

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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**International Labour Office
Geneva**

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Summary

In November 2008, the Governing Body of the ILO decided to set up a Commission of Inquiry, in accordance with article 26, paragraph 4, of the ILO Constitution, to examine the complaints filed by a number of delegates to the Conference concerning the observance by the Government of Zimbabwe of Conventions Nos 87 and 98 on freedom of association. As recalled by the Director-General of the ILO at the inaugural session of the Commission, this was the first occasion on which a Commission of Inquiry had arisen out of simultaneous complaints from Workers' and Employers' delegates to the Conference. The complaints examined by the Commission of Inquiry referred in particular to serious allegations of violations of basic civil liberties, including the quasi-systematic arrest, detention, harassment and intimidation of trade union leaders and members for the exercise of legitimate trade union activities.

The members of the Commission of Inquiry were: Judge Raymond Ranjeva (Madagascar, Chairperson), Dr Evance Kalula (Zambia) and Dr Bertrand Ramcharan (Guyana).

In view of political developments leading to a Global Political Agreement, the Commission of Inquiry undertook a preliminary visit of goodwill and initial contacts to Zimbabwe in May 2009 to familiarize itself with the situation in the country following the establishment of the inclusive Government. The Commission explained to those whom it met that, while working in the judicial spirit that characterizes ILO Commissions of Inquiry, it was at the same time desirous of contributing to the process of reconciliation and healing in Zimbabwe. The Commission then undertook a full fact-finding mission to Zimbabwe in August 2009.

The Report of the Commission of Inquiry, in addition to outlining the substance of the communications received, reviews the historical and socio-economic context of trade unionism in Zimbabwe, both during the period of colonization and white minority government, and following independence in 1980. It reports on the current socio-economic context in the country and reviews the national legislation in relation to freedom of association. It then summarizes the comments made by the ILO supervisory bodies over the years on the application of Conventions Nos 87 and 98 in Zimbabwe.

The report summarizes the information on the factual matters investigated by the Commission relating to the systematic violation of freedom of association rights. More specifically, it discusses allegations concerning the right to strike and demonstrate; arrests, detentions, assaults and torture; intimidation and harassment of trade unionists and, in particular, teachers, farm workers and the business community; interference in trade union affairs and trade union discrimination; collective bargaining and social dialogue; and the institutional protection of trade union rights. It also considers statements concerning attempts at a healing and reconciliation process in Zimbabwe.

In its conclusions, the Commission of Inquiry notes that, by and large, it found little disagreement between the complainants and the Government of Zimbabwe in relation to many of the allegations. The Government of Zimbabwe accepted that "things" had happened, that they were regrettable and that it was important to ensure that such "things" did not happen again. However, there was a certain amount of disagreement as to the extent of the regrettable events and their causes.

The Commission of Inquiry concludes that there was systematic, and even systemic, violation of the Conventions in the country. It saw a clear pattern of arrests, detentions, violence and torture of trade union leaders and members by the security forces coinciding with Zimbabwe Congress of Trade Unions (ZCTU) nationwide events, indicating some centralized direction to the security forces to take such action and a clear pattern of control

over ZCTU trade union gatherings through the application of the Public Order and Security Act (POSA). It noted the systematic targeting of ZCTU officials and members, particularly in rural areas, involving significant violence and anti-union discrimination in employment, in what appeared to be a calculated attempt to intimidate and threaten ZCTU members. It also noted with particular concern the routine use of the police and army against strikes, widespread interference in trade union affairs and the failure to guarantee judicial independence and the rule of law, resulting in a situation of impunity for those perpetrating atrocities.

In its recommendations, the Commission of Inquiry therefore calls for:

- the harmonization of the relevant legislative texts, and particularly the Labour Act, the Public Service Act and the Public Order and Security Act, with Conventions Nos 87 and 98, as requested by the ILO supervisory bodies;
- the cessation with immediate effect of all anti-union practices, as documented in its report;
- the Zimbabwe Human Rights Commission to be rendered operational as soon as possible, with adequate resources;
- the provision of training on freedom of association and collective bargaining, civil liberties and human rights to key personnel in the country, most notably the police, security forces and the social partners;
- the reinforcement of the rule of law and the role of the courts in Zimbabwe, by ensuring that the courts are respected, properly resourced and provided with appropriate training and support;
- the continued strengthening of social dialogue; and
- the continuation of ILO technical assistance in these areas.

Finally, the Commission of Inquiry observes that it witnessed a country in deep crisis, which is facing the challenge of building a bridge from division and social tension to a peaceful and just future. The move towards truth, reconciliation and justice needs to be sustained and the Commission of Inquiry hopes that its report will contribute to this process. It expresses its firm belief in a positive future for Zimbabwe and affirms that the implementation of the two Conventions on freedom of association can pave the way to genuine democracy. And, in conclusion, it emphasizes that the rule of law, democracy and respect for human rights beckon the country to higher ground. Zimbabweans expect and deserve no less.

Acronyms

Zimbabwean workers' organizations

| | |
|--------|---|
| CASWUZ | Communication and Allied Services Workers' Union of Zimbabwe |
| GAPWUZ | General Agriculture and Plantation Workers' Union of Zimbabwe |
| PTUZ | Progressive Teachers' Union of Zimbabwe |
| ZCTU | Zimbabwe Congress of Trade Unions |
| ZFTU | Zimbabwe Federation of Trade Unions |
| ZIMTA | Zimbabwe Teachers' Association |

Zimbabwean employers' organization

| | |
|-------|--------------------------------------|
| EMCOZ | Employers' Confederation of Zimbabwe |
|-------|--------------------------------------|

National institutions

| | |
|-------|--|
| CIO | Central Intelligence Organization |
| NEC | National Employment Council |
| ONHRI | Organ for National Healing, Reconciliation and Integration |
| PSC | Public Service Commission |
| TNF | Tripartite Negotiating Forum |

International and regional workers' and employers' organizations

| | |
|-------|---|
| ICFTU | International Confederation of Free Trade Unions (now the ITUC) |
| IOE | International Organisation of Employers |
| ITUC | International Trade Union Confederation (formerly the ICFTU) |
| OATUU | Organization of African Trade Union Unity |
| PAEF | Pan-African Employers' Federation |
| UNI | Global Union |
| WFTU | World Federation of Trade Unions |

Zimbabwean political parties

| | |
|---------|---|
| MDC–M | Movement for Democratic Change–Mutambara |
| MDC–T | Movement for Democratic Change–Tsvangirai |
| ZANU–PF | Zimbabwe African National Union–Patriotic Front |
| ZAPU | Zimbabwe African People's Union |

Zimbabwean legislative and other instruments

| | |
|------|-------------------------------|
| GPA | Global Political Agreement |
| POSA | Public Order and Security Act |

Regional organizations

| | |
|------|--|
| AU | African Union |
| SADC | Southern African Development Community |

Part I.

Introduction and background to the case

1. Filing of the complaints and appointment of the Commission

I. Filing of the complaints

1. Through a statement addressed to the 97th Session of the International Labour Conference during its 16th plenary sitting held on 13 June 2008, 13 Workers' delegates filed a complaint under article 26 of the Constitution of the International Labour Organization (ILO) against the Government of Zimbabwe for non-observance 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. The complaint was worded as follows:

We, Workers' 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)

Julio Robert Gomez Esguerra
Colombia

Jan Sithole
Swaziland

Maria Fernanda Francisco
Angola

Leroy Trotman
Barbados

Joao Felicio
Brazil

Japhta Radibe
Botswana

Sharan Burrow
Australia

Mody Guiro
Senegal

Khurshid Ahmed
Pakistan

Rabiatou Sera Diallo
Guinea

Basile Mahagan Gae
Côte d'Ivoire

Luc Cortebeeck
Belgium

2. By a letter the same day, addressed to the President of the International Labour Conference, 13 Employers' delegates filed a complaint under article 26 of the Constitution of the ILO against the Government of Zimbabwe for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The complaint was worded as follows:

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.

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

II. Provisions of the Constitution of the International Labour Organization relating to complaints concerning the application of ratified Conventions

3. The procedure under which the Workers' and Employers' delegates filed their complaints against the Government of Zimbabwe is set out in articles 26–29 and 31–34 of the ILO Constitution. These articles provide for the procedure by which a Commission of Inquiry may be established and set out its terms of reference and functions to be fulfilled.
4. The relevant provisions are as follows:

Article 26

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 article 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.

Article 27

The Members agree that, in the event of the reference of a complaint to a Commission of Inquiry under article 26, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

Article 28

When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

Article 29

1. The Director-General of the International Labour Office shall communicate the report of the Commission of Inquiry to the Governing Body and to each of the governments concerned in the complaint, and shall cause it to be published.
2. Each of these governments shall within three months inform the Director-General of the International Labour Office whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the International Court of Justice.

Article 31

The decision of the International Court of Justice in regard to a complaint or matter which has been referred to it in pursuance of article 29 shall be final.

Article 32

The International Court of Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry, if any.

Article 33

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.

Article 34

The defaulting government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry or with those in the decision of the International Court of Justice, as the case may be, and may request it to constitute a Commission of Inquiry to verify its contention. In this case the provisions of articles 27, 28, 29, 31 and 32 shall apply, and if the report of the Commission of Inquiry or the decision of the International Court of Justice is in favour of the defaulting government, the Governing Body shall forthwith recommend the discontinuance of any action taken in pursuance of article 33.

III. Provisions 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)

5. The basic provisions 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) are as follows:

FREEDOM OF ASSOCIATION AND PROTECTION OF THE
RIGHT TO ORGANISE CONVENTION, 1948 (NO. 87)

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term “organisation” means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949 (NO. 98)

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to –
 - (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
 - (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers’ and employers’ organisations shall enjoy adequate protection against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration.
2. In particular, acts which are designed to promote the establishment of workers’ organisations under the domination of employers or employers’ organisations, or to support workers’ organisations by financial or other means, with the object of placing such organisations under the control of employers or employers’ organizations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

IV. Summary of measures taken by the Governing Body of the ILO following the filing of the complaints

6. At its 303rd Session (November 2008), the Governing Body of the ILO had before it a report by its Officers concerning the subject of the complaints. The report included the following passages: ¹

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.

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.

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.

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.

V. Appointment of the Commission

7. The Governing Body decided to refer the whole matter to a Commission of Inquiry, in accordance with article 26, paragraph 4, of the Constitution of the ILO. During the same session, the Governing Body decided that the Commission of Inquiry would have the following composition: ²

Chairperson: Judge Raymond Ranjeva (Madagascar) – Former Vice-President of the International Court of Justice; Conciliator at the World Bank International Centre for Settlement of Investment Disputes.

¹ ILO, 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, 303rd Session (Geneva, November 2008), paras 1 and 2.

² ILO, Report of the Director-General, Eighth Supplementary Report: 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): Appointment by the Governing Body of a Commission of Inquiry in accordance with article 26(4) of the Constitution of the ILO, 303rd Session (Geneva, November 2008), para. 2.

Members: Dr Evance Kalula (Zambia) – Professor of Employment Law and Social Security and Director of the Institute of Development and Labour Law of the University of Cape Town; Chairperson of the South African Employment Conditions Commission.

Dr Bertrand Ramcharan (Guyana) – Former Acting UN High Commissioner for Human Rights and UN Under Secretary-General; Commissioner of the International Commission of Jurists; former professor (Swiss Chair of Human Rights), Graduate Institute of International and Development Studies.

2. Relations with the ILO concerning freedom of association

8. Zimbabwe joined the ILO upon gaining independence in 1980 and has currently ratified 26 Conventions, including all the fundamental Conventions. Zimbabwe's observance of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), has been examined regularly by the Committee of Experts on the Application of Conventions and Recommendations. The Conference Committee has discussed the case of Zimbabwe four times in relation to Convention No. 98 and three times in relation to Convention No. 87, mentioning the country in a special paragraph of its report once for Convention No. 98 and twice for Convention No. 87.³ Nine complaints against Zimbabwe have been considered by the Committee on Freedom of Association, seven of which have been brought to the special attention of the Governing Body as serious and urgent cases.⁴
9. For the first 16 years of its membership of the ILO, no complaints were filed in relation to Zimbabwe's observance of the freedom of association and collective bargaining Conventions. The first two complaints were submitted to the Committee on Freedom of Association in 1996 by the International Confederation of Free Trade Unions (ICFTU), alleging that the police violently broke up a demonstration of workers in support of striking doctors and nurses, and in 1997 by the International Federation of Commercial, Clerical, Professional and Technical Employees, alleging the mass dismissal of bank workers following a strike. The Government provided information to the Committee on Freedom of Association in relation to both of these cases.
10. The following year a complaint was filed by the Zimbabwe Congress of Trade Unions (ZCTU), alleging violent police interventions in large-scale national demonstrations, an assault on its Secretary-General, Mr Morgan Tsvangirai, arson on a regional union office, and a Presidential declaration that all industrial action was illegal for a six-month period. While the Government provided comments on the allegations, it considered that it was inappropriate to instigate independent inquiries or legislative amendments in accordance with the Committee on Freedom of Association's requests. In 2007, the Committee regretted the Government's "continued and long-standing failure to cooperate".⁵
11. Convention No. 98 came into force in Zimbabwe on 27 August 1999. The Committee of Experts considered the country's first report in November 2000. In a direct request, it addressed concerns involving legislative discrepancies concerning, in particular, interference in trade union affairs, compulsory arbitration, collective bargaining and the coverage of public

³ The comments of the Committee of Experts were considered by the Conference Committee in relation to Convention No. 98 in 2002, 2003, 2004 and 2005; and in relation to Convention No. 87 in 2006, 2007 and 2008.

⁴ Cases Nos 1909, 1937, 2027, 2081, 2184, 2238, 2313, 2328 and 2365.

⁵ 344th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. XC, 2007, Series B, No. 1, para. 247. See also 331st Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 2; 332nd Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 3; 333rd Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVII, 2004, Series B, No. 1; 336th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVIII, 2003, Series B, No. 1; and 340th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVIX, 2006, Series B, No. 2.

servants. In 2001, no report was received from the Government, and so the Committee of Experts repeated its comments from the previous year as an observation. In 2002, the Conference Committee invited Zimbabwe to participate in its work in relation to its observance of Convention No. 98 and suggested that the Government should have recourse to an ILO mission.⁶

- 12.** Another Committee on Freedom of Association complaint brought by the ZCTU in 2000 concerned the appointment of an investigator to look into the union's funds and property, which the Committee continued to follow up until 2004, when it regretted that the Government had not reformed the law. Two complaints were filed by the ICFTU in 2002, both of which were listed as serious and urgent cases by the Committee. One of those cases concerned alleged interference by the police in a ZCTU meeting and the threat of de-registration; the other related to allegations of arrest and detention of nine trade unionists in the context of a planned mass stay-away, assault by the police, and riot police having prevented a trade union meeting.
- 13.** In 2002, in its observation on Convention No. 98 the Committee of Experts regretted that the Government had not accepted an ILO mission as suggested by the Conference Committee. In 2003, for the first time, Zimbabwe was mentioned in a special paragraph of the Conference Committee's report as of special concern. The Government commented that its listing was unnecessary given the current labour law reform processes, and emphasized its cooperation with African political leaders to address the problems it faced. The Government stated that, although it was willing to accept technical assistance from the ILO, a direct contacts mission would be political in nature; the view was expressed that those who were trying to participate in the political process in the country were failing to respect the fact that African countries were capable of resolving their problems on their own.⁷
- 14.** A further complaint to the Committee on Freedom of Association was filed by the ICFTU in 2003 concerning allegations of the arrest of 165 trade union leaders during a nationwide protest, some of whom were seriously assaulted, and of 390 trade unionists at a nationwide protest one month later. The Government of Zimbabwe replied that many of the ZCTU's actions were political, rather than of a true trade union nature. By 2006, the Government did not reply to further information provided by the complainants containing details of alleged violence, despite an urgent appeal to do so. On both occasions that it examined the case, the Committee on Freedom of Association brought it to the special attention of the Governing Body.
- 15.** In November 2003, the Committee of Experts noted with satisfaction that the Government had introduced new legislation that partially resolved some of its concerns in relation to interference, compulsory arbitration and the application of the Labour Act to most public servants. However, it regretted that some problems remained in relation to collective bargaining and freedom of association rights of prison workers. These same issues were raised by the Committee of Experts the following year. The Conference Committee discussed the case of Zimbabwe again in 2004 and in 2005, when it noted positive legislative developments as well as problems in practice, and the Government's continued refusal to accept a high-level direct contacts mission. In 2005, the Committee of Experts encouraged Zimbabwe to accept a direct contacts mission.
- 16.** In 2004, a complaint was filed with the Committee on Freedom of Association by the Organization of African Trade Union Unity (OATUU), the UNI Global Union and the ICFTU

⁶ 90th Session, International Labour Conference, June 2002.

