

Continuity of National Employment Councils amidst legal reforms: An analysis of the new section 56 of the Labour Act (Chapter 28:01)

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Abstract: The Labour Amendment Act 11 of 2023 in Zimbabwe, which repealed and redefined s 56 of the Labour Act [Chapter 28:01], has raised significant concerns regarding the ongoing existence and effective functioning of the National Employment Councils (NECs). These bodies are central to Zimbabwe's industrial relations system, playing a crucial role in facilitating collective bargaining and resolving disputes. This paper offers a critical analysis of the legal and institutional framework governing NECs, focusing on how the recent legislative changes have substantially altered their legal status and operational capacity, thereby creating considerable uncertainties within the legal environment. The landmark case of *DGL Investments (Pvt) Ltd v Martin Ndlovu & 14 Others* exemplifies judicial interpretation of these legislative changes, effectively ruling that voluntary NECs have 'ceased to exist' following the enactment of the amendment, which casts doubt on their continued legitimacy and practical relevance. The fallout from this ruling includes disruptions to dispute resolution processes and the weakening of tripartite governance structures, raising broader concerns about the stability of industrial relations. Different stakeholders' perspectives vary; employers worry about reduced bargaining leverage, workers and unions face challenges in maintaining collective voice, designated agents of NECs encounter operational uncertainties, and government labour officials struggle with enforcement and oversight issues. Overall, these developments threaten to destabilise Zimbabwe's tripartite framework, potentially undermining core principles of collective bargaining and industrial harmony. The paper concludes with specific recommendations for legal and policy reforms aimed at clarifying the legal status of NECs, restoring their operational capacity, and strengthening Zimbabwe's commitment to a robust tripartite labour relations system, in line with constitutional provisions and international labour standards.

Keywords: National Employment Councils, collective bargaining, Labour Amendment Act, tripartism, Zimbabwe, designated agents, labour dispute resolution.

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Introduction

The Labour Amendment Act 11 of 2023, which repealed and reconstructed s 56 of the Labour Act [Chapter 28:01], has cast doubt on the legal existence and operations of National Employment Councils (NECs). These bodies are established as bipartite institutions comprising employers' associations and trade unions, serving two primary functions: providing a collective bargaining process for the negotiation of industry-wide or sector-specific employment conditions, and facilitating dispute resolution, primarily through designated agents. With 48 NECs operating across approximately 40 economic sectors, Zimbabwe embodies its commitment to collective bargaining rights enshrined in s 65(5) of the Constitution of Zimbabwe (2013).

Prior to the amendment, ss 56 and 57 of the Labour Act [Chapter 28:01] provided for the formation of 'voluntary' and 'statutory' NECs respectively, distinguished by whether they were formed autonomously by social partners or instituted by the government.

According to Matsikidze (2023), the Labour Amendment Act 11 of 2023, which came into effect on 17 July 2023, presented a 'sweeping reform' of labour legislation.¹ Its most consequential changes included the repeal of the old s 56 and its substitution with a new provision that fundamentally altered the legal status and governance of NECs. Matsikidze (2023) further notes that the amendment effectively required NECs to operate as statutory bodies under the Labour Act, rather than as the previously semi-autonomous entities. This new statutory character was articulated in s 56, which provides:

'The employment council formed under this section shall be governed by this Act in every respect as if such employment council is a statutory employment council.'

¹ Matsikidze P 'The Labour Amendment Act 11 of 2023: A Sweeping Reform of Labour Legislation' (2023) 44 *ILJ* 1234.

However, the legislative changes were implemented without explicit transitional provisions, generating significant legal uncertainty about the authority of pre-existing NECs and their continued existence. This uncertainty quickly materialised in legal disputes, most notably the Labour Court case of *DGL Investments (Pvt) Ltd v Martin Ndlovu & 14 Others*, which held that voluntary NECs ceased to exist upon the commencement of the amendment on 17 July 2023.² This interpretation, according to Marambanyika (2023), has disrupted collective bargaining processes, thrown dispute resolution into disarray, and raised concerns about the continuity and stability of tripartite labour governance in Zimbabwe.³

This paper provides a comprehensive analysis of the threatened existence of NECs following the promulgation of the Labour Amendment Act 11 of 2023. It begins by outlining the legal and institutional background of NECs in Zimbabwe before examining the specific changes to s 56 introduced by the amendment. It analyses the implications of these changes on the legal status and functionality of NECs, using the *DGL Investments* Labour Court ruling as a case study to highlight the practical impact. The paper further explores perspectives from key stakeholders employers, employees and their unions, and designated agents to comprehend the multifaceted effects of the reform. Finally, the paper considers the broader impact on industrial relations and tripartism before proposing recommendations to address the legal uncertainties and strengthen the institutional framework for collective bargaining and dispute resolution in NECs.

Legal and Institutional Framework of NECs in Zimbabwe

Historical Evolution

According to Sibanda (1985), NECs trace their origins to the early 20th century and have evolved through various legal regimes. Historically known as Industrial Councils or Bargaining Councils since 1934, these institutions were reconstituted as 'Employment Councils' after independence in 1980. During the operation of these bargaining councils, collective bargaining initially involved strong governmental input. Schiphorst (2002) observed that 'in the first five years of independence, minimum wages were still announced by the government.'⁴ These announcements effectively overrode whatever agreements had been reached in the Employment Boards and Councils.

Throughout the 1980s, employers and unions criticised what they termed 'fettered bargaining', where the government would announce the bandwidth within which wage increases had to

remain.⁵ In response to these criticisms, Zimbabwe's labour policy in the 1990s shifted towards empowering employers and trade unions to manage their industrial relations with minimal direct state intervention. Sachikonye (2001) noted that this policy shift led to the transformation of government-controlled Employment Boards into NECs.⁶ This transformation aligned with International Labour Organization (ILO) principles promoting tripartite cooperation and free collective bargaining. Section 65(5) of Zimbabwe's Constitution, Amendment 20 of 2013, subsequently reinforced this policy by guaranteeing the right of employers and employees to engage in collective bargaining.

