

ZCTU Submission to the ILO High Level Mission on the Status of Implementation of CAS Conclusions 2016



Background

The CAS Conclusions 2016

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee welcomed the Government's indication that steps were being taken to harmonize the labour and public service legislation with Articles 1 and 4 of Convention No. 98, including effected and proposed amendments to the Labour Act, the adoption of the 2013 Constitution and the Public Service Act.

The Committee noted with disappointment the Government's failure to provide statistical information on cases of anti-union discrimination as requested by the Committee of Experts in its 2016 observation. Taking into account the discussion of the case, the Committee urged the Government to comply with its conclusions. The Government should accept a high-level ILO mission before the next International Labour Conference in order to assess progress towards compliance with these conclusions.

The Government representative thanked the Committee for its deliberations and for the conclusions and assured the Committee that the Government would continue to work with the social partners to implement the programmes outlined in the conclusions.

ZCTU's Assessment of Progress on the Implementation of the CAS Conclusions

- 1. Hold meaningful consultations with social partners in order to fully and effectively implement the Commission of Inquiry recommendations with respect to the amendment of the Labour Act, the Public Service Act and the Public Order and Security Act;**

(a) Amendment of the Labour Act Chapter 28:01

Consultations and discussions to amend the Labour Act Chapter 28:01 started way back in 2010 after the Commission of Inquiry's report which was accepted by the government of Zimbabwe on 20 April 2010. The discussions culminated in the adoption of 13 principles in 2014. However, the agreed principles were ignored by government and in 2015,

government unilaterally imposed amendments that were very retrogressive as they ignored the recommendations of the Commission of Inquiry and the agreed principles. The new provisions were criticised by the Committee of Experts on the Application of Conventions and Recommendations in its 2016 Report. This culminated in the discussion of Zimbabwe in the 2016 ILC conference and again government committed itself to implement the conclusions.

What is important to note is that after the CAS 2016 conclusions, tripartite meetings were held to discuss again the principles to guide the amendment of the Labour Act chapter 28:01. The Principles were agreed on 31 August 2016 with minor issues remaining especially on the period of notice for embarking on strike.

Since then, there was silence on the part of government to have the principles adopted by Cabinet and the drafting of the bill. However, as this Mission dates drew, government called for a tripartite meeting on 9 February 2017 to give feedback on progress in this regard. Government promised that the draft bill will be ready by the 10th of February 2017. We are yet to receive the draft bill.

Although there are broad labour rights provided in the Constitution of Zimbabwe in section 65, implementation has been a challenge because such rights are subject to limitation in terms of section 86 of the Constitution of Zimbabwe. Only 6 rights are not subject to limitation namely the right to life, the right to human dignity; the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment; the right not to be placed in slavery or servitude, the right to a fair trial, the right to obtain an order of *habeas corpus*.

Workers are finding it difficult to exercise their Constitutional rights due to such limitations imposed in the Labour Act. (see **Labour Court judgment in file under Railway Industry: National Railways of Zimbabwe v Jeremiah Muzangwa & 1357 others LC/MT/66/16**) in which striking workers of National Railways of Zimbabwe were stopped from exercising their right to strike because they have not complied with the limitations to strike imposed in the Labour Act.

The ZCTU is concerned by the delays in this process as government always adopt a forward and backward position in implementing the Commission of inquiry's recommendations and the CAS conclusions in this regard. Government has spent almost 7 years promising progress which is not yet tangible despite several meetings. In matters of its interest, government has been fast tracking processes as they did in the retrogressive Labour Act amendments of 2015 and the retrogressive Constitutional Amendment Act introduced on 3 January 2017 that is already in parliament.

Negotiations or consultations for the amendment of the Public Service Act were initially held together with those of the Labour Act since 2010. However, after the CAS Conclusions, government adopted a divide and rule approach in which it elected to have a bipartite discussion with its employees' association. The ZCTU was side lined and despite demand government refused to cooperate no share information in this regard. Government just informed the other social partners at a meeting on the 9th of February 2017 that there is progress and the draft principles are before Cabinet for approval.

In practice, Civil Service employees still do not enjoy the right to collective bargaining and other fundamental rights. The Law only recognise consultations but the Civil Service Commission is not bound by the proposal of the employees. Conditions of service continue to be imposed by the Authorities. Section 203 (4) of the Constitution of Zimbabwe provides as follows: *In fixing the salaries, allowances and other benefits of members of the Civil Service, the Civil Service Commission must act with the approval of the President given on the recommendation of the Minister responsible for finance and after consultation with the Minister responsible for the Civil Service.*

This clearly means the salaries are fixed by the authorities other than by collective bargaining. The Commission of Inquiry reiterated in para 589 of its report that *'The Commission wishes to stress that all workers, including public servants, should be entitled to bargain collectively to determine their conditions of work with the exception of those in the administration of the state in the strict sense'*.

