

AMALGAMATED RURAL TEACHERS UNION OF ZIMBABWE (ARTUZ)
LABOUR JUSTICE INDEX (TEACHING PROFESSION) 2020

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Abstract

This Labour Justice Index was prepared at the instance of the Amalgamated Rural Teachers Union of Zimbabwe, a trade union of teachers in Zimbabwe. The Index deals with labour justice in the teaching profession in Zimbabwe. It explores the relationship that exists between the Constitution of Zimbabwe particularly section 65 on labour rights and the domestic legislation and policies that govern labour rights in Zimbabwe. Same also analyses the extend of constitutional compliance by the government looking at practice, custom and the exercise of administrative authority over its employees. The Index will thus be an examination of whether or not professionals in the teaching field have enjoyed the rights brought by the 2013 Constitution.

Keywords: Teaching profession, labour justice, Constitution, social contract, collective bargaining, collective job action, remuneration, discipline and grievance.

I. INTRODUCTION

Zimbabwe is in a crisis. The country has not seen any economic stability in decades. Labour has been hard hit with the present government which came in place through the 2018 disputed elections targeting labour in its thrust to lure investors. Labour has been considered as a stumbling block to foreign direct investment and such policies as the ease of doing business are bend to move towards labour market flexibility. The existing labour laws are considered excessively favourable to the employees at the expense of business. In the civil service, the wage bill has been considered a huge expense to the fiscus. Such drives as staff rationalization and wage bill reduction have seen employees not only surviving on starvation wages but also an entire shredding of both collective and individual labour rights.

Inflation, currency changes, and tax regime among other adverse economic factors – largely human-made, have resulted in employees failing to enjoy the fruits of their hard-work. Disposable income has been gravely eroded. Pension and compulsory social security and protection schemes are almost non-existent for the teaching professionals.

Faced with such unbearable situations, employees always resort to use their collective force to air out their grievances and express their dissatisfaction. This collective effort

is always met with State heavy-handedness. Collective job action, strikes, petitioning and demonstrations have been severely resisted with State violence, threats and criminalization⁵.

Laws have not been amended to align them with constitutional dictates, modern trends and regional and international best practice. For State employees, collective bargaining is not recognized and the employer is still resident in the archaic culture of unilateralism in decision making thereby thwarting democracy at the workplace. In a nutshell, the gains brought in by the 2013 Constitution are still on paper. The little favourable rights that had remained are in fact being taken away. There is nothing yet to celebrate for the teaching professionals.

II. LABOUR RIGHTS AND THE CONSTITUTION OF ZIMBABWE

In the year 2013, Zimbabwe, through a referendum, adopted a very comprehensive Constitution of Zimbabwe Amendment (No, 20) Act, 2013. This legislative charter has a comprehensive bill of rights covering civil and political rights, socio-economic rights and group and solidarity rights. For the first time ever in Zimbabwe the bill of rights, among other rights, contains socio-economic rights *inter alia*; right to education, right to food and shelter, right to health care and children's rights. The Constitution for the first time since independence has a detailed bill of labour rights under section 65. Gwisai M out it as;

*This section provides probably the most significant labour rights under the new Constitution. This is because of its all-encompassing nature covering the right to fair labour practices and standards, the right to safe labour standards and the right a fair and reasonable wage. It has the potential for the dramatic overhaul of labour jurisprudence in the country by the incorporation of advances made by the working class regionally and internationally.*⁶

The Constitution of Zimbabwe is the supreme law of the land so much that any other laws, practices, customs or conduct must be in tandem with the dictates of the Constitution for same to be valid⁷. The Constitution provides a bill of labour rights which include the right to fair, safe labour standards and practices and to be paid a fair and reasonable wage, the right to join trade unions and employers' organisations of choice and participate in their lawful activities and the right to collective job action

⁵ ITUC, 2019 ITUC Global Rights Index, *The World's Worst Countries for Workers*, ITUC GSI IGB, Turin.

