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NON ALIGNMENT OF LABOUR LAWS WITH NATIONAL CONSTITUTIONS, A TRIGGER OF TRIPARTITE INDUSTRIAL RELATIONS CONFLICTS IN AFRICA; THE ZIMBABWE EXPERIENCE



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BACKGROUND OF THE STUDY

Economic and political challenges (Rule of law, democracy, human rights issues-AIPPA and POSA, corruption, international outcry, sanctions)

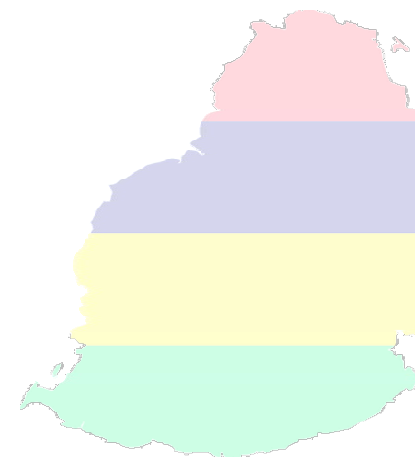
Tripartite relations involve the three social partners namely; government (state), business (employers) and labour (workers or employees).

- The *New National Constitution Amendment No. 20 of 2013*. This constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.



The obligations imposed by this constitution are binding on every person, natural or juristic, including the state and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled.

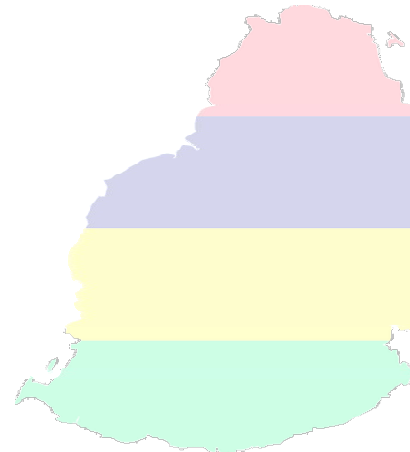
Zimbabwe has a dual labour system





Labour Act [*Chapter 28:01 currently No. 5 amended 2015*] –private sector and parastatals

Public Service Act (*Chapter 16:04*).
-civil servants



STATEMENT OF THE PROBLEM

The major administrative labour laws, namely the Labour Act and the Public Service Act have not been aligned with the *New National Constitution Amendment No. 20 of 2013*. This has culminated in a lot different interpretations of labour laws as evidenced by a lot of heavy backlog of pending cases before the Labour courts threatening progressive collective efforts such as Social dialogue through tripartite forums.



RESEARCH QUESTIONS (SUB-PROBLEMS)

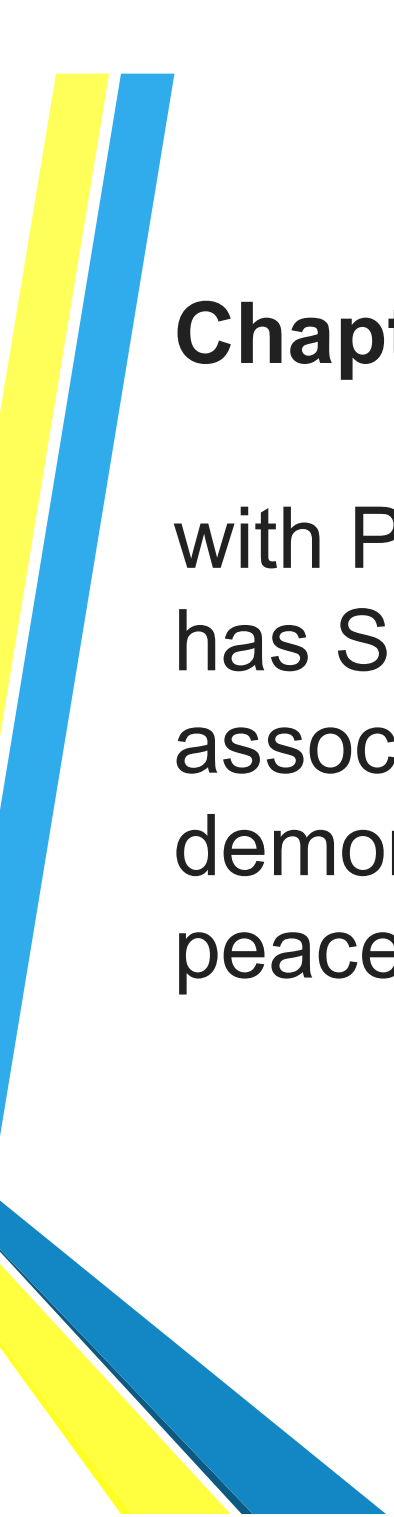
1. What are the sticking labour issues arising from different provisions of the New National Constitution Amendment , the Labour Act and the Public Service Act (*Chapter 16:04*)
2. What are the reasons behind the delays to align the major laws with the national constitution?
3. How can the social partners work towards the alignment of the laws in order to reduce labour conflicts?