⁷ 91st Session of the International Labour Conference, June 2003.

in relation to the alleged dismissals and indefinite suspension of trade union officials. Appeals in this case were still pending in the national courts in 2007. Another complaint filed by the ICFTU concerned a number of allegations relating to 2004, including detentions, dismissals and transfers, and general intimidation and harassment of trade unionists. Later allegations concerned similar events in 2004–06, as well as investigations of ZCTU financial matters, refusal to allow foreign trade unionists to enter the country, and police intervention in trade union meetings, strikes and demonstrations. The final set of allegations concerned the arrest and assault of 265 union members and officials during a 13 September 2006 demonstration. While the Government provided observations throughout the Committee on Freedom of Association’s follow-up to the case, during which time it was listed as a serious and urgent case on three occasions, the Committee deplored the fact that its recommendations had not been implemented.

- 17.** This case also concerned the issue of alleged governmental involvement in an internal conflict within the ZCTU, which was raised before the Credentials Committee of the International Labour Conference in 2005. The ICFTU and Concerned Zimbabweans Abroad had alleged that the Workers’ delegates on the Zimbabwe delegation had been unilaterally selected by the Government in contradiction with the ZCTU’s proposal as the most representative trade union. While the Credentials Committee was not in a position to verify allegations concerning internal ZCTU conflicts, it noted that the Government’s actions in rejecting the written proposal of the ZCTU amounted to interference. The Credentials Committee noted “some doubts” about the Government’s impartiality and an indication of governmental “manoeuvres to manipulate the choice”.
- 18.** Convention No. 87 came into force in Zimbabwe on 9 April 2004. The Committee of Experts examined the country’s first report in November 2005, commenting upon concerns with implementation of the Convention in relation to civil liberties, arrest and detention of unionists. In addition, the Committee of Experts noted various matters including the application of the Act to the prison service and managers, the question of registration, governmental involvement in union elections and activities and ability to launch investigations into unions, and the right to strike.
- 19.** In June 2006, Zimbabwe was invited to appear before the Conference Committee on account of Convention No. 87. The country considered that its appearance on the case list was politically motivated and continued to refuse to accept the suggestion by the Conference Committee of a high-level direct contacts mission. The Conference Committee commented on the use of the POSA and emphasized that the exercise of trade union rights was intrinsically linked to the assurance of full guarantees of basic civil liberties, including the rights to express opinions freely, and to hold assemblies and public meetings.
- 20.** In 2006, Zimbabwe again provided reports to the Committee of Experts on both Conventions Nos 98 and 87, which raised similar matters. While the Government continued to refuse to accept a high-level direct contacts mission, Zimbabwe had invited the Director of the ILO International Labour Standards Department to officially visit the country in August 2006. Her mission report, which commented on a paucity of social dialogue in the country, was mentioned by both the Committee of Experts and the Conference Committee.
- 21.** In June 2007, Zimbabwe’s observance of Convention No. 87 was again discussed by the Conference Committee. Despite having a delegation accredited to the Conference, the Government did not attend the sitting of the Conference Committee. Zimbabwe was mentioned in a special paragraph. At the same session, following an objection by the International Trade Union Confederation (ITUC), the Credentials Committee regretted that the Government had appointed a person of its own choice as one of the Workers’ delegates on the Zimbabwe delegation and expected that in the future the Government would nominate the Workers’ delegation exclusively in agreement with the most representative workers’ organization.

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- 22.** In 2007, the Committee of Experts made observations on both Conventions Nos 87 and 98, raising similar technical issues as in its previous comments, and reiterated the importance of the country receiving a high-level direct contacts mission. A further complaint to the Committee on Freedom of Association submitted by the ITUC in May 2008 contained updates on previous allegations and new allegations relating to 2006–08. In 2008, Zimbabwe was again discussed, despite the absence of its delegation, by the Conference Committee. In its conclusions, the Committee called for countries to consider action under article 26 of the ILO Constitution. During the 97th Session of the Conference in June 2008, complaints under article 26 of the Constitution were filed by 13 Workers’ and 13 Employers’ delegates and the Governing Body appointed this Commission of Inquiry in November 2008.

3. Political developments subsequent to the complaints

- 23.** Between the time that the complaints were submitted to the International Labour Conference on 13 June 2008 and the date when the Commission of Inquiry began its work on 18 February 2009, there were significant political developments in Zimbabwe.
- 24.** In the two weeks following the submission of the two article 26 complaints upon which this Commission of Inquiry was established, Mr Robert Mugabe was sworn in as President, Head of State and Head of Government following a run-off election from which Mr Morgan Tsvangirai withdrew, alleging violence against his supporters.
- 25.** On 15 September 2008, the Global Political Agreement (GPA) was signed by Mr Robert Mugabe, as President of the Zimbabwe African National Union – Patriotic Front (ZANU–PF), and Mr Morgan Tsvangirai and Mr Arthur Mutambara, the Presidents of the two formations of the Movement for Democratic Change (MDC).⁸ Pursuant to Article II of the GPA, the parties agreed “to work together to create a genuine, viable, permanent, sustainable and nationally acceptable solution to the Zimbabwe situation”. Article XII of the Agreement reaffirms the principle of freedom of assembly and association.
- 26.** Pursuant to the GPA, Constitutional Amendment No. 19 was passed by the Parliament of Zimbabwe on 5 February 2009, creating the constitutional context within which an inclusive government could be established in accordance with the GPA. Under the GPA, Mr Mugabe remained as President of Zimbabwe. On 11 February 2009, Mr Tsvangirai was sworn in as Prime Minister of Zimbabwe and on 13 February 2009, a Council of Ministers was sworn in, including ministers from the ZANU–PF, the MDC–T and the MDC–M parties. Most notably in relation to the allegations that the Commission of Inquiry was called upon to consider, the Council of Ministers included new Ministers of Labour and Social Services and of Public Services.

⁸ The two formations of the MDC are known as “MDC–T” and “MDC–M”. MDC–T is led by Mr Tsvangirai, and MDC–M is led by Mr Mutambara.

Part II.

Procedure followed by the Commission

4. First Session of the Commission

I. Solemn declaration made by the members of the Commission

27. The First Session of the Commission was held on 18, 19 and 20 February 2009 in Geneva, during which the Commission decided on the procedure it was to follow for the rest of its work.
28. At the beginning of this session, each member of the Commission made a solemn declaration in the presence of Mr Juan Somavia, Director-General of the International Labour Office. Inviting the members of the Commission to make the declaration, the Director-General recalled the circumstances in which the Commission had been established and noted that it was the first time a Commission had arisen from simultaneous complaints from workers and employers. The Director-General hoped that the Commission would help the new Government of Zimbabwe in its rebuilding of the country, ensuring restored respect for the fundamental ILO principles that underpin a sound democracy. He stressed that the task entrusted to the Commissioners was to “establish the facts without fear or favour and in full independence and impartiality”.
29. The members of the Commission then each made the following declaration:

I solemnly declare that I will honourably, faithfully, impartially and conscientiously perform my duties and exercise my powers as a member of the Commission of Inquiry set up by the Governing Body of the International Labour Office at its 303rd Session, November 2008, in pursuance of article 26 of the Constitution of the International Labour Organization, to examine the observance by Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

II. Adoption of the procedure to be followed by the Commission

30. The ILO Constitution does not lay down rules of procedure to be followed by a Commission of Inquiry appointed under article 26. In determining its procedure, the Commission recalled certain elements which characterized the nature of its work. As earlier Commissions of Inquiry had stressed, the procedure provided for in articles 26–29 and 31–34 of the Constitution was of a judicial nature. Thus, the rules of procedure had to safeguard the right of the parties to a fair procedure as recognized in international law.
31. The Commission, while working in the judicial spirit that characterizes ILO Commissions of Inquiry, at the same time considered it desirable that it contributed to the process of reconciliation and healing in Zimbabwe on the basis of international standards on labour relations and human rights. Bearing these considerations in mind, the Commission adopted the rules of procedure that it intended to follow. These rules were brought to the attention of the Government of Zimbabwe and the complainants, and are as follows:

Rules of procedure: Commission of Inquiry on Zimbabwe

A. General procedure

1. The Government of Zimbabwe and the complainants shall each designate a representative to act on their behalf in relation to the Commission. Each representative may designate a substitute or substitutes to act on their behalf.

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2. The representatives shall remain at the disposal of the Commission during the entire period of its mandate.
 3. The proceedings of the Commission, including all information that comes to its notice, shall be confidential except insofar as the Commission publishes its conclusions.
 4. The Commission shall produce a report, in accordance with article 28 of the Constitution of the ILO, embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.
 5. The purpose of the Commission is to examine the information it considers necessary to ascertain the matters submitted to it for investigation by the Governing Body of the International Labour Office, and to express its view thereon. It shall therefore only accept information and statements of relevance to the complaints concerning Conventions Nos 87 and 98. Any questions of admissibility shall be determined by the Commission.
 6. The members of the Commission, its secretariat and any person or organization appearing before it, or in contact with it, shall be accorded the privileges and immunities pursuant to the Convention on the Privileges and Immunities of the Specialised Agencies, 1947 and its Annex relating to the ILO.
 7. During any meetings that the Commission may hold, it will decide who may be present. During the Commission's on-the-spot mission to Zimbabwe, or any other mission that the Commission undertakes, it shall determine its schedule and meet freely with all the parties involved, to ensure that it may be fully and objectively informed on all aspects of the case.

B. Procedure for hearings

8. The Commission shall determine its own procedure with full regard to due process.
9. The representatives designated by the Government of Zimbabwe and the complainants shall be expected to be present throughout the hearing of witnesses, and shall be responsible for the general presentation of their cases.
10. The Commission shall hear the representatives of the parties and all witnesses in private sittings and the information and evidence presented to the Commission therein is to be treated as fully confidential by all persons and organizations whom the Commission permits to be present.
11. The Commission reserves the right to consult the representatives in the course of, or upon the completion of, the hearings in respect of any matter on which it considers their special cooperation to be necessary.
12. Each representative may, if s/he so chooses, designate witnesses to present evidence to the Commission at its formal hearing.
13. The Commission or any member of the Commission may question the representatives of the parties or the witnesses at any stage in the hearing.
14. The Commission shall require each witness to make a solemn declaration identical to that provided for in the Rules of the Court of the International Court of Justice. This declaration reads: "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth".
15. All statements by witnesses and questioning of witnesses shall be subject to control by the Commission.
16. Except with the leave of the Commission, witnesses may not be present except when giving evidence.
17. Any witness shall be given an opportunity to make a statement before questions are put to him or her. If a witness reads his or her statement, the Commission shall receive a copy.
18. With the leave of the Commission, the representatives may be permitted to put questions to the witnesses, in an order to be determined by the Commission.

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19. The Commission shall not receive statements or materials on matters outside its terms of reference.
 20. The Commission reserves the right to recall witnesses, if necessary.
 21. The Commission may authorize representatives to question one another.
 22. The Commission reiterates that representatives and witnesses shall enjoy the privileges and immunities referred to in paragraph (6) above, as well as full protection against any kind of discrimination, intimidation, harassment or pressure, on account of their appearance before, or contact with, the Commission, either during the hearing itself or following it. No obstacles of any kind shall prevent witnesses from attending the Commission's hearing or communicating with it.
 23. While fully respecting the ILO rules and procedure for the conduct of the Commission of Inquiry the Commission may, in its judgment, exercise its good offices for the advancement and the welfare of the people of Zimbabwe and the promotion and protection of trade union and human rights.

III. Communication of additional information

32. The Commission took note of the recent inauguration of the inclusive Government in Zimbabwe and extended its wishes for its success and for the full realization of the GPA between the ZANU–PF and the two MDC formations, on resolving the challenges facing Zimbabwe, as signed on 15 September 2008. It expressed the hope that these developments would have a positive impact on the issues of freedom of association rights that fell within the mandate of the Commission of Inquiry. The Commission wrote to the President and Prime Minister of Zimbabwe along these lines and shared its sentiments with the leadership of the African Union (AU) and the Southern African Development Community (SADC).
33. The Commission invited the Government of Zimbabwe and the complainants to communicate to it any additional information concerning the issues raised in the complaints regarding the situation of freedom of association in the country. It decided that any new material received from either party would be transmitted to the other party for possible comment.
34. The Commission further gave the opportunity of presenting any communication they might wish to make on the matters raised in the complaint to those workers' and employers' organisations having consultative status with the ILO and which are universal or regional in scope: the ITUC, the World Federation of Trade Unions (WFTU), the Organization of African Trade Union Unity (OATUU), the International Organisation of Employers (IOE) and the Pan-African Employers' Federation (PAEF).
35. Further, the Commission informed various international organizations within the United Nations system of the Governing Body's decision to constitute a Commission of Inquiry to examine the complaints concerning the observance by Zimbabwe of the freedom of association Conventions and, with a view to the duty of coordination and cooperation with the United Nations system, it offered those organizations the opportunity to present any information they might consider relevant. The organizations thus addressed were: Food and Agriculture Organization of the United Nations (FAO), Office of the UN High Commissioner for Human Rights (OHCHR), United Nations High Commissioner for Refugees (UNHCR), World Food Programme (WFP), World Health Organization (WHO), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Economic and Social Council (ECOSOC) and United Nations Department of Political Affairs (UNDPA).
36. Pursuant to article 27 of the ILO Constitution, the Commission also wrote to the governments of the following countries neighbouring Zimbabwe seeking any information pertinent to the complaints relating to freedom of association and collective bargaining that they might wish to provide: Botswana, Mozambique, Namibia, South Africa and Zambia. The Commission also

wrote to the member States who were members or deputy members of the Governing Body of the ILO, seeking any information relating to freedom of association and collective bargaining that they might consider pertinent to the complaints: Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, China, Congo, Cuba, Czech Republic, Egypt, El Salvador, France, Germany, Ghana, Guinea, Hungary, India, Islamic Republic of Iran, Italy, Japan, Jordan, Kenya, Republic of Korea, Lebanon, Lithuania, Mexico, Mozambique, Nigeria, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Russian Federation, Singapore, Spain, South Africa, Sudan, Sweden, Thailand, Tunisia, United Republic of Tanzania, United Kingdom, United States, Uruguay, Viet Nam, Bolivarian Republic of Venezuela and Zambia.

37. Additionally, the Commission addressed a communication to the Law Society of Zimbabwe, providing it with the opportunity to submit any information that it considered pertinent to the complaints.
38. The Commission notified the governments and organizations thus addressed that any information provided by them would be transmitted to the Government of Zimbabwe and to the complainants for possible comment. It also indicated that it was competent only to examine Zimbabwe's fulfilment of the obligations it undertook upon ratifying Conventions Nos 87 and 98 and that therefore questions which did not relate to freedom of association affairs would be outside its competence.
39. The Commission informed the Government of Zimbabwe and the complainants that it intended to perform its task with complete objectivity, impartiality and independence. It made it clear that it did not consider its role to be confined to an examination of the information furnished by the parties themselves or in support of their contentions and that it would take all appropriate measures to obtain information that was as full and objective as possible on the matters at stake.

