

MLSS Stakeholder Meeting on Casualisation Presentation by the JCTR - 15th November 2006

Who is the JCTR?

- Faith based organisation – research, education & advocacy – promoting dignity of human being
- *Basic Needs Basket* – research on cost of essential needs – used in wage negotiations
- BNB has stirred great debate in Zambia on the wage issue – Are just wages feasible in Zambia today? Is BNB out of touch with reality? Is the BNB causing unemployment?
- In advocating for just wages, we take a balanced position: All employers should strive to pay above the total cost of basic needs. All wages should at least exceed the cost of basic food items, with exceptions justifiable for some small and new businesses – progressive realisation
- JCTR has just launched a Policy Brief on Minimum Wages, Casualisation, Terminal Benefits - the 3 issues are so interconnected that they must be examined together

What is casualisation?

- Re-hiring of one casual employee or multiple casual employees on contracts less than six months to fill a position that is *permanent in nature* – ongoing over years of time

Who is a legal casual employee?

- Employment Act: a legal casual employee is a worker engaged for a period less than six months and who is paid at the end of each day
- ZRA Act: a legal casual employee is any employee whose payment period is less than 5 days
- Casual employees fill an important role in society (i.e., piecework, jobs of fixed / short duration)
- The Employment Act only sets out two other categories of workers: workers on Oral Contracts (Temporary Employees) and workers on Written Contracts (contracts can be of fixed duration or open-ended) – all 3 employee categories are legally guaranteed certain wages & benefits

Why is casualisation a problem?

- Casualisation is a problem because under it, long-term employment is remunerated as if it is casual employment – In other words Permanent Employees are paid as if they are Casuals
- In Labour Laws, Casual Employee is guaranteed very little – not much more than hourly wage
- Previously under the Minimum Wages and Conditions of Employment Act, Casual Employees were excluded from the Act – not guaranteed any minimum wages, allowances, benefits
- It appears that Casual Employees now qualify under Statutory Instruments (SIs) 56 and 57 – explicitly for Shop Workers and implicitly for General Workers – What does this mean?
- **Basic Pay:** Casual Employees are at least guaranteed an hourly wage equivalent to the minimums set out in categories of wage table – range between K1,378 and K4,308 per hour
- **Allowances:** SIs are silent – JCTR argues that casual employees are legally entitled to hourly equivalents of all allowances, including those for lunch, travel, housing, tools and machinery
- **Benefits:** SIs are silent – Some employers pay overtime to casual employees, very few employers provide paid sick leave, paid leave time, funeral benefits – JCTR also argues that a casual employee legally qualifies for some equivalent fraction of these provisions as well
- **NAPSA:** NAPSA Act is silent over casuals – some employers make contributions, some do not
- **Taxes:** ZRA charges tax on all daily earnings over K10,520 (at 30%) – part-time casual employees earn monthly wages below the Tax Exemption Threshold (K320,000), yet still pay tax
- **Job Security:** Employers can release a casual employee without warning, without penalty
- **Freedom of Negotiation** – Casual Employees are free to join union, but too prone to intimidation
- In the JCTR Policy Brief, there is a powerful case example explaining these issues

Possible motivating factors contributing to the casualisation of labour (3 possible causes):

- 1) Lack of clarity and modernity in the Labour Laws concerning legal employee categories:
 - Only 3 labour categories to cater for so many types of employees: casual employees, temporary employees, employees with contracts of fixed duration, employees with open-ended contracts, employees paid for work done and not for duration of work, part-time employees, employees paid hourly wages and employees paid monthly salaries, etc.
 - Confusion over legal employee categories is one cause but probably not the major cause

- 2) Excessive demands in the Labour Laws for employers to pay terminal benefits to employees
 - This rationale has become widely quoted and accepted as a major cause of casualisation, with many employers arguing they can't afford to hire permanent, pensionable employees
 - But looking more closely at current provisions in the Labour Laws, it is actually very difficult for an employee to qualify for any terminal benefit
 - It is only a misconception that all employees legally qualify for a terminal benefit!
 - Either an employee must be made *redundant* or legally *retire*: 1) to be made redundant is to have a contract terminated before it expires – an employee is not redundant if termination of employment coincides with expiration of a contract 2) to retire is to reach the age of 55 after 10 years of service or to work 25 years with a single employer (and qualify under SIs 56 & 57)
 - In the modern labour market, how many employees are hired on permanent basis, with open-ended contracts? Many new employees are hired on 1, 3, 5 year contracts...
 - Yes, some employers may be unable to pay retirement benefits, but at the same time there is no legal obligation for employers to hire employees under permanent, pensionable conditions
 - Employers don't have to resort to casual labour to avoid paying benefits; other options exist
- 3) Loopholes exist in the Labour Laws that allow employers to hire casual employees continuously to fill permanent positions:
 - It is the position of the JCTR that the most serious cases of casualisation are deliberate actions by employers to exploit the Labour Laws and minimise investment in employees
 - Casualisation is not limited only to small, resource-constrained employers – it is prominent in the mines, in the industrial sector, in the retail sector, in the hotel industry, etc.
 - And with a Ministry of Labour and Social Security that is resource-constrained to adequately monitor employers nationwide, employers are able to exploit the loophole

JCTR Recommendations on the Best Way Forward:

- 1) Permanent positions must not be casualised, or in other words filled with casual employees
 - The loophole that allows casualisation must be closed by adding to the Employment Act a well-defined legal phrase such as: "the re-hiring of casual employees to fill a position that is permanent in nature is prohibited"
 - Casual employees are legally guaranteed nothing more than their basic pay, they are prone to intimidation and abuse and they do not belong in jobs of permanent nature
 - Casual work must be restricted to short-term projects / jobs such as piecework, etc.
- 2) Employee categories under the Employment Act must be refined to suit the modern labour market
 - Once casualisation is clearly prohibited, employers will likely hire the same labour on short-term contracts – contract employment is not bad *so long as benefits are clear and adequate*
 - Again, under the outdated definitions of employee categories in the Employment Act and the exclusion of many workers from the Minimum Wages and Conditions of Employment Act, contract employees may still fail to qualify for many benefits, especially terminal benefits
 - Contracts should at least be divided into 4 clear categories, with graduated legal entitlements:
 - 1) Casual
 - 2) Temporary
 - 3) Fixed-Contract Employee
 - 4) Open Ended-Contract Employee
- 3) All employee categories must be legally guaranteed acceptable minimums, including minimum basic pay, allowances, paid leave time, sick leave, maternity leave, terminal benefits, etc.
 - This would require serious revision of the Minimum Wages and Conditions of Employment Act
 - A new provision would need to be added to guarantee a terminal benefit to any employee who leaves employment before reaching legal retirement (2 months per year of service)
 - When and as if NAPSA proves itself as viable, it is possible to remove the legal obligation for employers to pay 3 month basic pay per year of service to all retiring employees

Conclusion: Towards a Just, Modern Labour Market

- 1) Prohibit Casualisation – close the loophole in the Employment Act
- 2) Clearly Define Employee Categories, including for Fixed-Contract Employment
- 3) Set minimum acceptable pay, allowances and benefits for all categories – also limit excluded employees under the Minimum Wages and Conditions of Employment Act
- 4) Legalise Mandatory Terminal Benefits (e.g., at least 2 months per year of service) for all employees who leave employment before retirement
- 5) As and only if NAPSA proves its viability, remove the legal obligation for employers to pay full terminal benefits to all employees who legally retire