LITERATURE REVIEW

The New Constitution of Zimbabwe Amendment (No. 20) Act, 2013

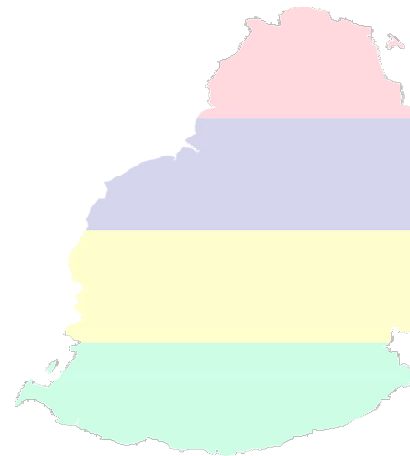
Chapter 1 is on Founding provisions and Section 3 has the Founding values and Principles which on (c) emphasizes respect of fundamental human rights and freedoms and (h) good corporate governance that includes transparency, justice, accountability and responsiveness.

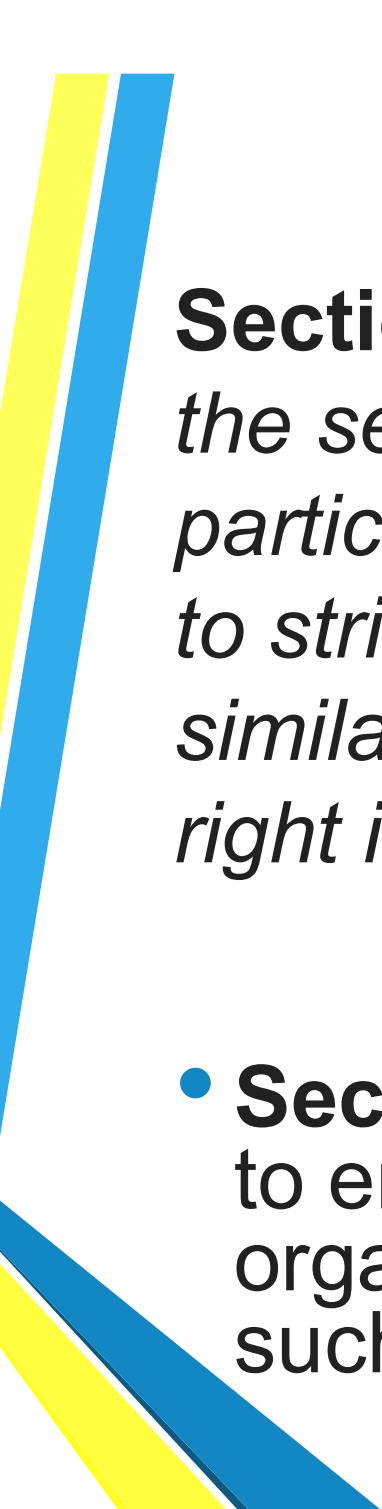




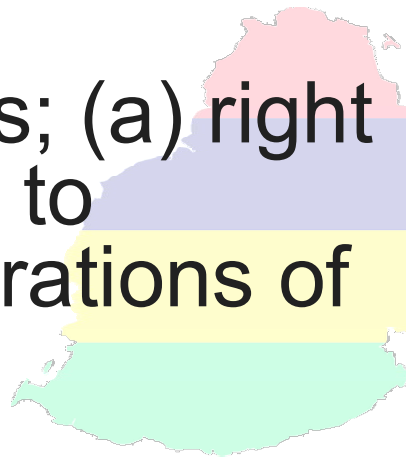
Chapter 4 is on Declaration of rights,

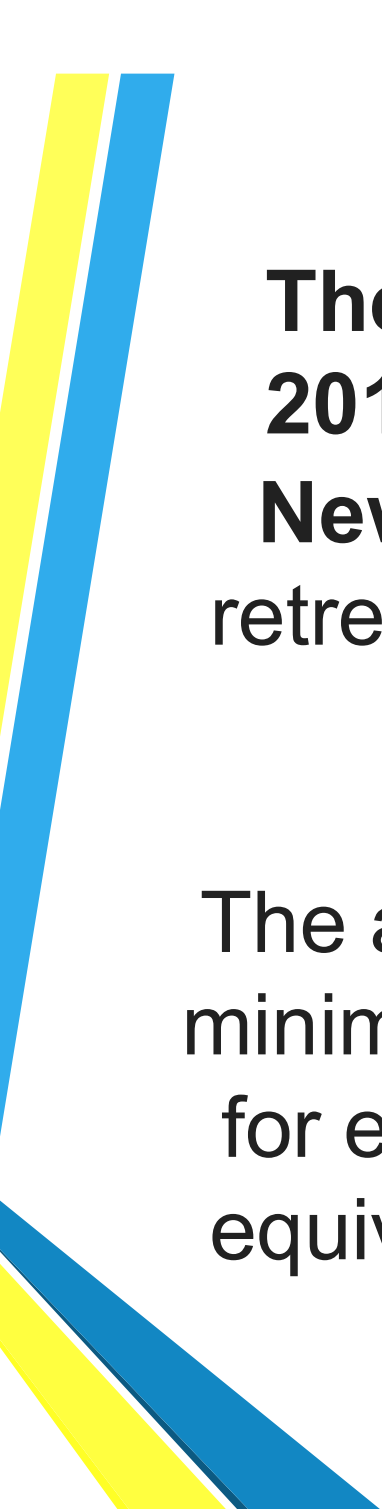
with Part 2 covering Fundamental human rights that has Section 58 allowing freedom of assembly and association as well as Section 59 allowing freedom to demonstrate and present petitions, albeit being peaceful.





Section 65 (3) states that *...except for members of the security services, everyone has the right to participate in a collective job action, including the right to strike, sit in, withdraw labour and to take other similar concerted action, but a law may restrict this right in order to maintain essential services*

