

**International labour organization
(ILO)**

**Labour Law Reform: Capacity Building
Workshop**

**Montclair Hotel – Nyanga
11 -13 May**

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Foreword

The role of social dialogue as an effective tool for achieving socio- economic development, industrial democracy and social justice has been seriously embraced by the government, workers' and employers' organizations in Zimbabwe. In an effort to achieve industrial democracy, peace and social justice, the Inclusive government's first economic blue print – the Short Term Economic Recovery Programme (STERP) expressly proposed the immediate harmonization of all labour laws and statutes, the strengthening of the Labour Court as well as a review of the Labour Act to ensure its compliance with government's obligations under the framework of the International Labour Organisation (ILO).

Following several tripartite consultative workshops and meetings, the social partners agreed to bring the country's legislation in conformity with international labour standards. Again through this tripartite approach the social partners met on the 27th of July 2009 - agreed to harmonize labour laws and to further engage on a more comprehensive reform process targeting the weakness in the current Labour Act [Chapter 28:01].

The social partners also decided on the structure to guide the reform process. In this respect the Minister of Labour and Social Services established a tripartite Labour Law Reform Advisory Council in terms of section 19 of the Labour Act to guide the process. Members of the tripartite Council presented their position papers to the Ministry detailing their appreciation of the status quo and areas for possible law reform. The Council is also set to focus its work on the Public Service Act and the Health Service Act. It is hoped that by July 2010, the Council will be in a position to present to the Minister of Labour and Social Services the draft principles for labour law reform and to forward these to the Cabinet Committee on legislation.

It is against this background that the Capacity Building Workshop was organized from the 11th to the 13th of May, 2010 to facilitate the narrowing of differences on the nature of labour law reforms envisaged by the social partners. The workshop was also designed to bring other stakeholders and labour law experts to discuss and ensure national consensus on key areas for reform as well as build the capacity of the tripartite Council. The recommendations from the capacity building workshop brought to the fore a number of areas for consideration in the reform process under the key themes: Collective Bargaining, Alternative Dispute Resolution and Public Service Law Reform. It is hoped that these recommendations will assist the work of Council going forward.

I would like to express my appreciation to the social dialogue team in the ILO Harare office for their tireless efforts to give technical support to the social partners and for making the workshop a successful step towards the process of harmonizing labour laws in Zimbabwe. The ILO will continue to support the labour law reform process including the capacity building of members of the Council. I also wish to thank the United Nations Development Programme (UNDP) and the Fredrick Ebert Stiftung Foundation (FES) for their technical expertise and assistance to this process.

Tabi Abodo
Director
ILO-Harare Office

1. Introduction

The Labour Law Reform: Capacity Building Workshop was held at the Montclair Hotel – Nyanga from the 11th to the 13th of May, 2010. The workshop stemmed from the Road Map of the tripartite Labour Law Reform Advisory Council which identified capacity building of stakeholders involved in the labour law reform process as a key element. The workshop was aimed at bringing stakeholders and labour law experts together to discuss and fuse areas of common interest and identify areas of difference in the labour law harmonization and reform process. The recommendations from the workshop together with the position papers from the tripartite partners will form the basis of further negotiations by the tripartite Labour Law Reform Advisory Council which has the mandate to guide the law reform process.

The workshop was attended by representatives from the three principal social partners - Ministry of Labour and Social Services (MLSS), Employers Confederation of Zimbabwe of Zimbabwe (EMCOZ) and the Zimbabwe Congress of Trade Unions (ZCTU). Other stakeholders from labour were represented by the Zimbabwe Federation of Trade Unions (ZFTU) and the APEX Council. Also in attendance were representatives from other government Ministries relevant to the process of labour law reform such as the Ministry of Justice, Ministry of Constitutional and Parliamentary Affairs, Ministry of Public Service, the Health Services Board, Members of the Parliamentary Portfolio Committee on Labour and Social Services and the Labour Court.

2. Workshop objectives

The objectives of the workshop were spelt out by Mr. Lance Museka – the Permanent Secretary for the Ministry of Labour and Social Services as follows:

- To provide a historical background of labour legislation in Zimbabwe;
- To justify the need to reform labour laws in Zimbabwe;
- To critically analyse Conventions 87 and 98 and their practical application to labour legislation;
- To re-emphasize the role of social dialogue and its relevance to the current labour law reform process;
- To appreciate administration vis-à-vis socio-economic governance issues;
- To build the capacity of participants in order for them to successfully complete the labour law reform process; and
- To impart information to participants on the current Alternative Dispute Resolution System and identify gaps for consideration under the reform process.

3. Official opening

The workshop was officially opened by the honourable Deputy Minister of Labour and Social Services, Dr. Tracy Mutinhiri. Before her presentation the meeting heard remarks from the representatives of the International Labour Organisation, the Zimbabwe Congress of Trade Unions and the Employers' Confederation of Zimbabwe.

3.1 Remarks from the ILO

The ILO Harare office Director, Mr. Tabi Abodo began by stating that the workshop was one of the activities under the social dialogue framework with technical capacity from ILO and UNDP. He noted that labour law reform has been a component of the social dialogue framework since 2009 with the ILO giving support to the tripartite partners in particular and socio-economic recovery process in general. He alluded to a number of workshops organized within the ILO tripartite framework since June 2009. Some of the workshops included the workshop for negotiators held on 22-24 June, social dialogue in the Public sector workshop held 10-11 June, the High level technical meeting held in July among others. He pointed out that these workshops assisted the social partners to draw lessons from the international and regional experiences which were shared by experts from the region and international level. He reiterated the importance of social dialogue in addressing the socio-economic challenges facing the country. He also reminded the tripartite partners of the commitment they made during the TNF retreat in July 2009 on the need to have a common purpose in developing national policies and legislation.

