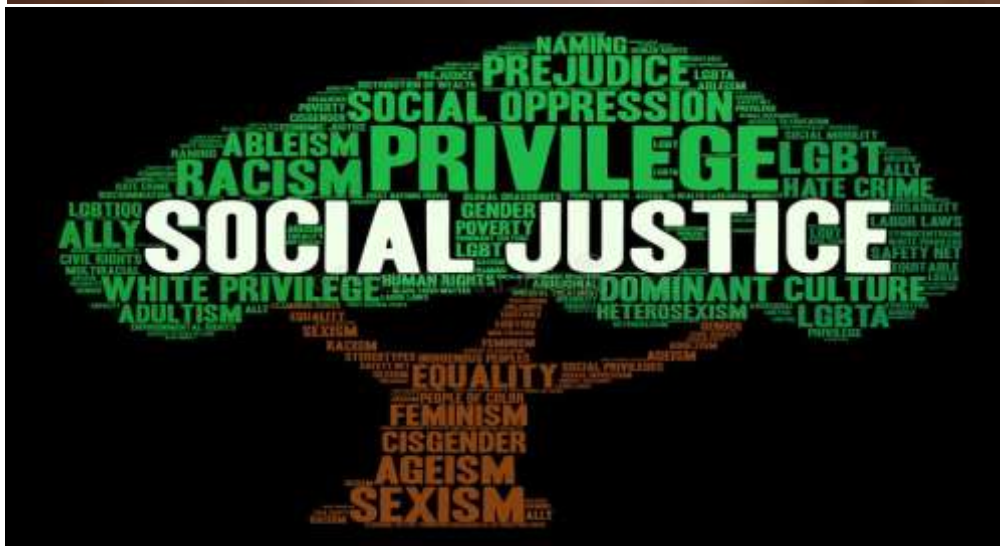


# ZIMBABWE CONGRESS OF TRADE UNIONS ZCTU



## ANALYSIS OF THE LABOUR AMENDMENT ACT NO. 11 OF 2023



***THEME:***

***“SOCIAL JUSTICE IN THE WORKPLACE: OUR PRIORITY”***

## INTRODUCTION:

The Labour Amendment Act No. 11 of 2023 has been long awaited as workers centre their hope on it, to secure decent jobs and decent life in our beloved country, Zimbabwe. This analysis by the Zimbabwe Congress of Trade Unions will reflect on both the good and bad parts of this Amendment as workers believe that social dialogue is a continuous process meant for the good of our nation, hence there is always room for improvement.

As originally indicated by the 2021 Labour Bill, this Amendment sought to align the Labour Act Chapter 28:01 with the Zimbabwe Constitution and international labour standards duly ratified by Zimbabwe. Therefore the benchmarks used in this analysis are the principles to amend the Labour Act adopted by the social partners in the Tripartite Negotiating Forum (TNF) between 2016 and 2019<sup>1</sup> and the International Labour Organisation (ILO)'s conventions and recommendations together with the ILO supervisory bodies' comments in respect of Zimbabwe's compliance with its international obligations<sup>2</sup>.

### **PART A - ZCTU CRITIQUE: POSITIVE AMENDMENTS:**

The Zimbabwe Congress of Trade Unions has noted and appreciates the following progressive amendments in the Labour Amendment Act no. 11 of 2023: -

- 1. PROTECTION FROM VIOLENCE AND HARASSMENT IN THE WORLD OF WORK:** The Act broadened definitions and protection of employees against sexual harassment and gender-based violence and the scope of coverage extended to the world of work which includes violence that occurs beyond the physical workplace **(s2, s6 and s8)**
- 2. FORCED LABOUR PROHIBITION:** Forced labour prohibition has been strengthened and clarified **(s4A)**.
- 3. PROHIBITION OF DISCRIMINATION IN EMPLOYMENT AND OCCUPATION:** The Amendment Strengthened protection from Discrimination on **section 5**, which now specifies equal remuneration for male and female workers. This brings clarity to the fact that the Act outlaws discrimination based on gender.
- 4(A). TERMINATION THROUGH RETRENCHMENT (s12C):**
  - ☐ The Amendment now creates stringent requirements for retrenchments and the retrenchment board now has powers to disapprove and create personal liability to the culprit.

