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HOW HAVE THE LABOUR LAWS AND RELATED POLICIES INFLUENCED OR AFFECTED UNION ACTIVITIES AND EFFECTIVENESS?

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ABSTRACT

The Zimbabwean labour relations environment is characterised by liberalised employment laws that provides for employee democracy, industry and workplace level labour relations councils namely national employment councils and works councils respectively. In spite of this, both employers and employees are unhappy with the current labour relations environment. The objective of this article is to understand the impact of labour laws on labour relations in Zimbabwe. It therefore adopted a qualitative research paradigm. A purposive sample of thirty-five participants took part in the study wherein twelve participated in interviews and two wrote memoirs detailing their experiences. The study revealed that the labour legal framework in Zimbabwe is dual in nature. Trade unions in the private sector benefitted from the rights enshrined in the Labour Act as well as in the Zimbabwean Constitution; whereas, unions in the public sector were excluded from some of the labour rights. The public sector trade unions have no right to negotiate with their employer; but just consult which is tantamount to begging the employer to improve their conditions of service. globalisation has impact on labour legislation. The nature of Zimbabwe's labour relations showed two composites namely of employee participation and inherent antagonism between employers and employees. The article recommended that to ameliorate the negative impact of globalisation on labour relations in Zimbabwe, employees and their employers require to work together in establishing a desired labour relations culture.

KEYWORDS

Labour laws, effectiveness, union activities, policies, labour relations, employees, employee democracy.



Introduction

Labour law refers to the collection of legal rules which govern the employment relationship (Bernard, 2022). In a broad sense, labour law covers not only the rules which govern the employment relationship but also embraces the rules regulating the existence and operation of all the institutions of the labour market, such as trade unions, employers' organizations, the State in its dual capacity as employer and regulator and the labour dispute resolution entities (Blackburn, 2010).

Labour law is concerned with 'labour or work' which is done in a position of subordination, that is, when an employee works under the command, the authority and the control of an employer, when the work is not carried out in a position of subordination, as in the case of self-employment, labour law does not apply. If work is done in such a position, the employee enjoys the full protection of labour law and of social security (Bergholm, 2012). Labour law can thus be described as the body of rules which governs the relationship between employers and employees who carry out their labour or work in a subordinate position.

Bondurant (2018) notes that globalisation is both a connecting and a disconnecting process. In the case of Zimbabwe, the State through; (1) neo-liberalism opened up new opportunities for organised labour by supporting workplace democracy; and (2) labour deregulation weakened the role and power of unions. Worker victimization increased and government became less receptive to increased organised labour. Whilst globalisation pessimists might have perceived globalisation as being pathogenic and a catalyst for worker marginalisation, the (Nail, 2021). viewed it differently. He noted that embracing globalisation is the only solution for addressing economic and labour market challenges, which Zimbabwe faces. Globalisation is unavoidable, and resisting it through unfriendly labour laws and internal policies leads to firms moving their business to other countries that offer better policies and ease of doing business (Heery, & Kebly, 2014). Hence, with this background, it is increasingly necessary to understand the current labour relations climate in Zimbabwe to promote economic growth and at the same time ensure tranquility in labour relations.

Methodology

The study adopted the qualitative research methodology and interpretivism as its philosophy. The design used was the multi-case design, and the accessible population comprised of all leaders, members and full-time staff from three public sector unions. The sample comprised thirty participants who were purposively selected using criterion sampling; of which sixty-percent were male and forty percent female. The study's epistemology was guided by subjectivism and its ontology was guided by constructivism. The study's data generation instruments included the interview guide, open-ended questionnaire and focus group discussions. Document analysis was also used to complement the other methods. The interview guide and focus group discussions constituted the data generation methods. Seven questions in both the interview guide and questionnaire solicited for responses from the participants.

Data Presentation

The participants revealed that the Labour Act had positive things about the operations of the unions in the country (including public sector unions), yet the Public Service Act created by the Zimbabwean constitution hindered the free operations of public sector trade unions. The participants observed that in as much as the Zimbabwean constitution allowed for the formation of trade unions in the public sector; it went on to set inhibitive conditions like referring to them as essential services; which means that they cannot go on strike.

The above sentiments are in sync with observations by Visser (2011) who states that:

The right to strike is commonly believed and tolerated to be a fundamental right of workers and any encroachment on it is regarded with suspicion and resentment.

In addition to the Public Service Acts' restrictive measures on public sector trade unions, the participants highlighted other administrative policies that inhibited their union's operations.

POSA was promulgated to minimise the participation of trade unions in political issues among other reasons. It was an open secret that the ruling ZANU (PF) experienced its greatest challenge on its hold on power from the MDC. It is also an open secret that the MDC was born out of the Zimbabwe Congress of Trade Unions (ZCTU), a labour centre for many trade unions, including some from the public sector. Thus, POSA was seen as a brutal reaction by the ruling party to suppress trade unions, and as such, most workers are afraid of being caught up in the cross fire.

