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**STAKEHOLDERS APPEARING TO THE PC FOR PUBLIC HEARINGS****Submission 3: Mr Sunil Gopal, a public servant****4.1 Clause 20: Transfers within public service**

Mr Gopal objects to this clause in as far as it imposes public interest over consent of an employee during a transfer. He infers that this amounts to forced labour, in terms of the International Labour Organisation (ILO). He quotes this definition of forced labour to mean:

- (i) the work or service exacted under the menace of a penalty and
- (ii) the work undertaken involuntarily.

**He points out that refusal to accept an imposed transfer would subject an employee to some kind of sanction, including loss of rights and privileges, loss of wages and threats of dismissal. He alludes that these sanctions would be reminiscent of the Stalinist era.**

"Public interest" may be a subjective element of imposing a transfer because some devious removal of an employee by those who act on behalf of the executive authority cannot be ruled out. But the "involuntary" part of Mr Gopal's concern takes it too far. Involuntary work would mean "forcible extraction of a service" and this would technically mean forcing an employee to do the work he/she is not supposed to do because he/she is not employed to do it, e.g. conscription. Being an employee and then transferred to another place or position on prescribed conditions does not technically amount to an involuntary work.

**The Amendment does not indicate any sanction on refusal to accept transfer. But it remains to be seen whether his concerns might prove to be true when an employee refuses to accept an imposed transfer. The Portfolio Committee may have to elicit a response to this concern from the Department of Public Service and Administration (DPSA).**

Mr Gopal believes that the Bill has not received sufficient debate within the public service and he calls for a transparent process. The public hearings are meant for this very transparent process.

agencies to perform services constitutionally mandated to another sphere of government. **A reasonable assumption will be that the activity of the agency would be restricted to the sphere that established it.**

~~IMATU believes that agencies will have extensive and unrestricted powers.~~ **President of the Republic or other functionaries within the executive.** The agencies [ ] should be accountable to the communities which they serve." It is important to note here that the very nature of government departments is that they account to Parliament, an institution that represents communities or the people. The proposed agencies account to the executive authority per clause 7A(2)(c) which says **"(f)or each government agency the relevant executive authority [ ] shall, subject to applicable legislation, determine the reporting requirements to the head of the principal department..."** The executive authority is by nature a public representative.

**IMATU claims that the tenure and term of office of the agencies are unlimited, unlike that of municipal councils and provinces.** The Portfolio Committee will duly note that since the agencies will be outlets of principal departments, they would have similar conditions of establishment and service as those of a government department because a " **'department' means a national**

department, a national government agency, the Office of a Premier, a provincial department or a provincial government agency” in terms of clause 1 of the Bill. Clause 7A(3)(c)(iii) says, “(t)he notice shall stipulate the conditions that the executive authority considers appropriate”. Also, clause 7A(4)(c)(iii) indicates that “(a)ny delegation of a power or authorisation to perform a duty [ ] may at any time be withdrawn in writing by that person”.

IMATU suggests that Section 160(1) of the Constitution will be undermined by agencies' proposed responsibility to appoint, second transfer and assign staff in order to execute the power and duties conferred upon them. The Portfolio Committee may note that the agencies will not disestablish municipalities and will not take over their functions. It is not a fait accompli that the staff complement of agencies would come from the municipalities, unless a municipal employee applies on his/her own accord to work in the agency should a post be advertised.