

**FOR DECISION**

TWENTIETH ITEM ON THE AGENDA

**Report of the Officers of
the Governing Body****Complaints concerning the non-observance
by Zimbabwe of the Freedom of Association
and Protection of the Right to Organise
Convention, 1948 (No. 87), and the Right
to Organise and Collective Bargaining
Convention, 1949 (No. 98), made by
delegates to the 97th Session (2008)
of the International Labour Conference
under article 26 of the ILO Constitution**

1. During the 97th Session (2008) of the Conference, at its 16th plenary sitting held on 13 June 2008, Ms Alinah Rantsolase, Workers' delegate from South Africa, made a statement in her own name and in the name of the following Workers' delegates: Mr Khurshid Ahmed (Pakistan), Ms Sharan Burrow (Australia), Mr Luc Cortebeek (Belgium), Ms Rabiatou Sera Diallo (Guinea), Mr João Felício (Brazil), Ms Maria Fernanda Francisco (Angola), Mr Julio Roberto Gomez Esguerra (Colombia), Mr Mody Guiro (Senegal), Mr Basile Mahan Gahe (Côte d'Ivoire), Mr Ebrahim Patel (South Africa), Mr Japhta Radibe (Botswana), Mr Jan Sithole (Swaziland) and Sir Leroy Trotman (Barbados). The statement was in support of the conclusion adopted by the Committee on the Application of Standards calling for a complaint under article 26 of the ILO Constitution against the Government of Zimbabwe for violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and thus constituted a complaint under article 26 of the Constitution. The text of the complaint as read by Ms Alinah Rantsolase is attached as Appendix I.
2. On the same date, the President of the International Labour Conference received a communication dated 13 June 2008, signed by Mr Edward Potter, Employers' delegate from the United States, and by the following Employers' delegates: Mr Peter Anderson (Australia), Ms Jacqueline Coke-Lloyd (Jamaica), Mr Daniel Funes de Rioja (Argentina), Ms Ronnie L. Goldberg (United States), Mr Emmanuel Julien (France), Mr Ali M'Kaissi (Tunisia), Mr Andrew Moore (United Kingdom), Ms Jacqueline Mugo (Kenya), Mr Ansoumane Savané (Guinea), Mr Peter Tomek (Austria), Mr Armando Urtecho (Honduras) and Mr Vic van Vuuren (South Africa). The communication presented a

complaint under article 26 of the Constitution, to the effect that the Government of Zimbabwe had failed to adopt measures to ensure the satisfactory implementation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The text of this communication is attached as Appendix II.

3. Article 26 of the ILO Constitution provides as follows:

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.

3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of articles 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

4. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), were ratified by Zimbabwe on 9 April 2003 and 27 August 1998, respectively, and thus have been in force for that country since 9 April 2004 and 27 August 1999. All the authors of the complaints were Workers' and Employers' delegates of their respective countries to the 97th Session of the Conference on the date of filing the complaint. They accordingly had the right to file a complaint, under article 26, paragraph 4, of the Constitution, if they were not satisfied that Zimbabwe was securing the effective observance of these Conventions.

5. The authors of the complaints have called upon the Governing Body to propose measures for the effective observance of the above fundamental Conventions in law and practice. It is for the Governing Body to decide on this request.

6. No discussion on the merits of the complaints is admissible at this stage. Indeed, it would be inconsistent with the judicial nature of the procedure provided for in article 26 and the following articles of the Constitution that there should be any discussion in the Governing Body on the merits of the complaint while a proposal to refer the complaint to a Commission of Inquiry is pending before the Governing Body and, until the Governing Body has before it the contentions of the government against which the complaint is filed, together with an objective evaluation of these contentions by an impartial body.

7. It is now for the Governing Body to adopt the necessary decisions as to procedure regarding the complaints submitted under article 26 of the Constitution.

