The Economic and Labour Relations Review (2025), **36**, 855–872
doi:10.1017/elr.2025.10040

CAMBRIDGE UNIVERSITY PRESS

ORIGINAL ARTICLE

Stakeholder perceptions on the retrenchment laws in Zimbabwe

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(Received 6 September 2024; revised 17 July 2025; accepted 21 August 2025; first published online 20 October 2025)

Abstract

Global crises have wreaked havoc on the world economy, causing severe instability and retrenchment of employees in many countries. This necessitates interrogating the retrenchment laws that seek to resolve issues and encourage fruitful outcomes throughout the work ecosystem. This article explores stakeholders' perceptions of Zimbabwe's retrenchment laws. The research utilised a qualitative approach with 68 participants, including employers, employees, trade unionists, legal practitioners, and labour consultants. The study revealed that employers were not utilising available special measures to avoid retrenchment. Stakeholders faced challenges such as difficulties in interpreting the retrenchment sections in the Labour Act, distance, processes which are lengthy and costly, and compliance. Further, this study underscores the tension between organisational survival and employee rights, framed through proximity justice and organisational justice theories. The primary recommendation is that retrenchments should be carefully planned, well-thought-out, and purposefully carried out in order to prevent legal disputes. Employers should exercise patience to carry out a thorough analysis of the problems before retrenching employees. Although this research sought to increase knowledge of retrenchment laws, such findings call for additional research using longitudinal and cross-sectional field surveys.

Keywords: Compliance; Labour act; retrenchment; special measures; Zimbabwe

Introduction

Retrenchment has become a widespread phenomenon in Africa, with the International Labour Organization (ILO) (2020) reporting that the continent has the highest number of organisations making unlawful retrenchments. In Zimbabwe, economic instability and a restrictive economic climate have exacerbated this trend, resulting in the unemployment of thousands of workers. (Raftopoulos 2020). Employers in Zimbabwe can retrench employees, simply to meet operational needs by reducing costs to ensure business survival.

Retrenchment is the termination of employee services by an employer as a consequence of challenges such as a decline in company income, technological changes, or the need to restructure the organisation (Mucheche 2014). Termination of employee

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https://doi.org/10.1017/elr.2025.10040 Published online by Cambridge University Press

services through the retrenchment process is different from termination of an employment contract through disciplinary processes, where an employee can be discharged due to infractions. In general, the retrenchment process involves two vital steps – consultations with affected employees and obtaining government approval. These are necessary steps to achieve procedural justice and substantive fairness (Grogan 2007). Throughout Africa, retrenchment has become the norm for many underperforming and distressed organisations (Sharma 2016; Ulebor 2022). Organisations' failures to fully adhere to retrenchment laws raise concerns about the protection of employees' rights (Collington 2022). Indeed, employers are blatantly breaking the law when it comes to retrenchments, causing a global uproar between employees and employee representatives (Johnstone 2024; Zhang et al 2023). Organisations are taking advantage of weak legal systems when observing and adhering, or not adhering, to the labour laws applicable to retrenchment (Syed 2023).

In Zimbabwe, retrenchment is defined and regulated by the Labour Act Chapter (28:01) and Labour (Retrenchment) Regulations 2024 (SI 191 of 2024). Section 12D of the Labour Act provides for special measures to avoid retrenchment. Section 12C outlines the retrenchment process, and Section 12CC regulates compliance, particularly non-payment of the retrenchment package by employers. The Labour Act also identifies key institutions overseeing compliance throughout the retrenchment process. The workers' committee or works council (Section 25) represents employees. Sections 56 and 57 define National Employment Councils, which are industry-specific bodies, while Section 12C identifies the Retrenchment Board, which is the default authority where no council exists. The Minister of Labour is the final arbiter in unresolved cases.

The Zimbabwean legal framework provides for special measures that an employer can take to avoid retrenchment. Section 12D requires employers to inform and consult with employees before proceeding with retrenchment. This may result in an agreement to implement special measures although, it is not mandatory for an employer to exhaust special measures before proceeding to retrenchment. 'Special measures' can include placing employees on short-time work and, with the agreement of employees, instituting a shift work system for up to twelve months. The strategy of special measures is meant to reduce the labour costs of the organisation until financial stability is reached, well before executing the full retrenchment process.

The prevalence of the retrenchment process problem in Africa generally, and more specifically, in Zimbabwe demonstrates the widespread nature of the challenge and the need for empirical research. The research for this article sought to thoroughly investigate stakeholders' perceptions of retrenchment laws governed by the Labour Act (Chapter 28:01). The primary research question is: Are retrenchment laws meeting the expectations of the stakeholders?

This study is very significant for stakeholders involved in Zimbabwe's employment relations. It gives retrenched employees a forum to express their concerns and experiences, ensuring that their viewpoints are considered when formulating policies and making decisions. Trade unions can use the results to support just and equal treatment of employees affected by retrenchment. The study's conclusions shed important light on how stakeholders perceive Zimbabwe's present retrenchment laws. The findings also provide insight into the capacity of labour laws to protect employees' rights when retrenchment occurs. Because stakeholders ought to be informed of retrenchment laws, the research advances stakeholders' understanding of the retrenchment process. Overall, this research adds to the knowledge already available on retrenchment by concentrating on Zimbabwe.