IV. Measures adopted with a view to the Second Session and subsequent work of the Commission

40. The Commission took some preliminary decisions concerning its subsequent work, mindful of the fact that the prevailing political situation in Zimbabwe might require changes to this, in particular as regards possible dates of future sessions.
41. The Commission considered that its Second Session would include both missions to the region and meetings in Geneva. It planned a mission to Zimbabwe, so as to be able to obtain the fullest understanding of the reality of the situation concerning the observance of the freedom of association Conventions in the country, in the context of national efforts to take forward the process of dialogue and reconciliation. In view of the recent political developments that had occurred in Zimbabwe, the Commission decided that prior to confirmation of the details of its Second Session, it would undertake a preliminary visit of goodwill and initial contacts to Zimbabwe, accompanied by senior ILO officials.
42. The Commission authorized its Chairperson to deal with any questions of procedure that might arise between sessions, in consultation with the other members if he considered it necessary. It considered that the finalization of the dates of its subsequent meetings, missions and hearings would be determined following consultations with the Government and the complainants.

V. Goodwill mission to Zimbabwe

43. Following an exchange of communications with the Government to determine a convenient date, Mr Kari Tapiola, Executive Director for Fundamental Principles and Rights at Work, and Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department, undertook a preliminary mission to the country on 19–22 May 2009.
44. The Commission of Inquiry undertook a goodwill mission to Zimbabwe on 20–22 May 2009. During this time, the Commission of Inquiry met the Minister and Deputy Minister of Labour and Social Services; the Minister and Deputy Minister of Public Service; the Minister of Foreign Affairs; the Co-Ministers of Home Affairs; the Members of the Organ for National Healing, Reconciliation and Integration; the President and Secretary General of the ZCTU; and the Vice-Presidents and Executive Director of the Employers' Confederation of Zimbabwe.
45. The Commission explained that it had come to Zimbabwe on a goodwill mission to familiarize itself with the situation in the country following the establishment of the inclusive Government. The Commission, while working in the judicial spirit that characterizes ILO Commissions of Inquiry, at the same time was desirous of contributing to the process of reconciliation and healing in Zimbabwe on the basis of African and international standards on labour relations and human rights. The Commission asked the people whom it met to specify any areas in which the Commission or the ILO could provide support.
46. The Commission received assurances of cooperation and support from those whom it met during the goodwill mission, and the dates of 12–25 August were agreed for the Commission's future fact-finding mission to Zimbabwe.
47. The ILO agreed to provide technical assistance to the Government to assist in the achievement of certain of the targets set in its "100-day plan" covering the period 29 April–6 August 2009, entitled "Getting Zimbabwe working again". Accordingly, the ILO provided technical assistance to Zimbabwe to support the first steps in: (1) the revision of the country's social dialogue institution; (2) the harmonization of the public service and labour laws so as to ensure freedom of association rights to civil servants; and (3) through discussion of a draft employment policy, ratification of ILO Convention No. 122 on employment policy. In July 2009, tripartite workshops were held on each of these topics, a high-level tripartite delegation carried out a study visit to the social dialogue institution in South Africa, and discussion papers were prepared on best practices for social dialogue institutions and on freedom of association rights for public servants.

5. Communications received by the Commission after its First Session

48. After the Commission had given the Government of Zimbabwe, the complainants, Zimbabwean workers' and employers' organizations, neighbouring countries, member States who were members or deputy members of the ILO Governing Body, organizations from within the UN system, and various international workers' and employers' organizations the opportunity of submitting communications to it, the Commission received the following information, which will be analysed in greater detail in Part IV of the report. In accordance with the procedure established by the Commission at its First Session, copies of all information received were transmitted to both the Government of Zimbabwe and the complainants for their information.

I. Communications from the complainants

49. The Commission received a communication from the ITUC dated 22 April 2009 conveying information concerning intimidation of potential witnesses to the Commission of Inquiry by individuals purporting to be Central Intelligence Organization (CIO) operatives.

50. A communication from the secretary of the Workers' group, on behalf of the complainants and dated 22 June 2009, designated the General Secretary of the ITUC, Mr Guy Ryder, as the representative of the complainants in relation to all matters before the Commission. The following persons were authorized to act on behalf of the General Secretary for the purposes of the Commission: Mr Stephen Benedict, Director of the ITUC Human and Trade Union Rights Department, Ms Raquel Gonzales, Director, ITUC Geneva Office, and Ms June Sorenson, ITUC Human and Trade Union Rights Department.

51. The General Secretary of the ITUC submitted a communication dated 22 June 2009 including a report containing additional information on alleged violations of freedom of association rights in Zimbabwe and a number of attachments. A further communication from the General Secretary dated 30 July 2009 commented on the further communication from the Government of Zimbabwe and provided additional updated information to the Commission.

52. In a communication dated 28 July 2009, the Director of the ITUC Human and Trade Union Rights Department submitted a list of individuals whom the complainants wished the Commission to meet during its visit to Zimbabwe.

53. In a communication dated 7 August 2009, the secretary of the Employers' group indicated that the Executive Committee of the Employers' Confederation of Zimbabwe (EMCOZ) would arrange for the Commission to meet certain individuals during its mission to Zimbabwe.

II. Communications from the Government

54. In relation to the allegation of intimidation of potential witnesses, the Commission received, through the ILO Subregional Office, a copy of a communication dated 22 April 2009 from the Minister of Labour and Social Affairs to the Minister of State for National Security, respectfully requesting that the issue be looked into with a view to taking remedial measures so as to facilitate an environment where workers' rights were fully observed and respected.

55. In a communication dated 29 June 2009, the Government of Zimbabwe provided further information to the Commission of Inquiry and designated Mr Langton Ngorima, the Acting

Chief Labour Officer of the Ministry of Labour and Social Services, as the government representative on matters relating to the Commission of Inquiry.

III. Communications from other member States and organizations

- 56.** The Commission had offered the opportunity to present information on the matters raised in the complaint to a number of member States neighbouring Zimbabwe; members and deputy members of the Governing Body; international and regional organizations with consultative status before the ILO; organizations from within the United Nations system; the SADC; and the African Union. In a communication dated 16 April 2009, the Commission received certain information from the United Nations High Commissioner for Human Rights. The other organizations and member States did not provide substantive information to the Commission.

6. Second Session of the Commission

57. The Second Session of the Commission took place from 9 to 28 August and 5 to 6 October 2009. The first part of the session involved a mission to the region to meet with various government officials, representatives of the social partners and other stakeholders, and individuals proposed by the social partners in Zimbabwe. The second part of the session involved meetings in Geneva with representatives of the complainants and the Government.

I. The Commission's visit to the region

58. The Commission carried out its mission to the region from 9 to 28 August 2009. During its time in Pretoria, the Commission met representatives of the SADC workers' and employers' groups. A planned meeting with the Minister of Labour of South Africa, the then chairperson of the SADC, could not take place due to the absence of the Minister.

59. From 12 to 26 August, the Commission visited Zimbabwe. The Commission had meetings in Harare, Bulawayo, Gweru and Mutare. Through the cooperative attitude of the Government of Zimbabwe, the Commission was able to meet almost all officials with whom it had requested meetings. The exceptions were the President of Zimbabwe, the Minister of State for National Security, the Director of the CIO, and the Commissioner of Police. The Commission met the trade union and employers' organization officials and members listed by the complainants in their communications dated 28 July and 7 August 2009. The Commission also had meetings with a number of other stakeholders in Zimbabwe and resident members of the international community. At the end of its visit to Zimbabwe, the ILO hosted a cocktail party in Harare, which was widely attended by government officials, representatives of trade unions, employers' organizations and other civil society organizations, and members of the international donor community.

60. The Commission met representatives of the following workers' and employers' organizations on behalf of the complainants: the ZCTU and the two factions of the Zimbabwe Federation of Trade Unions (ZFTU), and a number of primary-level organizations affiliated to those unions; the Apex Council, the body composed of associations of employees from the public service, in the absence of legally recognized public service trade unions under Zimbabwean law; and EMCOZ and its members, including the Chamber of Mines, the Zimbabwe National Chamber of Commerce and the Confederation of Zimbabwe Industries.

61. In total, the Commission met over 100 individuals proposed by the social partners in meetings held in Bulawayo, Gweru, Harare and Mutare. These individuals were officials, members and former members of Zimbabwean workers' and employers' organizations, who relayed their personal experiences to the Commission of Inquiry after having taken an oath to tell the truth, the whole truth and nothing but the truth.

62. The Commission met the following government officials during its visit: the Prime Minister; the Minister and Deputy Minister of Labour and Social Services; the Minister and Deputy Minister of Public Service; the Minister of Foreign Affairs; the Minister of Home Affairs; the Ministers on the Organ for National Healing, Reconciliation and Integration; the Minister of Education; the Minister of Constitutional and Parliamentary Affairs; the Attorney-General and Deputy Attorney-General; the Minister of Justice and Legal Affairs; the Minister of Lands and Rural Resettlement; the Minister of Media, Information and Publicity; the Chairperson and Members of the Public Service Commission; the Acting Commissioner and Deputy Commissioner of Prisons; the Executive Chairperson and Director of the Health Service Board; and the Ombudsperson.

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63. The Commission also met with the Senior President and judge presidents of the Labour Court; the Director-General of the Judicial College on behalf of the Judge President of the High Court; and the Chief Magistrate and magistrates of the Magistrates' Court.
 64. The Commission had meetings with a number of civil society organizations: the National Association of Non-Governmental Organizations, the Law Society, Zimbabwe Lawyers for Human Rights, the Catholic Commission for Justice and Peace and the Zimbabwe Human Rights Association.
 65. Finally, the Commission convened meetings with African ambassadors, representatives of the international donor community resident in Zimbabwe, and the United Nations Country Team.

II. Meetings with the complainants and the Government in Geneva

66. The Commission met on 5 and 6 October 2009 in Geneva to hold internal discussions and meet with representatives of the complainants and the Government. On behalf of the complainants from the Workers' group, the Commission met with Mr Guy Ryder via a video conference. On behalf of the complainants from the Employers' group, the Commission met with Mr Edward Potter. On behalf of the Government, the Commission met with His Excellency, Mr Chitsaka Chipaziwa, Ambassador of the Republic of Zimbabwe to the United Nations.
67. In each of these meetings, the Commission was able to provide a briefing on its work to date, and to indicate the future steps that it would be taking in terms of the preparation of its report. In particular, it informed the representatives with whom it met about its on-the-spot mission to Zimbabwe in August, and sought further information, to the extent possible, on developments in the country since then.

III. Communications received by the Commission following its mission

68. Through the ILO's Subregional Office in Harare, the Commission of Inquiry was informed that on 4 September 2009 the Tripartite Negotiating Forum signed the Kadoma Declaration concerning social dialogue.⁹
69. The Commission received communications from the complainants dated 14 September and 8 October 2009 alleging the dismissal of 23 workers from ZIMASCO (Pvt) Ltd Kwekwe for participating in a strike; the shooting of trade unionists in the context of a strike at the Shabanie Mine in Zvishavane; the banning of, and arrests during, demonstrations in September 2009; and police and army involvement in relation to the cases of farm workers evicted from the farms on which they had formerly worked.

⁹ The Kadoma Declaration Towards a Shared National Economic and Social Vision is a Tripartite Negotiating Forum document calling for political, social and economic reforms aimed at reducing Zimbabwe's status as a "high-risk" country.

7. Third Session of the Commission

I. Communications received by the Commission after the Second Session

- 70.** The Commission of Inquiry received communications from the ITUC and the OATUU dated 9 and 13 November 2009 concerning the alleged arrest and detention of the President and four officials of the ZCTU. The Commission also received a communication dated 10 November 2009 from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations alleging that individuals believed to be CIO officials had threatened the family of the President of the General Agricultural and Plantation Workers' Union of Zimbabwe (GAPWUZ) in her absence. The Commission of Inquiry was informed that the International Labour Office had written to the President and Prime Minister of Zimbabwe in regard to these allegations.
- 71.** The Commission was advised of a communication from the Government dated 6 November 2009 and received by the Director of the International Labour Standards Department on 9 December 2009, in which the Government indicated its view that the work of the Commission should be premised only on the specific allegations that led to its establishment, as well as the findings obtained during its visits to Zimbabwe. The Government stated that it found it inappropriate for the ITUC to have forwarded fresh allegations implying that the Government was taking no action and found it unsuitable for the Commission to entertain unverified allegations. The Commission considered it its duty to take account of all relevant information up to the adoption of its report.

II. Adoption of the report

- 72.** The Third Session of the Commission was held in Geneva from 12 to 18 December 2009 when it considered and adopted its report.

Part III.

Historical and legal context

- 73.** For several years before the presentation of the complaint under article 26 of the ILO Constitution, questions concerning freedom of association and collective bargaining rights in Zimbabwe had been under examination by the Committee on Freedom of Association. In addition, the Committee of Experts had examined the Government's reports under article 22 of the ILO Constitution on the application of Conventions Nos 87 and 98 and the Conference Committee on the Application of Standards had discussed the application of these standards in the country. The Governing Body decided to refer the examination of the case as a whole to the present Commission of Inquiry.
- 74.** Accordingly, the following chapters take into account all the information presented previously to the Committee on Freedom of Association and included in the reports submitted by the Government on the application of Conventions Nos 87 and 98 pursuant to article 22 of the ILO Constitution.
- 75.** For that reason, before starting the analysis of the case itself, the Commission briefly describes the historical and socio-economic context of freedom of association and collective bargaining in Zimbabwe, surveys the relevant legislation in Zimbabwe, and details the matters that have already been reviewed by the ILO supervisory bodies on the basis of the information that was made available to them.

8. Trade unionism in Zimbabwe: Historical and socio-economic context

I. Colonization and white minority government: 1880s–1979

76. In the 1880s, British settlement of the land now comprising Zimbabwe, within which the Shona and Ndebele peoples lived, began under the British South Africa Company. Despite insurrections by the Shona and Ndebele, British settlement increased and the country became formally known as Southern Rhodesia. The country was ruled according to a clear division along racial lines at the expense of the African majority.
77. The British South Africa Company introduced various measures “to induce reluctant African workers to enter wage employment”, where their employment contracts were individually negotiated under master and servant legislation which made the bringing of grievances very difficult.¹⁰ The pillar of the early colonial economy was the mines on which Africans were sent to work despite a reluctance due to their agricultural activities which supplied all their needs. To meet the increasing labour demands most workers at this time were temporary migrant labourers from neighbouring countries, brought into the country. A 1901 ordinance regularized the legal status of black workers, but made no provision for collective consultation or bargaining.¹¹ At this time, trade unions of black workers were illegal.
78. White workers on the mines and the railways had organized themselves into trade unions from 1916.¹² A strike by white mineworkers in 1919 resulted in their demands being met and, indirectly, led to the formation of the Rhodesia Mine Owners’ Association in 1920. In 1923, Southern Rhodesia became a self-governing British colony as a result of a vote by its British settlers. At that time, there was a “vociferous white labour movement” in the country, although it was not entirely officially recognized.¹³
79. In comparison, there were no formal trade unions among the black workers. The Industrial Conciliation Act 1934 excluded African workers from collective bargaining procedures and from training for skilled jobs, by excluding “natives” from the definition of employees.¹⁴ This statute created industrial boards for each sector, within which trade unions and employers’ organizations negotiated wages and working conditions. The Land Act, 1930 excluded Africans from ownership of the best farming land and the Labour Act, 1934 prohibited Africans from entering skilled trades and professions. Consequently, black workers largely worked for low wages on white-owned mines and farms and as domestic workers or low-skilled workers in factories or the railways.

¹⁰ Harris, P., 1974, “Industrial relations in Rhodesia”, in *South African Journal of Economics Braamfontein*, 42(1), pp. 65–84, p. 65.

¹¹ Harris, op. cit., p. 65.

¹² Phimister I. and van Onselen, C., 1997, “The labour movement in Zimbabwe 1900–1945”, in B. Raftopoulos and I. Phimister (eds) *Keep on knocking: A history of the labour movement in Zimbabwe 1900–97* (Baobab Books/ZCTU, Harare), pp. 1–54, p. 1.