Some administrative policies also inhibit certain grades of employees in the structure of the public sector from participating in trade unionism for example, the employer has issued a directive that prohibits certain grades from joining unions. This according to the participants, is meant to divide the workers since those who are not members of the union are used by the employer to intimidate the unionized members, especially during industrial action.

Discussion

It is evident from the information contributed by the participants that the law in a sense promoted disunity among trade unions by fragmenting the civil service from the rest of workers in the country. The labour environment constituted one of the external factors that have largely weighed in as indirect political influence by government and political parties. This is corroborated by Chikanda (2018) who stated that:

The Public Service Commission has directed that all those in management positions in the public service should not be part of trade unions because by virtue of their positions, they are considered to be representing the employer in their dealings with their subordinates. Joining trade unions would compromise their positions.

Such induced disunity in trade unionism presents industrial relations challenges, compromises the interest of workers and does not inure to the benefit of the unions. According to the participants, the constitution chooses to treat trade unions in the public sector differently from those in the private sector. Some of the policies that contradict the constitution were national in nature like the Public Order Security Act (POSA); and others were policies from the trade unions themselves. POSA required that trade unions had to apply for permission from the police for clearance to hold meetings. This, according to the participants created an intimidating environment as some members were reluctant to attend meetings which had to be first cleared by the police, as Nail(2021) observes. The public sector unions have no right to negotiate with the employer but just to consult which is tantamount to begging the employer to improve their conditions of service.

Conclusion

The labour legal framework in the country is dual in nature. Trade unions in the private sector enjoy all the rights and privileges enshrined in the International Labour Act and in the Zimbabwean constitution. The private sector unions have the right to industrial action, they also enjoy the benefit to engage in genuine negotiations with the employer during the collective bargaining process. On the other hand, public sector unions can only consult their employer and cannot engage in collective bargaining. Consulting the employer means that the employer may incorporate the unions' inputs or ignore them. The employer is under no obligation to implement what they agree with the public sector unions. There are also other administrative policies that inhibit the operations of public sector unions.

Recommendations

Public sector unions should vigorously fight for the harmonization of labour laws in the country so that civil servants are also covered by protections granted in the Labour Act. Activities of public service trade unions are governed by the Public Service Act which does not recognise the collective bargaining rights of public employees. Private sector employees, by contrast, benefit from National Employment Councils and sector-specific tripartite negotiating committees that set down wages and benefits through a discussion amongst labour, business and government representations. This facility does not exist amongst the civil servants and thus the need for public sector unions to engage the government and other key stakeholders like the International Labour Court as well as local labour centres to create this facility in the public sector.

In addition to fighting for the harmonization of labour laws, public sector unions should also lobby for the repeal of legislation like Public Order and Security Act (POSA) which is often invoked to curtail union freedoms. Workers should ensure that the text of the harmonized laws does not include provisions that interfere with internal affairs of unions, instead should have adequate protective provisions against interference. It is strongly recommended that unions intensify and accelerate the enactment of legislation that will facilitate the rights of workers as enshrined in the constitution, particularly the right to organise and collectively bargain. The civil service workers should disband Apex Council, a body existing as a result of Statutory Instrument 141 of 1997. This piece of legislation must be repealed together with the Public Service Act. Another administrative policy that public sector unions should fight to remove from the statute books is Statutory Instrument 1 of 2000 because it also inhibits the operations of public sector unions.

Because the current laws and subsidiary instruments allow for consultation in place of collective bargaining is ultra vires the constitution they must be repealed and a new law that establishes a collective bargaining machinery must be promulgated. To this end, there is need for the unions to influence legislative changes in the Public Service Act to create safety nets that will protect the civil service workers and allow them to enjoy labour standards consonant with democratic practices. Given the expansiveness of sectors under the civil service it may be necessary to apply the following model of bargaining.

REFERENCES

- Bernard, E. (2022). *Trade union's changing role: membership erosion organisational reforms, and social partnership in Europe* Cologne: Max Planck Institute.
- Bergholm, T. (2012). *The country report of Finnish. Trade Unions*. Helsinki: Civic and Social Organisation
- Blackburn, D. (2010). *Trade Union rights in public services*. Unison: International Centre.
- Bondurant, J.V. (2018). *Conquest of Violence: The Gandhian Philosophy of Conflicts*. Delhi: University of Delhi.
- Borg, R. & Gall, M.D. (2012). *Applying educational research*. London: Allyn.
- Chikanda, A. (2018). *Medical Leave: The Exodus of Health Professionals from Zimbabwe*. Harare: University of Zimbabwe.
- Heery, E & Kebly, (2014). Participative and managerial trade unionism: an interpretation of change in trade unions. *Work, employment and society*, 6 (4): 16-34.
- Nail, M. (2021). *The impact of trade unions in lower skilled jobs*. London: Longman.
- Visser, J. (2021). *Trends in trade union membership*. OECD: Employment Outlook, 7