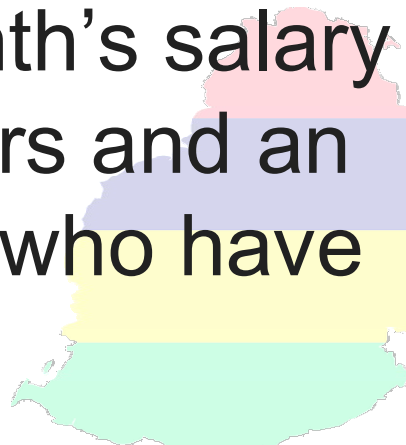
- **Section 65 (5)** covers labour rights such as; (a) right to engage in collective bargaining, (b) right to organise and (c) right to form and join federations of such unions and organisations.
- 



The Labour Amendment Act 28:01 (No. 5 amende 2015)

New Section substituted for Section 12 is about retrenchment procedure and seeks to set a minimum retrenchment package.

The amendment is bad in Clause (2) which sets out a minimum retrenchment package of one month's salary for employees who have saved for two years and an equivalent lesser proportion for employees who have worked for less than two years



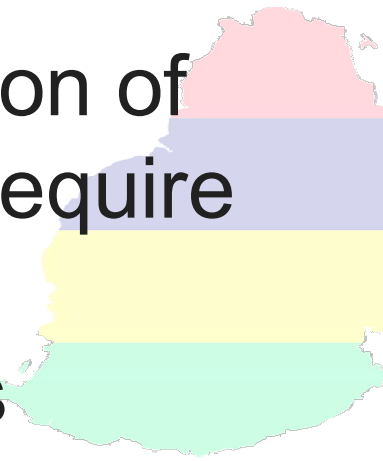


Considering that average minimum wage in the country is US\$246-00 (RBZ, 2015), 2 weeks' salary will translate to US\$123-00 for year, and that cannot be called a package?