⁶ Gwisai M, *Enshrined Labour Rights under s 65(1) of the 2013 Constitution of Zimbabwe: The right to fair and safe labour practices and standards and the right to a fair and reasonable wage*, UZ Student Journal Vol 3, Issue 1, 2015.

⁷ Section 2 of the Constitution of Zimbabwe.

(strike, sit in and to withdraw labour). Same also provides the right to organise and collective bargaining, the right to fully paid maternity leave for women and the right to equal remuneration for similar work. Just, equitable and satisfactory conditions of work are also mandated by the same Constitution⁸.

Section 65 cannot stand on its own without due consideration to other fundamental human rights enshrined in the Constitution. Labour rights are contained in Chapter 4 of the Constitution which contains all basic fundamental human rights and as such labour rights are considered as human rights. Human rights are indivisible and interdependent. There is no one set of human rights which can be fully enjoyed without the other rights. A violation of one set of human rights can affect the enjoyment of the other rights⁹. In light of the indivisibility and interdependent of human rights, there are other rights supportive of labour such as freedom from slavery or servitude¹⁰, freedom from forced or compulsory labour¹¹, equality and non-discrimination¹², freedom of association and assembly¹³, freedom to demonstrate and petition¹⁴, freedom of profession, trade or occupation¹⁵ among others¹⁶.

The 2013 Constitution introduced a radical departure from past laws, customs and practices demanding a total change of the laws and mindset in as far as labour law is concerned. This Constitution invited the alignment, revising, amendment and repealing of certain laws and a change in the way labour was being administered particularly in the civil service. The Constitution being the supreme law of the land, there is need to benchmark all practices, customs and laws against the Constitution to ensure compliance. It is the basis upon which this index is premised.

III. TEACHING PROFESSION AND DOMESTIC LEGISLATION

The teaching profession is largely composed of persons employed by the State under the civil service except for a few who are employed by private institutions or who are in government institutions but employed by the School Development Associations and Committees. This distinction is crucial in dealing with labour rights in Zimbabwe as different legislation cover the two sectors i.e., public and private. The public sector,

⁸ Section 65.

⁹ <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx#:~:text=All%20human%20rights%20are%20indivisible,economic%2C%20social%20and%20cultural%20rights.>

¹⁰ Section 54

¹¹ Section 55

¹² Section 56

¹³ Section 58

¹⁴ Section 59

¹⁵ Section 64

¹⁶ See also section 14 on *Empowerment and employment creation* and section 24 on *Work and Labour Relations* which sections fall under National Objectives which the State will endeavour to fulfil by laws and policy decisions.

where the majority of teachers are, is State employment. This sector is covered under the Public Service Act [Chapter 16:04] and its regulations and supporting Acts of Parliament whereas the private sector is governed by the Labour Act [Chapter 28:01] and regulations made thereunder. All these however fall under the Constitution of Zimbabwe.

The civil (public) service is created in terms of section 199 of the Constitution and is made up of persons employed by the State¹⁷. The organisation, structure and management, discipline and conditions of service of the service are in terms of an Act of Parliament¹⁸ which is presently is the Public Service Act. The Civil Service is run by the Civil Service Commission made by commissioners appointed by the President¹⁹ and the commission is responsible for employing persons, dealing with their grievances, fixing salaries and conditions of service as well as dealing with discipline and control of the civil service²⁰ and they operate under a Minister²¹ which currently is the Minister of Public Service Labour and Social Welfare.

Section 200 of the Constitution provides for the conduct expected of members of the civil service including the teaching profession. The members are obliged, among other things, to act in accordance with the Constitution and the law, not to act in a partisan manner, not to further the interest of any political party, not to be office bearers of any political party, not to violate any other person's rights and freedoms, and not to prejudice the interest of other political parties in the discharge of their duties. From the practice however, it can be noted that some high-ranking officials from the teaching profession from the Provincial Education Directors can be seen campaigning and holding District positions in ruling party ZANU – PF structures contrary to this Constitutional provision, which situation cannot be allowed to obtain in other opposition political parties such as the Movement for Democratic Change (MDC).

