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PARLIAMENT OF ZIMBABWE

FIRST SESSION – SIXTH PARLIAMENT

FIRST REPORT

OF THE PORTFOLIO COMMITTEE ON PUBLIC SERVICE, LABOUR AND SOCIAL WELFARE

ON

THE LABOUR AMENDMENT BILL H.B. 1, 2005

FIRST SESSION – SIXTH PARLIAMENT

[S.C. 4, 2005]

ORDERED IN TERMS OF STANDING ORDER No. 151:

- (1) At the commencement of every session, there shall be as many select committees to be designated according to government portfolios to examine expenditure, administration and policy of government departments and other matters falling under their jurisdictions as the House may by resolution determine and whose members shall be nominated by the Standing Rules and Orders Committee. Such nominations shall take into account the expressed interests, experience of expertise of the members and the political and gender composition of the House.

TERMS OF REFERENCE OF PORTFOLIO COMMITTEES S.0 152

“Subject to these Standing Order a Portfolio Committee shall:

- a) Consider and deal with all Bills and statutory instruments which are referred to it by or under a resolution of the House or by the Speaker, consider or deal with an appropriation or money bill referred to it by these Standing Orders or by or under resolution of this House; and
- b) Monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, rationalization, policy formulation or any other matter it may consider relevant of the government department falling within the category of affairs assigned to it, and may for that purpose consult and liaise with such a department.’

On Tuesday, 19th of July, 2005, Mr. Speaker announced that the Committee on Standing Rules and Orders nominated the following members to serve on the Portfolio Committee on Public Service Labour and Social Welfare: -

Mr. Baloyi
Chief Charumbira
Mr. Chibaya
Mr. Gwetu
Mr. Maluleke
Mrs Mawere
Mr. Matutu
Mrs Maziriri
Ms Mpariwa
Mr. Mushore
Mr. Shoko

Mrs Mawere (to be Chairperson)

1. INTRODUCTION

1.1 Mr. Speaker sir, the stated government intention of this Bill is to correct the problems encountered in the implementation of the Labour Relations Act Chapter 28:01 as amended by the Labour Relations Amendment Act, 2002 (Act No. 17 of 2002)

1.2 Your Committee embarked on a series of activities in its analysis of the Bill. Firstly the Committee members were educated on the principles of the Bill by a legal Advisor from the State University of New York / Zimbabwe (SUNY). The Committee then held a public hearing on the Bill with various stakeholders on the 16th August 2005, to gather their views on the Bill. The Committee also received oral evidence from the Ministry of Public Service Labour and Social Welfare officials on the same and then carried out a consideration of the evidence it had gathered, with a view toward strengthening it and making it more understandable and a practicable piece of legislation.

1.3 Mr. Speaker sir, the Labour Amendment Bill deals with several topics, the appointment of a Chairperson of a Works Council at a workplace, retrenchments from employment, notice periods for termination of employment, appointment of officials to Advisory Councils, powers of the registrar of trade unions, maternity leave conditions and Application of the Act as well as functions and jurisdiction of the Labour Court.

1.4 The sponsoring Minister must be commended for coming up with this Bill and your Committee applauds the Ministry for including the following progressive provisions, giving the Labour Act supremacy over any other enactment inconsistent with it, increasing maternity leave from 90 days to 98 days for female employees who have served for at least one year in employment, repealing Section 22 of the Principal Act that gave the Minister powers to fix maximum wages, providing for negotiations on housing and transport facilities in collective bargaining agreements, providing that wages and benefits upon termination of employment shall not form part of the retrenchment package and repealing section 56 of the Export Processing Zones Act.

1.5 Mr. Speaker sir, your Committee set out to consider how best the proposed Bill could be structured, taking into account the various socio-economic and political factors at play in the country at present as well as the international treaties that our country has ratified, specifically the freedom of Association Convention 87 of 1947 which the Government of Zimbabwe ratified in the year 2003 which provides for freedom of association to worker organizations and convention 98 on the Right to organize and collectively bargain of 1948 which was ratified by our Government in 1998. The Committee also considered the fact that Zimbabwe is a member of the International Labour Organization (ILO) and is therefore obliged to adhere to principles of the ILO and thus sought to come up with

suggestions on improving the application of the Bill that mirror the aforementioned.

