

NATIONAL MANPOWER COMMISSIONINPUT TO THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING TRANSITION

NMK 10/2/4

1993-07-07

1. STATUS OF THIS DOCUMENT

This document reflects the views of the full National Manpower Commission, as agreed upon at the NMC meeting of 6 July 1993.

The employer caucus of the NMC has indicated that it provisionally supports the viewpoints contained in this document, but needs to get a mandate from its constituency. Its final views will be known on Monday 12 July 1993.

2. THE NATIONAL MANPOWER COMMISSION

The National Manpower Commission (NMC), established in terms of the Labour Relations Act, 1956 (LRA) as an advisory body to the Minister of Manpower on labour related matters, has been reconstituted on a tripartite basis at the beginning of 1993. The NMC is now representative of major employer and employee parties in the economy and regarded as the forum agreed upon between Government, employers and employees to deal with all labour issues. Its functions include among other things evaluating the application and effectiveness of labour legislation and practice in the light of anticipated developments. One of the NMC's subcommittees is at present busy reviewing and modernising the LRA.

3. LABOUR RIGHTS IN AN INTERIM BILL OF RIGHTS

To the extent that the Technical Committee is working within the terms of a limited brief, namely to identify that core of fundamental rights that require special protection during a transitional period, our view is that the existing labour law regime should not be disturbed. In other words, the interim Bill should abide the status quo.

However, the Technical Committee's various progress reports indicate that a comprehensive set of rights is under consideration. We understand, further, that there is the possibility that the interim Bill may remain in force for a relatively extended period.

In response to this prospect, our point of departure remains the same: the rights in the current system of labour laws should remain untouched until such time as Parliament, following a consultative process involving all concerned, decides to introduce amendments.

-2-

The draft interim bill set out in the progress report does impact on existing labour relations. If, despite the views expressed above, it is decided that the Bill should go forward in approximately the present form, our comments on particular provisions are as follows:

(1) Enforcement (Section 1 of the draft chapter)

|| The NMC believes that the best method of preserving existing statutory rights is to stipulate in the interim Bill that it will operate vertically only, or at least that the labour provisions will operate in this way. It is probable that full consensus on this issue will be reached at the NMC meeting of 6 July.

(2) Equality (Section 2 of the draft interim bill)

The Bill should not impede any current or future labour law which seeks to promote equality and to redress discrimination. The section appears to accommodate these concerns. We suggest, however, that the guarantee of 'equal benefit' under the law is unattainable in the immediate future.

(3) Servitude and Forced Labour (Section 7)

We believe this section is in order.

(4) Freedom of Association (Section 12)

Section 12(1) may be interpreted to outlaw any infringement of the right to dissociate. This may in consequence invalidate provisions of the Labour Relations Act providing for and regulating closed shops, as well as non-statutory closed shops (which are subject to scrutiny by the unfair labour practice remedy). Furthermore, the section may threaten existing collective bargaining arrangements in terms of which industrial agreements are extended to non-parties.

In order to protect the status quo (which is under review by the NMC) we would suggest the addition of the limitations clause set out in par 8 below.

(5) Access to Court (Section 18)

We would suggest that this section be amended to read:

'Every person shall have the right to have legal claims determined by a court of law or an independent and impartial tribunal'.

Economic disputes, ie disputes over wages and working conditions are not readily justiciable. On the contrary, our systems of labour law assume that disputes of interest will be determined by a process of bargaining supported by a recourse to economic power. The current section 18 undermines an employer's freedom to

-3-

implement unilaterally its employment proposals on wages and working conditions in the event of a bargaining impasse, and a union's freedom to strike in support of a better deal.

In any event, the non-judicial arbitration of both economic and rights disputes is a well established feature of our present industrial relations dispensation. With respect to the adjudication of rights disputes, it should be noted that the industrial court is not a court of law.

The proposed section may have financial implications for the State in respect of legal representation.

(6) Economic Activity (Section 23)

This section may have a very significant impact on labour and employment relations. The NMC would recommend that it be deleted, alternatively that it be qualified so as to neutralize any potential impact on labour or employment relations.

(7) Labour Relations (Section 24)

Noting that the right to strike has not been unequivocally established in the labour jurisprudence the rights contained in this section are not unqualified. The NMC accordingly suggests that the rights contained in section 24 should be qualified by the phrase "according to the law" or "as accorded by law" so that it is clear that the rights emanate from the statutes only, eg the Labour Relations Act or similar legislation.

(8) General limitations subsection

We propose that the following limitations clause be introduced to protect those provisions of the existing law regulating key labour and employment matters:

"The provisions of a law in force at the commencement of the Bill of Rights promoting fair employment practices, orderly and equitable collective bargaining and regulating of industrial action shall remain in full force and effect until repealed or amended by the legislature, after the legislation has been considered by the relevant tripartite body, eg the National Manpower Commission or the National Economic Forum".

NOTE: The term "industrial action" is not defined in the Labour Relations Act (LRA) or similar legislation. From a technical point of view it might be thought necessary to use the LRA wording in a Bill of Rights, ie "strikes and lock-outs" instead of "industrial action".