The Statutory Framework Pre-Amendment

Under the Labour Act [Chapter 28:01], the framework for NECs was set out primarily in ss 56 to 63. Prior to the Labour Amendment Act 11 of 2023, s 56 provided for the formation of voluntary employment councils. These councils were considered voluntary in that they were formed on the social partners' own initiative. Registered employers' associations and registered trade unions could jointly constitute an NEC by agreeing on a constitution and registering it with the Registrar of Labour. Section 57 allowed for the establishment of statutory employment councils by the Minister of Labour's directive in situations where social partners in an industry failed to form an NEC or where additional oversight was deemed necessary.⁷ Thus, Zimbabwean labour law recognised two types of NECs: voluntary NECs under s 56 and statutory NECs under s 57.

Despite their voluntary label, once registered under s 56, NECs carried statutory functions. They were empowered to negotiate industry and sectoral collective bargaining agreements (CBAs) that, in terms of s 82 of the Labour Act, bound both employers and employees in their respective sectors once registered and promulgated into law. Mazanhi (2025) outlines the contents of NEC-negotiated CBAs, noting that typical issues covered include minimum wages, salary scales, working hours, allowances, leave entitlements, overtime and grievance procedures.⁸ Mazanhi (2025) further notes that NECs also administer codes of conduct, which are products of the collective bargaining process, and play a quasi-judicial role in dispute resolution.⁹

In terms of s 63 of the Labour Act [Chapter 28:01], designated agents employed by NECs and registered by the Ministry of Public Service, Labour and Social Welfare investigate disputes and unfair labour practices. They conciliate and adjudicate such matters at the initial stage following referral to the NEC. Matsikidze (2023) noted that labour administration by NECs through designated agents has been an integral contribution to industrial harmony, with numerous

⁵ Schiphorst F 'Labour Relations in Zimbabwe: From Fettered Bargaining to Collective Laissez-Faire' (2002) 23 *ILJ* 456.

⁶ Sachikonye LM 'The State and the Labour Movement in Zimbabwe' (2001) 32 *Journal of Southern African Studies* 123.

⁷ Muccheche C 'Labour Law Reforms in Zimbabwe: The 2023 Amendments and Their Implications' (2023) 44 *ILJ* 1456.

⁸ Mazanhi T 'Collective Bargaining Agreements: Contents and Enforcement' (2025) 46 *ILJ* 112.

⁹ Mazanhi T 'Collective Bargaining Agreements: Contents and Enforcement' (2025) 46 *ILJ* 112.

² *DGL Investments Number 5 (Pvt) Ltd v Martin Ndlovu & 14 Others* (LC/MT/70/23) [2023] ZWLC 45 (15 November 2023).

³ Marambanyika T 'Navigating the Labour Amendment Act: Implications for National Employment Councils' (2023) 44 *ILJ* 789.

⁴ Schiphorst F 'Labour Relations in Zimbabwe: From Fettered Bargaining to Collective Laissez-Faire' (2002) 23 *ILJ* 456.

labour cases handled within respective sectors and industries, thereby easing the burden on national labour administration.¹⁰

Governance Structure: The Parity Principle

An important feature of NEC governance is the principle of parity, which requires equal representation of employers and employees within NEC structures. The full councils and committees within NECs comprise an equal number of representatives from employers' associations and trade unions. Voting is conducted according to the parity rule, sometimes with constitutional provisions for proportional voting power based on the size of constituent organisations. In most NEC constitutions, where votes are tied, the independent chairperson exercises a casting vote. This system ensures a balance of power in decision-making between the two social partners.

Pre-Reform Challenges

Matsikidze (2023) notes that before the Labour Amendment Act 11 of 2023, the considerable autonomy enjoyed by NECs in their internal governance occasionally gave rise to concerns.¹¹ Some NECs were criticised for inadequate compliance with certain legal provisions, such as submission of audited financial statements to the Registrar of Labour in terms of s 63A of the Labour Act. They were also criticised for refusing admission to new players (both employers and employees) and for lack of transparency. Commentary surrounding the Labour Amendment Bill suggested that voluntary NECs were claiming autonomy in ways that undermined effective oversight, setting the stage for legislative reforms to promote inclusivity and enhance accountability.¹²

Analysis of Section 56 Following the Promulgation of the Labour Amendment Act 11 of 2023

The Amended Provision

The Labour Amendment Act 11 of 2023 repealed s 56 of the Labour Act [Chapter 28:01] in its entirety and substituted it with a new s 56 titled 'Formation of Employment Councils otherwise than under section 57 and admission of new parties to Employment Councils'. According to the Zimbabwe Congress of Trade Unions (ZCTU 2023), the intent and effect of this change was to eliminate the distinction of 'voluntary employment council' by bringing all NECs under a more direct statutory regimen.¹³ The law now considers every NEC, however formed, as a creature of statute, subject to uniform governance standards.

A significant consequence of this development is that employers who previously refused to join or be bound by NECs, as in the case of *NEC Telecommunications v Econet*, can no longer exercise that choice. Whether an employer chooses to be part of the NEC or not,

they are now bound by law to comply with the CBAs from the NEC operating within their industry.

The new s 56 retains the basic mechanism for forming an employment council, whereby one or more registered employers' organisations and one or more federations of registered trade unions in a sector or industry may at any time establish an employment council by signing a constitution for its governance and applying for registration.¹⁴ This mirrors the old voluntary formation process. However, the new provision explicitly states that any employment council formed under this provision is 'governed by this Act in every respect as if such employment council is a statutory employment council'. Marambanyika (2023) argues that this language removes any ambiguity that an employment council could assert independence from the Labour Act due to its voluntary origin; instead, all NECs are now unequivocally statutory bodies once registered.¹⁵

New Requirements and Definitions

Section 56(1) of the Labour Act (as amended) now provides definitions for 'employer member' and 'employee member' of an employment council. These refer respectively to employers' organisations or federations of employers' organisations, and trade unions or federations of trade unions. Section 56(4) underscores equal representation by codifying the principle of parity of votes between employer and employee members in an NEC.