¹³ Harris, op. cit., p. 65.

¹⁴ This had the result that most African workers were still covered by the Master and Servant Ordinance.

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- 80.** In the 1920s and 1930s, social, religious and recreational organizations began to be developed by black miners which, although not primarily industrial in nature, became involved in the strikes and industrial unrest in the mines in the absence of registered trade union organizations.¹⁵ These have been described as “the logical precursors of a trade union movement”.¹⁶ Industrial unrest escalated in the years following the First World War, with strikes taking place in various mines. A five-day strike in 1927 at the Shamva gold mine involved 3,500 black workers; it collapsed after police and army intervention and its leaders were arrested, tried and deported to the neighbouring countries from which they had originally come.¹⁷
- 81.** At the same time, a new trade union movement among black workers began to develop in Bulawayo and Salisbury (now Harare). In the early 1920s, urban tribal and regional mutual aid societies existed. The desire for a “secular and pan-tribal organization” led to the development of the Industrial and Commercial Workers’ Union of Rhodesia in 1927–28, the contemporary “voice of radical discontent”.¹⁸ The division between white and black workers remained and the union failed to establish widespread support from mineworkers and workers on white-owned farms, despite this being the major employment sector in the country. The union largely fell apart in the mid-1930s.
- 82.** A nationwide strike by 8,000 black railway workers in 1945 led to an inquiry into “matters affecting Africans employed in industry”. The resulting Native Labour Boards Act, 1947 laid down conditions of employment for African workers in all industries except agriculture and domestic service, and African workers could still not negotiate directly with their employers. The African Workers’ Trade Union was formed following the strike in 1945, later changing its name to the Federation of Bulawayo African Workers’ Union; the Industrial and Commercial Workers’ Union was revived in 1946; and the British African National Voice Association was founded in 1947.
- 83.** In 1948, a general strike took place throughout the country, covering many sectors and lasting about eight days. Native labour boards were established as a result. The Subversive Activities Act, 1950 was intended to control trade unionism. Nevertheless, there were numerous strikes during the 1950s, often broken up by force. In 1954, all 9,000 miners at the Wankie Collieries, supported by domestic workers working for the 375 white labourers at the colliery, went on strike and, in 1956, a strike by 22,000 workers organized by the Railway African Workers’ Union went ahead despite a previous declaration of a state of emergency. Black workers’ experiences with the State during this time “reinforced their views about the brutality of the colonial State”¹⁹ and unions and workers started to become linked with nationalist politics.²⁰ Additionally, unions for African workers started to form national federations such as the

¹⁵ Ranger, T.O., 1970, *The African voice in Southern Rhodesia 1891–1930* (Heinmann), p. 141.

¹⁶ Phimister and van Onselen, op. cit., p. 9.

¹⁷ Ranger, op. cit., p. 147; Phimister and van Onselen, op. cit., pp. 34–35.

¹⁸ Ranger, op. cit., p. 163.

¹⁹ Mothibe, T.H., 1993, “African labour in colonial Zimbabwe in the 1950s: Decline in the militancy or a turn to mass struggle?”, in *Labour, Capital and Society*, 26:2, pp. 226–251, p. 250.

²⁰ Phimister and van Onselen, op. cit., pp. 72–3. 26:2,

African National Congress (ANC) in 1957, which became involved in both trade union and nationalist issues.²¹

- 84.** The Industrial Conciliation Act, 1959 covered all workers except those in agriculture and domestic service – who were still subject to the Master and Servants Act – and public service and railway employees, who were covered by specific legislation.²² It allowed for a system of industrial councils, through which employers and employees would collectively bargain conditions of service in a particular industry, and recognized for the first time African trade unions. Nevertheless, white workers had more voting power than black workers, registration was difficult, and unions were prohibited from becoming involved in political activities.²³ By 1964, 26 African trade unions were registered.²⁴
- 85.** In 1959, a state of emergency was declared, numerous trade union members were arrested, the ANC and its successor were banned, and the army and police entered the townships. Legislation to control unrest and dissension included criminalizing strikes in some circumstances. In 1962, the Zimbabwe African People’s Union (ZAPU) was established, and in 1963 a split led to the formation of the Zimbabwe African National Union (ZANU). During this period, divisions in the trade union movement mirrored broader divisions in the nationalist movement between trade union and radical nationalist perspectives.²⁵
- 86.** In the context of increased calls for independence and universal suffrage, the white-minority government in Southern Rhodesia made a Unilateral Declaration of Independence (UDI) from the United Kingdom on 11 November 1965. Sanctions were imposed by the international community, which did not recognize Rhodesia as an independent country. Within the country, a guerrilla war of independence intensified over the years, with armies from both the ZAPU and ZANU political parties involved. Many trade unionists, as members of nationalist political parties, were arrested or went into exile during this period, and public order and safety legislation was used to limit and control industrial action.
- 87.** At this time, the government policy on labour aimed to maintain “industrial peace” and ensure an adequate labour supply.²⁶ For example, an amendment to the Industrial Conciliation Act in 1971 removed the right to strike “when the President is satisfied that a strike ... would prejudice the public interest”.²⁷ The Government intervened in strikes by both white and black workers.²⁸ The Law and Order Maintenance Act, 1960 and the Emergency Powers Act, 1960

²¹ Phimister and van Onselen, op. cit., p. 77.

²² Harris, op. cit., p. 67.

²³ Phimister and van Onselen, op. cit., p. 57.

²⁴ Shadur, M., 1994, *Labour relations in a developing country* (Avebury, Aldershot), p. 60.

²⁵ Phimister and van Onselen, op. cit., p. 87.

²⁶ Harris, op. cit., p. 69.

²⁷ *Parliamentary Debates*, cited in Harris, op. cit., p. 67.

²⁸ Harris, op. cit., pp. 74–5.

were applied against striking workers who, if found guilty, could receive a penal sentence and be prevented from holding union office for seven years.²⁹

- 88.** An ad hoc working group of experts of the Commission of Human Rights reported to the ECOSOC in 1973 on allegations of infringements of trade union rights in Southern Rhodesia. The working group concluded that “the vast majority of African workers cannot belong to any trade union”; that deregistration of trade unions had increased; and that the right to strike was “virtually non-existent in view of the political and legal constraints”.³⁰ The ILO had provided expert evidence to this working group and subsequently produced its own report in 1978 which also canvassed freedom of association.³¹
- 89.** Although unions were prohibited from restricting membership on the basis of race, they remained racially distinct due to their divide along skills lines: “the concept of a single worker movement is inapplicable in the Rhodesian context, and any study of industrial relations has to recognize that this movement is fragmented, its objectives multi-directional and its tactics variable”.³² Policies continued to maintain the preferential position of white workers compared to black workers and it was difficult for black unions to become established. The fight for trade union rights “was transformed into the fight for majority political rights, a fight against colonialism and the UDI”.³³

II. Independence: Zimbabwe since 1980³⁴

- 90.** A constitutional agreement was signed on 21 December 1979 (the Lancaster House Agreement), by which the war of independence was ended and Zimbabwe became an independent country. The Constitution of the new country in 1979 guaranteed freedom of association and the right to form and belong to trade unions. Full majority elections held in 1980 were won by the ZANU party. Robert Mugabe, who became Prime Minister and, in 1987 President of Zimbabwe, emphasized the need for reconciliation in the country. The guerrilla war that developed between the ZANU and ZAPU armies ended by their merger in 1988 to create the ZANU–PF, which dominated Zimbabwean politics in the following years.
- 91.** Land was a burning issue in the colonial period. Under the Lancaster House Agreement, land could only be acquired if the owners wished to sell, and so there was limited land for resettlement. Other problems arose that limited the pace at which the Government was able to acquire land for resettlement.

²⁹ Brittain, J. and Raftopolous, B., 1997, “The labour movement in Zimbabwe 1965–1980”, in B. Raftopoulos and I. Phimister, op. cit., pp. 91–106, p. 91.

³⁰ ECOSOC. *Report of the Ad Hoc Working Group of Experts of the Commission on Human Rights prepared in accordance with Council resolution 1599 (L)*, 54th Session, 23 Feb. 1973, p. 55.

³¹ ILO, 1978, *Labour conditions and discrimination in southern Rhodesia (Zimbabwe)*, (Geneva).

³² Harris. op. cit., p. 68.

³³ Dansereau, S., 1997, “Rebirth of resistance: Labour and structural adjustment in Zimbabwe”, in *Labour, Capital and Society*, 30:1, pp. 90–122, p. 93.

³⁴ See generally Schiphorst, F., 2001, “Strength and weakness: The rise of the Zimbabwe Congress of Trade Unions (ZCTU) and the development of labour relations 1980–1995” (doctoral thesis, Leiden University).

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- 92.** White employers – in comparison compared with African entrepreneurs – were well organized at independence. Trade or employers’ associations existed in “the broad sectors of agriculture (Commercial Farmers’ Union, Agricultural Labour Bureau), industrial (Confederation of Zimbabwe Industries), mining (Chamber of Mines), commerce (Zimbabwe National Chamber of Commerce and National Commercial Employers’ Association of Zimbabwe), and building (Construction Industry Federation of Zimbabwe). In addition, industry associations existed within these sectors (e.g., Engineering Employers’ Association of Zimbabwe)”.³⁵ After independence, the Confederation of Rhodesian Employers, which had hitherto played a minor role, became the Employers’ Confederation of Zimbabwe. At this time, “a degree of suspicion, if not conflict, characterized relations between the major employer groups and the Government”.³⁶
- 93.** In the newly independent Zimbabwe, health and education were extended to the whole community and trade unions, which were no longer banned from “associating with nationalist parties”, enjoyed freedom of association and expression for the first time.³⁷ Black workers on white-owned farms were no longer subject to the master and servant legislation³⁸ and farm workers became represented by, notably, the General Agricultural and Plantation Workers’ Union of Zimbabwe (GAPWUZ). Nevertheless, farm workers largely remained reliant on the social protection and patronage of farm owners.³⁹
- 94.** A national trade union centre, called the Zimbabwe Congress of Trade Unions (ZCTU), was created in 1981, with the support and “deep interest” of the Government.⁴⁰ The ZCTU was a confederation of the six labour federations that existed in Zimbabwe at the time: the African Trade Union Congress, the National African Trade Union Congress, the Trade Union Congress of Zimbabwe, the United Trade Unions of Zimbabwe, the Zimbabwe Federation of Labour and the Zimbabwe Trade Union Congress. Most white trade unions were dissolved or joined African trade unions by the mid-1980s.⁴¹
- 95.** Initially, the ZCTU was closely aligned to the Government and the ZANU–PF movement, with its founding secretary being Mr Alfred Mugabe, the Prime Minister’s brother. Nevertheless, up to 200 strikes were organized during the first two years of independence. The Minimum Wages Act, 1980 aimed to tackle discontent with wages by setting out minimum wages in the different sectors, partly in recognition of the fact that “trade unions were not yet

³⁵ Shadur, op. cit., pp. 64–5.

³⁶ Shadur, op. cit., p. 65.

³⁷ Sachikonye, L., 1997, “Trade unions: Economic and political development in Zimbabwe since independence in 1980”, in B. Raftopoulos and I. Phimister, op. cit., pp. 107–128, p. 107.

³⁸ By virtue of the Conditions of Service Regulation 1981, which repealed the Masters and Servants Act, the African Juveniles Employment Act, the African Labour Regulations Act and the Foreign Migratory Labour Act: Dansereau, S., 2000, “State, capital and labour: Veins, fissures and faults in Zimbabwe’s mining sector”, in *Labour, Capital and Society*, 33:2, pp. 216–254, p. 232.

³⁹ Rutherford, B., 2000, “Racial politics and beyond in post-colonial Zimbabwe: Shifting public evaluations of class relationships on commercial farms”, in *Labour, Capital and Society*, 33:2, pp. 192–214, p. 195, p. 201.

⁴⁰ Sachikonye, op. cit., p. 108.

⁴¹ Shadur, op. cit., p. 9.

strong enough to engage in serious collective bargaining”.⁴² Other labour legislation enacted in 1980 and 1981, and then incorporated into the Labour Relations Act, 1985, equally included governmental involvement in labour relations.⁴³ For example, the Employment (Conditions of Service) Regulations, 1981 required prior ministerial approval for retrenchments.⁴⁴ The granting of such powers to the Minister of Labour restricted the “employers’ hitherto unlimited powers to hire and fire”.⁴⁵ Black workers were now considered to be “employees” like their white colleagues.⁴⁶

96. The Labour Relations Act, 1985 also created a number of labour institutions, including workers committees, works committees and trade unions at the enterprise or industry level, and national tripartite employment councils, employment boards, the wages and salaries advisory board, the retrenchment committee, the labour relations board and the labour relations tribunal. During this time, there was a trend towards the merging of smaller trade unions into larger ones.
97. From the mid-1980s, the close link between the Government and the ZCTU came under pressure as the country experienced an economic downturn and the union challenged the socio-economic policies of the Government. The ZCTU supported a protest by students in 1989, during which Mr Morgan Tsvangirai, its Secretary General since 1988, was arrested.
98. In 1991, with the introduction of the Economic Structural Adjustment Programme (ESAP), and the deregulatory Labour Relations Amendment Act, 1992, strains in the relationship between the Government and the ZCTU became more marked. The Government began to use the Law and Order Maintenance Act in relation to protests against labour law reforms in 1992.⁴⁷
99. Industrial unrest increased and took the form of strikes in a number of sectors.⁴⁸ In 1994, there were strikes in the post and telecommunications, health, banking, construction and insurance sectors.⁴⁹ In 1995, the ZCTU launched a publication arguing against the Government’s structural reform programme,⁵⁰ which “led to government charges of union involvement in

⁴² Sachikonye, op. cit., p. 111.

⁴³ The Employment Act, 1980, the Employment (Conditions of Service) Regulations, 1981 and the Emergency Powers (Termination of Employment) Regulations, 1982.

⁴⁴ See Sachikonye, op. cit., p. 111.

⁴⁵ Sachikonye, op. cit., p. 111.

⁴⁶ Dansereau (2000), op. cit., p. 234.

⁴⁷ Sachikonye, op. cit., p. 124.

⁴⁸ Sachikonye, op. cit., pp. 121–2.

⁴⁹ Dansereau, op. cit., pp. 110–112.

⁵⁰ ZCTU, 1995, *Beyond the economic structural adjustment programme: Framework for a long-term development strategy in Zimbabwe* (ZCTU, Harare).

partisan politics”.⁵¹ In 1996, a large public service strike was led by junior doctors, nurses and teachers. Strike leaders were arrested and large numbers of workers dismissed.⁵²

- 100.** There were further strikes in 1997 in the public and private sectors. Farm workers staged wildcat strikes, protesting against a deadlock in the annual collective bargaining round between their union, GAPWUZ, and the employers’ association, the Agricultural Labour Bureau; the result of the strike was a larger pay increase than ever before.⁵³ A one-day general strike called by the ZCTU received support from both workers and employers.⁵⁴ At this time, the National Economic Consultative Forum was established, although the ZCTU chose not to participate. In 1998, further industrial action, including a general strike, ended with police and army intervention.
- 101.** In 1999, the labour movement joined with opposition groups to form a political opposition: the Movement for Democratic Change (MDC). The leadership of the MDC drew strongly on trade unionists from the ZCTU. In 2000, a programme of state-sanctioned land redistribution of white-owned commercial farms began, with the aim of transferring the ownership of prime agricultural land from a small number of white farmers to indigenous Zimbabweans. In 2001, a state-supported referendum on a new constitution, limiting future presidential mandates to a maximum of two consecutive terms of five years and with no retrospective effect, was defeated.
- 102.** ZANU–PF and the MDC contested parliamentary elections in 2005 and 2008, and presidential elections in 2002 and 2008. During the 2008 presidential elections, and particularly in relation to the run-off elections in June 2008, there was significant violence involving supporters of the two main political parties and police. Soon after the elections, negotiations between the major political parties began, mediated by the Southern African Development Community (SADC).
- 103.** A Global Political Agreement (GPA) on “resolving the challenges facing Zimbabwe” was signed on 15 September 2008 by the three main political parties – ZANU–PF and the two MDC formations (MDC–T and MDC–M) – and witnessed by Mr Thabo Mbeki, the then President of South Africa, as the SADC facilitator. The GPA includes provisions, among others, on the restoration of economic stability and growth, sanctions and external interference, the land question, constitutional reform, promotion of equality, national healing, cohesion and unity. It reiterated guarantees to political freedom, the rule of law, freedom of assembly, association and expression, and respect for national institutions, and affirmed the apolitical nature of state organs and institutions, the role of traditional leaders and youth, and the principle of equality in provision of humanitarian and food assistance. By the Agreement, the parties agreed to promote tolerance, respect, non-violence and dialogue as a means of resolving political differences.
- 104.** Pursuant to the GPA, President Robert Gabriel Mugabe, from ZANU–PF, remained as President of Zimbabwe. Mr Morgan Tsvangirai from MDC–T became Prime Minister and Mr Arthur Mutambara from MDC–M became Deputy Prime Minister. Ministerial roles were divided among the parties, as agreed by the “principals” of the parties in the months following the signature of the GPA.