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Literature review

This subsection explicitly outlines the legal provisions governing retrenchment in Zimbabwe and their intended safeguards. Zimbabwe's Labour Act (Chapter 28:01) and the 2024 Retrenchment Regulations establish a procedural framework to protect employees during retrenchment. The key provisions include mandatory consultation and special measures (Section 12D) to avoid retrenchment, as well as government oversight via the Retrenchment Board and National Employment Councils (Sections 12C, 56-57). The Act provides requirements for different types of retrenchment packages and dispute resolution through the Labour Courts.

However, stakeholders report systemic gaps undermining these provisions, including weak enforcement, demonstrated by the lack of penalties for non-compliance. For example, employers face no sanctions for skipping consultations. In addition, structural barriers result in centralised institutions that exclude rural employees, such as the Retrenchment Board in Harare. Legal ambiguities further enable employer exploitation, demonstrated through unclear definitions in the Act, such as the term 'capacity to pay'. Finally, lengthy processes for non-compliance certificates and court orders delay justice and render remedies ineffective. These flaws align with Syed's (2023) findings in Bangladesh, where weak inspection systems and lax penalties perpetuate non-compliance. The literature review in this section also covers a scholarly survey of similar context studies conducted at international, regional, and local levels and the theoretical framework guiding the study.

Global perspectives on retrenchment laws (Global North and South)

Syed's (2023) research in Bangladesh revealed insufficient penalties or other sanctions for breaking labour laws, and the absence of efficient inspection systems to enforce laws. As a result, Bangladesh's labour and retrenchment laws were poorly implemented, frequently resulting in abuses of employees' rights. Syed (2023) asserts that to guarantee compliance, enforcement mechanisms must be put in place, and in 2024, argued that adhering to retrenchment laws is a procedural requirement (Syed 2024). Grgurev (2021) claims in his research that, while all stakeholders are required to follow the law, it is unrealistic to think that businesses in Croatia will always follow the law under all conditions.

Husin et al's (2021) research study in Malaysia concluded that employees do not accept the retrenchment process and outlined its unfavourable effects, including frustration, demotivation, or unemployment. They identified the absence of the retrenchment criteria, employee pay, and retrenchment standards as key issues. The same study found prevailing challenges such as rising unemployment rates, living expenses, mental and social health issues, lower organisational productivity, and deteriorating health. Rico et al's (2021) research study in Spain asserts that retrenchment is not a universally applicable solution for businesses going through the worst kinds of crises. When attempting a turnaround, businesses should concentrate on mending stakeholder relationships and cutting unnecessary costs. Nevertheless, retrenchments or selling assets should be carefully considered in British manufacturing firms (Johnstone 2024).

African perspectives on retrenchment laws

Sharma (2016) concluded that non-compliance with retrenchment laws has made labour law execution and retrenchment in Nigeria a severe concern for labour unions, organisations, and the government. He advised organisations retrenching employees to follow the correct procedure. In their research into how labour law compliance should be promoted as a solid governance practice in South Africa, Thomas and Luvhengo (2019)

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found that owners' ignorance of labour legislation prevented them from adhering to the retrenchment laws. This research demonstrates that an organisation's ownership is another challenge to complying with retrenchment laws. Owners felt labour laws were burdensome and that forcing them to follow procedures had a detrimental effect on organisational governance. Thomas and Luvhengo (2019) recommended treating the small-enterprise sector differently when it came to legal requirements.

Zimbabwean perspectives on retrenchment laws

Dzingirai and Baporikar (2023) conducted another study in Zimbabwe to analyse the retrenchment strategy's effect on market share in Zimbabwe. The results indicated that the retrenchment strategy does not significantly contribute to explaining organisational performance. The study concluded that firm performance can be explained by factors other than the retrenchment approach. Therefore, to retain organisational knowledge, the study advised the management of failing organisations to monitor and evaluate other factors such as high retrenchment costs, poor timing, deviant conduct, strict labour laws, and compensation disparity before engaging in employee retrenchment.

The retrenchment process in Zimbabwe has been dramatically impacted by economic issues such as financial instability, diminishing profitability, firms' inability to pay employees, unavailability of raw materials, new technology, and increased competition (Dzingirai and Baporikar 2023). Businesses have been under tremendous pressure, forcing them to make difficult decisions about retrenchment that may jeopardise their ability to comply with legal requirements. Maunganidze et al (2021) agreed that businesses should look to automate procedures and adjust to new technology. Zimbabwe's quick technological advances have resulted in a considerable reorganisation and workforce reduction. As a result, it is now more difficult for businesses to comply with retrenchment laws and regulations during periods of technological change. Zimbabwean organisations have faced considerable challenges maintaining consistent compliance with retrenchment legislation due to the complexities of accessing global markets and differing labour laws across different countries (Ndhlovu and Ndhlovu 2023).

Literature gap

The cited literature sources provide an all-encompassing summary of key challenges and implications of the laws governing retrenchment from different viewpoints, covering international, regional, and local perspectives. There is notable inadequate punishment and social control mechanisms (Syed 2023) and stakeholder ignorance and resistance to the enacted retrenchment laws (Thomas and Luvhengo 2019). This underscores the value of targeted training programmes and awareness campaigns to business leaders and managers, and social support for retrenched people. There are evident differences in the understanding of applicable retrenchment laws in the geographical areas cited in the empirical literature review. Zimbabwe has a unique business environment characterised by political tensions and ever-changing economic conditions. Studies by Dzingirai and Baporikar (2023) and Maunganidze et al (2021) explored challenges associated with retrenchment practices and governing laws in Zimbabwe. However, there is limited research on how various stakeholders, such as employees, trade unions, government, and employers, perceive the strength and justness of retrenchment laws in Zimbabwe.

