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SPECIAL SUPPLEMENT

Truth, reconciliation and justice in Zimbabwe

Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of 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)

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569. The Commission takes due note of the Government's declared intention to reform the law in relation to the basic labour rights of public servants by harmonizing the Labour Act and the Public Service Act. The Commission is pleased to note the Government's stated commitment to ensuring that the right to organize is extended to public servants in the near future. It considers it significant that steps have already been taken in this regard, taking advantage of technical assistance offered by the ILO during July 2009.

570. Despite this, however, the Commission was unable to obtain firm information as to the status of legislative amendments to harmonize the labour law. In addition, the Commission is concerned to note that all workers' and employers' organizations that it met believed that their opinion had not been sufficiently taken into account. The Commission notes that, as at 18 December 2009, it has received no information relating to legislative amendments to the Public Service and Labour Acts, and so it can only assume that the harmonization process is somewhat delayed.

571. The Commission reiterates that all workers, without distinction whatsoever and without previous authorization, should enjoy the right to establish and join trade unions of their own choosing for furthering and defending their occupational and economic interests. Convention No. 87 guarantees the right to organize to employees in the public service, including prison officers. The Commission considers that the current legislation in Zimbabwe is not in full conformity with Article 2 of Convention No. 87 in so far as public servants are denied their right to organize.

The right to strike

572. The right to strike is recognized by the Zimbabwean Labour Act. The Commission notes however that many representatives of workers' and employers' organizations and labour lawyers recognized that the right to strike could not, in practice, be exercised. It was explained to the Commission that it was very difficult for a strike to be declared lawful under the Labour Act. The procedure was described as cumbersome and extraordinarily slow. Further, the Commission was made aware of the excessively wide definition of "essential services" in Zimbabwean legislation, which meant that a significant number of workers had no right to strike.

573. The Commission notes that as strikes are usually, if not always, found to be unlawful in Zimbabwe, striking workers are routinely subject to the sanctions set out in the Labour Act for illegal strikes – and these sanctions include fines, dismissal and penal sentences for individuals, and fines and deregistration for trade unions. The Commission was told that large numbers of workers have been dismissed from their employment on account of taking industrial action, and that this has had a significant effect on their lives, and that of their families, in the context of the economic and social crisis in Zimbabwe. It notes with concern that often members of workers' committees and trade union officials and members were singled out for dismissal in the aftermath of a strike.

574. The Commission must highlight its particular concern at the information it received concerning the routine use of the police and army against strikes. In particular, the Commission was presented with information concerning the shooting of striking workers in 2001, leading to injuries and deaths. The Commission is deeply disturbed by the information that it received that security forces opened fire on striking workers in the mining sector in September 2009, less than a month after it left the country.

575. In light of the above, the Commission is obliged to observe that the right to strike is not fully guaranteed in law or practice. In particular, the Commission is concerned that the legislation includes disproportionate sanctions for the exercise of the right to strike and an excessively large definition of essential services; and that in practice the procedure for the declaration of strikes is problematic and that it appears that the security forces often intervene in strikes in Zimbabwe. The Commission wishes to confirm that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87.

Interference

576. The Commission was told of serious interference in ZCTU meetings and demonstrations, most particularly through the requirement in practice that trade unions seek the permission of the police to hold such gatherings. The Commission was concerned at the complaint that members of the secret services were present at all ZCTU meetings, either overtly or covertly. In this regard, it was not surprised to be told that members of the ZCTU often did not wish to actively participate in meetings on account of the presence of CIO operatives.

577. A number of ZCTU officials and members stated that when their homes or trade union premises had been searched, trade union materials had been confiscated, without court orders. These materials included posters, flyers, T-shirts and caps.

578. It was also indicated to the Commission that the legislation allowed interference by the authorities in the financial affairs of trade unions (Labour Act, section 120(2)), and that this power had been used in relation to a financial investigation of the ZCTU in 2006. The Commission understands that the investigation involved the seizure of ZCTU financial and administrative documentation and affected its ability to function normally during that time. The Commission also noted concerns with legislative provisions concerning the supervision of the elections of trade union officers (Labour Act, section 51); the regulation of trade union dues (Labour Act, sections 28(2), 54(2) and (3) and 55) and the disposal of union dues by limitations on the staff that trade unions may employ and the equipment and property that they may purchase (Labour Act, section 55).

579. The Commission took particular note of the allegation that the Reserve Bank of Zimbabwe had established a parallel bank account into which funds sent by foreign donors to the ZCTU were transferred. The Commission was told by the ZCTU that it was not able to freely access that money, and that a significant amount of money had been held in this way for one year, until it was released the day after the Commission's first meeting with the ZCTU during its on-the-spot mission in August 2009.

580. The Commission was deeply concerned at statements that potential "witnesses" to the Commission had been identified by the CIO before its on-the-spot mission, and had been threatened that they should not participate in the Commission's work. The Commission was made aware that, when it was drawn to her attention, the Minister of Labour and Social Services sent a letter to the Minister of State for National Security seeking his urgent intervention to prevent the repetition of such actions.

581. The Commission wishes to stress that public authorities should refrain from any interference which would restrict the right of workers' organizations to organize their activities and to formulate their programmes, or which would impede the lawful exercise of this right. The freedom to organize their administration is not limited to strictly financial operations, but also implies that trade unions should be able to dispose of all their fixed and movable assets unhindered and that they should enjoy inviolability of their premises,