under normal circumstances negotiators might seek third party involvement if they experience;

- Intense emotions that threaten to hamper a settlement
- Poor quality or quantity of communication, resulting in a negotiation impasse
- Misconceptions or stereotypes that hinder productive exchanges
- Frequency of negative behaviours e.g name-calling, use of abusive or hate language.
- Serious disagreement over the importance, collection or evaluation of data
- Disagreements on the number, order and combinations of issues under dispute.
- Actual or perceived incompatible interests that the parties are unable to reconcile
- Unnecessary value differences that are divisive
- Absence of a clear, common negotiation protocol or procedure.
- Difficulties to initiate negotiations or “bargaining through” an impasse.

5.9.5 Formal Third Party Intervention Methods

These refer to roles and activities that are intentionally designed as third parties in the traditional sense such as judges, labour arbitrators, divorce mediators to mention a few. Informal third party intervention methods include those of managers, supervisors or concerned friends (Uzhenyu, 2016 ; Sambureni; 2001)..

5.9.5.1 Conciliation

Conciliation can be defined as the first third party intervention strategy that helps the disputing bodies identify the cause of their differences and the relative importance of the various issues at stake. The parties are left to agree on a resolution to the dispute themselves; conciliators do not impose or recommend solutions. Salamon(2000) also emphasizes that conciliation as a third party strategy does not only support the direct bipartite negotiating process by assisting the parties to identify the cause, and extent of their differences but also encourages them to establish alternative solutions and their various implications and to develop and agree a mutually acceptable settlement. What this means is that the responsibility for making decisions and reaching a solution still remains a joint one between the conflicting parties – management and the labour union. The conciliator acts as a medium or a catalyst for the continuation of dialogue aimed at leading the parties to an agreement without interfering in the actual decision making.

5.9.5.2 Arbitration

Arbitration is another popular formal third party dispute settlement method whereby one or more impartial persons (arbitrator/s) determine/s the issue on which the parties are unable to agree. Unlike other forms

of dispute settlement methods, where the disputing parties control over the outcome of the dispute, in arbitration the third party is given the power of determination – the arbitrator like a pendulum that swings from one end to the other, hence the name Pendulum Arbitration, is required to make a decision wholly in favour of either party’s final position, be it employer’s final offer or the unions final claim. Any other solution in arbitration is not acceptable.

Arbitration is usually used in disputes between businesses and union-organised workers. In Zimbabwe, the Ministry of Labour offers arbitration services in both labour and commercial disputes. The commercial Arbitration Centre in Harare trains arbitrators and offer arbitration services in both labour and commercial disputes.

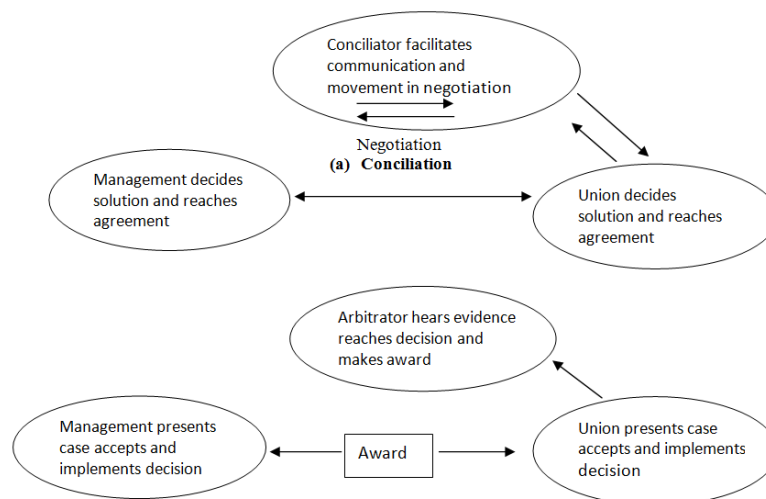


Figure 4.1: Conciliation and Arbitration processSource: Salamon (2000), Industrial Relations, Theory and Practice, 4th Edition, Prentice Hall, London

5.9.5.3 Mediation

In this third party involvement, the negotiators themselves, reach an agreement and the third party is just a facilitator. Mediators usually have no formal power over outcomes and cannot resolve the dispute on their own or impose a solution. Their strength lies in their ability to motivate the parties to make concessions towards agreement. The mediator himself/herself must be acceptable and credible, must be neutral and recognized as impartial, experienced and potentially helpful.