This knowledge gap is significant because stakeholder perceptions can positively or negatively influence the enforcement of labour laws in the workplace. For example, if employees perceive the retrenchment legislation as fair, there will be quick and fruitful discussions during the negotiation stage of the retrenchment process. In contrast, negative perception by employees or influential trade unions can lead to labour unrest, low

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workforce morale among the remaining employees, and reduced trust in employers. Similarly, if employers perceive retrenchment laws as burdensome and restrictive, they can be tempted to resort to shortcuts in the retrenchment process, thereby violating employee rights. To address this gap, the present study focuses on exploring stakeholder perceptions of retrenchment laws in Zimbabwe, with a particular emphasis on how employees, employers, government agencies, and labour unions perceive the fairness and effectiveness of retrenchment laws. The research would contribute to a deeper understanding of the challenges and opportunities associated with retrenchment laws in Zimbabwe, providing valuable insights for policymakers, employers, and labour advocates.

Theoretical framework

The current research is based on two supporting theories, namely, proximity justice and organisational justice theory, which serve as the theoretical foundation for the study. This framework offers a comprehensive perspective for examining stakeholders' views on retrenchment laws in Zimbabwe, focusing on fairness, accessibility, and procedural fairness.

Proximity justice

The study was guided by the French movement of proximity justice by Wyvekens (2008) to analyse the views of stakeholders on the retrenchment laws. The concept of human proximity necessitates a less formal approach to the justice system, regard for the parties' expectations, and the use of plain language for the citizens. Geographic proximity, which relates to the actual distance between judicial institutions and citizens, has long been a source of debate in the field of proximity justice (Araújo et al 2020). The concept of time proximity is connected to the notion that it is not sufficient to simply be close; justice must also act promptly. Wyvekens' (2008) definition of the triangle of closeness (culture, location, and time) outlines those benefits that have been widely acknowledged by several research studies in the European and African contexts (Simon et al 2019).

Organisational justice theory

Greenberg's (1987) organisational justice theory provided support for the concept of proximity justice. According to the theory, employees evaluate the fairness of the organisation's policies, processes, and practices, and these evaluations influence their attitudes and behaviours, including abiding by the law. This theory is particularly pertinent to retrenchment because it clarifies how employees feel about the process and whether they believe it to be just and fair. Distributive justice or procedural justice can be used in an organisation. The equity of outcomes, such as the distribution of severance pay and the criteria used in layoff selection, is the focus of distributive justice. Employees will be more likely to abide by legal obligations if they feel the process produces fair and equitable results. Procedural justice is a component that highlights the equity of the methods employed in the retrenchment process. This includes elements such as openness, uniformity, and the chance for staff members to express their concerns. Employees who believe the methods are fair are more inclined to accept the results, even unfavourably (Husin et al 2021).

These two theories are a light-bulb moment, helping business people to understand the importance of people during the retrenchment process and how retrenchment stakeholders work together to find a fair solution. While proximity justice examines the broader societal factors that contribute to disparities in access to justice,

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organisational justice theory focuses on the individual experiences and perceptions of fairness within organisational settings. By combining these frameworks, we can gain a comprehensive understanding of how stakeholders in Zimbabwe perceive retrenchment laws, considering both the broader system and the personal experiences of justice. This dual approach is especially important in a country like Zimbabwe, where economic instability and legal inefficiencies frequently collide, and pose complex challenges for stakeholders impacted by retrenchment.

Research methodology

This section of the paper outlines the research methodology used to explore the stakeholders' views on retrenchment laws in Zimbabwe, focusing on fairness, accessibility, and procedural fairness. Key parts of this methodology section include the research approach, design, sampling procedure, primary data collection tools, and data analysis methods.

Research approach

The study adopted a qualitative approach to explore the complex dynamics between participants who were directly and indirectly involved in retrenchment (Saunders et al 2023). Qualitative research is particularly suited for understanding social phenomena, as it allows for in-depth exploration of participants' experiences, perceptions, and behaviours (Ishtiaq 2019). This approach enables researchers to identify themes and patterns in the data, providing rich insights into the research problem.

Research design

A descriptive research design was used in this study. Descriptive research aims to describe the characteristics of a population or phenomenon without manipulating variables. It is particularly useful when the goal is to understand the behaviours within a population (Schindler 2023). This design allowed researchers to explore the stakeholders' views on retrenchment laws in Zimbabwe, focusing on fairness, accessibility, and procedural fairness.

Sampling method

The study employed controlled quota sampling to select participants. Controlled quota sampling is a non-probability sampling technique where the researcher divides the population into subgroups (quotas) based on specific characteristics and then selects participants from each subgroup to ensure representation (Etikan et al 2016). Controlled quota sampling ensures that all relevant subgroups within the population are represented. For example, in this study, the population was divided into subgroups of labour consultants/experts, trade unionists, affected employees, human resource officials (employers), and legal practitioners, ensuring that each group's perspective was included. This method is practical for studies with limited time and resources, as it allows researchers to focus on specific groups of interest. By setting quotas for different subgroups, the study captures diverse perspectives, enhancing the validity of the findings (Saunders et al 2023).