Mr Tabi emphasized the importance of institutionalizing a single labour law regime that will promote decent work, facilitates the enjoyment of labour rights and address pertinent comments made by the ILO in its recommendations on the application of ILO conventions relating to the right to organize and collectively bargain, freedom of association, equal remuneration, labour inspection just to mention a few. He informed the tripartite partners that the harmonization process involves a lot of negotiations and give and take concessions which require utmost good faith from all those involved in the harmonisation and reform process.

In conclusion, he pledged the commitment of the ILO towards the harmonisation process through technical assistance and expertise. He also informed the meeting of the ILO's commitment to the implementation of the decent work agenda and the strengthening of social dialogue institutions in Zimbabwe.

3.2 Remarks from ZCTU – Cde. E. Mhuriro

Cde. Mhuriro started her presentation by expressing the labour movement's pleasure to participate in the tripartite process of deliberating a single labour law for all workers in Zimbabwe. She also conveyed labour's delight in the organisation of the capacity building workshop after the polarization of the Zimbabwean society especially workers who were receiving the brunt of the consequences of such polarization.

She gave a background on the development of progressive labour laws in post independent Zimbabwe. She noted that the first piece of legislation that was progressive was the Labour Relations Act of 1985, but that some of the gains were unilaterally reversed in 1992 after



Cde. Mhuriro – Zimbabwe Congress of Trade Unions (ZCTU)

government embraced ESAP. She also highlighted that in 2000, the tripartite partners came up with a progressive labour law, though with some shortcomings. However, the effort to harmonize the labour laws was unilaterally changed by the government in 2005 to the surprise of the other two social partners.

She expressed labour's concern on the lack of tripartism before decisions are made. She noted that a unilateral approach seems to be the norm in areas of importance by those who have the power to change laws overnight. She reminded the meeting that any progressive policy that lacks citizen participation is doomed to fail because it will lack the support of the citizenry.

Cde. Mhuriro pledged ZCTU's support towards the resuscitation of Tripartite Negotiating Forum and tripartism in general. She commended the spirit of togetherness in the labour sector which has been informed by a new mindset embraced by the inclusive government in general and the Hon. Minister of Labour and Social Services Hon. Mpariwa to ensure the participation of the relevant stakeholders.

Addressing the issue of labour law reform in Zimbabwe, Cde Mhuriro indicated that the process has gone through so many challenges in order to balance the socio-economic needs of all the parties particularly in the area of collectively bargain. She also noted that labour law has to some extent been used to oppress the workers as documented in the ILO Commission of Inquiry Report. She reiterated the importance of implementing the ILO recommendations in law and in practice by giving workers full rights of freedom of association and collective bargaining especially in the public sector - The workers only have a right to be consulted and not to bargain. Labour lamented that it has been almost over 100 years with no right to strike or collective bargaining in the public sector in Zimbabwe. She added that the right to strike in the private sector is given by one hand and taken by the other hand and that the restriction on the right to strike tilts the bargaining power in favour of business.

Ms. Mhuriro also noted that the Supreme Court had over the years failed to protect the rights of workers. A case in particular was the dismissal of 2476 workers at Tel One, Net One and ZIMPOST because of judicial interpretations of the provisions of the labour Act and workplace Codes of Conduct. She highlighted that the wide interpretation by the Supreme Court is an area of concern needing redress from a labour perspective. She also alluded to the Supreme Court's approach in awarding damages to employees who have been unlawfully dismissed – The precedent set requires workers to mitigate their loss by securing alternative employment in a country with an unemployment figure of 94% - As for those who try to find other sources of survival, the Supreme Court punishes them by ordering deductions of what they earned in such survival activities. She also noted that labour was concerned with the reversal of progressive pronouncements of the Labour Court by the Supreme Court and called for the establishment of a Labour Appeals Court.

In conclusion, she emphasized the importance of ensuring that the new labour law is in line with International obligations under the ILO standards and other human rights instruments. She called upon the social partners through this process to do an assessment of whether our law meets the international obligations and if that was not the social partners would be making a mockery of the ILO process. She

thanked the ILO, UNDP and other cooperating partners for their support to the process and hoped that the process was going to achieve the desired results.

3.3 Remarks from EMCOZ– Mr. J. Mufukare

The employer representative began by commending the capacity building mode that was among the social partners to change the labour laws of the country taking cognizance of national economic vision that Zimbabwe wanted. He indicated to the social partners the questions that had to be answered in the labour law reform process – What change do we want? - How do we bring out that change in a way that adds value to all the social partners and the country at large?

In response to the above questions Mr. Mufukare indicated that a national vision is key, as without a national vision on any issue, change is revolutionary, piece meal and disorganized. He reminded the partners that the shared national vision of the tripartite partners was spelt out in the ‘social contract’ signed under the framework of the Tripartite Negotiating Forum.



*Mr. Mufukare – Employers’
Confederation of Zimbabwe (EMCOZ)*

He noted that the nation and employers in particular, had embraced the principle of tripartism, creation of platforms for such tripartism and positive outcomes had been realized from social dialogue. He however noted that employers were concerned with the tendency of unilateralism by the government in the implementation of national policy. He stated that it was important for the government to use the existing social dialogue platforms to engage the social partners and come up with ‘buy in’ for painful social adjustment as will be necessary with the amendments to be made to the Labour Act.

With regards to the business environment and its competitiveness he stated that Zimbabwe was ranked 133 out of 134 countries that participated in 2009. He also alluded to the remarks made by labour that about 94% of the people are ‘unemployed’ and therefore the urgent need was to create jobs and enhance productivity without compromising the decent work agenda.