There is no consideration of other components of a retrenchment package like severance pay and relocation allowance.

International Labour Standards (Termination of Employment Convention No. 158, 1982) require payment of adequate compensation.

Compensation is very little and empowers employers to terminate a contract willy-nilly.



Amendment of Section 12D of Labour Act 28:01

This section deals with measures to avoid retrenchment. In clause (b) there is a deliberate ploy to remove the employment council so as to oust the trade union power in the negotiations for measures to avoid retrenchment. Allowing an employer to reach agreement with 'employees alone' without their trade union representative will lead to dictatorial tendencies by an employer taking into consideration the different power dynamics, between an employer and employee

Amendment of Section 104 Right to resort to collective job action

**Civil servants are prohibited from initiating any form of labour unrest as outlined in PART XIII
Section 104 (3) Period of 14 days' notice before going on strike in Subsection (2) (a) was too long**

- **The Public Service Act (*Chapter 16:04*)**

conditions of service, applicable to members (except The Army, Police, Prisons and CIO) including their remuneration, benefits, leave of absence, hours of work and discipline, shall be determined by the Commission in consultation with the Minister ... the concurrence of the Minister shall be obtained.

METHODOLOGY

Approach(Qualitative, Neuman, 2003)

Philosophy-(interpretivism, Leedy & Omrod, 2016)

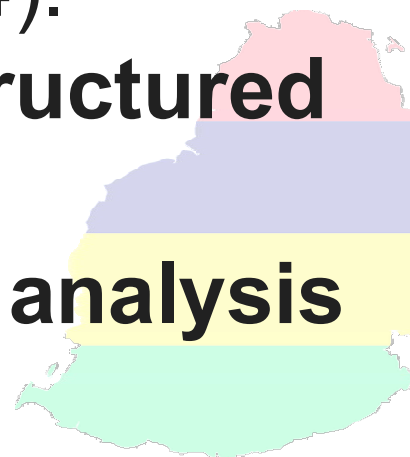
Survey design -relevant experience on the problem or subject matter (Leedy and Omrod, 2016)

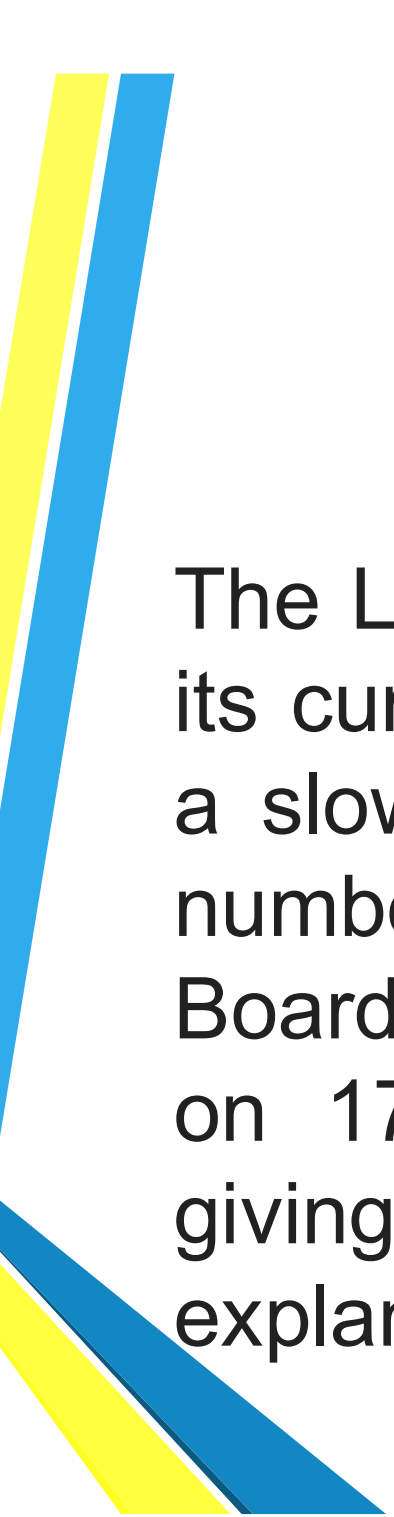
Target population- Ministry, PSC, Major labour bodies (the Apex Council, ZCTU, ZFTU), EMCOZ.