Sample frame

The sample frame included labour consultants/experts, trade unionists, affected employees, human resource officials (employers), and legal practitioners.

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Sample size

A total of 68 participants were selected, divided into the following quotas: eight (8) labour consultants/experts, eighteen (18) trade unionists, sixteen (16) affected employees, eighteen (18) human resource officials (employers), and eight (8) legal practitioners.

Data collection methods

The sixty-eight participants were sent questionnaires with open-ended questions such as: (1) What are your perceptions of the retrenchment process in Zimbabwe? (2) How effective are the special measures outlined in Section 12D of the Labour Act? (3) What challenges do you face in complying with retrenchment laws? The research was diversified to ensure representation in all sectors. The study covered eight sectors: construction, education, mining, catering, engineering, clothing, transport, and the commercial sector.

Data analysis

Thematic analysis was used to analyse qualitative data. Researchers used theory-driven coding as predefined themes already existed from the theoretical framework for the study (proximity justice and organisational justice theories) (Braun & Clarke 2006). The predefined themes according to the two theories are: accessibility, time, and geography, drawn from proximity justice, and procedural fairness derived from organisational justice theory. While the main data analysis was deductive, the primary data revealed new sub-themes, which also persuaded the researchers to be flexible and follow the inductive route to respect the verbatim reports by research participants (Caulfield 2023).

Ethical considerations

The study adhered to ethical research practices, including obtaining approval from the research ethics committee, reference number: MLX7/24. Participants were provided with information about the study and gave their consent to participate. Participants' identities were kept confidential, and data were anonymised to maintain confidentiality (Schindler 2023). Participants were informed that they could withdraw from the study at any time without penalty.

Results

The research established that employers were not opting for special measures to avoid retrenchments. Employers were finding it difficult to follow the retrenchment process and were not complying with paying the retrenchment package. Employers saw retrenchment as a difficult decision to preserve organisational viability and competitiveness in a challenging economic climate. Retrenched employees expressed feelings of insecurity and resentment. Labour consultants and legal practitioners stressed the importance of following the law and treating retrenched employees fairly. Labour unions expressed dissatisfaction with their lack of involvement in defending the rights and interests of employees during the retrenchment process. They underlined the significance of equitable retrenchment packages and the necessity of efficient consultation during the retrenchment process. However, one positive aspect of the retrenchment process in Zimbabwe is that it involves employees at the workplace level (Works Council). If parties fail to agree, it moves to the National Employment Council (NEC) (industry level) or the Retrenchment Board (national).

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Key theme 1: Procedural Justice (Fairness of retrenchment process)

The research revealed that the retrenchment process was not fair. It was observed that employers were not utilising special measures to avoid retrenchment (section 12D of the Labour Act). Labour experts and legal practitioners underlined how vital consultation is as a collaborative process to reach a consensus before retrenchment. However, employees, unions, and HR professionals revealed that it was not being implemented. Employers confirmed that they did not opt for special measures because the process was lengthy and can take at least four months to be approved by the Retrenchment Board. In other words, employers have been unable to recognise or consider some of the potential repercussions of retrenching employees.

Lack of genuine consultation

HR practitioners supported the view that special measures to avoid retrenchment were optional. They argued that special measures seem expensive because the process is cumbersome, can take from six to twelve months to implement so that employees continue to accrue vacation, sick, and maternity leave, which is an added cost.

> *'It is difficult to implement special measures because things change abruptly. We only consult affected employees when we are certain there is a need to retrench'.* (HR practitioner response)

Exclusion of unions in decision-making

Unions feel retrenchment laws sideline them.

> *'Show me where trade unions are consulted in sections 12C, 12CC and 12D of the Labour Act. That means the whole process is flawed because these sections do not support collectivism'.* (Unionist response)

Non-compliance with legal procedures

Unions believe employers were not complying with retrenchment laws due to poor enforcement mechanisms. Designated Agents and Labour Officers were not inspecting or investigating retrenchment issues.

> *Our laws are not protecting employees; if the employer fails to follow the retrenchment procedure, they are allowed to correct the anomaly without any penalty.* (Unionist response)

Power imbalances in negotiations

> *I worked for 11 years in that company; I cannot remember being consulted or informed of any special measures. They implement what they think is best for their organisation.* (Employee response)

The findings above corroborate Rico et al's (2021) research results, which revealed that retrenchment is not a universally applicable solution for businesses going through the worst kinds of crises. When trying a turnaround, businesses should concentrate on mending stakeholder relationships and cutting unnecessary costs. Nevertheless, retrenchments or selling assets should be carefully considered (Johnstone 2024).

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Key theme 2: Human proximity (accessibility and communication)

Complex legal language

The retrenchment process, regulated by the Labour Act, starts with the negotiation between the employer and the concerned employees. If they agree, it is called an agreed retrenchment package. If the parties fail to agree, the employer will pay a minimum retrenchment package. If the employees prove that the employer has the capacity to pay more than the minimum retrenchment package, the employer will pay an enhanced retrenchment package. The challenge is that these words (agreed, minimum, and enhanced retrenchment package) lack clarity, especially for HR practitioners and employees. However, trade unions, labour consultants, and legal practitioners have a better understanding. Participants were worried about the whole process of retrenchment. Stakeholders highlighted challenges related to interpreting and adhering to labour laws during retrenchment. There were challenges of inconsistent implementation of legal requirements and potential disputes. Stakeholders raised challenges such as the interpretation of the retrenchment sections in the Labour Act, distance, the lengthy and costly process, and compliance. All these challenges arise because the Labour Act's established procedures must be followed during the retrenchment process, regardless of whether there is a legitimate cause to do so.