Apart from the Constitution, the labour rights for the teaching professionals are mainly covered by the Public Service Act²² and the Public Service Regulations²³. Issues to do with injury the workplace and pension are dealt with in the State Service (Disability Benefits) Act²⁴ and the State Service (Pensions) Act²⁵. Collective labour rights such as formation and recognition of trade unions or associations and

¹⁷ Section 199(2) of the Constitution.

¹⁸ Section 199 (3).

¹⁹ Section 200.

²⁰ Section 203.

²¹ Section 201.

²² [Chapter 16:04].

²³ SI 1 of 2000.

²⁴ [Chapter 16:05].

²⁵ [Chapter 16:06].

consultation and negotiations thereof are governed by the Public Service (Formation and Recognition of Associations and Organisations) Regulations²⁶ and the Public Service (Public Service Joint Negotiating Council) Regulations²⁷.

IV. MOST VIOLATED LABOUR RIGHTS

(a) Non-alignment of laws

Since adoption of the new Constitution in 2013, public service labour laws have not yet been aligned to the constitutional provisions. The Public Service Act and the Regulations are still in their former state which existed prior to the 2013 Constitution. Despite section 203 (1) (b) as read with section 65(5) of the Constitution providing for collective bargaining, the Public Service Act in section 20 as read with section 20 of the Public Service Regulations still provide for 'consultation' with associations or organisations when the Public Service Commission fixes salaries and conditions of service of members of the civil service. Consultations are not the same as collective bargaining hence the need for alignment²⁸.

Section 65(1) of the Constitution bring in the right fair and safe labour practices and standards and to be paid a fair and reasonable wage. To the contrary section 22 of the Public Service Act only mentions an enforceable right against the state for remuneration but does not specifically mention that the remuneration must be fair and reasonable²⁹.

Section 65(7) of the Constitution provides for the right to fully paid maternity leave for at least three months for women employees. Instead, section 39 of the Public Service Regulations limits the right to those who would have completed one-year service and for only three maternity leave periods³⁰. With the coming in of the new constitutional provision, this section need amendment.

The right to collective job action (strike, sit in, withdrawal of labour etc.) is non-existent in the Public Service Act and Regulations. Instead, Paragraph 23 of the First Schedule (Section 2) of the Public Service Regulations makes it an act of misconduct to engage in collective job action (whether lawful or otherwise). Section 65(3) provides

²⁶ SI 45/1998.

²⁷ SI 141/1997.

²⁸ See also the provisions of SI 141 of 1997 which establishes the Joint Negotiating Council which is not a collective bargaining forum.

²⁹ Gwisai M, *Enshrined Labour rights under s 65(1) of the 2013 Constitution of Zimbabwe: The right to fair and safe labour practices and standards and the right to a fair and reasonable wage*, UZ Student Journal Vol 3, Issue 1, 2015; p.12.

³⁰ Section 39 (3) of the Public Service Regulations.

for this right to collective job action and as such the State is deliberately not aligning the laws to the Constitution so as to continue suppressing this right.

In the 2019 ITUC Global Rights Index, Zimbabwe was ranked in the top ten worst countries with regards to the adoption of regressive laws. The following was said;

*Brazil and Zimbabwe are in the ten worst countries for the first time, **with the adoption of regressive laws**, violent repression of strikes and protests, and threats and intimidation of union leaders³¹. (Emphasis added)*

(b) Collective Bargaining

Members of the civil service have the right to collective bargaining in terms of section 65(5)(a) of the Constitution. Section 203(1) (b) of the Constitution mandates the Commission to engage in collective bargaining when fixing and regulating conditions of service including salaries, allowances and benefits for members of the civil service. The existing laws in the public service as mentioned herein above provide for consultation instead³².