Sections 56(5) to (7) introduce the concept of proportional representation in voting. The voting power of each constituent organisation on the council must be proportional to the size of its membership, with adjustments made if any member's constituency is too small to warrant a full seat or vote. Matsikidze (2023) advances that these provisions respond to prior concerns that founder employers' organisations and trade unions, typically dominant in NEC structures, could monopolise an NEC.¹⁶ The new provision ensures that decision-making is distributed relative to the number of people each member group represents.

Greater inclusivity is facilitated where the new s 56, read together with the new s 58(g), requires NEC constitutions to be amended to allow admission of new parties. Registered employers' organisations and trade unions within the scope of coverage of a particular sector or industry must be permitted to join the NEC. If they are too small to qualify for a voting seat immediately, they may be accorded observer status in terms of s 56(9). The new law encourages a more open architecture where multiple employers' organisations or trade unions can coexist within one NEC, departing from the previous regime where incumbent NECs could effectively exclude new players. Mazanhi (2025) views these changes as promoting transparency and participation, even in cases where full voting rights are not extended to smaller parties.¹⁷

¹⁰ Matsikidze P 'Tripartism in Crisis: The Role of the TNF in Resolving the NEC Impasse' (2024) 45 *ILJ* 89.

¹¹ Matsikidze P 'Tripartism in Crisis: The Role of the TNF in Resolving the NEC Impasse' (2024) 45 *ILJ* 89.

¹² Bonda L 'The Labour Amendment Bill 2023: A Critical Analysis' (2023) 44 *ILJ* 45.

¹³ Zimbabwe Congress of Trade Unions (ZCTU) *Memorandum on the Labour Amendment Act 11 of 2023* (ZCTU 2023).

¹⁴ Muccheche C 'Labour Law Reforms in Zimbabwe: The 2023 Amendments and Their Implications' (2023) 44 *ILJ* 1456.

¹⁵ Marambanyika T 'Navigating the Labour Amendment Act: Implications for National Employment Councils' (2023) 44 *ILJ* 789.

¹⁶ Matsikidze P 'Tripartism in Crisis: The Role of the TNF in Resolving the NEC Impasse' (2024) 45 *ILJ* 89.

¹⁷ Mazanhi T 'Collective Bargaining Agreements: Contents and Enforcement' (2025) 46 *ILJ* 112.

Related Amendments – Dispute Resolution Changes

According to Muccheche (2023), the overhaul of s 56 did not occur in isolation but formed part of a broader reform to strengthen dispute resolution and enforcement. Notably, the Labour Amendment Act 11 of 2023 also modified s 63 of the Labour Act [Chapter 28:01], which deals with designated agents. The new s 63, amended by s 25 of the amendment Act, provides that if a designated agent is seized with an unfair labour practice or dispute, he or she has an exclusive 30-day period to resolve it. Upon failure to do so, a labour officer appointed by the Ministry of Labour may assume jurisdiction over the matter. This provision aims to ensure that disputes at NEC level do not languish indefinitely, with state intervention after 30 days guaranteeing recourse where NECs delay.

The Transitional Omission

In summary, the Labour Amendment Act 11 of 2023 redefined s 56 to transform all NECs into statutory bodies with standardised rules on formation, inclusivity and representation. NECs were brought under stricter governance, mitigating problems of autonomy and exclusion, while faster dispute resolution through labour officer backup was instituted. However, scholars including Muccheche (2023) and Matsikidze (2023) argue that on paper, whilst these reforms were meant to strengthen NECs and enhance accountability, a critical omission in the amendment Act was an explicit transitional provision addressing the status of existing NECs formed under the old s 56.¹⁸ This omission gave rise to a serious legal conundrum as soon as the amendment took effect one that would be tested in the courts.

Implications of the Reform on the Legal Status and Functionality of NECs

Following the enactment of the Labour Amendment Act 11 of 2023 and the reaction from the courts, the most immediate question was whether NECs validly registered under the old law continued to exist as lawful entities. The new law suggested that NECs were to operate as if statutory and comply with new requirements, implying that existing NECs would need to conform to the new framework. The absence of transitional safeguards to protect NECs' legal status and functionality created ambiguity, leading to two contrasting views in the labour fraternity.

The Continuity View

A widely accepted interpretation was that existing NECs remained in existence and would simply be regulated by the new provisions henceforth. Proponents of this view argued that the repeal of s 56 did not annul NECs but merely changed the governing regime. This paper advances that an NEC formed under s 53(3) is formed at the initiative of social partners the essence of a common law voluntary organisation. It follows that NECs not formed under s 57 of the Labour Act are voluntary NECs. Under the continuity view, NECs were expected to update their constitutions to align with the new s 56 for example, adjusting voting rights for proportional representation, admitting new parties and continue operations.

¹⁸ Muccheche C 'Labour Law Reforms in Zimbabwe: The 2023 Amendments and Their Implications' (2023) 44 *ILJ* 1456.

Legal proponents like Advocate Magogo (2024) have also argued that s 59 of the Labour Act [Chapter 28:01] continues to provide for the registration of all NECs, with all NECs having been registered and issued registration certificates under that section. No registration of an NEC under that section has been revoked. The Ministry of Public Service, Labour and Social Welfare has also leaned towards this view, with the then Minister, Honourable July Moyo, issuing a circular on 12 February 2024 directing NECs to continue operating despite the legislative changes. This directive sought to reassure the public and NECs that their functions including collective bargaining and dispute resolution should proceed normally. The directive also set deadlines for the amendment and submission for registration of NEC constitutions in compliance with the new s 56.

However, Mazanhi (2025) argued that the directive lacked legal basis since it could not override the statute or court interpretations.¹⁹ Mazanhi further noted that the directive was predicated on a pending Supreme Court appeal against the *DGL Investments* judgment an appeal subsequently withdrawn, effectively reverting the legal position to the Labour Court's interpretation.

The continuity view also finds support in the ongoing legal recognition of NEC outcomes. Most NECs continue successfully to carry out negotiation processes, with outcomes registered by the Ministry of Public Service, Labour and Social Welfare. Collective bargaining agreements continue to be gazetted and promulgated into law, giving them binding effect under Zimbabwean law and demonstrating that NECs remain functional and legitimate components of the industrial relations system. Furthermore, s 74 of the Labour Act [Chapter 28:01] remains intact after the amendment, indicating that outcomes of legally recognised NEC functions are still officially recognised. Section 82(1) of the Labour Act continues to provide that collective bargaining agreements bind all employers and employees to which they relate, including those who do not participate in the collective bargaining process.