In conclusion, he urged the meeting to seek an understanding of why the different constituencies made certain demands and look at the possibility of a consensus. He also thanked the cooperating partners, ILO and UNDP for their technical assistance in this process of facilitating social dialogue in Zimbabwe. He also looked forward to positive results from the meeting.

3.4. Remarks from the Deputy Minister – Hon. Dr Tracy Mutinhiri

The Deputy Minister thanked all the cooperating partners that had made it possible for the social partners to deliberate on the important issue of labour law reform in Zimbabwe. She indicated that the capacity building workshop could not have come at a better time as it formed part of the bigger process of social dialogue to address the serious socio-economic challenges facing the country.

She reminded the meeting that the government of Zimbabwe through the work of the inclusive government had taken tripartism seriously having ratified the ILO Convention on Tripartism (Convention No. 144). She indicated that tripartism had even been extended to other domains of nation building in addition to labour matters.

She admitted that although the Tripartite Negotiating Forum had its own problems, some structural, others ideological and lack of trust, the process had been resuscitated with positive results thus far. She alluded to the meeting of the tripartite partners in 2009 to map a way forward to address the challenges faced by the nation as outlined in the Short Term Economic Recovery Programme and the re-examination of the founding documents of the TNF.



Dr. Tracy Mutinhiri - Hon. Deputy Minister of Labour and Social Services (MLSS)

She indicated that the proposed legislative reforms to the country's labour law were informed by the desire among the social partners to bring the country's legislation in conformity with international standards and make them more responsive to the contemporary needs of the country. Most importantly, she noted that over the years the various supervisory mechanisms of the ILO identified areas for the possible strengthening of the Labour Act and its supporting legislation. Dr. Mutinhiri informed the meeting that her Ministry had a mandate to ensure the immediate harmonization of all labour laws and ensure compliance with international obligations. She also noted that the Ministry had in terms of the Labour Act established a Tripartite Law Reform Advisory Council to drive the reform process. She pointed out the need to build the capacity of this advisory council in order to achieve the desired results.

In the end she emphasized the importance of commitment, mutual confidence and trust among the social partners to ensure the success of the labour law reform process. She also called upon the social partners to learn from the previous labour law reform process and build on the positive experiences.

4. Labour law reforms and harmonisation in Zimbabwe: Background and Rationale - Mr. P. Dzviti, Ministry of Labour and Social Services

Mr Dzviti's paper sought to give a background of what the government did since independence in relation to formulation, efforts to harmonise labour laws and highlight the current challenges in harmonizing and reviewing labour laws.

In dealing with labour law reforms since 1980, the paper highlighted that the first labour laws after independence were in line with government national policies aimed at achieving reconciliation and redistribution of resources to the black majority. Thus interventionist policies such as Growth with Equity policy which sought to address the inequalities of the colonial era were extended to the labour market system which resulted in the repeal of the Industrial Conciliation Act of 1959 and the enactment of the Labour Relations Act No.16 of 1985. Among other things, the Act provided for:

- The rights of workers to form one workers' organisation, join and participate in trade union activities;
- Right to establish workers' committees;
- A labour dispute resolution system that mainly involved the state machinery through labour officers, hearing officers, regional hearing officers, Labour Relations Board and the Labour Tribunal;
- Introduction of the concept of unfair labour practices applying to both the employer, employee and workers' organizations;
- Regulation and control of collective job action;
- Regulation of redundancy and closure of companies;
- Rights of employers to form one employers' organisation;
- Determination of minimum wages through the tripartite Wages and Salaries Advisory Board; and
- Employment Boards that were appointed by government in sectors where NECs were non-existent to negotiate conditions of service and recommend to government for approval.

The paper also noted that in 1992 the provisions of the 1985 Act were reviewed to be in line with the Economic Structural Adjustment Programme (ESAP) which advocated for the deregulation of the economy to market forces especially, price controls and labour market policies. Among others, the reviews provided for the determination of salaries and wages through collective bargaining processes at national and sectoral levels, introduction of codes of conduct, expediting dispute resolution systems by bypassing the functions of the Hearing officers and the Labour Boards, the removal of one union in one industry policy in compliance with ILO convention 87 on Freedom of Association.

Mr Dzviti noted that the above post-independence changes to the labour laws applied to workers in the private sector only and excluded workers in the public sector and the Export Processing Zones. As a result, the social partners agreed to review the law in 2000 to promote common employment standards in all sectors of the economy. This resulted in the 2003 amendments which facilitated the inclusion of public sector workers and workers in the Export Processing Zones to be governed under the Labour Act. He further noted that this progressive development in relation to public service workers was reversed in the Labour Amendment of 2005. The rationale for this retrogressive legislation was based on an argument by the Public Service Commission - which is a creature of the constitution of the Republic of Zimbabwe that it derived powers from the Constitution to administer the public service and therefore public servants could not be taken out of the Public Service Act. However, the Commission made an undertaking to amend the Public Service Act to bring it in line with international standards but this was not done five years later.

His paper further noted that the need to harmonise and review labour legislation in line with commitments under the ILO is one of the key result areas for the Ministry of Labour and Social Services under STERP. In order to achieve this key result area the Ministry facilitated and participated in several tripartite workshops, study tours and several meetings with the tripartite partners and including meeting the Ministry of Public Service to ensure that the harmonisation materializes. Like previous

speakers he informed the meeting that the Ministry had established the tripartite Labour Law Reform Advisory Council to spearhead the reform process.

In conclusion, Mr Dzviti called upon the social partners to deliberate on the key issues for reform and come up with recommendations for further follow-up by the Advisory Council. He wished all fruitful deliberations during the two days of the workshop.