Collective bargaining is defined as the process in terms of which employers (or their representatives) and employees (or their representatives) collectively seek to reconcile their conflicting goals through a process of mutual accommodation (Grogan 2000:263)³³

There is a huge difference between collective bargaining and consultations. Collective bargaining will result in collective bargaining agreement³⁴ whereas in consultation, no agreement may be reached at. The case of **Metal and Allied Workers Union v Hart Ltd** (1985) 6 ILJ 478 (IL) at 493 H-I aptly captures the distinction in that: -

There is a distinct and substantial difference between consultations and bargaining. To consult means to take counsel or seek information or advice from someone and does not imply any kind of agreement, whereas to bargain means to haggle or wrangle so as to arrive at some agreement on terms of give and take. The term negotiate is akin to bargaining and means to confer with a view to compromise and agreement.

³¹ ITUC, 2019 ITUC Global Rights Index, p. 5.

³² See sections 20 of the Public Service Act and Public Service Regulations.

³³ Mucheche C H, A Guide to Collective Bargaining Law and Wage Negotiations in Zimbabwe; Dominion Investments (Pvt) Ltd; 2012, p.1.

³⁴ Section 2 of the Labour Act defines collective bargaining agreement as an agreement negotiated in terms of that Act.

The employer is still resident in past practices as Madhuku L, as far back as 1997, had this to say;

It has been indicated above that there is no collective bargaining machinery strictly so called, in the public service. Issues such as levels of, frequency and subjects of bargaining at the workplaces do not arise. An undefined consultation takes place but the extent and modus operandi are neither systematic nor capable of being reduced to some form...

As there is no systematic collective bargaining, wages and other conditions of employment are fixed by the Public Service Commission acting at its sole discretion in terms of the enabling legislation. It is clear that the Commission need not consult the workers in promulgating regulations determining their terms and conditions of employment. In this regard, the courts have not been helpful³⁵.

Several decisions on salaries, allowances and benefits for civil servants have been done outside the consultative forum and some *ex-gratia* from the President. Examples of such allowances can be drawn from the 2020 COVID -19 USD allowance which was never bargained for and can be withdrawn at will³⁶.

On the 27th December 2017 the Government unilaterally announced that the civil service (teaching profession included) had been moved from the Ministry of Public Service, Labour and Social Welfare to fall under the Office of the President and Cabinet³⁷. Similarly, On the 26th of February 2020, the Cabinet unilaterally resolved to establish the Government Employees Mutual Savings Fund (GEMS Fund) which would see the establishment of Garrison shops and funded by two and half percent (2, 5%) of the total remuneration deducted from every government employee. This was not done through collective bargaining but unilaterally by the State hence its failure. Fortunately, these draconian developments never saw the light of the day as unions resisted same³⁸³⁹.

Recently the Public Service Commission announced that the retirement age of all civil servants had been rationalize that all employees were to retire at the age of sixty-five

³⁵ Kalula E and Madhuku L (Eds), *Public Sector Labour Relations in Southern Africa: Developments and Trends*, Institute of Development and Labour Law and FES, 1997 p. 272 -273.

³⁶ <https://www.news24.com/fin24/economy/africa/zimbabwe-gives-civil-servants-50-salary-hike-adds-coronavirus-allowance-in-us-dollars-20200618>

³⁷ <https://news.pindula.co.zw/2017/12/28/civil-servants-now-office-president-cabinet/>.

³⁸ Matika E & Mahlangu C; *Comments on the Shift of the Civil Service from the Ministry of Public Service, Labour and Social Welfare to the Office of the President and Cabinet*, Munyaradzi Gwisai & Partners, 2017.

³⁹ Munyaradzi Gwisai & Partners; *The Constitutionality or Otherwise of the Gems Fund and Garrison Shops*, 2020.

instead of sixty⁴⁰. The amendment of the law has not yet been effected but the announcement has since been made and the position is being unilaterally implemented. Issues such as retirement age ought to pass through collective bargaining as they affect conditions of service of employees but the State is unilaterally effecting such changes.

In the 2021 National Budget Statement, the Minister of Finance and Economic Development announced the introduction of a new pension scheme for civil service employees as part of cost containment measures. The decision will see the pension fund being moved from a pay as you go pension to a fully funded defined benefit scheme⁴¹. This decision is one which should have been arrived at through collective bargaining and not unilaterally as was done therein.