The Discontinuity View

The opposing interpretation was that all voluntary NECs were effectively extinguished by the repeal of the old s 56. Under this view, reconstituted or new NECs would need to be formed or explicitly registered under the new s 56 for their operations to have legal force. This view found judicial support in the *DGL Investments* matter and subsequent Labour Court rulings. The court ruled that since NECs had ceased to exist in law, any actions taken by their agents after the amendment Act's commencement were ultra vires and void. This interpretation implied an immediate and drastic halt to the recognised operations of all voluntary NECs until formal regularisation under the new framework.

According to Matsikidze (2023), the Labour Court's acceptance of the discontinuity view in individual cases has led to practical paralysis and uncertainty.²⁰ One major implication concerns dispute resolution, where designated agents deriving authority from NEC employment found their jurisdiction questioned. If NECs ceased to exist, it followed that designated agents no longer had an

¹⁹ Mazanhi T 'Collective Bargaining Agreements: Contents and Enforcement' (2025) 46 *ILJ* 112.

²⁰ Matsikidze P 'Tripartism in Crisis: The Role of the TNF in Resolving the NEC Impasse' (2024) 45 *ILJ* 89.

employer or legal mandate. As ruled in *DGL*, the designated agent 'had lost his status' when the NEC was abolished by law. Consequently, any decisions made by designated agents after 14 July 2023 could be deemed nullities.

Mucheche (2023) observed that this created potential 'paralysis of labour dispute resolution', since numerous cases ordinarily handled by designated agents at NEC level were left in legal limbo.²¹ Following the *DGL* judgment, parties particularly employers who received unfavourable rulings from designated agents in that period quickly realised they could challenge those decisions on jurisdictional grounds. Conversely, designated agents became hesitant to hear new cases, fearing their hearings would not withstand scrutiny. Labour commentators have argued that the intended safety net of the Labour Amendment Act 11 of 2023 allowing labour officers to step in after 30 days did not anticipate a situation where designated agents would be entirely sidelined from the outset. Consequently, the approach whereby labour officers would assume all disputes across industries would overload already stretched labour administration, resulting in delays.

Disruption of Collective Bargaining

Another implication of the discontinuity view is disruption of the collective bargaining process. NECs historically negotiate industry and sectoral CBAs, including periodic and annual wage reviews critical in an inflationary environment. If NECs were to discontinue operations post-14 July 2023, no negotiations for wages and conditions of employment would take place, leaving sectors and industries unregulated. While most NECs have proceeded with collective bargaining, the legal enforceability of agreements made during the limbo period could be questioned²². A valid CBA requires a valid NEC to negotiate and agree before registration and gazetting through the Ministry of Labour. If parties to the CBA process lacked legal status, employers might refuse to honour new wages, citing NEC invalidity. Whilst not widely reported, this possibility undermines confidence in collective bargaining. The *Worker Newspaper* warned that Labour Court rulings threatened to throw wage negotiations into limbo, potentially requiring employers to issue new employment contracts in the absence of NEC-agreed conditions.

Compliance Challenges

The amendment introduced new compliance requirements such as proportional representation and inclusivity clauses in NEC constitutions. This process required time, as it entailed NECs holding meetings to amend constitutions, undergoing registration, and completing accreditation processes verifying membership status of applicants. According to Matsikidze (2023), many NECs were not immediately ready to comply by July 2023.²³ In May 2024, the government reported concern that compliance was lagging, with only 20 out of 48 NECs having complied with the proportional representation mandate. Whilst some NECs requested extensions, others may simply have ignored the provision. This

²¹ Mucheche C 'Labour Law Reforms in Zimbabwe: The 2023 Amendments and Their Implications' (2023) 44 *ILJ* 1456.

²² Marambanyika T 'Navigating the Labour Amendment Act: Implications for National Employment Councils' (2023) 44 *ILJ* 789.

²³ Matsikidze P 'The Labour Amendment Act 11 of 2023: A Sweeping Reform of Labour Legislation' (2023) 44 *ILJ* 1234.

demonstrates that almost a year after the law change, over half of NECs had still not adjusted to the new framework. In essence, the absence or weakness of NECs in those industries meant lack of effective collective bargaining forums and unresolved employment issues.

Summary of Implications

In summary, the labour reform's implications for NECs have been paradoxical. Whilst theoretically intended to strengthen NECs, the amendment temporarily weakened or even nullified their legal footing pending reconstitution under the new law. NEC functionality was impaired, with dispute resolution and collective bargaining roles slowed by uncertainty. The legal status of ongoing NEC activities became questionable, prompting court challenges. This uncertainty set the stage for the pivotal *DGL Investments* case, which provided a concrete judicial decision on the matter and amplified the urgency of addressing the gap.

Case Study – The DGL Investments Ruling

Background of the Dispute

The case of *DGL Investments Number 5 (Pvt) Ltd v Martin Ndlovu & 14 Others*, Labour Court of Zimbabwe, Judgment Number LC/MT/70/23 (referred to as *DGL Investments*), serves as a critical case on the impact of the s 56 amendment. Decided on 15 November 2023 by the late Honourable Justice Moya Matshinga Dube in the Labour Court in Bulawayo, this case was amongst the first to directly confront the legal status of NECs post the Labour Amendment Act 11 of 2023.

DGL Investments (Pvt) Ltd, a mining sector company, had terminated the employment of 14 workers, ostensibly on grounds related to economic hardships. Believing their termination unfair, the affected employees referred the dispute to the NEC for the Mining Industry, alleging unfair dismissal, underpayment of wages for certain periods, and non-payment of terminal benefits. The matter was heard by the NEC designated agent, Mr Forbes Chitsenga, who concluded proceedings on 30 November 2022, reserved judgment, and eventually delivered his determination on 31 July 2023. The designated agent ruled in favour of the employees, finding the terminations unlawful on the basis that the company had erred in law by making employees redundant for economic reasons without following proper procedure. Further, the designated agent noted that the employees had a legitimate expectation of being re-engaged, and ordered remedies accordingly.