2. GENERAL COMMENTARY ON THE BILL

2.1 Mr. Speaker sir, the Bill makes it clear that one of its purposes is to repeal section 3 of the Labour Act and substitute a new section 3 which excludes certain categories of employees from the application of the Act. These are specifically members of the public service. Your committee heard two schools of thought on the implications of this provision. On the one hand the stakeholders from labour and industry cited that the exclusion of public servants from the application of the labour act defeats the objectives of harmonization, which were to bring together the fragmented Labour Laws and deprives public servants of their rights as workers. [The right to form and belong to trade unions of their choice, the right to free collective bargaining processes, the right to strike and the right to access alternative and effective dispute resolutions mechanisms]. This means that their fundamental right to form and belong to trade unions, to bargain collectively and to engage in collective job action will be taken away. On the other hand the Ministry argued that harmonization does not mean being housed or mentioned under the same Act of Parliament. Harmonisation denotes applicability of the same, similar and compatible principles governing labour regimes whether housed under the same or different Acts of Parliament. The Bill proposes to house civil servants under the Public Services Act. The current Labour Act gives “right to form and belong to Trade Unions of choice, the right to free collective bargaining processes, the

right to strike and the right to access alternative and effective dispute resolution systems” to civil servants as much as it does to other employees. Your Committee was assured that there was a parallel process of amending the Public Service Act, which will transfer the principles in the Labour Act to the Public Service Act.

2.2 Mr. Speaker sir, your committee considered all the individual clauses of the Bill to ensure that a solid piece of legislation is passed in this August House. A piece of legislation that meets international standards and the regions best practices. Your Committee therefore suggests that some individual clauses and provisions of the Bill can be improved as indicated in this report.

3. RECOMMENDATIONS

3.1 Definitions

- a) Mr. Speaker sir, from the evidence gathered by the Committee and the subsequent deliberations, it emerged that there are certain definitions in the Bill that are too wide and will bring chaos to industrial relations in the country.
- i) “Managerial employee” is re-defined as an employee, who by virtue of his contract of employment or his **“seniority in an organization may be required or permitted to hire, transfer, promote, suspend, lay off, dismiss, reward, discipline or adjudge the grievances of other employees.**
- ii) The phrase, “his seniority in an organization, should be deleted. One cannot only be a managerial employee on the basis of his

seniority when during the course of his employment; he or she does not enjoy the benefit of a managerial employee.

3.2 APPLICATION OF THE ACT

- a) The Amendment now expressly excludes Public Service employees from the Labour Act. It proposes that they revert to the Public Service Act (Chapter 16:04). As mentioned elsewhere in this report the Public Service Act should reflect the same principles as reflected in the labour Act. Your Committee urges the responsible Ministry to amend the Public Service Act in order to incorporate the same principles as enshrined in the Labour Act. Your Committee also recommends the abolishment of the Joint Negotiating Council and the setting up of National Employment Council modeled along the private sector s one.

3.3 NOTICE PERIODS

- i) The amendment in 4 (e) seeks to provide for one-day notice of termination in the case of a contract for a period less than 3 months or in the case of casual or seasonal work.
- ii) This will draw us back to the ESAP era where employers were granted the powers to hire and fire willy nilly. Although there has been a limit to casualisation of labour, there is still an element of abuse by employers especially on fixed term contracts.
- iii) Your Committee recommends that the current provision of two weeks notice be retained and the provision should expressly state that there shall be no casualisation of labour and fixed term contracts in any job that is of permanence in nature.

3.4 **RETRENCHMENTS**

The Bill seeks to repeal time frames upon which the Minister is compelled to make a decision concerning the retrenchment of employees. The repeal has an effect of disadvantaging parties in dispute, as they are kept in limbo as to when the Minister will make a decision on their case. Further the repeal of subsection (10) will make the Minister a final authority thereby denying parties recourse to the Labour Court. Your Committee recommends that the Ministry responsible should within a period of one month give a decision either to confirm or decline the retrenchment.

3.5 **MATERNITY LEAVE**

- a) The Bill seeks to repeal subsection (4) which reads “a female employee who has served for less than one year and who requires maternity leave without pay”. The implication is that, a female employee who has served for less than one year will not be entitled to maternity leave at all, even without pay and this is tantamount to discrimination on the grounds of pregnancy. Your Committee proposes that there should be no condition for maternity leave.

3.6 **COLLECTIVE BARGAINING**

- a) The provision gives the Minister with the power to approve

collective bargaining agreements, register and publish them. While registering and publishing bargaining agreements is in order the approval powers may infringe upon the parties right to freely collectively bargain and this is incompatible with convention 98 of the ILO. Further Government undertook to repeal these provisions at the June 2004 ILO Conference but has not done so.

3.7 EFFECT OF AN APPEAL

The Bill is proposing to repeal subsection (2) which had the effect of suspending the decision of the registrar of trade unions once a party appeals against his / her decision. It is substituted by the following “a notice of appeal in terms of subsection (1) shall not suspend the operation or effect of the decision appealed against.

The effect of this provision is that a trade union whose registration has been suspended or, rescinded will cease to operate despite the noting of an appeal. This will be disastrous to unions considering that courts are taking too long to dispose cases.

Your Committee recommends that a decision appealed against is suspended and this should be the case.

4. CONCLUSION

4.1 In conclusion Mr. Speaker sir, your Committee would like to commend the responsible Minister for bringing this Bill before this august House and sincerely hopes that the recommendations detailed herein will be critically considered and taken up. Your Committee would like to extend its gratitude to all the stakeholders for their invaluable submissions, which made the consideration process more informative.

Report-labour amendment bill