

ZIMBABWE CONGRESS OF TRADE UNIONS (ZCTU)

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3 October 2023

The Director General

International Labour Office

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Cc: ITUC Geneva e-mail: Jeroen.beirnaert@ituc-csi.org

Dear Director General,

RE: referral of the dispute over the interpretation of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No 87) (C.87) International Court of Justice (ICJ)

We thank you for your letter to all ILO Member States dated 31 August that was brought to our attention. In this letter you confirmed that you have received the request from the ILO Workers' group of 12 July 2023 for the urgent referral of the dispute over the interpretation of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No 87) (C.87) in relation to the right to strike to the International Court of Justice (ICJ) for decision, in accordance with article 37(1) of the ILO Constitution. The Workers' group also requested this matter to be put urgently on the agenda of the Governing Body for decision. This request has in the meantime received support from 36 Governments from different regions, recognising the importance of legal certainty on this issue for all constituents.

We also express our appreciation for the background report that was prepared by your Office to inform the decision during the Special Meeting of the Governing Body on 10 November 2023 and welcome your invitation to all Governments and employers' and workers' organisations concerned to send in comments.

Indeed, the right to strike is of the utmost importance for workers in Zimbabwe and the inability of the ILO to supervise this right, as a consequence of the dispute, in our national context is potentially seriously affecting labour relations in our country.

In Zimbabwe a new labour act, The Labour Amendment Act No. 11 of 2023 is now in place and as workers we had expected it to provide for the right to strike and to be aligned to the

Zimbabwe National Centre for the Labour Movement

Zimbabwe Constitution and international labour standards duly ratified by Zimbabwe. We note with concern that the amendment does not address the real problem of decriminalising legitimate strikes. In fact the new Labour Law criminalises the right to strike and further pronounces a jail term of 1 to 5 years and a fine. This is against section 65 of the Zimbabwean Constitution that provides every employee with the right to participate in collective job action including the right to strike, sit in, withdraw their labour or take other similar concerted action. The Labour Amendment Act no. 11 of 2023 is therefore ultra-vires the Constitution and violates the enjoyment of the right to Freedom of Association in terms of Convention 87 which Zimbabwe has ratified.

We, therefore, wholeheartedly support the request for a referral from our Workers' representatives in the Governing Body and call for an urgent decision by the Governing Body to ensure an immediate referral of the dispute to the ICJ. In addition, since we firmly believe that the right to strike is an essential part of freedom of association and already elaborated by the ILO supervisory bodies, there will be no added value in a protocol complementing the convention to qualify the right to strike. On the contrary, any such attempt would generate a conflict with C.87 already guaranteeing the right to strike as a fundamental principle and right at work. This would further exacerbate the dispute rather than solve it. We are convinced that legal certainty through an advisory opinion of the ICJ that is binding on the ILO is urgently required.

Yours sincerely,



Japhet Moyo

SECRETARY GENERAL