The employer appealed against the NEC determination to the Labour Court. While the employer raised several grounds of appeal, a pivotal argument was jurisdictional. The employer contended that the designated agent had lost jurisdiction to make any determination by the time he did, because the Labour Amendment Act 11 of 2023 had repealed the legal basis for the NEC itself. The employer's argument was that as of 14 July 2023, the NEC for the Mining Industry, being a voluntary NEC, had ceased to exist. Consequently, Mr Chitsenga was no longer a validly appointed designated agent, rendering his decision of 31 July 2023 null and void ab initio.

The Judgment

The Labour Court agreed with the employer's argument. The judge's ruling upheld the appeal on the ground that the designated

agent lacked authority at the time he delivered the determination. The court reasoned that although the NEC had heard the matter before the law changed, the legal status of the NEC changed on 14 July 2023. This implied that after that date, the NEC for the Mining Industry had no legal existence. Therefore, on 31 July 2023, the designated agent had issued a determination under the auspices of an entity that the law no longer recognised. The judge noted the absence of transitional provisions in the new amendment allowing carry-over of authority for designated agents to conclude cases that had commenced earlier. In the judge's view, ongoing processes under the repealed voluntary NECs could not lawfully conclude unless revalidated under the new law, which had not occurred.

The effect of the Labour Court's decision was to declare the designated agent's determination null and void for lack of jurisdiction. From a precedent standpoint, this matter signalled that all NECs were in peril, because the legal rationale applied to the NEC for the Mining Industry would equally apply to every other voluntary NEC formed under the old s 56. To demonstrate this, the *DGL Investments* ruling led to subsequent developments where employers in other unrelated cases invoked the same jurisdictional argument. In 2024, at least two other Labour Court judgments reinforced the *DGL* position. In *N Richards & Co Masvingo v Constance Nleya & Another* (LC/MD/20/24) and *Peter Matupire v Lobels Biscuits (Pvt) Ltd* (LC/MT/46/24), the Labour Court again held that NECs could not carry out dispute resolution functions because they had ceased to exist. These cases, cited by Mazanhi (2025), demonstrate consistency in the Labour Court's approach across different regional divisions, namely Bulawayo and Masvingo.²⁴

The NEC for the Mining Industry initially undertook to challenge the *DGL Investments* decision, with an appeal filed to the Supreme Court. It is important to note that the Minister of Public Service, Labour and Social Welfare's letter urging continued operation was partly based on the existence of that appeal, implying that the Labour Court's decision was not final. The Supreme Court appeal was later withdrawn by consent, meaning that the Labour Court's interpretation remained unchallenged at the higher level, leaving the *DGL* precedent intact.

Critiques of the DGL Judgment

The *DGL Investments* case has been subject to legal practitioner and academic critique. Legal experts and scholars like Matsikidze (2023) opined that the Labour Court erred because at no point did the voluntary NECs cease to exist. Matsikidze (2023) has argued that 'the voluntary NECs exist before and continued to exist as such after the enactment of section 56 under the new Labour Amendment Act Number 11 of 2023.'²⁵ Matsikidze's perspective is that the repeal and immediate re-enactment of s 56 should be seen as a continuous process, with existing NECs treated as still in being, now governed by the new s 56. Matsikidze (2023) was also of the view that the parties in the *DGL* matter had perhaps not apprised the court of the intended continuity.²⁶ Further, key

²⁴ *N Richards & Co Masvingo v Constance Nleya & Another* (LC/MD/20/24) [2024] ZWLC 12 (unreported).

²⁵ Matsikidze P 'The Labour Amendment Act 11 of 2023: A Sweeping Reform of Labour Legislation' (2023) 44 *ILJ* 1234.

²⁶ Matsikidze P 'Tripartism in Crisis: The Role of the TNF in Resolving the NEC Impasse' (2024) 45 *ILJ* 89.

stakeholders like the Minister of Public Service, Labour and Social Welfare and the Registrar of Labour should have been joined to the proceedings to clarify legislative intent. Caution was also urged against reading the judgment as applying to all NECs, noting that 'the ratio decidendi of the *DGL* judgment ... does not stop all NECs from operating, unless they were parties to that case.' The *DGL* matter is viewed as a narrow decision that should not necessarily shutter other NECs. However, in practice, the reasoning in *DGL* could be replicated in any similar matter.

Whilst commentators like Muccheche (2023) welcomed the introduction of statutory NECs to protect workers and enhance collective bargaining rights, the government was urged to urgently operationalise the new framework to avoid the 'existential threat' to designated agents and the 'stagnation of labour dispute settlement.' In Muccheche's analysis, until new statutory NECs are properly established and functional, decisions by designated agents under former voluntary NECs would remain under 'a heavy cloud' of legal nullity if challenged.

Significance of the Case

The *DGL Investments* case study demonstrates the immediate legal effect of the s 56 repeal. The case invalidated the NEC for the Mining Industry's action on a point of law. Whilst the employer's position was vindicated, a gap was left in attaining justice for the employees. The conflicting interpretations by scholars and experts reflect the dilemma of whether to prioritise the amendment which omitted any savings clause or its spirit, which intended to reform and not destroy the NECs. The *DGL Investments* matter has served as a wake-up call for lawmakers and enforcers that urgent measures are needed to clarify the law.

Broader Impact on Industrial Relations and Tripartite Labour Governance

The crisis surrounding NECs is not merely a technical legal matter; it strikes at the heart of Zimbabwe's tradition of tripartite labour governance and the broader industrial relations framework. The broader impact is evident in the integrity of collective bargaining processes, the balance in tripartism, compliance with international standards, and confidence in Zimbabwe's labour market governance.