Employers complained that the retrenchment process required a lot of paperwork. Legal practitioners and HR practitioners questioned the numerous notifications they make to the employees, works council or employment council, and the Retrenchment Board. Where there is an agreed retrenchment package, the employer gives fourteen days' written notice of the intention to retrench to the Retrenchment Board. In the absence of an agreed retrenchment package, the employer gives fourteen days' written notice of the intention to retrench to the employees concerned through the works council. If there is no works council, the notice is given to the National Employment Council (NEC). Within fourteen days of retrenching the employees, the employer must notify the Retrenchment Board of the particulars of any agreed retrenchment package or minimum retrenchment package. The employer must also notify the Retrenchment Board of the agreed payment plan. Unions argued that these requirements are the cause of employers' current preference for contract workers.

> *I do not see the reason to notify the NEC or Retrenchment Board if the parties agree on a retrenchment package.* (HR practitioner response)

> *This raises a lot of unnecessary technicalities which slow the retrenchment process.* (Legal practitioner response)

Employers view retrenchment as a vital measure to preserve organisational viability and competitiveness, but they encounter difficulties in overseeing the retrenchment process. All the same, organisations are incurring retrenchment costs because it can be difficult for employers to ensure that labour laws are followed throughout the process. A similar context study (Dzingirai and Baporikar 2023) concluded that the retrenchment strategy has little bearing on how well an organisation performs. To preserve tacit knowledge, employers should keep an eye on and evaluate variables such as high retrenchment costs, poor timing, deviant behaviour, strict labour laws, and compensation discrepancies, before implementing retrenchment. Retrenchment should not be thought of as a general solution for organisations going through the worst crises (Rico et al 2021). Retrenchment conditions cause an organisation's industrial relations to deteriorate, as well as cause pain and suffering for the employees and disrupt production (Gathii 2021).

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Participants found terminology associated with retrenchment regulation difficult or confusing, including words such as 'minimum retrenchment package', 'enhanced retrenchment package', and 'agreed retrenchment package'.

> *I have noticed that this Labour Act has been confusing some of our employers and employees because of vagueness and challenges in the interpretation of some sections.* (Unionist response)

> *We have noticed that our clients have been struggling to distinguish what is meant by enhanced, minimum or agreed retrenchment package.* (Labour consultant response)

> *Who sets the minimum retrenchment package? What is an enhanced retrenched package? There is no clear roadmap on how parties negotiate to come up with what they call an agreed retrenchment package.* (Unionist response)

> *I do not see the reason to say enhanced retrenchment package; the government must set a reasonable minimum retrenchment package. (Employee response)*

> *How will the employees prove that the employer has the capacity to pay? Do these employees have access to such information?* (HR practitioner response)

> *The issue of minimum retrenchment package ignites controversy. The government has not set this minimum retrenchment package; as a result, it is difficult to prove the capacity to pay or to negotiate the agreed retrenchment package.* (Legal practitioner response)

The interpretation and application of labour laws may vary, leading to potential disputes and legal complications. The concept of human proximity requires the use of plain language for citizens (Wyvekens 2008). The application and interpretation of several provisions of sections 12D and 12C of the Labour Act remain contentious, triggering judicial intervention. There is an outcry in the employment sector about the loopholes and inconsistencies in the interpretation of the labour laws. These loopholes and inconsistencies give rise to the continual escalation of gross violations in the country. For the laws to be effective, they must be interpreted, understood, observed, and enforced by employers and employees (Hyman and Gumbrell-McCormick 2020). Thomas and Luvhengo (2019) observed that employers and employees were not knowledgeable about labour laws, hence their failure to understand them. Employers experience labour laws as cumbersome, and their forced implementation has a negative impact on governance (Ndhlovu et al 2023). There had been an assumption that the 2023 amendment of the Labour Act would make the retrenchment process more effective and easier to implement, but it instead appears to have worsened the situation. It is evident that there are the challenges to the current retrenchment process in Zimbabwe, especially interpretation, accessibility, and enforcement.

Lack of awareness and knowledge gaps

Labour consultants, legal practitioners, and trade unions believe employers were not opting for special measures because they lacked knowledge.

> *Employers do not understand these special measures, and due to this ignorance, they just bump into retrenchment. (Labour consultant response)*

Labour experts, legal practitioners, and unions shared the same view that special measures to avoid retrenchment are not mandatory. Section 12D of the Labour Act

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provides that the employer may, in agreement with employees, implement special measures for a period not exceeding twelve months. Thus, the Labour Act promotes employee participation in decision-making processes in the workplace, which is pertinent to the effective resolution of labour disputes. Unions protested that employers were not conducting genuine and thorough consultations before the decision to retrench because employers could retrench without implementing special measures.