5.10 Recent cases of strikes in Zimbabwe (2016)

1. GMB



The Grain Marketing Board (GMB) which is a parastatal (state enterprise) responsible for the storage of Zimbabwe’s grain products, had its workers besieging the company’s head office in the capital city Harare (actually camping there for more than two weeks) and vowed not to move or return to work demanding their outstanding salaries. According to the *Zimbabwean newspaper* article report of 26 February 2016, the embattled GMB, which owed farmers over US\$52 million from previous years delivered grain, also owed by then its

workers six months salaries. The workers accused the employer of being insensitive to their plight but insisted that they were not on industrial action but simply wanted their dues so that they could be able to go for their daily duties. They also refused a proposed payment plan by management describing it as an insult. They said they would sit in at the head office until their demands were met.

“We are not striking but simply demanding what we are owed, we worked for it and we deserve to get our money. We are making huge sales but always told that the company is waiting for treasury. Are we not supposed to generate our own salaries through sales?”

Said the President of the GMB Workers Union. Meanwhile, management had addressed the workers and made a commitment to pay the backlog by the 20th of the following month, a solution the workers refused.

We are working towards getting your salaries and plead with you to go back to your work stations. We will pay you by the 20th. We are struggling but we are also doing something about your plight,

Pleaded, the GMB Deputy General Manager - Human Resources. The GMB has been mired in serious financial problems which have resulted in delays in purchasing maize from farmers and the failure to pay US\$52,4 million for the 255 519 tonnes of grain delivered last year (2015).

2. The National Railways of Zimbabwe (NRZ)

The workers, who were reportedly owed 15 months' salaries each, had rejected an offer by management to pay them between \$175 and \$350. Workers who spoke to News Day daily newspaper of 12 April 2016 at the Rugare despatch and reception yard in Harare, where some of them were camped, said management did not care for their welfare.

“The paltry figures they are offering compared to what they owe us shows they do not care. We owe rentals and school fees and our families are starving yet they want to give us \$175. Some will not get a cent because they are servicing loans. We appeal to well wishers for food and any other assistance they may render because it appears we are going to be here for a long time
one striking worker, said.

More than 4 000 workers had downed tools across the country bringing to a halt operations including the transportation of imported wheat and drought relief maize. NRZ continued to experience plummeting traffic levels which had negatively impacted on its revenue/income.

The above are rare cases where strikes are allowed with minimal police intervention. The reason could be to do with the gravity of the grievances since in the above cases there was serious violation of employees fundamental rights as evidenced by the worrying period in which employees had not been paid, that is 6 and 15 months respectively.

5.11 Legislation position on industrial action (labour unrest e.g. strike) in Zimbabwe

5.11.1 Absence of Collective Bargaining in the public sector/service.

In Zimbabwe there is no clear cut procedure on collective bargaining between the civil servants and the employer represented by the Public (Civil) Service Commission. The legislation which is at the centre of industrial relations, that is the Labour Amendment Act chapter 28: 01 number 5 of 2015, appears to be not adequately covering the Public service as it even prohibits civil servants from initiating any form of labour unrest **as outlined on PART X111 Section 104 (3) (a) (i)**

5.11.2 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

5.11.3 Official Secrets Act

This is an Act, Chapter 11:09

- ✓ which prohibits the disclosure for any purpose prejudicial to the safety or interests of Zimbabwe of information which might be useful to an enemy,
- ✓ to make provision for the purpose of preventing persons from obtaining or disclosing official secrets in Zimbabwe,
- ✓ to prevent unauthorized persons from making sketches, plans or models of and to prevent trespass upon defense works, fortifications, military reserves and other prohibited places.
- ✓ All civil servants and government workers in general are supposed to sign for this Official Secrets Act before assuming office or duty and are most affected by
- ✓ Section 3 which covers espionage
- ✓ Section 4 on prohibition of communication of certain information including abuse of any secret official code or password or any model, article, document or information which has been entrusted in confidence to him/her by a person holding an office in the service (e.g head of office, supervisor, minister, commissioners etc).