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<sup>1</sup> See annexure 1

<sup>2</sup> See Zakeyo Mtintema *et al*, Compendium of the decisions of the ILO Supervisory bodies: Zimbabwe, 1985-2016

- ❑ Every retrenchment now has to be justified and cannot be done at the will of the employer anymore.

#### **4 (B) NEW INSERTION (SECTION 12CC): NON PAYMENT OF RETRENCHMENT PACKAGE DUE TO FRAUDULENT, RECKLESS OR GROSSLY NEGLIGENT CONDUCT BY EMPLOYER**

- ❑ There are extensive investigatory powers given to NECs and the Retrenchment Board to ascertain if a retrenchment is justified.
- ❑ Also if there is proof that a business is being run down and mismanaged or forced into a retrenchment there will be penalties and personal liability to the guilty company owners, directors, or even business partners.
- ❑ Personal assets of an employer found guilty of running a business down and hiding on retrenchment can now be attached. ***This puts an end to stage – managed retrenchments as previously experienced.***

#### **5. MATERNITY PROTECTION: (s18)**

- ❑ New provision removes the qualification period of one year thereby making the provision non – discriminatory and aligned to the constitution.
- ❑ Number of maternity leaves accorded is now unlimited.

#### **6. NEW INSERTION (SECTION 18A) - CONTRACTS FOR HOURLY WORK**

- ❑ Legal provision gives flexibility for employee on hourly work and prohibits employer to deny employee opportunity to work elsewhere to cover the hours not contracted for.
- ❑ If a worker is employed hourly for more than two month then they must be paid an equivalent of the minimum wage. The law assumes that if a person is tied on hourly contract for that long, they are restricted from looking for alternative permanent employment and their income earning capacity is diminished.
- ❑ This provision protects the workers and ensures those employees on hourly work contracts are not exploited.

#### **7. EFFECTS OF COLLECTIVE BARGAINING AGREEMENTS NEGOTIATED BY WORKERS COMMITTEES – (S25)**

- ❑ A provision has been inserted for employers who are statutory bodies predominantly or wholly controlled by the State, to put controls to prevent the conduct of some employers who refused to negotiate with workers committees on the basis that they did not get mandate from their principals. Now the Minister responsible for that institution shall form part of the negotiators.

**8. PAID EDUCATIONAL LEAVE** – Now can be included as a key issue for bargaining to accord the full right to education for all employees (**s25A**).

**9. COLLECTION AND REMITTANCE OF UNION DUES (S54):**

The **Amendment has removed Ministerial powers** which interfered with the trade union's right to collect union dues. The section now clearly accords this right to trade unions and makes it a punishable offence for any employer who fails to remit union dues without any reference to the Minister.

**10. SECTION 55 – REGULATION OF UNION FEES BY MINISTER:**

The **whole section 55**, which gave Minister Powers to regulate union dues and demand accountability in the administration of unions and assets purchased with those funds has now been repealed. This was a provision interfered with the right to Freedom of Association.

**11. ALL NECs NOW STATUTORY BODIES: - REPEAL OF S56 AND STRENGTHENING OF S57**

Voluntary NECs under sec 56 and 57 no longer exist but all NECs are now Statutory Bodies. This means those employers who refused to join or be bound by NEC Negotiations no longer have that choice. Whether an employer chooses to be part of an NEC or not they are now bound by the law to follow the CBAs from the particular NEC within the industry.