The ZCTU is concerned that the delay to amend the Public Service Act subject workers to provisions that violate their labour rights despite a clear constitutional right to engage in collective bargaining. The ZCTU is also concerned about the division approach adopted by government and this approach is anti-tripartism. The government representative submitted before CAS that it will work with social partners to address the challenges but now doing the opposite.

(c) Amendment of the Public Order and Security Act (POSA)

The ZCTU submit that nothing has been done to give effect to this conclusion or recommendation. The government remain adamant that POSA does not apply to trade unions. However, in practice it is being applied. **(see Copies in file under ZCTU)** in which police coordinated and banned the ZCTU demonstration against the introduction of bond notes. The demonstrations were banned throughout the 6 ZCTU regions of the ZCTU namely Harare, Bulawayo, Gweru, Masvingo, Chinhoyi and Mutare citing same reasons that the ZCTU has not complied with POSA. An appeal to the Zimbabwe Human rights Commission (ZHRC) received a negative reply. The ZHRC advised the ZCTU to go to court. **(see ZHRC Reply in file under ZCTU)**. However, the Commission is also concerned by the ill conduct of the Zimbabwe Republic Police in matters of demonstration. **(See ZHRC Press statement 30 August 2016, Commission Watch' in the file under ZCTU)**

-In the banking industry, The Zimbabwe Banks and Allied Workers Union approached the High Court on 13 June 2016 challenging the application of POSA. The Court ruled that the union has no right to approach the court save for its individual members.

(see Court judgment: Zimbabwe Banks and Allied Workers Union v Officer Commanding Police and others HH 387-16a and police reply to ZIMBAWU letters under Banking Industry)

The ZCTU is concerned that despite government insistence that POSA does not apply to trade unions, there is substantial evidence to disapprove its contention.

2. Ensure that dissuasive sanctions are imposed on those engaging in anti-union discrimination and that all workers who have been targeted for discrimination have access to effective remedies;

-There are no dissuasive sanctions stipulated because the enabling legislations are not yet amended to provide for stiffer penalties. Workers continue to be governed by the same law that blesses anti-union discrimination. There is no clear provision in the labour statute that provides directly for the protection of trade union members and their representatives.

-In addition, the available remedies are not effective as labour disputes in this respect are not addressed timeously. The Supreme Court of Zimbabwe in its interpretation of damages has over the years shifted the blame to the victim (workers) but setting precedent that a dismissed worker must look for alternative employment, provide proof of such attempts and mitigate loss. As a result most employers prefer to pay damages other than reinstatement.**(see Court Judgment Madhatter Mining Company v Marvellous Tapfuma under ZCTU)**

The current provision of the labour Act Chapter 28:01(s89(2)(c)(iii) encourages anti-union discrimination because the awarding of damages is purely the discretion of the court. The judges need to be directed by providing a clear provision that sets out stiff penalties.

-Some anti-union employers (Standard Chartered Bank Zimbabwe Limited) have found it easy to refuse to reinstate employees it dismissed and now intend to pay damages to victims of anti union discrimination in the **sum of US\$0.80 or US\$5-00 (see the cases of Peter Mutasa , Shepard Ngandu under Banking Industry).**

-The Minister of Public Service, Labour and Social Welfare does not allow victims of anti-union discrimination to demonstrate against their employers. **(See letter to Farai Mutowembwa and 21 others v Steward Bank in file under Banking Industry)**

The Labour Amendment Act No.5 of 2015 imposed a minimum retrenchment package of one month's salary for each 2 years of service. The provision is now used by employers to victimise workers by simply avoiding disciplinary process and allege retrenchment in order to avoid payment of damages. **(See the case of Elizabeth Moyo v National Employment Council for the Engineering and Iron and Steel Industry in file under ZCTU)**. The law destroyed collective bargaining in retrenchment and some employees who owed companies had their properties repossessed or auctioned by their employers because the retrenchment package cannot off set their debts.

-The dispute resolution process is slow as some cases of anti-union discrimination have gone for more than two years without judgment.

The President of the Zimbabwe Banks and Allied workers union Mr Farai Katsande was dismissed by the Infrastructure Development Bank of Zimbabwe (IDBZ) owned by government of Zimbabwe for his trade union activities. Mr Katsande filed a constitutional application to the constitutional Court which heard the matter in July 2014 and reserved judgment up to now.