Violation of this Act, empowers the Attorney General to institute criminal proceedings (Code of conduct or Courts)

.NB. It can be observed that it is difficult in Zimbabwe to have freedom to reveal any information related to government operations lest one is found on the wrong side of the law.

The media has for years been screaming itself hoarse that the Public Order and Security Act (POSA) and its evil Siamese twin, the Access to Information and Protection of Privacy Act (AIPPA), be repealed for they trample on the fundamental rights of Zimbabweans.

Even churches and other human rights groups believed that the discourse was political while others joined hands with dissenting voices to castigate these draconian laws which crush basic human freedoms of association and expression.

5.11.4 Access to Information and Protection of Privacy Act (AIPPA) of 2002

The Act establishes a Statutory Media Commission, which requires all journalists to apply for a one-year renewable licence to be allowed to work. Licences would only be awarded if a stringent set of requirements are met, and can be revoked at any time for those who breach a planned code of conduct.

Those found guilty of any offence will face a fine of up to Z\$100,000 (\$1,875) or two years' imprisonment. Widespread criticism have since forced some minor concessions culminating in 'lenient' application of the Act.

- Initially all journalists must be Zimbabwean citizens, which bars all foreign nationals from reporting in the country although the Act has been flexible at times.
- Foreign correspondents may be allowed to cover special events only.
- It is an offence to "spread rumours or falsehoods that cause alarm and despondency under the guise of authentic reports".
- Journalists are barred from publishing "unauthorised" reports of cabinet deliberations and policy advice by a head of a public body, as well as information that may be harmful to the law enforcement process and national security.
- Public bodies are also barred from releasing information that relates to intergovernmental relations or their financial or economic interests.

5.11.5 The Public Order and Security Act (POSA) of 2002

Constitutional lawyers have always been warning that the wide-ranging provisions of this Act, which give unprecedented powers to the police - are similar to apartheid-era security legislation in South Africa.

Punishment for breach of the Act ranges from the death penalty to harsh jail terms and heavy fines.

The Act makes it illegal:

- "To undermine the authority of the president" or "engender hostility" towards him.
- To make abusive, obscene or false statements against the president.
- To disturb the peace, security and order of the public, which includes public gatherings "to conduct riots, disorder or intolerance".
- To perform acts, utter words, distribute or display any writing, sign or other visible representation that is obscene, threatening, abusive, insulting or intended to provoke a breach of peace.
- The police are given powers to arrest anyone at a public meeting not in possession of an identity card.

Senior police officers will have powers to control and disperse public gatherings and crowds whenever they deem it reasonable to do so.

VI. Methodology

6.1 Approach

Was purely of Qualitative paradigm

6.2 Design

The Survey design was used

6.3 Target population

Ministry of Public Service and Labour and Social Services & Ministry of Finance (Treasury department), Employers Confederation Of Zimbabwe (EMCOZ), Civil Service Commission, Zimbabwe Congress Of Trade Unions (ZCTU), Zimbabwe Federation Of Trade Unions (ZFTU), Apex Council & Staff associations officials/representatives, Labour experts.

6.4 Sample size and sampling technique

Eighteen (18) subjects using the non-random quota sampling technique were identified. Quota sampling was done to accommodate the different groups mentioned above for representativeness. The number was based on *data saturation technique* where the interviewer/researcher felt that there was no need to interview an additional member of a particular group as almost or the information had been 'exhausted'.

6.5 Research instruments

Used an unstructured interview guide that allowed free expression of views since the approach was entirely qualitative (Choga and Njaya, 2011).

6.6 Data presentation and analysis

Results were analysed using the Content analysis method, involving categorization of data, classification, summarization and coding (Cresswell, 2003).

VII. Results/Findings

These were derived from the Research Questions outlined earlier on under PART IV

7.1 What do pieces of legislation in Zimbabwe say with regard to go on strike?

Apart from the National Constitution which has provision for strike, the other Labour laws have unclear provisions on whether strike is really allowed and for civil servants they should not engage in a strike as they provide essential services. These laws have not yet been synchronised with the National constitution.