5. Labour Law Reform: Workers' perspective - Zakeyo Mutimutema – Legal Advisor (ZCTU)

He began by acknowledging and commending the consensus among the social partners on what needs to be done – harmonizing and reviewing current labour laws. He called upon the social partners to ensure that what has been gained through progressive provisions in the current labour Act should not be lost in the process of harmonizing and reviewing labour laws. Mr. Mutimutema highlighted the following as the key areas to address from the perspective of the workers:

- 1) **Harmonization of labour laws:**-The concept had to be taken broadly to have common employment standards for workers in Zimbabwe. The harmonisation process has to take cognizance of the minimum standards spelt out in ILO conventions and other human rights instruments and even go beyond these minimum provisions.
- 2) **Restrictive provisions on the right to strike:** - The right is restricted as there is a requirement in the law for workers to give a notice of 14 days after several days or months of negotiations. Workers are of the opinion that if negotiations fail each party should be allowed to use power at its disposal and the only weapon the employee can use is the right to strike and the employer can lock out. As a result of the restrictive provisions many strikes had been declared 'illegal' because workers would not exercise the right to strike if they follow the procedures.
- 3) **Criminalization of the right to strike:** - The current provisions relating to damage caused to property through an 'illegal strike' imposes criminal sanctions on workers' representatives who would have facilitated the strike. There is no immunity for workers' representatives.
- 4) **Collective bargaining:**-The requirement to submit a freely concluded collective agreement to the Minister for approval is not in line with the spirit of freedom of the parties come to an agreement. There is no need for a third party to approve what two parties have agreed upon.
- 5) **Strengthening of workers' organizations:**- The law should introduce an agency fee to be paid to trade unions by non-union members who benefit from the union negotiations through the collective bargaining process.
- 6) **Dispute resolution process:**- The dispute resolution process is too long and also fraught with many challenges which include – The absence of an enforcement mechanism for conciliation awards and orders from the Labour Court, frivolous appeals against arbitration awards which defeats the finality of arbitral awards and disappointing judgments from the Supreme Court which calls for the establishment of a Labour Appeals Court.
- 7) **Contract workers:** - Most employees are on fixed term contracts and in worst case scenarios some have been contract workers for 10-16 years. It was noted as an injustice since workers in such situations do not enjoy job security and benefits that flow from a permanent placement.

- 8) **Strengthening the powers of the Labour Court:** - The Labour Court had done well so far in terms of protecting the rights of workers - but it does not have power to enforce its own decisions. One has to register the decisions with the High Court and this involves costs and lengthens the justice delivery process of getting. The Labour Court does not have exclusive jurisdiction in all labour matters and this has to be expressly provided for in the Act and also expressly oust the jurisdiction of other courts to be the first court of instance in labour matters.

6. Labour law reform: Employers' perspective – Mr. George Makings

He began by bringing to the attention of the meeting that every business lost its working capital due to inflation and the change to a multi-currency system in February 2009. He stated that despite the loss of working capital there was no compensation to business. He also highlighted the challenges currently faced by business to access meaningful working capital as there are major restrictions for borrowing money from the bank which are: - It is short term loans, more often than not the banks do not have the money and the interest rates are not favourable. He reminded the meeting that the level of investment was critically low and formal employment figures stands at about 400 000 which was the same figure for the number of people that were employed in 1974 and yet the population has doubled since then. He indicated the following position on labour law reform from a business perspective:

- The need for labour law systems that sustains business being mindful of the costs of business and competition in the business market as well as maintaining decent wages. He argued that, if business were to pay USD\$ 500 per month the reality is that the ability is not there at the moment and at the same time sustain business operations. He was quick to point out that business was not challenging the Poverty Datum Line level but looking at the reality in terms of the current business operating environment.
- The need to discuss and make concessions on how to meet social costs - 30 days annual leave, uncapped educational leave, 90 days sick leave per year, family leave, paternity leave and maternity leave. He noted that these demands were not insurmountable but could be discussed and solutions could be found to ease the burden from the employer.
- The need to ensure that capital invested was not exploited. Business people are in business to get a return on investment and labour is supposed to ensure that workers are not exploited and therefore the need to balance the two.
- Harmonisation of labour law: - Employers saw no reason why the public sector workers were excluded from the Labour Act. A single harmonized labour structure made more sense than subjecting workers in the same country to different labour laws.

Discussions and comments

Question: Since the tripartite partners once agreed on harmonizing labour laws in 2003, is it not possible to revisit the 2003 Amendment and improve on it as a starting point?

Answer: The process of going back to 2003 had already been considered by the Ministry of Labour and Social Services and was taken up to the Attorney General's office to facilitate the process through the Generals Amendment procedure.

Question: Is the TNF process in relation to harmonisation taking into account the views of public sector workers?

Answer: Yes, it is including the views of public sector workers since they do participate in the TNF process.

Question: Are we not moving faster than the constitutional process with the labour reform process as the Constitutional reform has implications on the incorporation of public sector workers under the Labour Act?

Answer: The labour reform process is well timed as it can inform the constitutional reforms from the loopholes that would have been identified especially in relation to the public sector.

Question: Since the employer regards family responsibility leave as an extra cost at what point does the employer look at the human needs of the employee?

Answer: Employers do not intend to take away the right or against social responsibility. There was a need to balance the interests of the employer and employee. A look at trends in the sub-region shows that most of countries in the SADC region pay for three days of family responsibility and the other leave such as maternity and paternity are funded from a national social security funded by government, workers and employers.

Question: Confirm how feasible it will be for the Public Service Act and the Labour Act to work concurrently. Whose responsibility will it be to ensure that common employment standards are being applied?