**12. STREAMLINING OF MINISTERIAL POWERS – (s 79) REGISTRATION OF COLLECTIVE BARGAINING AGREEMENTS (CBAs).**

Under the registration of Collective Bargaining Agreements (**Section 79**) the Minister's powers to refuse to register a CBA on the grounds that the agreement is unreasonable, have been repealed and now the Minister can only specify a specific section that is inconsistent with the law and the parties are asked to renegotiate that part and amend after which the Registrar will be directed to register. The Amendment has removed the powers where the Minister was left to use personal discretion as to the unreasonable nature of an agreement and that is no longer a ground for refusal to register.

**13. DISPUTE RESOLUTION –SECTION 93:**

**The legislature tried to streamline the processes in order to ensure expeditious resolution of disputes by inserting the following provisions:**

- **Sec 93 powers of labour officers** have now been restored and they have jurisdiction over labour disputes and any party aggrieved can approach the Labour Officer.

- **There is room for reference to compulsory arbitration** where there is a dispute of interest or a case of unfair labour practice with the **rules of arbitration under section 98** applying thereafter.
- Labour officer now has an overriding jurisdiction where if a DA is given a dispute and does not act within 30 days the Labour Officer takes over **(s93)**.
- **Labour Officer to execute the dispute within 30 days** and issue a certificate of no settlement if not resolved within the 30 days **(s93 (3))**
- **Parties to the dispute have recourse through the Labour Court in all instances.**

#### **14. AMENDMENT OF SECTION 101 OF CAP 28.01 – EMPLOYMENT CODES OF CONDUCT:**

**The new provision safeguards workers from being terminated under unfair and outdated codes of conduct which do not take account of the changes in national and international labour standards.**

- Under the new law every employment code of conduct shall be subject to review every five years.
- After five years any employment code of conduct which has not been reviewed within 3 months after the lapse of the 5 year period shall be deemed deregistered.
- Sector will be forced to use SI 15 in terms of sec 2(12b) of the Act, until a new code is bargained and registered in terms of the latest changes and developments.

#### **15. COMMON LAW TERMINATION ON NOTICE: AMENDMENT OF SECTION 12 (AMENDMENT CLAUSE 8 (4A))**

The Amendment protects workers from termination on notice as had previously happened following the Zuva Judgement of 2015. New Legal Provision now makes it difficult for the employer to exercise that common law given right to terminate on notice without any fault from the employee.

#### **PART B –ZCTU CRITIQUE: NEGATIVE PARTS OF THE NEW AMENDMENT 11 OF 2023: FROM A WORKER PERSPECTIVE:**

The Zimbabwe Congress of Trade Unions, however, raises serious concerns on the unconstitutional parts of the New Labour Amendment Act No. 11 of 2023. We are concerned by the failure of the legislature to consider ZCTU's Input which was duly submitted to Parliament as the largest representative voice of the workers of Zimbabwe.

**The Labour Movement notes the following amendments with negative implications to workers and a threat to the fundamental right decent work:**

**1. THE RIGHT TO STRIKE: (AMENDMENT OF SECTIONS 109, 111 & 112)**

**We note with concern that the amendment does not address the real problem of decriminalising legitimate strikes. The amendment does not give effect to the TNF agreed principle No. 4.**

**(i) In our commentary submitted to the Parliament of Zimbabwe on the 23<sup>rd</sup> of May 2022, we emphasised our serious concerns on the amendment number 32 in the Labour Bill which criminalises the right to strike and further pronounces a jail term of 1 to 5 years and a fine. The new law has actually confirmed these jail terms and fines, thus criminalising the Right to strike.**

This **section 65 of the Constitution** provides every employee with the Right to participate in collective job action including the right to strike, sit in, withdraw their labour or take other similar concerted action. The Constitution clearly excludes Security Services only. **While the Constitution states** that the law may restrict those meant to give essential services, **it does not prescribe criminal penalties** and this is the Supreme Law of the Country.