In summary, collective bargaining does not exist in the civil service both at law or in practice. The first step therefore should be the alignment of the existing laws to the Constitution and come up with a framework that allows for collective bargaining.

(c) Social Dialogue

Linked to the right to collective bargaining is the right to social dialogue. While Zimbabwe moved a few steps towards institutionalizing social dialogue⁴² through the enactment of the Tripartite Negotiating Forum (TNF) Act⁴³ the realization of the benefits thereof remain a mere fantasy. Social contract has been severely broken despite the existence of the TNF. The Government has not moved with speed in putting full mechanisms in ensuring that the TNF is an operational and functional institution.

Social contract remains a pipedream⁴⁴ as there is grave breakdown of trust amongst the stakeholders in the TNF i.e., organised labour, business and the Government, with Government still stuck in past practices of unilateralism in policy and decision making. Key policy decisions such as tax regime, national budgets among others are done without the knowledge of the TNF thereby ruining the intention of having that Forum.

⁴⁰<https://www.newvision.co.ug/news/1526358/zimbabwean-president-approves-65-retirement-age-civil-servants>.

⁴¹ *The 2021 National Budget Statement*, p, 8, p. 60 – 61 (Items 142 -145) and p. 63 (Item 152).

⁴² https://ilo.org/africa/countries-covered/zimbabwe/WCMS_714170/lang--en/index.htm.

⁴³ Act No. 3 of 2019.

⁴⁴ <https://www.theindependent.co.zw/2020/01/31/tnf-in-the-doldrums/>.

The 2020 ITUC Global Rights Index, *The World's Worst Countries for Workers* reports that Zimbabwe is one of the ten worst countries for workers. One of the issues reported and exposed in that Global Rights Index is the breakdown of the social contract. The Index states:

The breakdown of the social contract is exposed in the 2020 ITUC Global Rights Index with violations of workers' rights at a seven-year high⁴⁵.

...

The ten worst countries for workers in 2020 are the following -Bangladesh, Brazil, Colombia, Egypt, Honduras, India, Kazakhstan, the Philippines, Turkey and Zimbabwe⁴⁶. (Emphasis added)

(d) Collective Job Action

Section 65(3) provides for the right of employees except security services and essential services, to collective job action including strikes, sit in, to withdraw labour and other similar concerted actions. In one of the most retrogressive provisions of the law, the Public Service Regulations prohibit the exercise of this right and makes collective job action an act of misconduct: -

Engaging in collective job action, including –

- (a) incitement of members to engage in such action;*
- (b) damaging Government property or forcibly disrupting public services in furtherance of such action;*
- (c) calling meetings of members at the work place or during working hours in furtherance of such action.*

This section does not take into account whether the collective job action is lawful or otherwise. The right to resort to collective job action must be read together with other rights such as freedom of assembly and association, freedom to demonstrate and petition and freedom of expression and freedom of the media⁴⁷.

As rightfully pointed out in the ITUC 2019 Global Rights Index, the right collective job action and all other supporting rights as identified above, are not existent in Zimbabwe. Any iota of it left is met with violent resistance from the State⁴⁸, threats of

⁴⁵ ITUC, 2020 ITUC Global Rights Index; *The World's Worst Countries for Workers*, ITUC 2020 p.4

⁴⁶ Ibid p. 5.

⁴⁷ See Sections 58, 59, and 61 of the Constitution.

⁴⁸ <http://kubatana.net/2019/06/06/rtuz-president-abducted-and-tortured-over-teachers-strike/>.

cessation of salaries,⁴⁹ disciplinary action⁵⁰ or summary dismissal, arbitrary arrests and detention⁵¹, malicious prosecution or death⁵².

The *ITUC 2019 Global Rights Index* had this to say about Zimbabwe,

This year (2019) Zimbabwe fell into a pattern of violent attacks against workers and trade union members. Protests organised by ZCTU on 14 – 16 January 2019 against 150 per cent fuel price hike were repressed by state security forces with live ammunition. Twelve workers were killed and 70 sustained gunshot wounds. In total over 320 persons were injured, while accounts of severe beatings and torture by government forces were reported to the Zimbabwe Human Rights Commission⁵³.