Answer: The idea was not to repeal the Public Service Act in terms of the mandate of the Public Service Commission under the Constitution but amend the areas relating to fundamental rights of workers such as the right to freedom of association, organize and collectively bargain and dispute resolution.

Question: How do we deal with the Public Service Commission if it reverses the decision to harmonise like it did in 2003?

Answer: We are in a new political dispensation and with a more accommodative approach not the command style that used to exist in the public service.

Comment: Government workers under the Health Services Act need to be taken into account in the harmonisation process because there are inconsistencies and injustices in the current dispute resolution process as well as the excessive powers of the Health Services Board and chief executive officers in health institutions who have been empowered by the law to hire and fire workers.

Comment: The Joint Negotiating Council should be an independent body funded by the employers and the employees. The South African example should be followed and the logistics of funding it can be discussed at a later stage.

Comment: The Ministry of Labour cannot decide on the representation of Labour at the TNF even if it is aware that some workers are being excluded. If the Ministry interferes with the representation of labour it will be found wanting in terms of ILO Convention 98 for interfering with the rights of workers' organisations to organise. It was important for all labour organizations, be it in the public or private sector to be organized and speak with one voice.

Comment: The TNF is designed to build consensus and the Ministry of Labour and Social Services should ensure that all workers be it in private or public are consulted and are participating in the process even if it means facilitating their participation.

Comment: The solution to the representation of labour is in a legislated TNF like NEDLAC in South Africa which clearly and expressly provides for representation of various representatives of the social partners.

Comment: There is a need to come up with a formula on the most representative trade union because there is a gap in the current labour law on this issue of determining the 'most representative' workers' organisation. The tripartite partners have to come up with a formula.

Comment: The assertion by employers to review the law in light of the current economic environment is retrogressive. Labour law reform is not for a short term period but must be forward looking and based on basic principles that should not be compromised.

Comment: Employers agreed with the need to come up with a law based on basic principles but concessions would have to be made on what can be implemented under the current economic environment.

7. Labour Law Reform: Labour Court perspective – Justice A. Mutema, Senior President, Labour Court

Justice Mutema reiterated that changes to the Labour Act to ensure conformity with international standards and current trends were inevitable. He warned the social partners that generally people resist change for a number of reasons but changes to the labour law were unavoidable since the law was last updated in 2005. He noted that from the Labour Court's perspective the following areas needed attention:

1. **Section 2A of the Act:** - The Act should expressly incorporate ILO and other international principles on labour law since these have no self executing status in our national law. There is a need to incorporate international instruments in this section because without that incorporation judges or arbitrators cannot *mero motu* invoke international standards if counsel does not raise either international law or foreign decisions which was usually the case. The Labour Court can pronounce quality judgments based on international law but such a course would be fraught with legal challenges especially from the appellate courts due to lack of specialization which may result in strict confinement to the law and the striking out international principles based on the argument that they do not form part the national legal system.
2. **Section 12c of the Act:** - Currently the Minister's decision on retrenchment is final meaning that it is not appealable. Principles of equity have been applied to allow appeals against such

decisions and therefore there is a need to include a provision that *'any party aggrieved by the decision of the Minister may appeal to the Labour Court.'*

3. **Section 84(2) (a):** - The title of *'President'* in reference to a Labour Court judge confuses the generality of the public. In order to conform to regional and international titles the section should be amended to read *'the senior Judge of the Labour Court and such number of Judges as the President may consider necessary after consultation with the Judicial Service Commission.'* And wherever there is reference to *'President'* of the Labour Court it should read *'Judge'* President to differentiate from the State President.
4. **Section 89(1):** The section limits the court's jurisdiction. It should read *'The Labour Court shall have original and exclusive jurisdiction in all labour matters'*. It confines the jurisdiction of the Labour Court to the matters enumerated under the section and gives room for the High Court to hear and determine every labour matter, other than the ones specifically referred to in subsections (1) and (6) of section 89 of the Labour Act.
5. **Section 92:** Representation of parties is limited to registered legal practitioners or registered representatives of the workers' or employers' organizations of which the party is a member. The Act fails to take cognizance of legal officers or other representatives from parastatals, companies, local authorities or other incorporated bodies. Changes to the Act should be as follows:
'(c) in case of a local authority, company or other incorporated body, through an officer thereof nominated by it for the purpose; or
(d) in case of a partnership or group of persons associated for a common purpose, through a member thereof nominated by it for the purpose.'
 However, such representation shall be accompanied by a company resolution nominating the said representatives to represent the corporation, local authority or any other incorporated body.
6. **Section 92A (1):** The words *'member presiding'* should be substituted by *'the Judge presiding.'*
7. **Section 92B (3), (4) and (5):** A new provision to allow the Labour Court to be autonomous and giving it the mandate to register and enforce its orders, determinations and arbitral awards needs to be incorporated. The following provision to be deleted:
'of any magistrate which would have had jurisdiction to make the order had the matter been determined by it, or, if the decision, order or determination exceeds the jurisdiction of any magistrates court, the High Court.'
 The words *'of appropriate Court'* and *'concerned'* in subsections (4) and (5) also to be deleted.
8. **Section 98(2):** Amendment of Article 34 of the Arbitration Act to allow reviews against arbitral awards in labour matters to be referred to the Labour Court instead of the reviews being referred to the High Court. To also delete the words in subsection (14) which read: *'of any magistrate.....if the arbitral award exceeds the jurisdiction of any magistrate's court, or the High Court.'*
9. **Section 104:** To introduce a new sub-section (1a) to read: *'No employer shall discipline an employee from an alleged misconduct arising from a collective job action unless such disciplinary action has been authorized by the Court in terms of a disposal order issued in terms of section 107.'*