**(ii) The Labour Amendment Act no. 11 of 2023 is therefore ultra-vires the Constitution section 65 (3) and as stated in the Constitution it is deterrent to the enjoyment of the right to Freedom of Association in terms of Convention 87 which Zimbabwe has ratified. The amendment is also not in line with the TNF Agreed Labour Amendment Principles submitted to Cabinet and Parliament by the Ministry.**

**(iii) WORKERS DEMANDS: -**

**The workers demand that the New Labour Amendment Act must be aligned to the Constitution and the TNF Agreed principle number four (4) which sought to:-**

- a) Amend Section 104 of the Labour Act in order to streamline the procedures for declaring a strike under the Labour Act by reducing the notice period.
- b) To provide for a transparent democratic voting process by the workers to mandate a strike.
- c) To amend Section 107, 109, 112 of the Labour Act to remove excessive criminal penalties in the case of an unlawful collective job action also to decriminalize collective job actions completely.

- d) Under the same principle there is need for very clear laws for the protection of workers and their representatives against anti -union discrimination.

**SEE ALSO – ILO CONVENTION 105 ARTICLE (1) (Convention ratified by Zimbabwe)** *“Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour-- (d) as a punishment for having participated in strikes”.*

**ALSO DECISIONS OF THE ILO COMMITTEE ON FREEDOM OF ASSOCIATION 2018, PARA. 953,** *“Imposing sanctions on unions for leading a legitimate strike is a grave violation of the principles of freedom of association.*

**PARA 954:** *“No one should be penalized for carrying out or attempting to carry out a legitimate strike”.*

**PARA. 955:** *“Penal sanctions should not be imposed on any worker for participating in a peaceful strike”*

**PARA 956:** *“Legislative provisions which impose sanctions in relation to the threat of strike are contrary to freedom of expression and principles of freedom of association”.*

## **2. THE RIGHT TO FAIR AND REASONABLE WAGES: SECTION 12A**

The Legislature, in the New Labour Amendment, failed to address the issue of workers fair and reasonable wages especially considering the current deteriorated socio- economic dispensation.

*The Constitution on section 65 (1) gives every worker the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage. **Workers demand** for a provision of the principle that directs collective bargaining platforms to negotiate living wages that are fair and reasonable in line with decent work.*

## **3. INTERFERENCE WITH ADMINISTRATION OF TRADE UNIONS – (Clause 20 Amendment of section 51 of Cap. 28:01, Section 51 -“Supervision of election of officers”)**

**Subsection (1) gives right to any person directly involved in a trade union or employer’s organisation’s election to complain to the Minister about the conduct of the election on grounds of fraud coercion or unfairness.**

However if not properly executed may also lead to unnecessary interference into the FOA OR Right to Organise and Collective Bargaining of legitimate powerful trade unions.

**Subjecting trade union or employers' organisations election disputes to the Minister and Registrar is a serious interference in the affairs of a trade union and a violation of article 3 of C87.** After an election or congress any aggrieved trade union members already have recourse through the Courts and giving these powers to the Minister is a violation of Freedom of Association. see ILO Freedom of Association Compilation of Decisions of the Committee on Freedom of Association 6<sup>th</sup> edition, 2018, para 563, provides *'legislative provisions which regulate in detail the internal functioning of workers and employers' organisations pose a serious risk of interference by the public authorities. Where such provisions are deemed necessary by the public authorities, they should simply establish an overall framework in which the greatest possible autonomy is left to the organisations in their functioning and administration'* see CEACR observations at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:2332402](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2332402)

**For years government has been making commitments in its reports to the CEACR that the provision will be repealed but the new amendment actually strengthened the provision.**

**Furthermore, during tripartite negotiations, under principle No.8, it was agreed that s51 must be repealed. Our appeal is for the Government to Honour Zimbabwe's International obligations and commitments.**

#### **4. EXCLUSIVE POWERS OF THE LABOUR COURT TO ENFORCE ITS DECISIONS: SECTION 89**

The New Amendment failed to address the issue of according the Labour Court as a Court of First Instance in Labour Matters, the exclusive jurisdiction to enforce its own decisions.