Quota sampling technique (Khothari, 2014).

Library analysis (desk research) and **Unstructured interviews**(Kennedy, 2009).

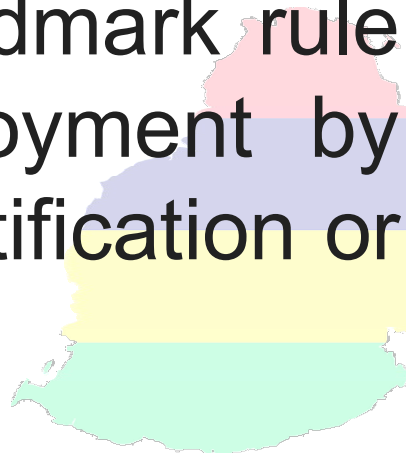
Results were analysed using the content analysis method (Cresswell, 2003).

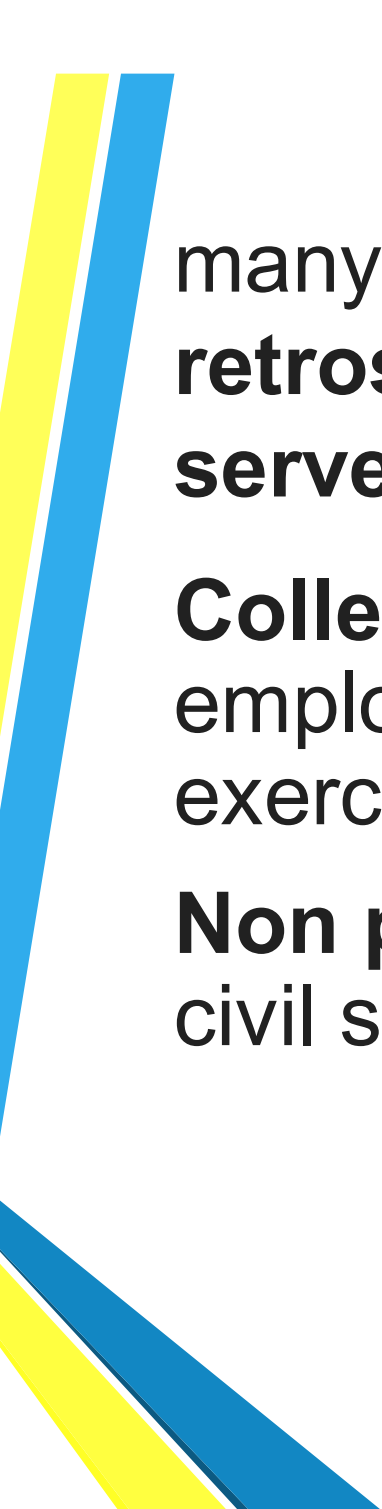




FINDINGS

The Labour Amendment Act 28:01 (No. 5 of 2015), in its current form, makes dismissals and retrenchments a slow process as employees have to go through a number of hearings or appeal to the Retrenchment Board, yet the Supreme court made a landmark rule on 17 July 2015 (terminate one's employment by giving 3 months' notice without need for justification or explanation based on common law).