10. Establishment of a Labour Appeals Court to ease the pressure on the Supreme Court, expedite finalization of appeals and conform to current trends in the sub-region.
11. The need to introduce a provision to facilitate the punishment through criminal or otherwise for employers who fail to furnish the Registrar's office with the relevant documents for the preparation of an appeal record.
12. Additional provision to protect workers whose employers' wind-up business before the labour dispute is finalized by the Labour Court.
13. There should not be a time frame for finalizing a matter in the Labour Court because it is depended on the complexity and nature of the case and availability of resources. However, cases that take a year or more are exceptional. They normally involve the presiding judge falling sick and since there are no provisions on how to proceed in such cases the Labour Court is waiting for the Supreme Court to make a determination on how such matters should be finalized.

Mr. Mutema concluded by stating that the reform exercise was important as labour law is the nerve centre of labour and business and critical in attracting investors.

8. Labour dispute resolution system in Zimbabwe – Dr. L. Madhuku, Labour Consultant

Like most of the foregoing speakers Dr. Madhuku acknowledged and commended the spirit of tripartism to deliberate on issues of importance to the country. He also pointed out that doors of the FES were open and ready to assist in this important process. In relation to his presentation he stated that the ILO commissioned an audit of the labour dispute resolution system in the country and he was tasked by the ILO to conduct the audit and a workshop to validate his findings was held on the 21st of April 2010. From the workshop the tripartite partners agreed that the dispute resolution mechanism was in disarray but were to consult their constituencies on those areas that were not generally agreed upon.

In summary his presentation was based on the findings from the ILO commissioned audit and noted the following in relation to the dispute resolution mechanism:

1. Disharmony of the labour system in general which separates workers in the private sector, public sector, Health services, police and the army. The recommendation was to harmonise the labour laws in the country.
2. Complicated dispute resolution process in the public sector. The dispute resolution procedure is in the first place not the dispute resolution process normally understood. It is the employer procedure all the way until the employee can approach the Labour Court.
3. Absence of guidelines for the conciliation process: The Act does not define conciliation and there are no guidelines and prescribed rules on how to conduct conciliation. In addition, the competency and scope of powers of conciliators is unclear unlike in other countries such as Botswana.
4. Absence of an Independent panel of conciliators: It is useful to get an independent panel which does not restrict conciliation to labour officers.

5. There are many lessons to be learnt from the dispute resolution process of functioning NECs. There is a lot of potential for the ADR system to develop as some NECs have excellent frameworks for dispute resolution and great potential to promote the NEC dispute resolution system.
6. Place of lawyers in the ADR system especially conciliation is uncalled for as it does not give a chance to the two parties to resolve disputes. Lawyers should not be allowed in conciliation hearings. Lawyers also cause delays in the conciliation process as the court can adjourn when a lawyer is engaged elsewhere.
7. The appointment of a panel of arbitrators in compulsory arbitration needs to be more transparent. Very few people are aware of the application process for one to become an arbitrator because the posts are not advertised. There are also no guidelines on who can become an arbitrator as well as systematic training of the arbitrators.
8. Absence of case management system in conciliation and arbitration. There is no system for allocation of cases to conciliators and arbitrators as well as guidelines for the case management process. This has been mainly due to limited resources allocated to the Ministry.
9. Absence of Code of Ethics for Conciliators and Arbitrators. The code should address issues of confidentiality and fee structures for arbitration.
10. No prescribed qualifications and competencies of Labour Court judges and lack of systematic training on labour law for those already in office.
11. Absence of rules regulating the service of a notification notice on a party to a dispute. The burden of service is on the shoulders of the complainant.
12. The practice of equal sharing of costs of arbitration which does not take cognizance of the workers' ability to pay leaves a lot to be desired. The authority referring the matter for arbitration should exercise its discretion in determining the share of the costs considering the ability to pay and cooperation of parties in the determination of the case.
13. A good practice based on the principle of social responsibility emerged from the audit. It involves arbitrators taking up certain cases without charging the parties any fees and practice was commendable.
14. Finality of arbitration awards in labour matters continues to be a challenge as the law allows for an appeal to the Labour Court on a "question of law" which has resulted in more appeals than warranted thereby prolonging the dispute resolution process.
15. Enforcement of awards and judgments is a challenge as Labour Court orders and awards of arbitrators are not automatically enforceable. The orders have to be registered with the High Court.
16. Enforcement of settlements by conciliation. There is no provision stipulating the effect of the conciliation agreement and sanctions for breaching the agreed settlement.
17. Time limits for making judgments. The law in some countries prescribes 30 days and for some 90 days would still be reasonable. There is need to set a time limit as the law is silent on this issue which results in some delays in resolving labour disputes.
18. Absence of hardware, equipment and other resources within the Ministry of Labour and the Labour Court to facilitate the process of computerizing court records and efficient functioning of the dispute resolution mechanism.

In conclusion, Dr. Madhuku stated that the majority of the issues raised in the audit report can be addressed through a statutory instrument which can be drafted by a consultant and sent to the Ministry for onward transmission to the official draft persons in the Ministry of Justice.

Discussion

Question: Is it okay to discipline an employee before the Labour Court makes an order to declare the strike illegal?

Answer: Striking is one way of resolving disputes and the law has to be clear and not restrictive. It is not legally correct for the employer to dismiss before a disposal order but if the law is not clear then it is subject to abuse.

Question: What is the dispute settlement system in the local government in Zimbabwe? Are the Local Boards still working?

Answer: It is still governed by the Labour Act but the system is not working and inactive.