⁵¹ Dansereau (1997), op. cit., p. 113.

⁵² Raftopoulos, B., 2000, “The labour movement and the emergence of opposition politics in Zimbabwe”, in *Labour, Capital and Society*, 33:2, pp. 256–286, pp. 268–9.

⁵³ Rutherford, op. cit., pp. 208–9.

⁵⁴ Raftopoulos, op. cit., pp. 270–271; see also Dansereau (2000), op. cit., p. 244.

105. Since February 2009, the GPA has been implemented through what has variously been called a “power-sharing government”, a “government of national unity” and an “inclusive Government”. Despite sporadic disagreements between the coalition parties, the inclusive Government has continued since then. The initial stages of its programme were approved by the Cabinet on 28 April 2009 in a Government of Zimbabwe “100-day plan” for the period 29 April to 6 August 2009 entitled “Getting Zimbabwe working again” setting out key targets for ministries and the newly established Organ for National Healing, Reconciliation and Integration.

III. Current socio-economic context: Zimbabwe in 2009

106. Zimbabwe is a multi-party republic with lower and upper houses of Parliament. Its population is estimated at 12–13 million.⁵⁵ The people of Zimbabwe are predominantly black African, with 80–84 per cent of the population being Shona and 10–15 per cent Ndebele; less than 1 per cent of the population are white Zimbabweans. The majority of Zimbabweans live in rural or provincial areas. The UNDP estimated that there were 570,000–1,000,000 internally displaced persons in Zimbabwe by the end of 2008, as well as a significant diaspora.⁵⁶

107. Zimbabwe was considered to have a “medium human development” ranking on the Human Development Index, placed 151st out of 177 countries in 2007.⁵⁷ Zimbabwe enjoys high literacy levels although the World Bank estimated that the net enrolment rate in primary schools fell significantly in 2008.

108. Zimbabwe’s economy is based principally on mining, agriculture and tourism, all of which are currently suffering from a severe recession. During 2008, there were large falls in manufacturing and mineral exports, tourism and tobacco production.⁵⁸ Agricultural yields have dropped in recent years. At the same time, sanctions were imposed by some members of the international community and some donors have cut or suspended aid operations to Zimbabwe, alleging human rights abuses.⁵⁹ Average inflation for 2008 was estimated to have been 15 billion per cent, based on a government figure of 231 million per cent in July, when its official estimates were halted.⁶⁰ In Zimbabwe’s 2009 budget, all foreign currency controls

⁵⁵ UNDP, *Human Development Report 2009 (statistics)*, referring to 2007 data, available at http://hdrstats.undp.org/en/countries/data_sheets/cty_ds_ZWE.html.

⁵⁶ Human Development Report 2009, available at http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf.

⁵⁷ Human Development Index 2007/8: figure of 0.513. Zimbabwe was not included in the Human Development Report 2009, which was compiled on the basis of data from 2007, as it was unable or unwilling to provide the data requested.

⁵⁸ Economist Intelligence Unit, Country Report – Zimbabwe (Monthly Report, Feb. 2009) p. 6.

⁵⁹ E.g. United States-targeted sanctions in place since 2003, and European Union-targeted sanctions since 2002.

⁶⁰ Economist Intelligence Unit, Monthly Report, Feb. 2009, p. 2.

were loosened. An International Monetary Fund (IMF) mission to the country in October 2009 concluded that the economy had begun to recover in 2009 “albeit from a low base”.⁶¹

- 109.** The International Federation of Red Cross and Red Crescent Societies estimated that almost 9 million Zimbabweans, amounting to 75 per cent of the population, required food aid during February 2009.⁶² Despite a great improvement in the harvest in 2009, the prevailing socio-economic conditions in the country meant that food insecurity was still critical, and in August 2009 it was estimated that 2.8 million people needed assistance until the next harvest in 2010.⁶³ Forty-seven per cent of the population is estimated to be undernourished. Unemployment was reported to be at 94 per cent at the end of 2008.⁶⁴ Much of the population appears to work in the informal economy and, most particularly, in cross-border trading.
- 110.** Life expectancy in Zimbabwe has fallen from an average of 55.6 years for the years 1970–75, to an average of 40 years for the years 2000–05.⁶⁵ There are indications that the 2008 male life expectancy in Zimbabwe was 37 years and female life expectancy was 34 years.⁶⁶ The latest data indicate an adult HIV prevalence of 18 per cent.⁶⁷ A cholera epidemic struck in August 2008 and, as of 31 July 2009, 4,288 people had died and 98,592 people had been infected. All ten of the country’s provinces were affected.⁶⁸

⁶¹ Statement of the IMF’s mission to Zimbabwe, 29 Oct. 2009, available at www.imf.org/external/np/sec/pr/2009/pr09376.htm.

⁶² Report released 10 Mar. 2009. See: <http://www.reliefweb.int/rw/rwb.nsf/db900SID/LSGZ-7Q2DUE?OpenDocument&RSS20=18-P>.

⁶³ International Federation of Red Cross and Red Crescent Societies, Operations update Zimbabwe: food insecurity, 26 Aug. 2009, available at <http://www.ifrc.org/docs/appeals/08/MDRZW00308.pdf>.

⁶⁴ United Nations Office for the Coordination of Humanitarian Affairs, Jan. 2009: referring to employment in the formal sector.

⁶⁵ Human Development Index 2007/8.

⁶⁶ Economist Intelligence Unit Country Profile 2008, op. cit., p. 10. See Human Development Report 2009, op. cit., where 2007 data is quoted as showing that healthy life expectancy at birth for 2007 was 38 years.

⁶⁷ Based on data from 2005–6: Joint United Nations Programme on HIV/AIDS (UNAIDS) and the WHO Sub-Saharan Africa AIDS epidemic update – regional summary (UNAIDS, 2008).

⁶⁸ See http://www.who.int/hac/crises/zwe/sitreps/zimbabwe_cholera_update_30july2009.pdf.

9. National legislation in relation to freedom of association

I. Introduction

111. Zimbabwe became a member of the UN and the ILO in 1980 and has ratified various international conventions, including the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. In the trade union rights context, it ratified, in 1998, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135), and in 2003, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It has ratified neither the Labour Relations (Public Service) Convention, 1978 (No. 151), nor the Collective Bargaining Convention, 1981 (No. 154).

A. Legal system and governance

112. The legal system of Zimbabwe is predominately a mixture of Roman–Dutch law and English common law. The term “law” is defined to refer to the provisions of the Constitution, an Act of Parliament, a statutory instrument and any unwritten law in force in Zimbabwe, including legal precedents under the common law and customary law. According to article 113(1) of the Constitution, a statutory instrument comprises any proclamation, rule, regulation, by-law, order, notice or other instrument having the force of law made by the President, a vice-president, a minister or any other person or authority under the Constitution or any Act of Parliament.

113. The current Constitution of Zimbabwe was drawn up as part of the Lancaster House Agreement (1979) primarily to transfer power from Britain as the colonial authority to an independent Zimbabwe. Between 1981 and 2007 it was amended 18 times. The last amendment,⁶⁹ laying down a framework for a new government, occurred following an Agreement between the ZANU–PF and the two MDC formations on resolving the challenges facing Zimbabwe, signed on 15 September 2008,⁷⁰ known as the GPA.⁷¹

114. Under the latest constitutional provisions, the executive authority of the inclusive Government is shared between the President, the Prime Minister and the Cabinet.⁷² The legislative authority of Zimbabwe is vested in the legislature which consists of, by virtue of article 32 of the Constitution, the President and Parliament. The bicameral Parliament consists of the Senate and the House of Assembly (article 33). Parliament is empowered to make laws for the peace, order and good government of Zimbabwe (article 50).

⁶⁹ Constitution of Zimbabwe Amendment (No. 19) Act, 2008.

⁷⁰ This Agreement acknowledges that the parties have agreed on a draft Constitution signed by them on 30 September 2007 in Kariba, on the enactment of the Constitution of Zimbabwe Amendment (No. 19) Act and amendments to a number of legislative Acts, including the POSA.

⁷¹ “Inter-party political agreement” under article 115 of the Constitution as amended by Act No. 19.

⁷² Schedule 8 of the Constitution as amended by Act No. 19, incorporating Article XX of the GPA in relation to the framework for a new government arrangement.

B. The judicial system

- 115.** The judicial authority of Zimbabwe is vested in the Supreme Court, the High Court and other courts subordinate to the Supreme and High Courts as may be established by or under an Act of Parliament (article 79(1) of the Constitution). The Supreme Court is a superior court of record and the final court of appeal (article 80(1)). The judges of the Supreme and High Courts are appointed by the President after consultation with the Judicial Service Commission (article 84(1)). In the exercise of his/her judicial authority, a member of the judiciary shall not be subject to the direction or control of any person or authority (article 79B).
- 116.** Special courts or other adjudicating authorities can be established by legislation (article 92). The Labour Court is a “special court” established to hear and to deal with labour matters pursuant to the Labour Act (Part XI of the Labour Act, section 84(1)). In respect of labour matters, the Labour Court exercises the same powers as the High Court (section 89(1)(d1) of the Labour Act). No court other than the Labour Court has jurisdiction in the first instance to hear and determine any application on labour matters (section 89(6)). Decisions of the Labour Court on a “question of law only” may be appealed to the Supreme Court (section 92F).

C. Other institutions

- 117.** Other independent bodies, which are “not subject to the direction or control of anyone”,⁷³ shall be established pursuant to the Constitution. Among them is the Zimbabwe Human Rights Commission⁷⁴ (article 100Q of the Constitution) consisting of a chairperson and eight other members⁷⁵ appointed by the President of Zimbabwe.⁷⁶ The Commission is to have the following functions: to promote development, awareness of, and respect for, human rights and freedoms and, to that effect, to recommend to Parliament the necessary effective measures; to monitor and assess the observance of human rights; to investigate the conduct of any authority or person, where it is alleged that any of the constitutional rights has been violated; and to assist in preparation of reports to be submitted to any regional or international body constituted under any human rights convention, treaty or agreement to which Zimbabwe is a party. The Human Rights Commission will have the power to take over and continue any investigation that has been instituted by the Public Protector (see below) into actions taken by any officer, person or other authority in the exercise of his/her administrative functions, where it determines that the dominant question in issue involves an alleged violation of constitutional rights. An Act of Parliament may confer power on the Human Rights Commission to conduct investigations on its own initiative or on receipt of complaints; to visit and inspect prisons, places of detention, refugee camps and related facilities in order to ascertain the conditions under which inmates are kept there, and to make recommendations regarding those conditions to the minister responsible for administering the law relating to those places or facilities; and to secure or provide appropriate redress for violations of human rights and for injustice.

⁷³ Article 109(1)(a) of the Constitution as amended by Act No. 19.

⁷⁴ Other commissions are: the Zimbabwe Electoral Commission, the Zimbabwe Anti-Corruption Commission and the Zimbabwe Media Commission.

⁷⁵ At least four of whom shall be women.

⁷⁶ After consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders for the appointment of the chairperson. The members are appointed from a list of 16 nominees submitted by the Committee on Standing Rules and Orders. The persons so appointed are chosen for their knowledge of and experience in the promotion of social justice or the protection of human rights and freedoms.

118. Articles 107 and 108 of the Constitution provide for the Public Protector to be appointed by the President to investigate actions taken by any officer, person or authority in the exercise of their administrative functions in any case where it is alleged that a person has suffered injustice in consequence of that action and it does not appear that there is any remedy reasonably available by way of proceedings in a court or on appeal from a court. On the basis of these provisions, an Office of the Ombudsperson was established in 1982 by the Ombudsman Act.

119. The Organ for National Healing, Reconciliation and Integration was established on the basis of article 7.1(c) of the GPA as “a mechanism to properly advise on what measures might be necessary and practicable to achieve national healing, cohesion and unity in respect of victims of pre- and post-independence political conflicts”. It is composed of three Ministers of State appointed by the President. Its purpose was later described as “to promote equality of treatment of all regardless of gender, race, ethnicity, or origin; put in place practicable measures to achieve national healing, cohesion and unity in respect of victims of pre- and post-independence political conflicts; create an environment of tolerance and respect among Zimbabweans from the Diaspora; as well as to assure personal security of all persons and prevent the resort to violence for purposes of settling any disagreements or differences”.⁷⁷

II. Trade union legislation

A. Relevant legislative instruments

120. Zimbabwe regulates trade union and employment affairs mainly pursuant to its Constitution; the Public Service Act [*Chapter 16:04*], 1996, accompanied by the Public Service (Public Service Joint Negotiating Council) Regulations, 1997 and the Public Service (Formation and Recognition of Associations or Organizations) Regulations, 1998; the Health Service Act [*Chapter 15:16*], 2004, accompanied by the Health Service (Health Service Bipartite Negotiation Panel) Regulations, 2006; the Labour Act [*Chapter 28:01*],⁷⁸ accompanied by the Labour (Declaration of Essential Services) Notice, 2003, the Labour Relations (Protection Against Any Acts of Interference Between Workers’ Organisation and Employers’ Organisation) Regulations, 2003, and the Labour (National Employment Code of Conduct) Regulations, 2006. Various provisions exist that subject trade unionists to the general law of Zimbabwe, including, in particular, the Public Order and Security Act [*Chapter 11:17*], 2002⁷⁹ and the Criminal Law (Codification and Reform) Act [*Chapter 9:23*], 2005.

121. The Constitution of Zimbabwe is the country’s supreme law and any law inconsistent with it shall, to the extent of the inconsistency, be considered void (article 3). Chapter III of the Constitution provides for the Declaration of Rights. Article 18(1a)⁸⁰ imposes on every public officer a duty towards every person in Zimbabwe to exercise his or her functions as a public officer in accordance with the law and to observe and uphold the rule of law.

⁷⁷ Interparty Political Agreement – Declaration Authorizing the Organ on National Healing Reconciliation and Integration to Embark on the National Dedication Programme, gazetted on 15 July 2009.

⁷⁸ The Labour Relations Act 16/1985 until 7 March 2003, when the short title was changed to the Labour Act by Act 17/2002. The Labour Act was last amended in December 2005.

⁷⁹ As amended by the Public Order and Security Amendment Act, 2007.

⁸⁰ As added by the Constitutional Amendment Act No. 19.