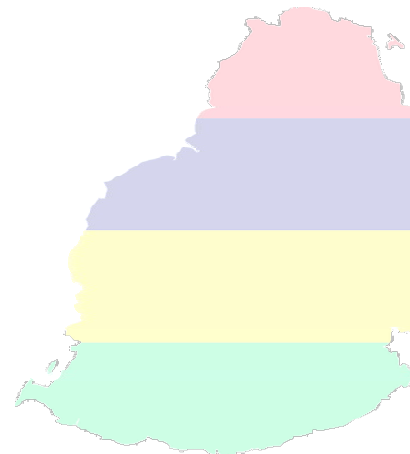


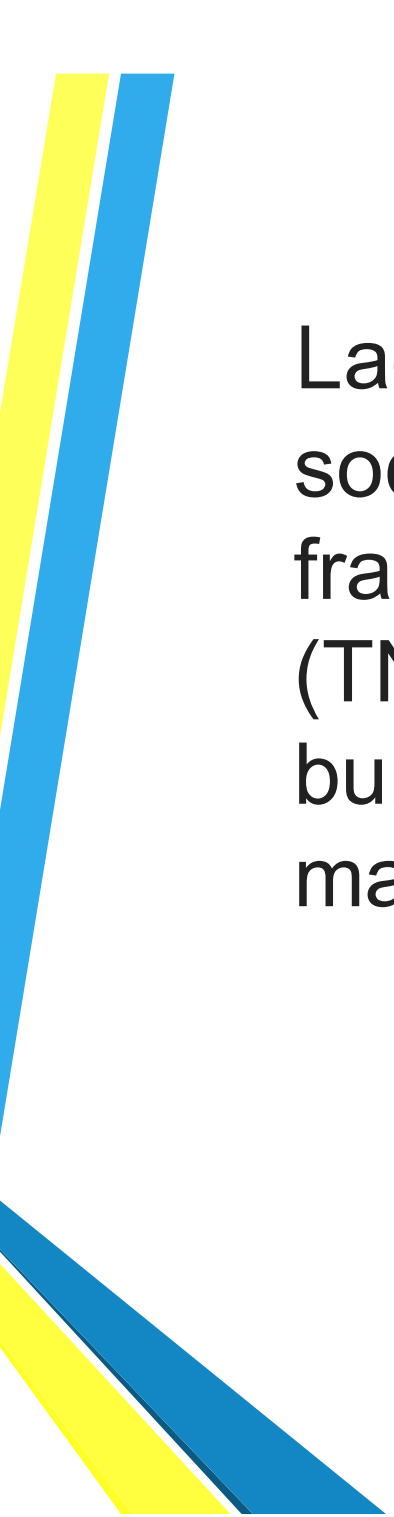


many organisations ignored **payment of benefits in retrospect of two weeks' wages per each year served including a minimum retrenchment benefit**

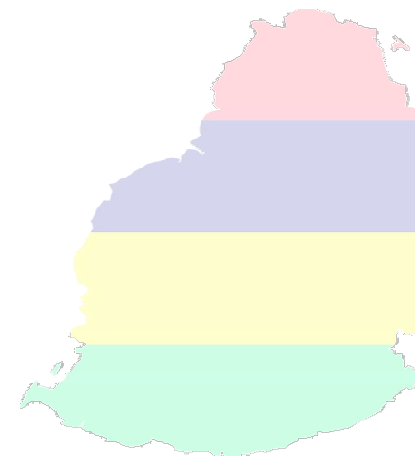
Collective job action still remains a nightmare to employees both in the private and public sectors to exercise such right

Non participation in collective bargaining by the civil servants



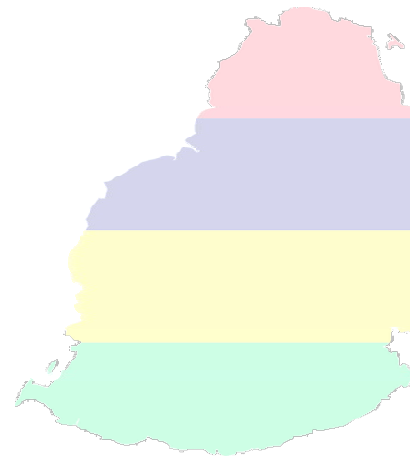


Lack of a social dialogue culture among the three social partners, absence of a binding dialogue framework such as the Tripartite Negotiating Forum (TNF) Act, lack of political will, mistrust and bureaucratic tendencies by government were the major reasons for lack of progress to align the laws



CONCLUSION

Industrial relations in Zimbabwe are at a loggerhead due to non-alignment of major laws governing labour matters. The situation was being exacerbated by lack of sound discourse among the social partners and this emanated in lack of trust and lack of cooperation.



RECOMMENDATIONS

Urgent alignment or synchronisation of the New National Constitution No. 20 of 2013 with the major labour administrative pieces of legislation

Promotion of social dialogue by resuscitating the almost 'defunct' Tripartite Negotiating Forum (TNF) which also calls for the urgent enactment of a TNF Act

Zimbabwe should conform to ILO provisions

Need for political will by social partners and not for sectorial gains.



THANK YOU ALL