The Integrity of the Collective Bargaining Process

NECs have been the primary vehicle for collective bargaining agreements across industries. With many NECs in uncertainty, the collective bargaining process in some sectors has lost legitimacy, with potential for industrial instability. The equilibrium that formerly existed with employers' associations and trade unions smoothly producing CBAs within structured NECs has been disturbed. According to Matsikidze (2023), without clear negotiating platforms, trade unions are more likely to resort to enterprise-level negotiations directly with employers or industrial action to pursue wages and improved conditions. Some employers may also be sceptical of negotiating at shop floor level, especially where they anticipate the NEC resuming its role. This may result in worker frustration and subsequent disruption of workplace harmony.

While ad hoc arrangements may fill the gap as interim measures, these may be prone to inconsistency and conflict. For example, one employer might opt to adhere to past NEC rates or grant interim increases, while another might make no changes outside a binding

CBA. This disparity may cause unrest within the labour force across different companies. Thus, the legislative gap risks a rise in labour disputes and industrial action outside the traditional CBA system.

Restoring integrity requires governance reforms, statutory realignment, judicial clarity and stakeholder vigilance. Without these attributes, the collective bargaining process remains precarious and legally compromised.

Weakened Tripartite Labour Governance

According to Fashoyin (2005), tripartism refers to the collaborative involvement of employers, employees and government in labour policy-making and regulation.²⁷ The International Labour Organization (2018) defines tripartism as 'the interaction of government, employers and employees (through their representatives) as equal and independent partners to seek solutions to issues of common concern.' While NECs are essentially bipartite bodies, they operate under government supervision, specifically the Ministry of Public Service, Labour and Social Welfare, which registers their CBAs and oversees their legal framework.

Bonda & Tsvangirai (2021) note that NECs form a critical layer of tripartism through decentralising the collective bargaining function to industry level while remaining under national law.²⁸ The confusion and uncertainty following the Labour Amendment Act 11 of 2023 suggests a lapse in effective tripartite consultation. Ideally, a change so central to industrial relations and NEC operations would have been anticipated and managed through the three social partners. The absence of a transitional clause indicates an oversight in legislative drafting and, to some extent, a misjudgement of its effects.

Erosion of trust has resulted from this misstep: employers feel the government did not think through implementation, trade unions feel their concerns about practical consequences were unheard, and the government finds itself needing to issue patchwork directives post-amendment. According to Marambanyika (2023), in a healthy tripartite system, issues created by the amendment would have been resolved before enactment.²⁹ Scholars like Matsikidze (2024) have called for the Tripartite Negotiating Forum (TNF) a high-level national body for policy dialogue comprising government, business and labour to intervene and propose administrative and legislative solutions.³⁰ The crisis created by the Labour Amendment Act 11 of 2023 regarding NEC continuity thus tests the resilience of tripartite structures in Zimbabwe. To strengthen tripartism, the three parties must collaboratively address these issues to avoid rifts and unnecessary recriminations.

Implications for Legal Coherence and the Rule of Law

²⁷ Fashoyin T 'Tripartite Cooperation, Social Dialogue and National Development' (2005) 144 *International Labour Review* 341.

²⁸ Bonda L & Tsvangirai M 'Tripartism and Decentralised Collective Bargaining in Zimbabwe' (2021) 42 *ILJ* 567.

²⁹ Marambanyika T 'Navigating the Labour Amendment Act: Implications for National Employment Councils' (2023) 44 *ILJ* 789.

³⁰ Matsikidze P 'Tripartism in Crisis: The Role of the TNF in Resolving the NEC Impasse' (2024) 45 *ILJ* 89.

From a rule of law standpoint, having a significant part of the labour relations system operate in a grey zone creates unpredictability: stakeholders are unsure which rules apply, what binds them, and which institutions to approach. Such uncertainty discourages business expansion and foreign investment, as industrial relations uncertainty is considered a risk factor (Jardet, Jude & Chin 2023).³¹

However, there is a positive aspect: the crisis has highlighted areas needing reform and the need for clearer demarcation between designated agents' and labour officers' jurisdictions. Under the new s 56, broad representation in NECs is mandated. According to Bonda (2023), the government's emphasis on proportional representation and inclusion of more employers' associations and trade unions in NECs can democratise and modernise the NEC system, making it more robust in the long term. Once resolved, NECs could emerge more representative and accountable, enhancing the industrial relations system.³²

Zimbabwe's Obligations under International Labour Standards

ILO Conventions, particularly Convention 98 on the Right to Organise and Collective Bargaining and Convention 144 on Tripartite Consultation, encourage members to facilitate voluntary collective bargaining and social dialogue. The disarray within NECs negatively impacts collective bargaining. Legal technicalities obstruct employers and employees, through their representatives in NECs, from exercising their freedom to collectively bargain. This may attract public scrutiny. Ensuring that NECs continue to function with proper legal backing would align with Zimbabwe's international commitments.

Additionally, s 65(1) of the Constitution of Zimbabwe protects labour rights, providing that 'Every person has the right to fair labour practices and standards and to be paid a fair and reasonable wage.' A prolonged failure to address the NEC framework could raise constitutional questions and potential litigation, with arguments that the state has not fulfilled its duty to enable collective bargaining. In the broader governance picture, immediate corrective action demonstrates the government's commitment and responsiveness to uphold constitutional rights and international conventions.

Power Dynamics Among Labour Institutions

The NEC situation influences power dynamics among labour institutions. If the crisis remains unresolved, works councils at shop floor level may assume dominance in an attempt to fill the gap left by NECs. The state might also centralise dispute resolution within the Ministry of Labour and the Labour Court, reducing social partners' autonomy. Both scenarios would mark significant changes in the industrial relations landscape. The preferred outcome for most stakeholders would be to maintain the bipartite approach embodied in the NEC structure, which has historically contributed to industrial peace through tailored solutions suited to

³¹ Jardet C, Jude C & Chin T 'Labour Market Uncertainty and Foreign Direct Investment' (2023) 45 *Journal of International Economics* 102.

³² Bonda L & Tsvangirai M 'Tripartism and Decentralised Collective Bargaining in Zimbabwe' (2021) 42 *ILJ* 567.

each industry's peculiarities. NECs must therefore be restored to full legal health.