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- 122.** Under the terms of its section 2A(1), the purpose of the Labour Act is “to advance social justice and democracy in the workplace” by providing for the fundamental rights of employees and a legal framework for collective bargaining to improve conditions of employment and through the promotion of fair labour standards and the participation by employees in decisions affecting their interests in the workplace, as well as securing the just, effective and expeditious resolution of disputes and of unfair labour practices. The Act prevails over any other enactment inconsistent with it (section 2A(3)). It applies to all employers and employees except those whose conditions of employment are otherwise provided for in the Constitution, members of the public service governed by the Public Service Act, members of a disciplined force (defined under section 2 as including military, air, naval and police forces, prison service and persons employed in the President’s Office on security duties) and such other employees of the State as the President may designate by statutory instrument (section 3).
- 123.** Several provisions of the Labour Act entitle the Minister of Public Service, Labour and Social Welfare to make specific regulations. Pursuant to section 17(1), the Labour Relations (Protection Against Any Acts of Interference Between Workers’ Organisation and Employers’ Organisation) Regulations were issued in 2003. The same year, pursuant to section 102, the Minister of Public Service, Labour and Social Welfare published the Labour (Declaration of Essential Services) Notice which declared certain services to be essential.
- 124.** The Public Service Act makes provision for the Public Service Commission and its functions, provides for the constitution and administration of the public service and the conditions of service of its members. Procedures for the establishment and recognition of associations or organizations representing public service employees, as well as for their suspension and dissolution, are set out in the Public Service (Formation and Recognition of Associations or Organisations) Regulations, 1998. The Regulations also set out privileges of recognized associations or organizations. The Public Service (Public Service Joint Negotiating Council) Regulations, 1997 provide for the establishment of the Public Service Joint Negotiating Council for the purpose of engaging in mutual consultations and negotiating salaries, allowances and conditions of service in the public service.
- 125.** The Health Service Act provides for the establishment of the Health Service Board and its functions, defines the health service and provides for its administration and the conditions of service of its members, and transfers persons engaged in public health service delivery from the public service to the health service. The Health Service (Health Service Bipartite Negotiation Panel) Regulations, 2006, like the relevant Public Service Regulations, provide, as their title indicates, for the establishment of the Bipartite Negotiating Panel for the purpose of engaging in mutual consultations and negotiating salaries, allowances and conditions of service in the health service.
- 126.** The Public Order and Security Act (POSA),⁸¹ which entered into force on 22 January 2002, deals with offences against public order. It is supplemented by Chapter IV on crimes against public order of the Criminal Law (Codification and Reform) Act,⁸² which entered into force on 1 July 2006. The latter Act consolidated and amended the criminal law of Zimbabwe, including through the repeal of several legislative acts, such as the Miscellaneous Offences Act [*Chapter 9:15*] of 1964 and amendment of the POSA. The First Schedule to the Criminal Law Act establishes a standard scale of fines ranging from levels 1 to 14 and which apply to all offences under the national legislation. The scale of fines can be periodically amended by a

⁸¹ As amended by the Public Order and Security Amendment Act, 2007.

⁸² Act 23/2004. The Act contains provisions addressing the same matters as dealt with under the POSA.

statutory instrument made by the Minister of Justice, Legal and Parliamentary Affairs with the prior approval of Parliament.⁸³

127. The following part of this analysis surveys the law of Zimbabwe in relation to freedom of association in so far as it provides the legislative context for the Commission of Inquiry's consideration of the present complaint.

B. Legislative survey of freedom of association

Civil liberties

128. The Constitution of Zimbabwe is the principal legal source of civil liberties in the country. Chapter III of the Constitution sets out the Declaration of Rights. The fundamental rights and freedoms of individuals specified in this chapter include the rights to life (article 12), personal liberty (article 13), protection from inhuman treatment (article 15), secure protection of the law (article 18), freedom of expression (article 20), freedom of association and assembly (article 21), and freedom of movement (article 22). Any person whose rights under the Declaration of Rights have been, are being or are likely to be contravened may apply to the Supreme Court for redress (article 24(1)).
129. Freedom of expression, association and assembly can be limited by legislative provisions made "in the interests of defence, public safety, public order, the economic interests of the State, public morality or public health", as well as for the purpose of protecting the rights and freedoms of other persons, and which are reasonably justifiable in a democratic society (articles 20(2) and 21(3)). Furthermore, these freedoms cannot be exercised "in or on any road, street, lane, path, pavement, sidewalk, thoroughfare or similar place which exists for the free passage of persons or vehicles" (articles 20(6) and 21(4)). Finally, the exercise of these freedoms by "public officers" can also be restricted (articles 20(2) and 21(3)).
130. Article XII of the GPA referring to freedom of assembly and association, notes that "public meetings have to be conducted in a free, peaceful and democratic manner in accordance with the law". To that end, the Government should "undertake training programmes, workshops and meetings for the police and other law enforcement agencies" on the issue of freedom of assembly and association and the "proper interpretation, understanding and application of the provisions of securing legislation". For the purposes of ensuring that all state bodies and institutions perform their duties ethically, professionally and in conformity with the principles and requirements of a multi-party democratic system, the parties agreed to include the subjects of human rights, international humanitarian law and statute law in the training curriculum of members of the uniformed forces (article XIII).
131. Part II of the POSA⁸⁴ provides for offences against constitutional government and public security, which include such acts as publishing or communicating false statements prejudicial to the State (section 15) and undermining the authority of or insulting the President (section 16). Any person who publishes or communicates a statement which is substantially false and which may incite or promote public disorder or violence, endanger public safety, adversely affect the defence or economic interests of Zimbabwe, undermine public confidence

⁸³ Section 280 of the Criminal Law Act.

⁸⁴ Part II also contains provisions dealing with offences relating to subverting constitutional government, insurgency, banditry, sabotage or terrorism, causing disaffection among the police or defence forces and possession of weapons (sections 5–14).

in a law enforcement agency, or interfere with, disrupt or interrupt any essential service⁸⁵ commits an offence under section 15 and is liable to a maximum fine of level ten and/or to imprisonment for a period not exceeding five years. An offence under section 16 is punishable by a fine not exceeding level six and/or imprisonment for a period not exceeding one year.

132. Part III of the POSA⁸⁶ deals with offences against public order. Under section 17, any person who, acting with other persons, “forcibly⁸⁷ disturbs the peace, security or order of the public or any section of the public or invades the rights of other people, intending such disturbance or invasion or realizing that there is a risk or possibility that such disturbance or invasion may occur”, is guilty of public violence and liable to a fine not exceeding level 12 and/or imprisonment for a period not exceeding ten years. Section 36 of the Criminal Law Act is to the same effect. Pursuant to section 19 of the POSA, a gathering resulting in riots, disorder and intolerance is punishable by a fine not exceeding level ten and/or to imprisonment for a period not exceeding ten years. Section 37 of the Criminal Law Act punishes the same acts of participating in a gathering with intent to promote public violence, breaches of the peace or bigotry with a fine not exceeding level ten and/or imprisonment for a period not exceeding five years.⁸⁸ Additionally, section 41 of the Criminal Law Act punishes a person who intentionally engages in disorderly or riotous conduct or uses threatening, abusive or insulting words or behaves in a threatening, abusive or insulting manner, intending to or realizing the possibility of provoking a breach of the peace with a fine not exceeding level five and/or imprisonment for a period not exceeding six months. Section 46 of the Criminal Law Act punishes criminal nuisance (e.g. acts such as encumbrance or obstruction of the free passage along any street, road, thoroughfare, sidewalk or pavement; shouting or screaming in a public place to the annoyance of the public; throwing any property from any place; and use of any means which are likely materially to interfere with the ordinary comfort, convenience, peace or quiet of the public or any section of the public) by a fine not exceeding level five and/or imprisonment for a period not exceeding six months.

133. Part IV of the POSA concerns public gatherings, defined under section 2, so as to include processions, public demonstrations and meetings. Sections 23 and 24 place an obligation on organizations to appoint conveners and authorized officers, in the case of processions and public demonstrations, and responsible officers, in the case of public meetings, who are responsible for giving notice of the public gathering. A failure to give notice of a gathering constitutes an offence and is punishable by a fine not exceeding level 12 and/or imprisonment for a period not exceeding one year. Section 26 provides for consultations and/or negotiations between a regulating authority and a convener or an authorized officer, if necessary, on amendment of notices and conditions with respect to public gatherings so as to avoid public

⁸⁵ The POSA defines an “essential service” as a service relating to the generation, supply or distribution of electricity, fuel and water, fire service, health, hospital or ambulance service, communications, transport and any other service or occupation the interruption of which would endanger the life, health or safety of the whole or a part of the population and which the minister may declare by statutory instrument to be an essential service.

⁸⁶ Also contains provisions punishing the acts of throwing articles at persons, motor vehicles, etc. (section 18, equivalent to section 38 of the Criminal Law), assaulting or resisting peace officer (section 20), undermining police authority (section 21) and intimidation (section 22).

⁸⁷ Note that section 36 of the Criminal Law Act also adds “and to a serious extent”.

⁸⁸ According to section 19 of the POSA and section 37 of the Criminal Law Act, the offence is committed by a person who, acting together with one or more other persons in any place or at any meeting, forcibly disturbs the peace, security or order of the public or any section of the public or invades the rights of other people, intending to cause such disturbance or invasion or realizing that there is a risk or possibility that such disturbance or invasion may occur.

disorder. The section also provides that a person who opposes or fails to comply with a prohibition notice or any directions or conditions, under which a gathering is authorized, shall be guilty of an offence and liable to a fine not exceeding level 14 and/or to imprisonment for a period not exceeding one year. However, the abovementioned sections (23, 24 and 26) do not apply to gatherings of a class described in the Schedule (section 26A), which includes public gatherings of members of professional, vocational or occupational bodies held for purposes which are not political (paragraph (c)); held by any club, association or organization which is not of a political nature and at which the discussions and matters dealt with are not of a political nature (paragraph (i)); held by a registered trade union for bona fide trade union purposes for the conduct of business in accordance with the Labour Relations Act (paragraph (j)); or held to form any club, association or organization which is not of a political nature (paragraph (k)).

- 134.** Section 27 provides for a temporary prohibition on holding processions and public demonstrations within particular police districts so as to prevent public disorder. To that end, a regulating authority can issue an order for a period not exceeding one month. The Minister of Home Affairs⁸⁹ may, on appeal, confirm, vary or set aside the order or give any other order in the matter as s/he thinks just. Any person who organizes, assists in organizing, takes part in, or attends any procession or public demonstration held in contravention of an order under this section shall be guilty of an offence and liable to a fine not exceeding level six and/or to imprisonment for a period not exceeding one year. Section 27A provides for a prohibition of all gatherings within a radius of between 20 and 100 metres of Parliament, courts and protected places (with the exception of gatherings of persons who are employed at institutions), unless special permission has been granted.
- 135.** Any prohibition notice, directions or conditions imposed pursuant to section 26, as well as an order issued in terms of section 27, may be appealed to the Magistrates' Court, although such an appeal will not have the effect of suspending any prohibition order appealed against (section 27B), unless and until the court so orders.
- 136.** Section 29 determines the powers of the police during the course of a gathering. It specifies in subsection 4 that the degree of force which may be used shall not be greater than is necessary for dispersing the persons gathered and shall be proportionate to the circumstances of the case and the object to be attained.
- 137.** Other sections of the POSA include provisions prohibiting the carrying of offensive weapons, including stones, at public gatherings (section 30, equivalent to section 43 of the Criminal Law Act), and providing for a penalty of a maximum fine of level ten and/or imprisonment for a period not exceeding five years; disrupting public gatherings (section 31, similar to section 44 of the Criminal Law Act, but whereas the POSA punishes this offence with a fine not exceeding level seven and/or a maximum of two years' imprisonment, the Criminal Law Act refers to a fine of level five and/or imprisonment for a period not exceeding six months); etc.

Workplace relations

- 138.** Under the Labour Act, the interests of workers in respect of their employment are represented and advanced by trade union organizations and their federations and/or, at the level of their

⁸⁹ Or any other minister to whom the President assigns the administration of the POSA.

workplace, by workers' committees.⁹⁰ The interests of employers in respect of matters relating to employment are represented by employers' organizations and their federations.⁹¹

- 139.** In every establishment in which a workers' committee has been elected, a works council composed of an equal number of representatives of the employer and representatives drawn from members of the workers' committee should be established (section 25A(1) and (2)). The function of a works council is to focus on the best use of resources so as to maintain the maximum productivity and optimum employment standards; to encourage good relations between the employer and employees and to seek solutions to common problems; and to promote mutual cooperation and trust in the interests of industrial harmony (section 25A(4)). A works council should be consulted by employers on matters including restructuring, training and education, closure, merger and transfer of ownership of an enterprise, retrenchment of employees, etc. (section 25A(5)). Works councils can make representations and advance alternative proposals on the matters referred to them and an employer shall attempt to reach consensus with the relevant council (section 25A(6)).
- 140.** Furthermore, any employer, registered employers' organization or a federation of such organizations and a registered trade union or a federation of such trade unions may, at any time, form an employment council (section 56).⁹² The Minister may also, whenever the national interest so demands, request the establishment of an employment council (section 57).⁹³ An employment council shall sufficiently represent any area, undertaking, industry, branch or section.⁹⁴ The duties of employment councils include assistance to their members in the conclusion of collective bargaining agreements and overseeing their implementation, as well as the prevention and settlement of disputes between employers and their organizations on the one hand, and employees, workers' committees or trade unions, on the other hand (section 62(1)).

Right to organize and join organizations

- 141.** The Constitution guarantees to everyone the right to freedom of association, including the right to form and belong to trade unions (article 21(1)).⁹⁵
- 142.** According to section 4(1) and (2) of the Labour Act, every employee has the right to be a member of a trade union, which includes the right to take part in the formation and registration of a union. However, the Labour Act does not apply to members of the public service governed by the Public Service Act, members of a disciplined force and such other employees of the State as the President may designate by statutory instrument (section 3).⁹⁶

⁹⁰ Sections 2, 23 and 24 of the Labour Act.

⁹¹ Section 2 of the Labour Act.

⁹² Voluntary employment councils.

⁹³ Statutory employment councils.

⁹⁴ Section 61 of the Labour Act.

⁹⁵ Under the terms of this article, "no person shall be hindered in his freedom of assembly".

⁹⁶ In 2005, the Labour Amendment Act repealed section 56 of the Export Processing Zones Act of 1996 [Chapter 14:07] making the provisions of the Labour Act applicable in export processing zones.

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- 143.** Under the terms of section 27(1) and (2) of the Labour Act, “any group of employees may form a trade union” and “any group of employers may form an employers’ organization”. Furthermore, pursuant to section 50, every employee has a right to be a member of any registered trade union representing his/her undertaking or industry and every employer is entitled to be a member of any registered employers’ organization representing his/her undertaking or industry.
- 144.** Section 23(1) specifies that no managerial employee shall be appointed or elected to a workers’ committee, nor shall a workers’ committee represent the interests of managerial employees, unless such a workers’ committee is composed solely of managerial employees.
- 145.** Under section 24(4) of the Public Service Act, any member of the public service may join a recognized association or organization and participate in its activities.⁹⁷ Pursuant to the Public Service (Formation and Recognition of Associations or Organisations) Regulations, any group of members of the public service may form an association or organization for the purpose of making representations to the Minister (of Public Service) or the Public Service Commission on matters affecting its members, including in particular their conditions of service (regulations 2 and 3(1)).

Establishment of organizations

- 146.** Any trade union or employers’ organization may, if it so desires, apply for registration (section 29(1) of the Labour Act). Upon its registration, an organization becomes “a body corporate” and therefore capable of acquiring, holding or alienating property and any other act which its constitution requires or permits (section 29(2)). It can further exercise the rights provided under section 29(4), which include the right to represent its members, the right to various facilities, the right to recommend a collective labour action and the right to bargain collectively. In terms of section 104(3)(c), no collective action may be recommended or engaged in by any trade union unless it is registered.⁹⁸
- 147.** An application for registration is made to the Registrar,⁹⁹ who shall publish it in the *Gazette* and invite any person who wishes to make any representations relating to the matter within a period of not less than 30 days (section 33). Accreditation proceedings are held to determine whether or not a trade union or an employers’ organization should be registered (section 41(a)). For that purpose, the Registrar shall issue a 30-day notice of proposed accreditation proceedings inviting all interested parties to submit any representations that they may wish within a further 30 days (section 42).
- 148.** Under the terms of section 36(1), after holding accreditation proceedings, the Registrar may “grant or refuse an application for the registration”. When granting any application for registration, the Registrar may, after consultation with the applicant, increase or reduce the interests or area in respect of which the applicant applied for registration (section 36(2)). In taking a decision on registration, the Registrar takes into account representations made by

⁹⁷ Similar arrangements exist in the health service, see section 16(4) of the Health Service Act.