The ZCTU is concerned that cases of anti-union discrimination are not given priority in the dispute resolution system and the available remedies are not effective to prevent it. Government has not done anything in this regard save for a proposal in the draft principles to address anti-union discrimination issues.

3. Collate and submit to the Office all statistical information about cases of anti-union discrimination, as requested by the Committee of Experts;

The ZCTU submitted cases of anti-union discrimination to government in June 2016. **(see letter to ZCTU letter dated 8 July 2016 in file under ZCTU)** These include the government parastatal Zimbabwe Revenue Authority that dismissed the entire 12 union executive members in November 2010 under spurious charges that were dismissed by the criminal courts. However, the real issue was of forming their union: The Zimbabwe Revenue Authority Trade Union on 10 September 2010. The issue of dismissal has been in various courts on appeal by the **employer for 6 years and** on 4 July 2016, the Supreme Court ordered the proceedings to start afresh at company level. **(see Judgment under Revenue Authority Industry)** Most of the cases have not yet been resolved. There are 64 cases reported to ZCTU and its affiliates most of which are pending in different dispute resolution systems.

4. Provide detailed information on the current situation of collective bargaining in the export processing zones and on the concrete measures to promote it in those zones;

The Special Economic Zones Act Chapter 14:34 was finally enacted and section 56(1) that was intended to remove the application of the Labour Act in the Special Economic Zones was amended to remove the phrase that made reference to the Labour Act. This was after a strong campaign against such provision by the ZCTU. **(See Campaign flyer in file under Parliament and Acts)**

However, section 56(2) provides ‘ *The Authority must in consultation with the Minister responsible for the administration of the Labour Act [Chapter 28:01], provide rules for conditions of service, termination of service, dismissal from service and disciplinary proceedings that apply within every special economic zone.* **(see The Act in file under Parliament and Acts)**

It is the ZCTU submission that the Special Economic Zones Act does not recognise the right of the parties to collective bargaining. The public Authority still enjoy the power to set conditions of service and disciplinary proceedings .Al though the right to engage in collective bargaining is recognised in the Constitution, it is subject to limitation save for the six rights stated in (a) above. A law of general application may limit the right.

-The current situation of collective bargaining in the Special economic Zones is that the zones are not yet operational.

The ZCTU is concerned that the despite the removal of the clause that directly barred the application of the Labour Act in the Special Economic Zones, The Act does not guarantee the freedom of the parties to engage in collective bargaining as the public authority still enjoy the power to set conditions of service. The right to collective bargaining will only be enjoyed at the discretion of the Minister responsible for Labour.

5. Ensure that collective bargaining can be exercised in a climate of dialogue and mutual understanding;

The climate for Colective bargaining and mutual understanding has been very difficult in a non performing economy that is compounded with company closures, liquidation, retrenchments and liquidity crisis.

Collective bargaining is associated with bad faith bargaining as some industries have not concluded agreements for example, National Railways of Zimbabwe’s last agreement was in 2011, Energy Sector (2011) the Ferro Alloy Industry, Motor Vehicle Manufacturing industry, Catering and Hotel Industry (2013) **(in file under Metal and Energy Industry)** and disputes in that regard remains pending in the Court **(see Copy of Appeal in file under Metal and Energy Industry Ferro Alloy Employers Association of Zimbabwe v Zimbabwe Metal and energy and Allied Workers union Case No. HC 5736/26, dispute of 2015)**

There is also a practice of refusal to comply with concluded collective bargaining agreements. The Zimbabwe Electricity Supply Authority has since 2012 with the blessing of the government refused to comply with concluded agreement. **(See judgement Zimbabwe Energy Workers Union v ZESA Holdings Pvt Ltd in file under Energy Industry industry)** The National Railways of Zimbabwe owes employees' wages and salaries close to 90million dollars for 14 months. It took a unilateral decision to slash salaries. In 2014 employer slashed salaries by 20%-30%. In 2016 it slashed salaries by 50% causing divisions between the unions and the members as some accepted while others were against. **(See copies under Railway Industry).**

- Non-payment of wages has become the norm and a subversion of collective bargaining. For detailed situation see survey carried out by the Labour and Economic Research Institute of Zimbabwe (LEDRIZ) titled "Working Without Pay: Wage Theft in Zimbabwe (2015) **See copy in file under CBA).**

- 'The survey, carried out on 442 companies, showed an estimated 80,000 workers have not received their wages and benefits on time. Many of these workers have gone for more than 12 months without receiving their monthly wages but are still expected to come to work without fail. The non-payment of wages is no longer only a private-sector phenomenon, but has extended to the public sector, where many workers are also going without pay. Both the government and parastatal institutions have been complacent about dealing with this issue'.