8. It will be recalled, in this connection, that the Committee on Freedom of Association has been examining a number of complaints submitted by workers' organizations alleging violation of trade union rights in Zimbabwe.

9. It will also be remembered that the Committee of Experts on the Application of Conventions and Recommendations has made observations to the Government of Zimbabwe regarding the observance of the Conventions referred to in the complaint submitted under article 26 of the Constitution and that in 2002, 2003, 2004 and 2005 the Committee on the Application of Standards of the Conference discussed some matters relating to the observance, in practice and under law, of Convention No. 98, as well as in 2006, 2007 and 2008 of Convention No. 87.
10. In the present case, the complaints filed by a number of delegates to the Conference, under article 26 of the Constitution, largely concern matters which are already before the Committee on Freedom of Association in the context of the special freedom of association procedure. The Committee has not yet proceeded with the examination of Case No. 2645, which contains a number of the allegations that were also put forward in the article 26 complaints, as it still awaits the Government's reply. In accordance with established practice, when a Commission of Inquiry is appointed, the relevant matters before the various ILO supervisory bodies are referred to this Commission.
11. The Officers have agreed to refer the matter to the Governing Body for consideration.
12. ***In the light of the situation described in the complaints, the Governing Body may wish to decide at its present session:***
- (a) ***to institute the procedure provided for in article 26, paragraph 4, of the Constitution and consequently to proceed to appoint a Commission of Inquiry to consider the allegations referred to in paragraphs 1 and 2 above; or***
- (b) ***that the Government of Zimbabwe, as the Government against which the complaints have been filed, should be requested by the Director-General to communicate its observations on the complaints so as to reach him not later than 5 January 2009 and that the Governing Body, during its 304th Session, should decide, in the light of:***
- (i) ***the information provided by the Government of Zimbabwe in connection with the complaints; and***
- (ii) ***the recommendations of the Committee on Freedom of Association regarding the article 26 complaints and the cases which are still pending, whether they should be referred as a whole to a Commission of Inquiry.***

Geneva, 11 November 2008.

Point for decision: Paragraph 12.

Appendix I

Workers' group 97th Session of the International Labour Conference

COMPLAINT UNDER ARTICLE 26 OF THE ILO CONSTITUTION AGAINST THE GOVERNMENT OF ZIMBABWE FOR NON-OBSERVANCE OF CONVENTIONS NOS 87 AND 98

We, Worker delegates to the 97th Session of the International Labour Conference (Geneva, June 2008), whose names are included hereunder, support the conclusions on Zimbabwe adopted in the Committee on Application of Standards, calling for a complaint under article 26 of the ILO Constitution against the Government of the Republic of Zimbabwe for violations of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Zimbabwe on 9 April 2003 and 27 August 1998, respectively.

Since 2002, the Conference Committee has consistently attempted to create a constructive dialogue with the Government to find durable solutions to ever-increasingly serious violations of these Conventions. To this end, it has requested the Government on numerous occasions to accept a direct contacts mission, as well as a high-level ILO technical assistance mission. The Government has systematically refused the missions requested by the Conference Committee and last year, while providing written information, declined to participate in the Committee's proceedings in respect of its application of the freedom of association Convention.

Again, the Government declined to come before the Committee this year, despite repeated requests for it to do so and the preparation of an advance list giving it sufficient time to prepare. The Conference Committee fully discussed the case and placed its conclusions in a special paragraph for continued failure to implement the freedom of association Convention.

Grave violations of freedom of association persist and have even increased. In the last few months, trade union leaders and members have been systematically arrested, detained, harassed and intimidated for the exercise of legitimate trade union activity. Teachers have been targeted, physically assaulted and threatened. The Public Order and Security Act (POSA) and the Criminal Law (Codification and Reform) Act of 2006 have been systematically used to repress basic civil liberties and trade union rights.

Taking into account all of the above factors, we, the undersigned, feel obliged to lodge a complaint under article 26 of the ILO Constitution and call upon the Governing Body to propose measures for the effective observance of these fundamental Conventions in law and in practice. The complainants reserve the right to submit additional information hereto at the appropriate time.