Even in the 2020 *ITUC Global Rights Index*, the Zimbabwean story was all on the negative with the State continuing with its negative trend of violently attacking the workers' leaders and working towards dismantling organised labour including those from the teaching profession. It was recorded;

Increase in violence and dismantling of independent unions

In Zimbabwe, the president of the Zimbabwe Hospital Doctors Association (ZHDA), Dr Peter Magombeyi, and the president of the Amalgamated Rural Teachers' Union of Zimbabwe (ARTUZ), Obert Masaraure, were kidnapped, beaten up and subjected to torture. They had both denounced harassment and persecution by security forces⁵⁴.

(e) Wages, Salaries and Allowances

Section 65(1) of the Constitution brought in the right to be paid a fair and reasonable wage. The difficult with this right is that there is no yardstick to measure the fairness and reasonableness of the wage. It has been written elsewhere that; -

This provision is a milestone in the labour relations and law regime of Zimbabwe. It brings Zimbabwean law in conformity with its obligations under various regional and international law ratified, which provide for employees' right to a just and favourable remuneration.⁵⁵⁵⁶

⁴⁹ <https://www.teacher.co.zw/2020/11/striking-teachers-to-lose-salaries.html>.

⁵⁰ <https://dailynews.co.zw/govt-to-dock-pay-of-striking-teachers/>.

⁵¹ <https://allafrica.com/stories/202006230360.html>.

⁵² *ITUC, 2019 Global Rights Index*, p. 16.

⁵³ *ITUC, 2019 Global Rights Index*, p. 27.

⁵⁴ *ITUC, 2020 ITUC Global Rights Index; The World's Worst Countries for Workers*, ITUC 2020 p.18

⁵⁵ For instance art. 23 (3) Universal Declaration of Human Rights, 1948; art 11 SADC Charter

⁵⁶ Gwisai, R Matsikidze & C Mucheche, "Labour Rights under Zimbabwe's new Constitution: The right to be paid a fair and reasonable wage" (2014, Unpublished, Harare) 1

The period after 2018 which saw the introduction of the RTGS dollars followed by the re-introduction of the Zimbabwean Dollars to operate at par with the USD and subsequently to replace the USD caused a lot of turmoil as the RTGS and Zimbabwean Dollar remained as the salaries of employees but never matched with the USD. Hyper-inflation worsened the situation. The widening gap between buying power of the USD and the ZWL could not be restored by corresponding salary increments.

There are basically two competing interest in the wage issue with the need to have decent living for the employees and their families whilst the State and all employers would argue that *too high salaries which were not backed by revenue inflows, risked scaring away investment from the country by making labour a huge cost centre and unsustainable*⁵⁷.

When schools reopened in October 2020 after the COVID-19 induced shut down, teachers declared incapacitation and could not turn to their workstations citing incapacitation arguing that their salaries were a mockery. In one of the joint statements by the teachers' unions it was argued: -

*"Teachers need decent salaries in order to work," the union leader insisted. "Teachers deserve better working conditions to get motivated. Teachers want to remain professional. Teachers should be paid in order to remove 'incapacitation'."*⁵⁸

Despite the acceptance that the salaries they were paying their employees were mere pittance, the State was unilaterally offering meagre increments which would be rejected by the employees as a mockery and the employees would continue claiming incapacitation despite such increment offers⁵⁹.

It is common cause that salaries which the State is currently paying its employees are way below to fair labour standards and are far from meeting the spirit of the Constitution i.e., fair and reasonable wage. Earnings which are below the Total Consumption Poverty Line (TCPL) or the bread basket are an attack on the right to fair and reasonable wages.

(f) Access to justice: Discipline and Grievance Mechanisms

Section 69 of the Constitution of Zimbabwe provides for the right to a fair and public trial withing reasonable time⁶⁰, the right to fair, speedy and public hearing before any

⁵⁷ <https://www.herald.co.zw/improved-civil-servants-perks-a-priority/>.