The Parliament of Zimbabwe's Portfolio Committee on Public Service Labour and Social Welfare Report on 'The Working Conditions at Hwange Colliery Company limited, National Railways of Zimbabwe and Dete Refractories revealed that workers are partly paid. Hwange Colliery company owes 3000 employees 25 months salaries amounting to US\$45million dollars, Non remittance of pensions, NRZ as of June owed US\$78,9 million dollars, Dete Refractories has resorted to pay wages in kind in the form **of bricks and tiles. (see report under Parliament and Act)**

-Domestic workers' wages were last increased in 2011 and the last meeting was held in 2012. **(See Copy from Zimbabwe Domestic and Allied Workers union in file under CBA)**

ZISCO Steel Company collapsed and workers have not been paid for almost 5 years.

The government of Zimbabwe has not yet paid in full bonuses for civil service employees due in November 2016.

- For those employees who are luck to receive the pity salaries, they have difficult to access it as the banks have no money and where it is available, it is limited to between 50 bond notes- \$100-00 bond notes per day.

- The main medium of exchange has been the United States dollar but government has imposed a bond note and pegged it by decree to be equivalent to the US\$. This has robbed workers of their genuine money in the banks. In addition Zimbabweans have been barred from accessing their money outside the country and any purchase require RBZ approval **(see Press Report in file under CBA, Herald 21 February 2017 , RBZ raps Banks over inputs))**

The ZCTU is concerned that the failure by government to create an enabling environment for collective bargaining is detrimental to the livelihoods of workers and their families and perpetuates worker exploitation and a recipe for poverty.

6. Enhance the capacity of the social partners to fulfil obligations under existing collective agreements;

As Zimbabwean workers are going for several months without salaries, reduced salaries or paid in kind, Trade unions subscriptions are also not remitted by employers thereby crippling unions operations to engage in collective bargaining. Even the ZCTU is failing to finance its operations as companies are not remitting trade union subscriptions to its affiliates. The survey of some ZCTU affiliates shows the following:

Zimbabwe Amalgamated Railway Workers Union	US\$503 000.00
Commercial Workers Union of Zimbabwe	US\$19000.00
Zimbabwe Security Guards Workers Union	US\$70916-77
Zimbabwe Tobacco Industrial Workers Union	US\$6000-00
National union of Metal I and Allied Industries in Zimbabwe	US\$74600.00
Total	US\$673 516.77 (see industrial reports in file under Anti-Union and Non Remittance) some of the cases are pending in Court. (see summons under Railway industry)

Furthermore, the government has been on the onslaught against its social partners. In September 2016, the government garnished all ZCTU accounts and confiscated US\$58000-00 to go towards Pay As You Earn taxes owed by ZCTU despite the fact that ZCTU has not paid wages for 14months. The amount includes donor funds for projects. This prompted the ZCTU to seek for ILO direct intervention. (See letter to ILO and Reply under ZCTU).

The ZCTU is concerned that instead of enhancing social partner's capacity to fulfil obligations under existing collective agreements, government has been on the onslaught. It is now difficult to monitor the implementation of collective bargaining agreements because the government has created difficult conditions for the unions to operate. The unions are broke and some companies are also broke. Nothing has been done to improve the situation.

7. Conclusions

The high Level mission's attention is drawn to the following points:

- 7.1. There is now a period of 7 years of promises after the Commission of Inquiry's recommendations to amend the Labour Act, Public Service Act and POSA and up to now, there is no tangible result save for drafts after drafts.
- 7.2. There are no dissuasive sanctions imposed on those engaging in anti-union discrimination and there is no access to effective remedies; The reported cases are taking up to 6 years to resolve with little damages awarded.
- 7.3. There is no action taken by government to provide remedies to victims of anti-union discrimination. Government simply copied information provided by ZCTU and submitted to ILO for the purpose of complying with the conclusion.
- 7.4. The Special Economic Zones are not yet operational. However, the promulgated law does not provide for the right to engage in collective bargaining but gives power to the public authority to set conditions.
- 7.5. Collective bargaining has become difficult to undertake in an environment in which workers' rights are not respected, non-payment of full wages, non-remittance of trade union dues. The government is on the offensive to cripple trade unions activities and survival.

The ZCTU concludes that there is no compliance or substantial compliance with the conclusions of CAS. The ZCTU implore upon the High Level Mission to impress upon the government of Zimbabwe to undertake urgent reforms and produce tangible results before the 2017 ILC.