Question: Will it be unconstitutional to amend the Labour Act to include public servants?

Answer: It is a political decision to come up with a single labour Act. We can still come up with a law that is consistent with the Constitution but it is a political decision.

Question: Why should workers go through conciliation where the dispute is of right?

Answer: In line with international trends it is good to bring the parties to talk about the employment dispute. Therefore it is a good law to insist on conciliation and which is why disputes of rights go to quick resolution through compulsory arbitration and disputes of interest workers can go on strike.

9. The role of labour law reform in the context of economic recovery: Doreen Munyati - Nyamukapa (UNDP)

The presentation focused on the role played by labour law to balance the interests of the employers and the workers especially in the context of Zimbabwe which is going through a phase of economic recovery following the severe economic challenges that included high levels of unemployment and low capacity utilization. She added that the labour law reform process was an opportunity to fill the gaps and update the current law in compliance with modern labour law trends but at the same time addressing the contemporary labour market issues.

She noted that labour law is a vulnerable piece of legislation susceptible to the political, economic and social environment of the day and also impacted upon by other laws such as immigration, commercial law, property law and human rights law. She however listed the following as key to consider in the process of reforming the labour legislation in a post crisis country like Zimbabwe:

- Luring investors, employment creation and protecting the rights of workers;

- Rapid changes in the organisation of work (contract work, fixed term contracts, consultancy work etc);
- Institutionalizing social dialogue and social partnerships;
- An expeditious labour dispute settlement system;
- Social inclusion and non-discrimination;
- Constitutional reforms related to employment issues;
- Social policy and social security (Concessions on the social costs);
- Poverty reduction and achieving MDGs;
- Family friendly legislation;
- Minimum interference in regulation of employers organizations and trade unions;
- Respect of the parties in collective bargaining process and outcome;
- Effective implementation of the law;
- Strong labour inspectorates; and
- Monitoring and evaluation.

She also discussed the key UNDP practice areas which include democratic governance, crisis prevention and recovery, energy and sustainable environment, poverty reduction and promotion of MDGs, HIV/AIDS, Capacity development and gender equality as cross cutting. She also informed the meeting that the UNDP is the lead agency in terms of democratic governance in Zimbabwe and there was a need to ensure that socio and economic rights rather than civil liberties form part of the constitutional reform process.

10. A critical analysis of the Public Service Act vis-à-vis the Labour Act – Dr N.T Sambureni

Dr. Sambureni's paper was presented by Mr. Vusani from the Ministry of Labour and Social Services. The paper outlined the key pieces of legislation that regulate the public service in Zimbabwe as the Constitution, Public Service Act (referred in this part as the Act) and the Public Service Regulations. He noted that although the Constitution empowered an 'Act of Parliament' to provide for the functioning of the public service it did not prescribe how the public service should be run. He emphasized that a closer look at sections 73 and 75 of the Constitution shows that what needs to be amended is the Public Service Act and not the Constitution *per se*. He discussed the following key areas for consideration in the current reform process:

1. Right to organizational rights, collective bargaining and freedom of association: Currently the Public Service Act (PSA) does not recognize trade unions but recognizes worker associations only. It is only those worker associations recognized by the Minister at a particular time that have the right of audience with the Public Service Commission. Amendments should allow for the formation and registration of trade unions. [See section 24 of the Act].
2. Determination of conditions of service (social dialogue): The Act does not compel the Public Service Commission to consult workers in promulgating regulations outlining their terms and conditions of service. [See section 19 and 31 of the Act]. Although the Act does provide for consultations with recognized associations and organizations the outcome of such consultations does not bind the employer. [See section 20(1) and 20 (2) (a) (b)].

3. Establishment of an effective Employment Council (transformation of the current Joint Negotiating Council, JNC) to create a platform for meaningful social dialogue in the determination of salaries, conditions of service and resolution of disputes in the public service.
4. A review of the definition of 'essential services' to be in line with international trends. This will ensure that government does not use the excuse of essential services where a dispute of salaries arises.
5. Representation of employees in hearing committees and other disciplinary procedures: The Act does not provide for the representation of workers in disciplinary hearings.
6. Review of the dispute resolution process: Currently it is the employer who lays charges for misconduct, adjudicate on cases of misconduct and dismiss the employee and then the employee can appeal to the Labour Court.
7. Amendments to the Labour Act in relation to the dispute resolution process: There is a need to provide for the exclusive jurisdiction of the Labour Court, finality of arbitration awards, revamp of the conciliation process to ensure that the parties are given a chance to resolve their disputes without the involvement of a third parties, costs and fees of arbitration need to be regulated.

In conclusion, Dr. Sambureni recommended that the best route to take in the resolution of disputes is the creation of a structure like the Commission for Conciliation, Mediation and Arbitration (CCMA) of South Africa with the necessary modifications.

11. Group work

The social partners were divided into three groups to discuss and come up with recommendations on three thematic areas: Dispute resolution mechanisms, collective bargaining and public service labour law reform. The recommendations were meant to pre-empt the precise labour amendment Bill that the social partners envisaged. The following recommendations from the groups were noted.