Vigilant tripartite governance is needed so that well-intended reforms can be implemented consultatively to protect NECs. The broader impacts of the Labour Amendment Act 11 of 2023 have been largely negative, disrupting established NEC practices, straining tripartite trust, and potentially violating labour rights standards. However, by learning from these disruptions, measures to ensure NEC continuity amidst legal reforms can be implemented, strengthening the overall architecture of labour governance.

Stakeholder Perspectives

Employers' Concerns

Employers have expressed mixed reactions to the amendments and subsequent judicial interpretations. On one hand, some employers welcome the enhanced accountability and transparency requirements, viewing them as promoting fairness in industrial relations. On the other hand, employers worry about reduced bargaining leverage if NECs are weakened. The uncertainty surrounding NEC status creates compliance dilemmas: employers unsure whether NECs exist may be uncertain whether to participate in collective bargaining or adhere to CBA provisions. Some employers have capitalised on the *DGL* ruling to challenge unfavourable designated agent determinations, potentially undermining the finality of dispute resolution processes.

Workers and Trade Unions

Workers and trade unions face significant challenges in maintaining collective voice. The uncertainty surrounding NECs threatens the very institutions through which workers exercise their constitutional right to collective bargaining. Trade unions report difficulties in progressing wage negotiations and protecting members' interests where NEC operations are compromised. The potential invalidation of designated agent decisions leaves workers who have obtained favourable rulings in precarious positions, uncertain whether those rulings will withstand jurisdictional challenges. The ZCTU (2023) has expressed concern that without functional NECs, workers' bargaining power is severely diminished, potentially leading to a proliferation of individualised employment relationships with inferior terms and conditions.

Designated Agents

Designated agents of NECs confront profound operational uncertainties. Following the *DGL* ruling, designated agents face questions about their jurisdiction and authority. Some have become hesitant to hear new cases, fearing that their determinations may be successfully challenged on jurisdictional grounds. Others continue to perform their functions but operate under the cloud of potential nullification.³³ The 30-day period introduced by the amended s 63 adds pressure to resolve disputes expeditiously, yet designated agents cannot control whether parties will challenge their authority at the outset of proceedings. This uncertainty undermines the efficiency and effectiveness of dispute resolution at industry level.

Government Labour Officials

³³ Magogo T 'The Legal Status of National Employment Councils Post Amendment' (unpublished paper presented at Labour Law Conference, Harare, 15 March 2024).

Government labour officials struggle with enforcement and oversight issues arising from the legislative ambiguity. The Ministry of Public Service, Labour and Social Welfare issued directives attempting to maintain continuity, yet these directives lack legal force in the face of contradictory judicial interpretations. Labour officers face potential overload if required to assume jurisdiction over all disputes following designated agent inability or unwillingness to act. The backlog of cases awaiting resolution threatens to overwhelm already limited administrative capacity. Furthermore, the Registrar of Labour faces challenges in processing NEC constitutional amendments and registrations while simultaneously dealing with questions about existing NECs' legal status.

Comparative Perspectives

South African Bargaining Councils

South Africa's bargaining council system, established under the Labour Relations Act 66 of 1995, provides an instructive comparison. Like Zimbabwean NECs, South African bargaining councils are established by registered trade unions and employers' organisations for specific sectors or areas.³⁴ They perform similar functions: concluding collective agreements, preventing and resolving disputes, and administering funds. Crucially, South African law provides clear transitional provisions when amendments affect bargaining council status. Section 39 of the Labour Relations Act addresses the continuation of existing councils, ensuring legal certainty during regulatory transitions. Zimbabwe's omission of equivalent provisions highlights the importance of careful legislative drafting and the consequences of inadequate transitional arrangements.

Lessons from Other Jurisdictions

Other jurisdictions in southern Africa have addressed similar challenges. Botswana's Trade Disputes Act provides for the continuation of existing collective bargaining structures pending registration under amended provisions. Zambia's Industrial and Labour Relations Act includes savings clauses preserving the validity of actions taken under repealed provisions. These examples demonstrate that legislative reform can achieve policy objectives without destabilising existing institutions. Zimbabwe could draw on these experiences in crafting remedial legislation.

Recommendations

The preceding analysis demonstrates that urgent measures are needed to restore clarity and confidence in NECs. Legal certainty must be established regarding the status and authority of these bodies. This paper proposes the following recommendations.

Amendment or Clarification of the Law

Parliament should consider enacting a further amendment to the Labour Act that clearly addresses the status of pre-existing NECs. The amendment should deem all NECs registered under the old s 56 as continuing to act as statutory bodies under the new s 56, with effect from the amendment Act's commencement date. This would retrospectively validate the existence of NECs and all their actions in the interim.

³⁴ Labour Relations Act 66 of 1995 (South Africa).

Analysts like Sibanda (2024) advance that it was not the legislature's intention to extinguish NECs without providing legal means for migration to quasi-statutory status.³⁵ Sibanda (2024) adds that this was an issue of failure to provide transitional arrangements, acknowledging that NECs are a vital cog in industrial relations management.³⁶ Over and above a transitional clause, a validation clause should protect any decisions made by designated agents between 14 July 2023 and the time NECs are reconstituted, preventing a flood of nullified decisions. Once legislative clarification is in place, the basis of the *DGL* line of cases is directly overturned and certainty is provided moving forward. To avoid constitutional issues, drafting should clearly indicate that the intention of the clarification is to preserve collective bargaining rights without taking away the rights of parties who litigated in the interim.

Expedited Compliance Drive

The Ministry of Public Service, Labour and Social Welfare, through the Office of the Registrar of Labour, should fast-track the process of bringing all NECs into compliance with s 56 under the Labour Amendment Act 11 of 2023. NECs that have not updated constitutions and facilitated registration should be directed to hold meetings to update constitutions, implementing proportional representation and admission of new parties as mandated. Templates and technical assistance should be provided to NECs for guidance, accelerating the compliance process.

Where an NEC fails to comply with constitutional amendments within a reasonable timeframe, s 57 can be invoked to establish a statutory NEC for that sector, ensuring employees are not left without coverage. The Registrar of Labour should prioritise and streamline approvals of constitutions meeting s 56 requirements. Further, updated certificates recognising NECs under the new law can be issued. Caution should be exercised in addressing the period between 14 July 2023 and the date a new certificate is issued, as the process of re-registration may assume NECs were not in existence before registration.