**In our commentary submitted to Parliament on 23 May 2022, we also highlighted the Agreed TNF Principle number 3 which was omitted in the Drafting of the Labour Amendment, concerning the Amendment of **section 89 of Cap 28:01** - Functions, powers, and jurisdiction of Labour Court.**

**The Agreed Principle number 3, proposed to review section 89 and 98 of the Labour Act: 'to strengthen the Powers of the Labour Court'. Amendments to these sections will include;**

- (a) Functions, powers and jurisdiction of the Labour Court to give the Labour Court jurisdiction over all labour matters.**
- (b) Enforcements of decisions by the Labour Court.**

**NB: Section 172 (2) of the Constitution of Zimbabwe provides that 'The Labour Court has such jurisdiction over matters of labour and employment as may be conferred upon it by an Act of Parliament.**



***Also Note that the Constitution on section 2 (1) states that , “ The Constitution is the Supreme Law of Zimbabwe and any law, practice, custom or conduct, inconsistent with it, is invalid to the extent of its inconsistency”.***

**The failure to address this important issue defeats the whole purpose of the Act i.e. to ensure Expeditious Resolution of Disputes.**

## **5. TERMINATION OF CONTRACTS – AMENDMENT OF SECTION 12**

**CLAUSE 4(b) of the New Amendment** has not specified the need for the right to be heard after an employee has been accused of a breach or offence. The provision has such ambiguity that it opens up workers to possible abuses where an employer can force an employee to sign and agree to an offence and summarily dismiss them without according them the right to a fair hearing. This can bring about the common law die hard through the back door where there is an alleged offence.

**Workers must be aware of this clause before signing any contract of employment in case it’s incorporated or sneaked in without the worker’s knowledge.**

### **CASE REF: AUDI ALTERAM PARTEM RULE (i.e. HEAR THE OTHER PARTY)**

***In the case of Chataira v ZESA S-83-01, the Supreme Court decided that in a disciplinary hearing against an employee, natural justice requires that the employees should know of the accusations he has to meet and get an opportunity to state his case in fairness. Thus the court ruled that the Right to be heard was Fundamental.***

## **6. DELETION OF PROVISION OF PROTECTION FROM MANIPULATION OF WORKERS RESULTING FROM LABOUR BROKING**

**The Labour Amendment Bill of 2021** had such good provision that sought to protect workers from unfair labour practices resulting from Labour Broking. The Legislature completely removed this protection hence the new **Labour Amendment Act 11 of 2023** does not have such protection at all. **The Labour Bill had been seeking to enforce joint and several liability of the employer parties to protect workers from unfair labour practices resulting from labour broking.**

**Deletion of this provision now leaves workers vulnerable to abuses, manipulation and violation of their fundamental right to decent work and social justice in the world of work.**

## **7. FUNDING FOR MATERNITY PROTECTION AND BREAST FEEDING TIME:**

The Amendment failed to address the issue of breast feeding time of one (1) hour. Workers we still feel the one hour is inadequate in light of situation where the nursing mother has to commute back home to breast feed the baby.

**FUNDING:** While the removal of the discriminatory clause in the new amendment is very good and very welcome, **this good provision** may end up being used by employers as a **'Double Edged Sword'** where young women of child bearing age may not get employment.

**The ZCTU therefore Advocates that the Government should consider creation of a subsidized fund for maternity protection either at NSSA or ZIMDEF.**

**8. PROTECTION OF WHISTLE BLOWERS:** The legislature overlooked the aspect of incorporation of protection of whistle blowers in cases of violence and harassment or even in cases of mismanagement of a company resulting in unfair retrenchment of workers. This is critical to encourage safe reporting for the good of our nation and development.

**CONCLUSION:**

While some protection has been given to employees against unfair labour practices, violence and harassment, casualization, forced labour and unfair retrenchments, it still remains that there are gaps and critical issues that have been overlooked. ZCTU will remain dedicated to social dialogue to resolve these issues.