11.1. Recommendations from Group 1 – Alternative Dispute Resolution

ISSUE	PROBLEMS IDENTIFIED	SOLUTIONS
CONCILIATION	1. Absence of guidelines on the conciliation process. 2. Absence of an autonomous conciliation panel. 3. Absence of skills. 4. Involvement of lawyers in the ADR system.	1.1 Promulgate a Statutory Instrument detailing guidelines at tripartite level. 1.2 Differentiate between Arbitration and Mediation as existing in the region. 2. Establish an independent conciliation and arbitration panel. 3. Skills enhancement through a set standard of training. 4. Amend the Act and Statutory

	5. Absence of a code of ethics. 6. Enforcement of conciliation agreements. 7. Share of Costs	Instrument to exclude lawyers. 5. Draw up code of ethics and incorporate a section in the Act referring the Conciliators to observe the code of ethics. 6. Provision in the Labour Act for registration of conciliation settlements at Labour Court. 7. Promulgate statutory instrument to regulate Issue of costs.
POWERS OF THE LABOUR COURT SECT. 89.	8. Powers of Labour Court limited in terms of enforcement of its own judgments and original exclusive jurisdiction.	8.1 Amend Sect. 89(1) to give exclusive jurisdiction to the Labour Court in all labour matters. 8.2 Adoption of Honourable Mutema's presentation with all its recommendations.
COMPULSORY ARBITRATION	9. Too many frivolous appeals going to the Labour Court 10. Appointment of arbitrators.	9.1 Judges of the Labour Court to be given jurisdiction to screen cases that are eligible for appeal regarding arbitral awards. 9.2 Aggrieved party to seek leave to appeal from the Arbitrator and party has right to appeal to Labour Court if application is denied. 9.3 Every arbitral award including record of proceedings should be submitted for scrutiny and record with the referring authority. Arbitrator to keep a copy of same. 10. Regulations to include standard qualifications and qualities of an arbitrator. 11. Reinstate section 93 which gave

	11. Lack of powers to authenticate documents by Arbitrators.	those powers.
ACCESS TO JUSTICE	Inaccessibility of the Labour Courts and access to resources to support the justice delivery system.	Decentralization of Labour Courts to provinces and allocation of adequate resources.

11.2. Recommendations from Group 2 - Collective bargaining

Challenge	Solution
1. Section 79 on submission of collective bargaining agreements for approval by the Minister.	Repeal of the approval requirement and indicate that once an agreement has been concluded freely it has the force of law and registration is a mere formality.
2. Section 81 infringes on the rights of the parties to collectively bargain.	A provision to allow the parties to renegotiate if provisions are contrary to public policy or labour standards.
3. Absence of collective bargaining in the public sector	Incorporation of public sector workers under the Labour Act and establishment of a collective bargaining framework for the public sector.
4. No provisions for agency fees to be paid to trade unions by non-union members	Introduction of a section in the Labour Act providing for agency fees.
5. No systematic training of union negotiators	Systematic training to move away from position collective bargaining to needs based collective bargaining.
6. Supreme Court decision dismissing proportional representation of trade unions in National Employment Councils based on the argument that they are Private and Voluntary frameworks and therefore cannot be interfered with.	The Supreme Court judgment to be brought to the attention of the tripartite labour law Reform Advisory Council for further consideration and finalisation.

11.3. Recommendations from Group 3 – Public Service Labour Law Reform

Challenge	Solution
1. De - harmonisation took away the fundamental rights of public service workers such as: • Right to freedom of association. • Right to organize and collectively bargain. • Right to strike. • Right to establish workplace committees. • Occupational health and safety rights.	1. Harmonisation through amendment of section 3 of the Labour Act to incorporate public sector workers including those under the Health Services Act. 2. Repeal of the relevant sections of the Public Service Act, Public Service Regulations, Health Services Act and Regulations to ensure the enjoyment of these fundamental rights. The areas to be repealed include but are not limited to:

	sections 19, 20, 21, 24, 25 and 31 of the Public Service Act, SI 145/90, SI 1/2000 and SI 111/06 relating to the Health Services.
2. Absence of effective and independent social dialogue framework	Establishment of an independent and effective social dialogue framework (National Employment Council) by incorporating new provisions in the Labour Act to provide for the creation of an employment council in the public sector.
3. Unilateral determination of conditions of service by the Minister and the Commission	1. Ensure the enjoyment of meaningful social dialogue in determination of conditions of service. 2. Repeal of relevant provisions of the Public Service Act, Public Service Regulations, Health Services Act and Health Services Regulations which hinder the institutionalization of social dialogue in the public sector.
4. Excessive powers of the Minister of Public Service, Public service Commission and Health Services Board.	Repeal relevant provisions in the Public Service Act, Public Service Regulations, Health Services Act and Health Services Regulations which grant excessive powers affecting social dialogue such as the setting of conditions of service and dispute resolution processes especially section 8(3) which gives the Commission unlimited powers.
5. Wide definition of 'essential services'	There is a need to review the Labour Declaration on Essential Services to ensure that the scope is in line with international standards.
7. Absence of a fair dispute resolution process	Establishment of a fair dispute resolution process which also allows for representation of workers in the process.
8. No clear position from the Public Service Commission on public sector reforms	1. Serious debate and consultations between the Ministry of Labour and Social Services and the Ministry of Public Service to get the position of the Commission. 2. Important to proceed with harmonisation pending further consultations.
9. Constitutional provisions on the powers of the Public Service Commission to determine and fix conditions of service of the public service	1. To lobby for amendment of the constitution in relation to fixing and determination of conditions of service. 2. Constitutional amendments do not affect the harmonisation process if there is a political will to develop a single labour law regime.

12. Conclusion

Mr Dzviti thanked the participants for lively and open discussions which were critical to the important exercise of harmonizing labour laws in Zimbabwe. He informed the meeting that a copy of the report of

the workshop will be sent to the participants and that it will form part of a comprehensive report of the proposed labour law amendments for presentation to the Cabinet Committee on legislation. He also reminded the social partners to play their role in the constitutional making process to ensure the incorporation of issues that concerns the tripartite partners in the area of labour law.

Annexure 'A' -List of Participants

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(11-13 MAY 2010)

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