Special measures to avoid retrenchment involve placing the employees on short-time work or instituting a system of shifts. Special measures were introduced to ensure that employees are kept informed of and consulted about any significant changes in production, programmes, restructuring, or technology that are likely to entail retrenchment. Section 12D of the Labour Act states that the consultation should begin when an employer contemplates retrenching one or more employees. This means that the decision to retrench should not be made before the employer starts consultations. The employer must inform the employees of the intention, and alternative special measures must be taken. The Labour Act ensures that retrenchment is treated as the employer's last resort, which is unlikely to be viewed as unfair where it can reasonably be prevented through negotiation efforts (Dzingirai and Baporikar 2023). Retrenchments should, therefore, only be implemented as a last resort when the employer has exhausted all other avenues for fair and practical job preservation (Husin et al 2021). As this encourages justice, employers should look for options less detrimental to workers' rights affected by retrenchment (Al Rasch and Shrimali 2024). The employer should thus approach the consultation open-mindedly because retrenchment is not a general solution for serious business problems (Rico et al 2021). While retrenchment should be carefully considered, employers should also concentrate on mending stakeholder relationships and cutting unnecessary expenses when undertaking a turnaround (Dzingirai and Baporikar 2023).

Trade unions, labour experts, and legal practitioners contended that the consultation's purpose was to provide the employer with a chance to justify the planned retrenchment, to hear suggestions for mitigating or preventing the retrenchment, and to explore other options. The other goal of the consultation was to provide an opportunity for real cooperative consensus-building when parties seek to agree on actions. The objectives were to minimise the negative impacts of the retrenchments, minimise the frequency of layoffs, and prevent needless employment terminations (Johnstone 2024). In addition, the parties need to agree on the retrenchment package and the selection criteria.

Retrenchment consultation necessitates a cooperative approach to problem-solving so that all parties' interests can be explored. Nevertheless, these consultations are seen as a negotiation, which is biased and has the consequence of preventing consideration of any other possibilities that might be explored in good faith to reach a mutually agreeable resolution (Mujtaba et al 2023). However, the requirement for businesses to formally consult employees affected by proposed retrenchments is unclear. As employers are permitted to effect retrenchments when alternatives exist, the purpose of sections 12D and 2A of the Labour Act becomes meaningless, as employers can eliminate employees without reasonable justification. Section 2A of the Labour Act (Chapter 28:01) advocates for the advancement of social justice and democracy in the workplace by giving effect to the fundamental rights of employees. Instead, organisations put their short-term financial interests ahead of the welfare of their employees (Dzingirai and Baporikar 2023). Because of this, the disputing parties will focus on the dispute's form rather than its content.

Key theme 3: Geographic proximity (physical accessibility of justice)

Centralised Retrenchment Board (Harare)

In addition to the process of obtaining a notification certificate, employees have a mammoth task of obtaining a non-compliance certificate from the Retrenchment Board.

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Unions and employees argued that the process of obtaining the non-compliance certificate was lengthy and costly. If the employer fails to pay or to comply with a retrenchment package, employees are required to approach the Retrenchment Board. A hearing will be conducted where the employer is provided an opportunity to refute the allegations. If the Retrenchment Board finds that there has been no compliance, it issues a non-compliance certificate. However, considering that the Retrenchment Board is based in Harare means that it is largely inaccessible for employees across the country who are unable to travel to the capital.

> *Maybe the process benefits those who are in Harare. It means if we fail to agree with the employer, we must travel several times for us to obtain the non-compliance certificate.* (Employee response)

Decentralisation needed

After obtaining a non-compliance certificate, employees will then proceed to the Labour Court for an order enforcing the package. When they obtain this order, employees must then approach the Magistrate's Court or High Court for registration and enforcement. Legal practitioners, unions, and affected employees agreed that it would be better if the notification certificate were enforceable. They reasoned that extending this jurisdiction to Labour Officers is preferable due to their convenient and accessible locations in the district.

The history of proximity justice has been marked by persistent concerns about distance. Economic, social, and cultural variables are related to this separation between citizens and the administration of justice (Araújo et al 2020). The current retrenchment process does not advance social justice and democracy because not every employee can access the Retrenchment Board. Sigafoos and Organ (2021) argue that limited reciprocity and inclusion, along with distrust in the system, have profound implications for social and civil rights, causing the dismantling of a social citizen. Some of the challenges that many countries in Sub-Saharan Africa have faced in the administration of justice can be attributed to the over-reliance on the courts in the resolution of disputes (Nkoane 2018), even where an easy retrenchment process would have been more appropriate.

Key theme 4: time proximity (delays in justice)

Study results revealed a lengthy process for non-compliance certificates and court enforcement, a lengthy retrenchment process, and a slow dispute resolution process. Primary data revealed that employers were not complying with retrenchment laws. Nor were they implementing special measures to avoid retrenchment, and appeared to be struggling to follow the retrenchment process or laws, including not paying the retrenchment package. Thus the major issue was non-compliance in paying the retrenchment package and refusing to reinstate employees when the retrenchment process had not been followed. Participants gave different reasons for non-compliance issues. Lack of knowledge and financial problems were the major reasons cited by all parties.