⁵⁸ <https://www.ei-ie.org/en/detail/16996/zimbabwe-government-must-pay-teachers-decent-salaries-for-them-to-resume-work>.

⁵⁹ <https://www.newsday.co.zw/2020/10/civil-servants-laugh-off-salary-hike/>.

⁶⁰ Section 69(1).

court, forum or tribunal in determination of civil rights and obligations⁶¹, the right to access the court, forum or tribunal established by law in resolution of disputes⁶² as well as the right to legal representation⁶³.

The existing laws and practices with regards to the teaching profession may be an affront to these constitutionally protected rights. It must be understood that access to the Labour Court for example for a teacher filing an appeal or application is not free. The filing of the appeal or application attracts court fees which in the year 2020 became so astronomical to the extend of literally barring litigants from appealing or filing applications. Apart from court fees, there are also costs payable to the Sheriff for service of notices of set down which costs are turning to be beyond the reach of many workers especially those who would have been discharged from the service or employment. Access to justice therefore has been significantly compromised by costs factors.

Further a look at the procedures in discipline, in terms of section 45 (3) of the Public Service Regulations, when appearing before a disciplinary committee an employee is allowed to be represented by a legal practitioner (registered as such in terms of the Legal Practitioners Act⁶⁴). The costs of enlisting legal counsel are not affordable to the already struggling teachers as one hours' work can gobble the entire teachers' monthly salary⁶⁵. The question that arises is why trade union officials or fellow employees are not allowed to represent their fellow members and workers at these stages. It also boggles the mind why at such inferior tribunals, representation is restricted to legal practitioners only whereas at the Labour Court level, which is a higher court of record, trade union officials are permitted⁶⁶. Only towards the end of 2019 did the State began to allow trade unionists to represent their members but that is only discretionary and not by law.

The composition of disciplinary committees in terms of section 43 of the Public Service Regulations does not bring the balance as is with those set under the Labour Act. The disciplinary committees set under the Public Service Regulations are made up of all representatives of the employer and no representatives of the employees. The neutrality expected of same cannot be realised. A disciplinary committee is defined as a committee set up at the workplace of establishment composed of employer and

⁶¹ Section 69(2).

⁶² Section 69(3).

⁶³ Section 69(4).

⁶⁴ [Chapter 27:07].

⁶⁵ Legal Practitioners' Fees Tariffs are published by the Law Society of Zimbabwe from time to time.

⁶⁶ Section 92 (b) of the Labour Act [Chapter 28:01]. See also Rule 3 of the Labour Court Rules SI 150/2017 as amended by Labour Court (Amendment) Rules SI 8 of 2018.

employees' representatives, to preside over and decide over disciplinary cases and/or worker grievances⁶⁷. The composition of disciplinary committees under section 43 of the Regulations therefore violates the principles of natural justice and the right to fair hearing.

The Ministry of Primary and Secondary Education has a practice of ceasing salaries of members who would have been absent from the from duty for a period of fourteen (14) days. This is done without the concerned member being suspended from work or being subjected to any disciplinary proceedings. The cessation of a salary in itself amounts to a punishment and as such powers to cease a salary must be used in situations where the affected member has been subjected to disciplinary proceedings or has been duly suspended without salary in terms of the Public Service Regulations⁶⁸. There is no provision in the Act and Regulations which provide for such cessation of salary and one wonders as to under what powers does the employer cease the salary. The powers are executed through Form Ed. 91(a)⁶⁹ which *must be completed immediately after fourteen (14) days of a member's imprisonment /restriction/ absence from duty without being granted leave of absence*⁷⁰.