⁹⁸ Furthermore, with regard to unregistered organizations, section 30 of the Labour Act provides that an unregistered trade union is not entitled to make representations to the Labour Court, to form or be represented on any employment councils or to be assisted by an agent thereof or by a labour officer, to recommend collective job action, or to obtain certain facilities granted to trade unions (access to the workplace, information, check-off facilities). On collective bargaining rights, see below.

⁹⁹ In the form prescribed by section 34 of the Labour Act.

employers and employees who might be affected, the Minister¹⁰⁰ and any member of the public likely to be affected; the desirability of affording the majority of employees and employers within an undertaking or industry effective representation in negotiations affecting their rights and interests; the desirability of reducing to the minimum the number of entities with which employees and employers have to negotiate; and the outcome of the representations or accreditation proceedings as to the representativeness of the trade union or employers' organization (section 45). The Registrar shall notify all interested parties who appeared at the proceedings of his or her decision in writing and the reasons thereof (section 44). While a person aggrieved by a decision of the Registrar may file an appeal to the Labour Court (section 47), the filing of an appeal does not have a suspensive effect (section 48(2)). Moreover, the Registrar may impose "reasonable" restrictions on the activity of any trade union or employers' organization involved in the appeal in order to protect the reasonable interests of the public and of persons concerned (section 48(3)). Failure to comply therewith is an offence punishable by a fine not exceeding level seven and/or imprisonment for a period not exceeding two years (section 48(5)).

- 149.** With regard to public service employees, section 24(1) of the Public Service Act provides that the Minister of Public Service may declare any organization or association representing all or any members of the public service as a recognized association or organization. The Public Service (Formation and Recognition of Associations or Organizations) Regulations set out a twofold procedure for the establishment and recognition of associations or organizations representing public service employees.¹⁰¹
- 150.** Regulation 4 provides for provisional recognition. For this purpose, an association or organization seeking to be recognized, shall, within six months of its formation, apply for provisional recognition. The Minister shall gazette the application inviting representations from any interested person within a period of not less than 30 days. As soon as practicable after the expiry of that period, the Minister shall issue a further notice advising any interested party of the accreditation proceedings to be held in not less than 30 days. At these proceedings, the Minister or a person authorized by the Minister shall call upon the association or organization and any interested person present to make any representations in connection with the application. The Minister or an authorized person may provisionally recognize the association or organization, decline provisional recognition, or recognize it provisionally subject to any alteration in the class or classes of members of the public service sought to be represented. The Minister shall, on request, supply any interested person with the reasons for his or her decision.
- 151.** A provisionally recognized association or organization may, not less than six months or more than one year after being so recognized, apply to the Minister for confirmation of its recognition (regulation 5). The procedure for provisional recognition applies *mutatis mutandis* to the confirmation procedure.
- 152.** In any determination of the recognition of an association or organization, the Minister shall take into account: the representations by the Public Service Commission and members of the public service who might be affected; the desirability of affording the majority of the members of the public service effective representation in negotiations affecting their rights and interests;

¹⁰⁰ Here and in what follows, the "Minister" means the Minister of Public Service, Minister of Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of the Act, such as the Minister responsible for Justice, who is assigned to administer Part XI (on the Labour Court) of the Act.

¹⁰¹ To carry out its activities, an association or organization of public servants must be recognized and become a body corporate (regulations 6(1) and 7).

the desirability of reducing to the minimum the number of entities with which the Commission has to negotiate; whether the representations indicated that the association or organization will not be substantially representative of the employees it proposes to represent; and whether the constitution of an association or organization is in conformity with the Regulations (regulation 11).

Drafting of constitutions and election of officers

- 153.** Pursuant to section 28(1)(b) of the Labour Act, every trade union and employers' organization shall adopt a constitution within a period of six months of its establishment. A written constitution should contain particular points concerning the organization's membership, election of officers, internal administration, dissolution, etc (sections 28(1) and 35). Once adopted, it shall be submitted to the Minister (section 28(3)).
- 154.** Under the terms of section 4(1)(a), any employee has the right to be an officer of a trade union. Section 51 provides for supervision of the election of officers. By virtue of this section, the Minister may, where the national interests so demand, supervise the holding of elections to any office or post in a registered trade union or employers' organization. In particular, the Minister may, on the advice of the Registrar, set aside any election if the election was not properly conducted or if the result of the election did not represent the views of the electors; postpone, or change the venue of or procedure for, any election to ensure that the views of electors are given proper expression; assign responsibility for the conduct of any election to any trade union or employers' organization; prohibit any person from conducting an election campaign if the conduct of such a campaign is leading to a misrepresentation of any issues involved and the consequences of such misrepresentation have serious implications for the national interest; and make regulations for controlling and regulating elections, and for fixing the qualifications of officers of registered trade unions and employers' organizations. Any person who is aggrieved by any action taken by the Minister may appeal to the Labour Court.

Administration of organizations

- 155.** A trade union or employers' organization may, before it has adopted its written constitution, raise funds in respect of membership fees up to an amount not exceeding that specified by the Minister pursuant to a statutory instrument (section 28(2) of the Labour Act).
- 156.** Once established, registered trade unions have the right to collect trade union dues (sections 29(4)(h) and 52).¹⁰² Trade union dues can be collected and transferred by means of a check-off scheme or any other manner agreed between the trade union, the employees and the employer, or by an employee's written authorization (section 54(1)). Any employer who, in violation of such an agreement, fails or refuses to collect and transfer trade union dues is guilty of an offence and liable to a fine not exceeding level seven and/or to imprisonment for a period not exceeding two years (section 54(6)).
- 157.** The Minister may, by notice in writing to any employer, prohibit or modify any arrangements made for the collection of union dues and, to that effect, give directions relating to a reduction or increase of the amount of the deductible dues and the deposit of the union dues into a trust fund instead of the union's account, as well as in respect of such other matters as the Minister considers necessary or desirable in the interest of the employees concerned (section 54(2) and (3)). Any person who is aggrieved by the Minister's direction may appeal to the Labour Court, provided that where the Minister certifies that the reason for the direction was a threat to

¹⁰² The collection of trade union dues by an unregistered trade union is an unfair labour practice (section 9(e) of the Labour Act). Furthermore, by virtue of section 30(3)(c), no unregistered trade union may levy, collect or recover union dues by means of a check-off scheme.

engage or the actual engagement by the registered trade union in an unlawful collective job action, any ruling by the Court rescinding or amending the direction shall not have effect for six months from the date of its issue (section 54(5)).

158. Pursuant to section 55, the Minister may make regulations providing for the proper and systematic collection, management, application and disbursement of trade union dues by trade unions. Such regulations may provide for the maximum amount and method of assessment of union dues; the accounting procedures to be followed in connection with their collection, management, application and disbursement; the appointment of auditors and the keeping of accounting books; the percentage of union dues to be paid by a union to any association or congress of trade unions recognized by the Minister as being representative of all or most registered trade unions in Zimbabwe; limitations as to the spending of trade union dues; limitations on the salaries and allowances that may be paid to trade union employees; and limitations on the staff that may be employed and the equipment and property that may be purchased by trade unions. Moreover, the Minister may direct any trade union to supply information in connection with the acquisition and disbursement of union dues. “Any trade union that fails or refuses to comply with the order of the Minister is guilty of an offence and liable to a fine not exceeding level seven and/or to imprisonment for a period not exceeding two years.”

159. Section 120 confers on the Minister the right to investigate trade unions and employers’ organizations. Under the terms of this section, “if the Minister has a reasonable cause to believe that the property or funds of any trade union, employers’ organization or federation are being misappropriated or misapplied, or that the affairs of any trade union, employers’ organization or federation are being conducted in a manner that is detrimental to the interests of its members, the Minister may order that such trade union, employers’ organization or federation be investigated”. For this purpose, the Minister shall appoint an investigator who shall, at all reasonable times and without prior notice, have power to enter any premises, to question any person employed on the premises, to inspect and make copies of and take extracts from any relevant books, records or other documents on the premises.

Facilities

160. Under section 7(2) of the Labour Act, ¹⁰³ every employer shall allow a trade union representative reasonable access to his/her employees at their place of work during working hours and provide them with “reasonable facilities and access for the exercise of his/her functions”. Any person who contravenes this provision shall be guilty of an offence and is liable to a fine not exceeding level seven and/or to imprisonment not exceeding two years (section 7(3)).

161. Special leave without loss of pay not exceeding 12 days in a calendar year shall be granted by an employer to an employee who is required to attend as a delegate or an office-bearer any meeting of a registered trade union representing employees within the undertaking or the relevant industry (section 14B(c)). Under the terms of section 29(4a), an official or an office-bearer of a registered trade union is entitled to take such reasonable paid or unpaid leave during working hours as may be agreed under a collective bargaining agreement for the purpose of exercising his/her trade union functions.

¹⁰³ Section 29(4)(b) of the Labour Act concerning the rights of a registered trade union is to the same effect. With regard to unregistered trade unions, section 30(3)(b) stipulates that they do not enjoy the same right of access.

Strikes and pickets

162. In accordance with section 104(1) of the Labour Act, all employees, workers' committees and trade unions shall have the right to resort to collective job actions¹⁰⁴ to resolve disputes of interest.¹⁰⁵ However, pursuant to sections 9(g), 30(3)(a) and 104(3)(c), only a registered trade union can recommend or call for a collective job action. Furthermore, under section 9(f), no strike should be undertaken while a valid collective agreement is in force.

163. Strikes are prohibited in three circumstances: in essential services; in the case of a dispute of rights; and if the dispute is referred to arbitration (section 104(3)(a)).¹⁰⁶ Essential services are defined under the Labour Act to mean "any service the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public and that is declared by notice in the *Gazette* made by the Minister, after consultation with the appropriate advisory council,¹⁰⁷ if any, to be an essential service" (section 102). Any person who is aggrieved by any statutory instrument declaring any service or occupation to be an essential service may appeal against such notice to the Labour Court, which may vary or revoke the statutory instrument as it deems just (section 103).

164. Such a statutory instrument declaring essential services was issued in 2003.¹⁰⁸ Pursuant to the Labour (Declaration of Essential Services) Notice, the following services are essential:

- fire services (drivers, control room attendants, chief fire officers and assistants, divisional officers and supervisors of fighters and station officers);
- supply and distribution of water (pump operators, responsible for water treatment, plumbers, electricians and engineers);
- veterinary services (laboratory technologists and assistants, veterinary surgeons and doctors, persons employed in a disease surveillance unit, field branch personnel of the veterinary services department, animal health inspectors, veterinary livestock technicians and the head of field veterinary services, involved in the diagnosis and control of rabies, foot-and-mouth disease and anthrax and the control of locusts and army worm);

¹⁰⁴ "Collective job action" is defined under section 2 of the Labour Act as "an industrial action calculated to persuade or cause a party to an employment relationship to accede to a demand related to employment, and includes a strike, boycott, lock-out, sit-in or sit-out, or other such concerted action".

¹⁰⁵ A "dispute of interest" is a dispute other than a "dispute of right", defined as "any dispute involving legal rights and obligations, including any dispute occasioned by an actual or alleged unfair labour practice, a breach or alleged breach of the [Labour] Act or any regulations made under [the] Act, or a breach or alleged breach of any of the terms of a collective bargaining agreement or contract of employment" (section 2 of the Labour Act).

¹⁰⁶ With regard to the prohibition of strikes during compulsory arbitration procedures for disputes, see also section 98(11) and (12).

¹⁰⁷ An advisory council consisting of such persons as the Minister may deem fit, may be appointed by the Minister, either on his/her own initiative or on the recommendation of any employer or employee of any association representing employers or employees for the purpose of investigating and making recommendations as to the following: wages, salaries or benefits, the compilation of a list of arbitrators, the declaration of any service as an essential service, etc. (section 19).

¹⁰⁸ Statutory Instrument No. 137.

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- services provided by revenue specialists involved in the performance of security and health checks at airports and other ports of entry on behalf of the Zimbabwe Revenue Authority;
 - health services (ambulance drivers, doctors, nurses, pharmacists, radiographers, physiotherapists, pharmacy technicians, rehabilitation technicians, dental therapists, medical laboratory scientists, technologists, assistants and technicians, dentists, environmental health officers and technicians, electrocardiogram technicians, hospital equipment technicians, X-ray operators, darkroom assistants, and occupational therapists);
 - transport and communication services (telecommunication technicians, drivers and mechanics in the industry, aircraft technician engineers, air traffic controllers, meteorological technicians, road technicians and engineers, and engineers, signals officers and engine men at the National Railway of Zimbabwe);
 - electrical services provided by a person licensed under the Electricity Act and performed by the operational staff and any staff of contractors hired by such person; and
 - services provided by any public broadcaster during a state of disaster or an emergency likely to be declared a state of disaster.

In terms of the Notice, any non-essential service may be declared essential by the Minister if a strike in a sector, service industry or enterprise persists to the point that the lives, personal safety or health of the whole or part of the population is endangered.

- 165.** Section 104(2) sets out the procedure for the declaration of a strike, which includes an attempt to conciliate the dispute and, in case of failure, a 14-day strike notice. No strike can be organized without the agreement of the majority of the employees voting by secret ballot (section 104(3)(e)).
- 166.** Furthermore, according to section 104A, a registered trade union or a workers' committee may authorize a picket, i.e. a gathering of members and supporters of a trade union or workers' committee, for the following purposes: demonstrating peacefully in support of any collective job action or in opposition to any lock-out; and peacefully persuading other members of the trade union or the workers' committee or employees of the industry, undertaking or workplace represented by the trade union or workers committee to take part in the collective job action or demonstration.
- 167.** An employer may not employ any person to perform the work of a locked-out employee (section 108(5)).
- 168.** No person is liable for participating in a lawful collective job action, except for acts or omissions threatening or resulting in the destruction of, or damage to, property other than the perishing of goods caused by employees' absence from work on account of such collective action. All employees, and officials or office-bearers of unions are entitled to the same immunity and, in addition, to the protection of their employment (section 108(2) and (3)).
- 169.** Any person who "recommends, advises, encourages, threatens, incites, commands, aids, procures, organizes or engages in any collective action which is prohibited in terms of section 104(3)"¹⁰⁹ is guilty of an offence and liable to a fine not exceeding level 14 and/or to

¹⁰⁹ That is strike in essential services; in the case of a dispute of rights; or if the dispute is referred to arbitration.

imprisonment for a period not exceeding five years (section 109(1) and (2)).¹¹⁰ In addition, such person would be liable for any death, injury, loss of or damage to property or other economic loss, including the perishing of goods caused by employees' absence from work (section 109(6)). Furthermore, breach of the procedure of the declaration of a strike incurs liability to imprisonment not exceeding one year (section 112(1)(a)).¹¹¹

- 170.** The Minister may further suspend for a period not exceeding 12 months the right of the trade union to levy, collect or recover union dues by means of a check-off scheme, if s/he "believes on a reasonable ground" that the union contravened the provisions concerning prohibited collective actions. Such an order of the Minister is cancelled if no criminal proceedings are instituted against the trade union in question or if the Labour Court's decision acquits the union (section 109(3) and (5)).

Right of organizations to establish federations

- 171.** Pursuant to section 27(3) of the Labour Act, "any group of trade unions or employers' organizations may form a federation". According to section 2, "federation" is "a group of trade unions or employers' organizations, each of which is representative of a single undertaking or industry". The requirements for the establishment of federations are the same as those for the establishment of trade unions and employers' organizations (section 28). In general, for the purposes of the Labour Act, federations enjoy the same rights as registered trade unions and employers' organizations.