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Lengthy process for non-compliance certificates and court enforcement

> *Sometimes we end up hiring a consultancy or lawyers, but still we may lose the case. However, the major reason why we may not comply is because of financial challenges. Retrenchment is like creating another wage bill.* (HR practitioner response)

> *The employer does not want to pay even our monthly salaries. If you see them retrenching, they just want to remove employees, and they know that after three to six months, employees will be scattered all over the country. It will be difficult to pursue a case or to make some follow-ups.* (Employee response)

> *There was an amendment especially on section 12C of the Labour Act in 2015, recently there was an amendment which repealed section 12C again. It becomes difficult for employers and employees to understand such changes in a short space of time, and this also leads to non-compliance.* (Legal practitioner response)

The trade unions argued that non-compliance with retrenchment provisions in the Labour Act should be treated as an unlawful termination of employment, which attracts damages or reinstatement. This would align with the Labour Act's purpose to advance social justice in the workplace by giving effect to the fundamental rights of employees. It would also promote job security and protect employees from unlawful termination of employment.

> *If the employer fails to pay the retrenchment package, employees must seek a non-compliance certificate from the Retrenchment Board, then approach the Labour Court for an order. The same Labour Court order should be enforced at the Magistrate/High Court.* (Unionist response)

Lengthy retrenchment process and slow dispute resolution

One of the HR practitioners lamented,

> *I think you need to employ an HR Officer specifically for running the retrenchment process. Every step demands fourteen days' written notice; failure to do that, the whole process becomes a nullity.* (HR practitioner response)

> *The notification certificate was supposed to be enforceable at the Magistrate's or High Court. Obtaining a non-compliance certificate and order from the Labour Court aids in non-compliance by employers because employees in faraway places cannot afford to travel. The whole process suffocates the employees.* (Legal practitioner response)

Isa and Sharma (2016) concluded that labour law execution and retrenchment have become a serious challenge to labour unions, employers, and governments due to non-compliance in the workplace. Compliance with a retrenchment law is imperative. Substantive and procedural fairness are the determinants of the fairness of retrenchment; however, the reality is that employers are not complying with every procedural requirement as laid down by sections 12D, 12C, and 12CC of the Labour Act. The penalties and other consequences for breaking labour laws are insufficient, and there are no efficient inspection or enforcement systems in place (Syed 2023). Because the fundamental tenet of termination is the conviction that the parties themselves are best suited to manage it, the retrenchment challenges are more severe. The efficacy of the retrenchment process is

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compromised by weak institutional frameworks and a dearth of enforcement mechanisms, which in turn breed mistrust in the system (Al Rasch and Shrimali 2024). This causes the retrenchment legislation to be insufficiently implemented, which leads to multiple employee rights abuses. Understanding employee welfare and ethics is essential to complying with retrenchment laws; it goes beyond following the dictates of the law (Syed 2024). All parties involved are supposed to follow the law; yet, since employers are taking advantage of loopholes, it is unrealistic to anticipate that employers will always follow the law in different situations (Grgurev 2021). Syed (2023) argues that to guarantee compliance, enforcement mechanisms must be put in place.

Key theme 5: distributive justice (fairness of retrenchment outcomes)

The study found that organisations retrench employees in three ways: mutual separation, voluntary retrenchment, and compulsory retrenchment. Mutual separation is rare but favoured when terminating contracts of employment for employees who occupy senior posts. It allows for negotiating retrenchment terms between the employer and the employee. Voluntary retrenchment is an ad hoc approach whereby there are no formally established arrangements followed. It is not subject to the retrenchment procedures set out in the Labour Act. Rather, employees choose whether to accept the termination of their employment contract in exchange for a lump sum payment from the employer. Employees in our study, however, were not drawn to this option as they consistently believed the offer was insufficient. Compulsory retrenchment, outlined in the Labour Act, is the most common form of retrenchment adopted by organisations.

> *Mutual separation has been effective for senior managers; however, for lower-level employees, compulsory retrenchment is the best option.* (Labour consultant response)

> *We all know the offer is too little, that is why we waited for compulsory retrenchment, unfortunately, it yielded nothing, we ended up getting less than US$1000.* (Employee response)

> *We revised our offer three times, but only six employees accepted the offer.* (HR practitioner response)

The results align with Greenberg's (1987) theory of organisational justice, which posits that employees are more inclined to adhere to legal obligations when they believe the process has produced fair and equal results (distributive justice). Employees do not believe the offers that are made fair and equitable, and therefore do not opt for voluntary retrenchment. Even if the proposed outcome is good, employees are more likely to reject the process if they believe there is unfairness (procedural injustice). Husin et al (2021) assert that employees do not accept the process of retrenchment and all its unfavourable effects, which include demotivation, frustration, and unemployment.

Employers avoid paying fair packages

Section 12C of the Labour Act provides that where an employer alleges a lack of capacity to pay any part of the minimum retrenchment package, it may apply for exemption in writing to the Employment Council, or to the Retrenchment Board if there is no Employment Council. Any party aggrieved by a decision of the Employment Council or the Retrenchment Board can appeal to the Labour Court. This process lengthens the retrenchment process further, and gives employers leeway to pay less.

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Trade unionists and employees complained that they did not have access to the company information; therefore, it was difficult to justify whether the employer had the capacity to pay or not.

> *I do not think careful consideration was made. Employers must pay the stipulated minimum retrenchment package. This provision opens channels for bribes or corruption and unnecessary delay. There is a need to value the welfare of employees.* (Unionist Response)

HR practitioners were supportive of the exemption, arguing that the inability to pay is the basis on which retrenchment processes are undertaken. In addition, HR practitioners do not see the purpose of seeking an enhancement package. The argument was that the motivation for employers to retrench was because of financial challenges, especially as most of the organisations were struggling. If that logic held, then there is no need to prove capacity to pay.