7.2 Which are the procedures required for workers to embark on a strike? (in fact a controlled one)

The study was able to establish that there were a lot of prohibitive procedures for employees to embark/engage in industrial action like a strike. For civil servants it was almost impossible as they are classified under the category of **essential services** providers. For the rest, particularly in the private sector;

- The Workers committee or Trade union should get **consent of at least 50%** of its members (constituency) who should append their signatures to commit themselves and demonstrate that they are in unison or agreement. A list of members who attended that meeting should be attached to the minutes of the meeting which resolved to embark on industrial action if their grievances were not urgently addressed.
- Writing a **letter of intent** which should be given to the employer notifying management about the intention to conduct an industrial action (strike). Usually a grace period of 14 days is given for management to address the grievance(s). A copy of the letter can also be copied to the trade union and the relevant national employment council
- A letter with justification to go on industrial action known as **show cause order** is normally issued by the Labour relations officer who intervenes should the strike commence or about to commence so that the he/she facilitates dialogue/negotiation(s) to take place.
- Notification of impending strike to the police(**application letter**) to get clearance which is normally difficult to be granted as that could be viewed as a threat to economic (national) stability and security.
- If impasse continues even after intervention of Senior labour relations officer and workers decide to take further industrial action (strike), the Minister Of Public Service, Labour and Social Welfare can issue a **disposal order** to call off the strike especially if he or she feels that the service being disrupted constitute an **essential service** or may contribute to economy 'malaise'.
- In the event that the strike is likely to paralyse major service areas and even the national economy, the State president could invoke his Emergency(temporary) powers to restore parity (stability).This calls for the state security and the police (Zimbabwe Republic Police) to implement provisions of AIPPA and POSA which

are Acts (legislation) that prohibit unnecessary gatherings and information sharing that is viewed as threatening to national peace and general security or related to economic sabotage.

- Use of **forced arbitration** (e.g. use of the **Labour court**) could be effected by the Labour relations officer as a way of trying to resolve the impasse. However this could take a lot of time as some cases can take even more than 2 years before finalisation owing to serious backlog of pending labour cases worsened by shortage of judges and prosecutors etc.

The above demonstrates why in Zimbabwe, it is very difficult to engage in a collective job action e.g a strike since the procedures are prohibitive as enshrined in the Labour Act 28:01 and exacerbated by the powers given to the Minister of Public Service, Labour and Social Welfare, who can use his/her 'discretion' to call off the industrial action.

The study noted that it was only on few occasions (cases) that permission to embark on an industrial action (strike) can be granted/given especially under the following cases;

- ✓ where workers strike against threat to **health and safety** at the workplace. This is where there is high risk of exposure to accidents, hazardous working conditions or threat to loss of human life
- ✓ when showing solidarity; such as women demonstrating against sexual harassment or abuse ,
- ✓ racial discrimination especially if practised usually by white management/leadership of an organisation or industry (this has been a reality especially in white owned mines or farms)
- ✓ demonstration against child labour or human trafficking etc.
- ✓ failure by employer to honour a collective bargaining agreement or to pay remuneration for several months like in recently in 2016, the cases of GMB workers who had gone for 6 months without pay and NRZ workers who had not been paid for over 15 months..

In most such cases, there is normally police presence and at times the police may actually escort the demonstrators

7.3 Which are the problems facing workers to embark on strike in Zimbabwe?

Workers faced a diverse range of challenges which included;

- (i) bureaucratic structures that makes the process tedious and delaying. This tended to kill off the zeal or momentum.
- (ii) threat of losing employment as not much was done to protect the workers in the event that they went on strike and they face disciplinary hearings.
- (iii) Minister of Public Service, Labour and Social Welfare's veto powers to call off the strike (disposal order) and his/her discretion to classify any trade or profession as providing essential services which makes it virtually uncertain to embark on industrial action (strike)
- (iv) usually loss of pay for the number of days that the workers are on strike.
- (v) use of draconian laws such as AIPPA and POSA which can lead to incarceration (being jailed).
- (vi) industrial action viewed as political at times by the ruling Zimbabwe African National Union Patriotic front (ZANU PF) government as meant to sabotage economy especially if supported by the Zimbabwe Congress of Trade Union (ZCTU) which gave birth to the major opposition political party, the Movement for Democratic Change (MDC) in 1998.
- (viii) non compliance by the government on observation of International Labour Organisation (ILO) Conventions especially those promoting workers rights to organise.