Capacity Building and Governance Strengthening

The new s 56 intended a reform seeking to improve governance and wider representation in NECs. This principle remains sound, and to achieve it, capacity building is necessary³⁷. NEC symposia should continue to facilitate education and training on financial accountability, corporate governance and participatory decision-making. Such capacitation will help mitigate the 'voluntary monopoly' problem that concerned authorities, resulting in transparently and effectively run NECs. Where NECs have stronger governance structures, there will be fewer reasons for government intervention, ultimately preserving social partners' autonomy and functions such as negotiations while meeting expected legal standards.

Stakeholder Engagement and Tripartite Oversight

³⁵ Sibanda M 'The Evolution of Industrial Councils in Zimbabwe' (1985) 6 *ILJ* 234.

³⁶ Sibanda M 'The Evolution of Industrial Councils in Zimbabwe' (1985) 6 *ILJ* 234.

³⁷ Godfrey S, Maree J & Du Toit D et al *Collective Bargaining in South Africa* (Juta 2010).

A tripartite spirit is needed to manage the resolution process. This paper recommends that a tripartite taskforce under the TNF or the Labour Advisory Board be formed to monitor the transition of NECs to the new framework. The taskforce should comprise representatives of the Ministry of Public Service, Labour and Social Welfare, the Employers' Confederation of Zimbabwe (EMCOZ), the Zimbabwe Congress of Trade Unions (ZCTU), and the Zimbabwe Federation of Trade Unions (ZFTU). The taskforce should be tasked with identifying bottlenecks in the transition and addressing disputes, for instance where parties to an NEC disagree on proportional voting allocations.³⁸

The ministry should also enhance communication through issuing public guidelines, clarifying that pending enactment of legislative clarification, the government position supports continuity of NECs in collective bargaining and dispute resolution processes. Where all parties are engaged, trust is reinforced and tripartite efforts to collectively manage labour market changes are realised.

Legislative Input from the Law Development Commission

The new s 56 should be referred to the Law Development Commission for comment and proposal regarding existing NECs. The Law Development Commission is a statutory body established under the Law Development Act [Chapter 1:02] in 1988, mandated to recommend legal reforms and revise statute to keep it current with new developments. Section 5 of the Law Development Act outlines the commission's functions, including reviewing law and its administration and promoting law development. The commission makes proposals for eliminating substantive defects from the law. Engagement with the commission would ensure that any remedial legislation is technically sound and addresses underlying issues comprehensively.

Interim Arrangements for Dispute Resolution

Until the legal status of NECs is completely resolved, interim measures are needed to facilitate dispute handling. The Labour Act allows the minister to designate any person as a labour officer through ministerial appointment for purposes of the Act. Labour consultants like Sibanda (2024), who have advanced the discontinuity view, also support that the Minister of Public Service, Labour and Social Welfare can explore using regulations to fill legislative gaps arising from the new s 56.

To aid dispute resolution, designated agents would then carry the authority of state officers, precluding jurisdictional challenges. This stop-gap measure could entail, through a statutory instrument, appointing all current designated agents as honorary labour officers for purposes of facilitating conciliation and arbitration in their respective industries, until such time as NEC status is clarified. This approach would ensure continuity of dispute resolution and prevent backlog. Once NECs are regularised, these interim appointments would be withdrawn, reverting to the old two-tier system.

Judicial Engagement

Courts should be encouraged to consider the broader policy objectives of the Labour Amendment Act 11 of 2023 when interpreting its provisions. While courts must apply the law as

³⁸ Zimbabwe Congress of Trade Unions (ZCTU) *Memorandum on the Labour Amendment Act 11 of 2023* (ZCTU 2023).

enacted, purposive interpretation that considers the legislative intent to strengthen, not destroy, NECs may mitigate some uncertainties pending legislative clarification. Future litigants should consider joining the Minister and Registrar of Labour to proceedings involving NEC status, ensuring that the executive's interpretation and implementation intentions are placed before the court.

Conclusion

The enactment of the Labour Amendment Act 11 of 2023 and the consequent repeal of s 56 of the Labour Act [Chapter 28:01] has inadvertently jeopardised the functioning of NECs in Zimbabwe.³⁹ What was legislatively portrayed as a labour reform to enhance governance and inclusivity has, in practice, placed NECs in a state of legal limbo. The *DGL Investments* case and subsequent similar rulings unequivocally exposed the absence of transitional mechanisms, resulting in interpretations that voluntary NECs ceased to exist after 14 July 2023. This has disrupted the established equilibrium in industrial relations, complicating or halting collective bargaining, creating uncertainty in dispute resolution, and disrupting tripartite collaboration among employers, employees and government.

The implications extend beyond technical legal questions to affect the integrity of collective bargaining, weaken tripartite governance, undermine legal coherence, and potentially breach international labour standards. Stakeholder perspectives reveal multifaceted impacts: employers face compliance dilemmas, workers and unions struggle to maintain collective voice, designated agents confront operational uncertainties, and government officials grapple with enforcement challenges.

However, the crisis also presents an opportunity for constructive reform. By implementing the recommendations proposed including legislative clarification, expedited compliance drives, capacity building, enhanced stakeholder engagement, and interim dispute resolution arrangements Zimbabwe can restore NECs to their rightful place in industrial relations. Once stabilised, NECs can continue as vehicles for negotiated, fair and enforceable labour standards. Zimbabwe would thereby uphold its constitutional mandate for collective bargaining and comply with international labour standards, maintaining industrial harmony.

The period 2023–2024 stands as a cautionary tale on the importance of transitional provisions in law-making and constant dialogue in tripartite governance. Future reforms must be carried out without disrupting the institutions they seek to capacitate and improve. The NEC system, with its deep historical roots and proven contribution to industrial peace, deserves protection and strengthening through carefully considered legal and policy interventions. The tripartite partners government, employers and labour must collaborate to resolve the current crisis and build a more robust framework for collective bargaining and dispute resolution in Zimbabwe.

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