> *Any organisation is struggling, and for us to retrench is because we are trying to reduce the wage bill. I do not think employees will utilise that provision because if the organisation had the capacity, it would not retrench.* (HR practitioner response)

Retrenchment laws should ensure labour justice, which will make up for societal injustices and promote respect for human dignity and fundamental rights (Al Rasch and Shrimali 2024). The justice and fairness of the retrenchment process can be assessed through its capacity to mitigate power inequalities between workers and employers and enable the exercise of employment rights (Papadopoulos et al 2021). Countries in Southern Africa are perceived as having unequal societies that influence the distribution of power among disputants, with capitalists continuing to exercise more power (Ndhlovu and Ndhlovu 2022; Nkoane 2018).

Stakeholders expressed frustration with the lengthy and costly retrenchment process, highlighting a lack of proximity justice. Employees also perceived the process as procedurally unfair, aligning with organisational justice theory, which emphasises the importance of fairness in decision-making. While retrenchment is often seen as a necessary evil, effective consultation and enforcement mechanisms can mitigate its negative impacts. Trade unions play a critical role in ensuring that retrenchment processes are fair and transparent, while state enforcement ensures that employers comply with legal requirements.

Conclusion and recommendations

This study aimed to explore stakeholder perceptions of Zimbabwe's retrenchment laws. The findings reveal significant challenges in compliance, interpretation, and enforcement, underscoring the need for legal reforms and stakeholder education. The Zimbabwean retrenchment laws were designed to enhance consultation before embarking on the retrenchment process, during the retrenchment process, and after the negotiations. Consultations are meant to afford the parties an opportunity to voice their concerns and suggest solutions through which the retrenchment may be minimised. However, this study demonstrated that employers are not consulting employees or their representatives, and stakeholders generally expressed negative views of the retrenchment laws. Employers are finding it difficult to follow the retrenchment process and are frequently failing to pay retrenchment packages. Stakeholders highlighted challenges in the interpretation of the application of labour laws during retrenchment. Some of the issues raised by stakeholders

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were a lack of knowledge or interpretation of some sections in the Labour Act, geographical distance, and the nature of process as lengthy and costly.

In light of these challenges, researchers make the following recommendations:

To prevent legal disputes, retrenchments should be carefully planned, well-thought out, and purposefully carried out. Employers should exercise patience to conduct a thorough analysis of the problems before retrenching employees; they should also adopt a positive business mindset. Rather, retrenchments should not be used without carefully weighing all other options. Instead, parties should participate in a consensus-building process to develop and implement solutions to minimise the number of dismissals.

There is a need to clarify ambiguities in the law and remove bureaucratic hurdles, such as the numerous notifications required throughout the retrenchment process. The misinterpretation and inconsistent implementation of retrenchment laws are creating unnecessary disputes. Labour law amendments can provide clarity and ensure fair implementation of retrenchment processes. The reforms must address both legal drafting (e.g. clearer definitions) and institutional capacity, such as decentralising the Retrenchment Board.

To ensure proximity justice, Labour Officers should be empowered or have jurisdiction to preside over retrenchment matters and issue a notification certificate. Changes in administrative practice by Labour Officers, as enabled by the modification of legal provisions, would assist in resolving identified retrenchment challenges. The government must gazette the minimum retrenchment package to reduce unnecessary disputes.

To enhance compliance with legal requirements, employers should seek advice from experienced legal practitioners or labour consultants to understand the specific obligations that apply to retrenchment. Improving the efficacy and enforcement of labour laws requires revisions, which include modernising penalties and expanding the authority of Retrenchment Boards, Labour Officers, and Designated Agents. Notification certificates should be enforceable.

There is a need for employers, the government, and trade unions to conduct training or awareness campaigns for employers and employees on retrenchment laws to enhance understanding of existing rights and responsibilities, reducing the risk of misunderstandings or non-compliance. This also ensures that stakeholders are made aware of any updates to labour laws, improving compliance. Fostering a culture of compliance within an organisation encourages employees to report any suspected violations and promotes ethical behaviour throughout the retrenchment process.

The shortcomings of this study, like any other, can be considered when reading, interpreting, and analysing the findings. This research utilised a qualitative research approach. Future research could utilise quantitative and mixed-method research approaches to address the limitations of using a qualitative research approach. A thorough understanding and interpretation of the data would be possible by employing a broader geographical scope. Despite these limitations, the research's conclusions have substantial theoretical and practical implications for retrenchment in Zimbabwe.

Acknowledgements. We are grateful to everybody. The participants who provided the data. The editors and the anonymous reviewers are especially appreciated by the authors for their insightful criticism and recommendations. Special thanks are extended to the staff at *The Economic and Labour Relations Review*.

Competing interests. The authors declare that there is no conflict of interest.

Ethical standards. Informed consent was obtained from all individuals involved in the study.

https://doi.org/10.1017/elr.2025.10040 Published online by Cambridge University Press

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Cite this article: Ndhlovu P, Mukuze K, and Ndhlovu P (2025). Stakeholder perceptions on the retrenchment laws in Zimbabwe. *The Economic and Labour Relations Review* **36**, 855–872. https://doi.org/10.1017/elr.2025.10040

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