VIII. Conclusion

It is very difficult to strike in Zimbabwe as the period that the aggrieved (intending) group has to wait before complying with the procedures, is very long relative to other countries, the Minister of labour is given too much powers including his prerogative to calling off a strike, the civil servants not allowed and use of repressive means of applying draconian laws like AIPPA and POSA by the police. Only for few limited cases are strikes possible.

IX. Recommendations

These are meant to answer the following research question raised earlier on under PART IV

What should be done to accord workers in Zimbabwe the right to strike in line with best practices?

- ✓ There was need to realign various legislations as they were not in harmony at the moment. The Amended Labour Act and the Public Service Act should be harmonised on issues critical to freedom of expression so that they are in tandem or synchronised with the National Constitution of 2013 which has provision for

freedom of expression, strikes included where justified except for the military and security related professions.

- ✓ Implementation of ILO Conventions such as No. 87 and 98 which allows the right to organise. in line with global best practices since Zimbabwe is a ‘bona fide’ member of ILO.
- ✓ Removal of fear for victimisation of leaders by protecting them if there was consent by at least 50% of the workers including full pay for days lost due to industrial action if fundamental rights of workers have been violated by the employer who will then have acted in bad faith.
- ✓ Streamlining the Labour Minister’s powers (Minister of Public Service, Labour and Social Welfare) and the police in order to create a democratic atmosphere rather than a confrontational and repressive approach.

References

- [1]. Beaumont, P, B (1995) *The Future of Employment Relations*, Sage, London
- [2]. Bless, C and Higson-Smith, C (1999) *Fundamentals of social research methodology, An African perspective*, 2nd edition, Juta and Company Ltd
- [3]. Blyton, P and Turnbull, P (1994) *The Dynamics of Employee Relations* MacMillan
- [4]. Cresswell, J.W (2003) *Research design, qualitative, quantitative and mixed methods approaches*, second edition, Sage publications.
- [5]. Choga and Njaya (2011) *Business research methods*, 1st edition, ZOU, Harare
- [6]. Kennedy, P (2009) *How to combine multiple research methods, practical triangulation*, Johny Holland
- [7]. Kothari, C.R (2004) *Research methodology*, New Age International Ltd Publishers, New Dehli
- [8]. Mudyawabikwa, P (2004) *Collective Bargaining in Zimbabwe*, Temur enterprises, Zimbabwe Open University (ZOU), Harare
- [9]. Salamon (2000), *Industrial Relations, Theory and Practice*, 4th Edition, Prentice Hall, London
- [10]. Sambureni, N,T (2001) *Industrial and Labour Relations*, ZOU, Harare
- [11]. Sambureni, N,T and (2003) *Introduction to Industrial and Labour Mudyawabikwa, P Relations*, ZOU, Harare
- [12]. Uzhenyu, D (2015) *Introduction to Industrial and labour Relations*, ZOU, Harare
- [13]. Uzhenyu, D (2016) *Globalisation and Industrial Relations*
- [14]. Government of Zimbabwe (2015) *Labour Amendment Act Chapter 28:01 No.5 Amended 2015*, Government Printers, Harare
- [15]. Government of Zimbabwe (2006) *Labour Act chapter 28:01 amended 2006*, Government Printers, Harare
- [16]. Government of Zimbabwe (1984) *Labour and Economy; Report of the National Trade unions survey; Zimbabwe*, Volume one, Government Printers, Harare
- [17]. Government of Zimbabwe (1996) *Labour Relations Act of (revised edition)*, Government Printers, Harare
- [18]. Government of Zimbabwe (1980) *Minimum Wages Act of 1980*, Government Printer, Harare
- [19]. ILO Convention number 144 (Tripartite Consultancy (1976) ILO, Geneva
- [20]. International Labour Organisation (ILO) Convention 87, Geneva on right to strike
- [21]. Labour Act 28:01 (Amended 2015) Government printers , on employment conditions
- [22]. Organisational Training Development, *Conflict management*, Harare
- [23]. NewsDay daily newspaper of 12 April 2016, NRZ strike over long due salaries continues
- [22] www.gilesfiles.co.za disputes of right and interest (Giles Files accessed on 23 April 2016)
- [23] www.thezimbabwean.co.zw GMB workers’ plight, a syndrome of Zimbabwe government’s rot, 26 February 2016