Another unfair development that has been taking place over the years is with regards to members who would have been suspended from duty. The maximum period for suspension in terms of the Public Service Regulations is three months. If the three months lapsed the suspension order is automatically cancelled by operation of law unless duly extended by the Commission for a fixed duration and on written notice to the member concerned⁷¹. In an unfair development, such suspensions would lapse and the employee would return to work but the employer would not reinstate the employee on the payroll. The employer would verbally argue that the employee would only be reinstated on the payroll after the misconduct has been determined which position is contrary to section 49(3) (b) of the Regulations. It would take the employee to approach the Courts for a declaratory order for them to be reinstated on the payroll, something which is supposed to be automatic by law⁷². Such a development is an attack to the presumption of innocence principle.

The grievance procedures in terms of sections 54 and 55 of the Public Service Regulations bar access to the Courts. Once a grievance process is followed up in terms of these section and the Commission has made its findings, there is no other stage of

⁶⁷ Section 2 of Labour (National Employment Code of Conduct) Regulations SI 15 of 2006.

⁶⁸ Section 48 of the Public Service Regulations.

⁶⁹ Notification of Cessation of Salary.

⁷⁰ See paragraph (b) of Form Ed. 92(a)

⁷¹ Section 49(3) (b) of the Public Service Regulations.

⁷² See **Nomuhle Mangena vs Minister of Primary and Secondary Education and Ors** HC 2448/19.

appeal available. It would thus mean that once the Commission has made a final decision on a grievance that will be the end of the matter even if the member remains aggrieved. The absence of an appeal process therefore means the end of the matter. This is contrary to grievances in terms of the Labour Act where one may approach a Labour Officer or a Designated Agent of the employment council for redress through conciliation or even up to Arbitration and the Courts⁷³. There exist no conciliation or Arbitration under the Public Service Act and Regulations.

(g) Casualisation of labour

With the huge appetite to lure investors that the government exhibits, labour market flexibility is likely to increase as labour costs and stringent labour laws are considered to be a threat to investment. There is need thus to wary about rise in casual and part time workers.

Casual and part-time workers are less costly in that they earn lower than their full-time counterparts⁷⁴. There are other obligations that may not also attach to the employer such as medical aid and pension which may be a huge saving on the part of the employer at the expense of the working class.

The employer may also tend to use casual workers, contract or part-time workers to cripple the activities of trade unions as such workers are least likely to be trade union members.

Ncube M had to conclude and recommend as follows;

*The preoccupation with flexibility in the labour market as a panacea for unemployment must also be weighed against the consequences of this obsession for workers. Wage flexibility attained through declines in real wages may throw many workers and their families into abject poverty, further aggravating aggregate demand and unemployment. In addition, employers have enhanced their wage-cost flexibility by increasing their use of casual labour. Flexibility must be weighed against the plight of such vulnerable groups in the labour market. In a country with limited social safety nets, sharp falls in real wages and significant casualisation of labour swell the ranks of the working poor. The plight of such workers calls for some form of selective protection which will not compromise flexibility.*⁷⁵

⁷³ See Section 93 of the Labour Act.

⁷⁴ Ncube M, *Wages Through Booms and Recession: A Case Study of Zimbabwe*, ILO/SAMAT Discussion Paper No.15 ILO/SAMAT, Harare 2001.

⁷⁵ Ibid p, 26.

V. CONCLUSION

Given the above, there is nothing to celebrate as there is grave labour injustice occurring in the teaching profession largely owing to the legislative gap between the Constitution of Zimbabwe and the existing operative laws in the public sector. There is need for challenging the existing laws which take away the rights given by the Constitution. Trade unions need to push for legislative alignment through litigation and /or advocacy and lobbying to ensure that the existing laws reflect the dictates of section 65 and related provisions of the Constitution.

There is need for unions to step up their activities and use their collective force. The adage 'united we stand divided we fall' stood to its real meaning this 2020 when teachers defied the threats by the employer and remained resolute with their fight for better salaries until such a time division was sowed amongst them.

Every unilateral decision by the employer to the detriment of the workers must not go unchallenged as spirited resistance of adverse unilateral decisions have proved effective over the years. Examples of such adverse decisions that have been resisted include the garrison shops decision, the issue of the civil service being placed under the OPC and some collective government housing schemes.

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