Alina Rantsolase
South Africa
(substitute delegate to
Ebrahim Patel)

Jan Sithole
Swaziland

Leroy Trotman
Barbados

Japhta Radibe
Botswana

Mody Guiro
Senegal

Rabiatou Sera Diallo
Guinea

Luc Cortebeek
Belgium

Julio Roberto Gomez Esguerra
Colombia

Maria Fernanda Francisco
Angola

Joao Felicio
Brazil

Sharan Burrow
Australia

Khurshid Ahmed
Pakistan

Basile Mahagan Gae
Côte d'Ivoire

Appendix II

Employers' group 97th Session of the International Labour Conference

Mr Edwin Salamín Jaén
President
International Labour Conference

Geneva, 13 June 2008

COMPLAINT UNDER ARTICLE 26 AGAINST THE GOVERNMENT OF ZIMBABWE
FOR THE NON-OBSERVANCE OF CONVENTION NO. 87

Dear Sir,

Taking into account the discussion that took place at the Committee on Application of Standards and the conclusions adopted that followed, the undersigned Employers' delegates to the 97th Session of the International Labour Conference (Geneva, June 2008), would like to file a complaint under article 26 of the ILO Constitution against the Government of Zimbabwe for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Zimbabwe on 9 April 2003, and which came into force for Zimbabwe on 9 April 2004.

This complaint is based in the following:

- The persistent obstructionist attitude demonstrated by the Government through its refusal to come before the Committee on Application of Standards in two consecutive years and thus seriously hamper the work of the ILO supervisory mechanisms to review the application of voluntarily ratified Conventions.
- The contempt shown by the Government to the Committee on Application of Standards and the gravity of the violations observed had led this Committee to decide last year to mention this case in a special paragraph of its report and to call upon the Government to accept a high-level technical assistance mission.
- The Government's refusal of the high-level technical assistance mission that the Committee on Application of Standards had invited it to accept.
- The serious allegations of the violation of basic civil liberties, including the quasi-systematic arrest and detention of trade unionists following their participation in public demonstrations made by the Committee of Experts.
- The continual recourse made by the Government to the Public Order and Security Act (POSA) and lately, to the Criminal Law (Codification and Reform) Act of 2006 to repress basic civil liberties and trade union rights. In the last few months, trade union leaders and members have seen systematically arrested, detained, harassed and intimidated for the exercise of legitimate trade union activity.

- The vast information presented to the ILO supervisory bodies concerning the surge in trade union rights and human rights violations in the country and the ongoing threats to trade unionists' physical safety. In particular, the recent arrests of Lovemore Motombo and Wellington Chibebe and the massive violence against teachers as well as the serious allegations of arrest and violent assault following the September 2006 demonstrations.

For the reasons stated above the undersigned request you to bring this complaint under article 26 of the ILO Constitution to the attention of the ILO Governing Body in its next session to propose measures for the effective observance of this Convention in law and in practice and to consider the appointment of a Commission of Inquiry to Zimbabwe. The complainants reserve the right to submit additional information.

Yours sincerely,

Maria Paz Anzorreguy
on behalf of Mr Edward
Potter Employers' delegate,
United States

Daniel Funes De Rioja
Employer,
Argentina

Emmanuel Julien
MEDEF,
France

Vic van Vuuren
Employer,
South Africa

Ansoumane Savané
CNP,
Guinea

Ronnie L. Goldberg
Employer,
United States

Peter Anderson
Employers' delegate,
Australia

Andrew Moore
Employer,
United Kingdom

Ali M'Kaissi
Tunisia

Peter Tomek
Employer,
Austria

Jacqueline Coke-Lloyd
Employer,
JEF,
Jamaica

Jacqueline Mugo
Employer,
Kenya

Armando Urtecho
Honduras