Dissolution and suspension of organizations

- 172.** Any interested person, including trade unions, may apply to the Registrar for the suspension or rescission of the registration of a trade union (section 39(1) of the Labour Act). The Minister may, after consultation with the union concerned, direct the Registrar to hold accreditation proceedings to determine whether the registration should be suspended or rescinded if he considers that a trade union no longer adequately represents the interests or area for which it was registered or has failed to perform any of its functions pursuant to the Labour Act (section 39(2)). For these purposes, the Registrar must gazette the application, inviting representations from any person within 30 days (section 39(3)). Following the 30-day period, the Registrar shall issue a notice of proposed accreditation proceedings, inviting all interested parties to submit any representations they may wish within a further 30 days (section 42). The Registrar shall hold accreditation proceedings and consider representations to determine whether to suspend or rescind the registration (sections 40, 41 and 43). In determining whether or not to suspend or rescind the registration, the Registrar shall take into account: the representations by employers or employees who might be affected, the Minister, or any interested member of public; the desirability of affording the majority of employees in an undertaking or industry effective representation in collective bargaining; the desirability of reducing to the minimum the number of entities with which employees and employers have to negotiate; whether the representations indicated that the trade union would be sufficiently representative; and the compliance of the trade union constitution with the Act (section 45). Following accreditation proceedings, the Registrar shall inform all those present of his or her decision and the reasons thereof (section 44). The Registrar's decision may be appealed to the

¹¹⁰ Furthermore, breach of a prohibition of a strike during compulsory arbitration procedures is punishable with a sentence not exceeding two years (sections 98(11) and (12)).

¹¹¹ According to the same section, any person who contravenes or fails to comply with section 104(3) is guilty of an offence and liable to a fine not exceeding level seven and/or to imprisonment for a period not exceeding one year.

Labour Court (sections 40(5), 47 and 49), although such an appeal will not suspend the operation or effect of the decision appealed against (section 48(2)).

- 173.** Furthermore, the report of an investigation ordered by the Minister into any trade union (registered or unregistered) may recommend in the case of an unregistered trade union that it be wound up; and in the case of a registered trade union, that it be deregistered or wound up (section 120). If the Minister accepts a recommendation of an investigator, s/he shall, in the case of an unregistered trade union, make an application to the High Court; and, in the case of a registered trade union, make an application to the Labour Court (section 120).
- 174.** In addition, the Labour Court may, in the context of strike, issue a disposal order providing, inter alia, for the suspension or rescission of the registration of the trade union involved in the collective job action (section 107(3)(a)(vi)).
- 175.** With regard to public service employees' organizations, section 24(2) of the Public Service Act provides that the Minister may at any time revoke the declaration of recognition of an organization. Where there is reasonable cause to believe that a recognized association no longer adequately represents the interests of the members for which it was recognized; or its property or funds are being misappropriated, or its affairs are otherwise being conducted in a manner detrimental to the interests of its members as a whole; or it has failed to perform any of its functions in terms of the Regulations, the Minister may, after affording the association or organization a reasonable opportunity to make representations, suspend or withdraw its recognition (regulation 10(1) of the Public Service (Formation and Recognition of Associations or Organisations) Regulations). In any determination of the suspension or withdrawal of recognition of an association or organization, the Minister shall take into account: the representations by the Public Service Commission and interested members of the public service; the desirability of affording the majority of the members of the public service effective representation in negotiations affecting their rights and interests; the desirability of reducing to the minimum the number of entities with which the Public Service Commission has to negotiate; whether the representations indicated that the association or organization will not be substantially representative of the employees it proposes to represent; and whether the constitution of an association or organization is in conformity with the Regulations (regulation 11). The Minister shall, on request, supply any interested person with the reasons for his or her decision (regulation 10(3)).

Protection against acts of anti-union discrimination

- 176.** According to section 4(3) of the Labour Act, no term or condition of employment and no offer of employment shall include a requirement that an employee or prospective employee shall relinquish his /her membership or office of a trade union or a workers' committee or not take part in the formation of a trade union or a workers' committee. Any such requirement is considered to be an unfair labour practice (section 8(a)) and shall be void. Without prejudice to any other remedy that may be available in any competent court, any person who is aggrieved by any infringement or threatened infringement of this right is entitled to apply for an order directing the employer or other party concerned to cease the infringement or threatened infringement or/and an order for damages for any loss caused either directly or indirectly as a result of the infringement (section 4(4)).
- 177.** In terms of section 89(2)(c), the Labour Court may order a cessation of an unfair labour practice, back pay from the time that the dispute or unfair labour practice arose and reinstatement or employment. Instead of reinstatement, payment of damages, including punitive damages, can be awarded to an employee who has been wrongfully dismissed.
- 178.** Section 24(5) of the Public Service Act provides that a public servant who is not a member of a recognized association shall not be debarred from, or prejudiced in respect of, any appointment, promotion or advancement within the public service.

Protection against acts of interference

- 179.** A trade union shall not represent employers and an employers' organization shall not represent employees other than managerial employees (section 45(1)(b) of the Labour Act). The same applies to workers' committees (section 23(1)).
- 180.** Section 7(1) prohibits hindering, obstructing or preventing employees from "forming or conducting any workers' committee for the purpose of airing any grievance, negotiating any matter or advancement or protecting the rights or interests of employees", or threatening "any employee with any reprisal for any lawful action taken in advancing or protecting his/her rights". Any person who contravenes this provision shall be guilty of an offence and liable to a fine not exceeding level seven and/or to imprisonment not exceeding two years (section 7(3)). Furthermore, preventing, hindering or obstructing employees in the exercise of trade union rights by any act or omission is an unfair labour practice under section 8.
- 181.** Section 3 of the Labour Relations (Protection Against Any Acts of Interference Between Workers' Organisation and Employers' Organisation) Regulations essentially takes up the wording of Article 2 of Convention No. 98 and provides that any employer or a representative of an employers' organization or workers' organization who commits an act of interference shall be guilty of an offence and liable to a fine not exceeding level five and/or to imprisonment for a period not exceeding six months.¹¹²

Collective bargaining

- 182.** As discussed above, under the Labour Act, workers can be represented by a trade union, which may or may not be registered, and/or by a workers' committee. However, an unregistered trade union acting as a collective bargaining agent commits an unfair labour practice (section 9(e) and (h)). Bargaining collectively with another union when a registered trade union exists is also an unfair labour practice by an employer (section 8(f)). However, while the first paragraph of section 74(1) states that Part X of the Act pertaining to collective bargaining agreements applies only to agreements negotiated by registered trade unions, the second paragraph of the same section indicates that an unregistered trade union shall not be prevented from negotiating a collective agreement. Furthermore, according to section 31, a registered trade union, upon the Minister's authorization, may act as the agent union of employees in any undertaking or industry who are not otherwise represented by a registered trade union if not less than 50 per cent of the employees concerned are in favour of such a trade union representing them or if the Minister so requests. An unregistered or a registered trade union can also request another registered trade union to act as its agent union.
- 183.** A workers' committee may bargain collectively by virtue of section 24(1)(b). Where an appropriate trade union exists to represent employees, section 24(3) sets out the following rules. If the trade union has no collective agreement with the employer concerned, a workers' committee can bargain collectively with the written authorization by the union concerned. Where there is a collective bargaining agreement, a workers' committee can negotiate only to the extent permitted by such a collective bargaining agreement, or where the Minister certifies that the issue in question was omitted from or included in the principal collective bargaining agreement when it should not have been so omitted or included, or the parties to the principal collective bargaining agreement have failed or are not in a position to reach an agreement on such an issue. Every collective bargaining agreement negotiated by a workers' committee shall be referred to the employees and the trade union concerned. It becomes binding if

¹¹² It shall be an act of interference for an employer or employers' organization to promote the establishment of workers' organization under the domination of the employer or employers' organization, or to support a workers' organization by financial or other means, with the object of placing such organization under the control of the employer or employers' organization.

approved by the trade union and by more than 50 per cent of the employees (section 25(1)). If a collective agreement contains a provision that is, or that has become, inconsistent with legislation in force or is unreasonable or unfair, the Minister may direct the parties to negotiate an amendment, and report back. The Minister may then amend the agreement in accordance with the report, or in such other manner that is consistent with the considerations of legislative consistency, reasonableness and fairness (section 25(2)–(4)).

- 184.** Pursuant to section 77, the parties to collective bargaining may be represented by committees, delegates or agents and are assisted by an employment council consisting of an equal number of members representing registered trade unions and employers (section 62(1)(a)).
- 185.** Section 74 determines the scope of collective agreements, which can regulate any conditions of employment of mutual interest to the parties, but should not be inconsistent with the Labour Act.¹¹³ In addition to collective agreements, the Minister, after consultation with any appropriate advisory council,¹¹⁴ may make regulations providing for the development, improvement, protection, regulation and control of employment and conditions of employment (section 17). Such regulations may provide for the following: minimum wages, benefits, remuneration, social security, retirement, pension, the deductions which may be made from the wages of employees, the hours of work, overtime, work shifts, rest and meal breaks, the provision of food and other services at work, sick leave, maternity leave, holidays and other conditions of employment.
- 186.** Collective agreements should be negotiated in good faith and failure to do so constitutes an unfair labour practice (section 75). Furthermore, an employer who refuses to negotiate in good faith with a workers' committee or a trade union which has been duly formed and authorized to bargain collectively commits an unfair labour practice (section 8(c)).
- 187.** After negotiation, a collective agreement concluded by trade unions and employers' organizations shall be submitted to the Registrar for registration (section 79(1)). "Where any provision of a collective bargaining agreement appears to the Minister to be inconsistent with this Act or any other enactment; or unreasonable or unfair, having regard to the respective rights of the parties; he may direct the Registrar not to register such collective bargaining agreement until it has been suitably amended by the parties thereto" (section 79(2)).
- 188.** The terms and conditions of a registered collective bargaining agreement become effective and binding either from the date of its publication as a statutory instrument or from such other date as may be specified in the agreement (sections 80 and 82(1)). Where a collective bargaining agreement which has been registered contains any provision which is or has become inconsistent with the legislation in force or "unreasonable or unfair, having regard to the respective rights of the parties", "the Minister may direct the parties to the agreement to negotiate within such period as he/she may specify for the amendment of the agreement in such manner or to such extent as he/she may specify" (section 81(1)(c)). It is a duty of the parties to the collective bargaining agreement to negotiate in absolute good faith for the amendment of the agreement and to report back to the Minister within the specified period of time as to the extent to which they have been able or unable to agree. Upon receipt of the report of the parties the Minister may amend the collective bargaining agreement in accordance with the report or in such other manner as is consistent with the considerations above. Any person who is aggrieved by any action taken by the Minister under the terms of this section may appeal to the Labour Court (section 81(5)).

¹¹³ See also section 12A(3) and (4) of the Labour Act: intervals at which the payment of wages is made, days and the manner of payment can also be subject to collective bargaining.

¹¹⁴ See section 19 of the Labour Act.

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- 189.** In the case of a dispute, a labour officer shall attempt to settle it through conciliation or, if agreed by the parties, by reference to arbitration (section 93(1)). If a dispute is not settled within 30 days (or any other period agreed by the parties), a labour officer shall refer the dispute to compulsory arbitration if it is a dispute of interest and the parties are engaged in an essential service, or with the agreement of the parties (section 93(3) and (5)). If it is not possible for any reason to refer the dispute to compulsory arbitration, any party to the dispute may apply to the Labour Court (section 93(7)). When a dispute is referred to compulsory arbitration, no employee, workers' committee, trade union, employer or employers' organization shall engage in a collective job action in respect of the dispute, at the risk of being found guilty of an offence and liable to a fine not exceeding level eight and/or to imprisonment for a period not exceeding two years (section 98(11) and (12)). An arbitration award has the effect of a civil judgement (section 98(15)).
- 190.** Any person who fails to comply with a binding collective agreement commits an unfair labour practice and is guilty of an offence and liable to a fine not exceeding level seven and/or to imprisonment for a period not exceeding two years (section 82(3)). If a registered collective agreement provides for a conciliation and arbitration procedure for a category of dispute, that procedure is the exclusive procedure for the determination of disputes (section 82(4)).
- 191.** With regard to the conditions of service of public servants, including their remuneration, benefits, leave of absence, hours of work and discipline, section 19(1) of the Public Service Act provides that they should be determined by the Public Service Commission in consultation with the Minister. Such conditions may be fixed by means of service regulations, notices, circulars or in such other manner as the Commission considers will best bring the conditions to the attention of public servants (section 19(2)). Section 20 further provides that the Commission shall engage in regular consultations with recognized associations and organizations in regard to the conditions of service of public servants. In this respect, the Public Service (Formation and Recognition of Associations or Organisations) Regulations provide for the right of a recognized association or organization to make representations to the Commission and the Minister (regulation 6(2)(a)). However, notwithstanding this obligation, the conditions of service so fixed or determined by the Commission shall not be invalid solely on the ground that they were not subject to prior consultations or were not agreed to by all the parties to a prior consultation (section 20 of the Public Service Act).
- 192.** The Public Service (Public Service Joint Negotiating Council) Regulations, 1997, establish the bipartite¹¹⁵ Joint Negotiating Council to engage in mutual consultations and negotiate salaries, allowances and conditions of service in the public service (regulation 3). The Council's duty is to conclude and enter into agreements on salaries, allowances and conditions of service for submission to the Minister for his or her consideration (regulation 4(f)).
- 193.** Similar arrangements exist for consultations and negotiations in the health service under the Health Service (Health Service Bipartite Negotiating Panel) Regulations, 2006.¹¹⁶

¹¹⁵ Of which, in addition to the chairperson, nine members are appointed by the Minister of Public Service to represent the State and nine others by the Apex Council to represent the membership of the Apex Council (regulation 3(2)). "Apex council" means a council representing all recognized associations or organizations that is formed for the purpose of conducting negotiations on conditions of service (regulation 2).

¹¹⁶ The Health Service Bipartite Negotiating Panel is composed of a chairperson and 12 members representing the State and the members of the Apex Council.

10. Zimbabwe and international labour standards: Consideration by the ILO supervisory bodies

194. Zimbabwe's observance of Conventions Nos 87 and 98 has been examined by both the general and special ILO supervisory mechanisms. The Committee on Freedom of Association has examined nine complaints from workers' organizations, and the Committee of Experts has examined the legislative aspects of Zimbabwe's observance of both Conventions since their ratification.¹¹⁷

I. Committee on Freedom of Association

195. The first complaint against Zimbabwe was filed in 1996. The ICFTU filed a complaint alleging that police violently broke up a peaceful demonstration (*Case No. 1909*). The complainant alleged that 100 workers who had gathered in solidarity with striking nurses and doctors had been attacked by 50 police officers firing tear gas and using clubs to beat those who tried to leave. The police allegedly arrested Mr Morgan Tsvangirai (ZCTU Secretary General) and Mr Isaac Matongo (ZCTU Vice-President) and questioned them at the police station. The complainants commented upon a general failure in social dialogue and unrest in the public sector throughout 1996, epitomized by the unilateral dismissal of 1,000 doctors and nurses in the face of grievances, leading to a three-week health sector strike.

196. The Government categorically denied violence on the part of the police, and emphasized the constitutional guarantee of freedom of association in Zimbabwe. It stated that no court cases had been based on these allegations, nor were there any medical reports of injuries. The Government stated that when a group of people had attempted to enter the court that was hearing the case concerning the strike by doctors and nurses, the situation had become violent. As a result, after appropriate warnings, the police had used tear gas to disperse the crowd and restore order without assaulting anyone. While no one had been arrested, two ZCTU officials had been questioned at the police station about an intended general strike. Finally, the Government stated that, as doctors and nurses were considered to work in essential services in Zimbabwe, their strike was accordingly illegal.

197. In the context of the contradictory statements, the Committee insisted upon the principles concerning the right to peaceful demonstration and urged that trade unionists not be questioned in police detention in the future.¹¹⁸

198. In the following year, 1997, a case was brought by the International Federation of Commercial, Clerical, Professional and Technical Employees in relation to a strike by employees of the Standard Chartered Bank (*Case No. 1937*).¹¹⁹ The complainants argued that the employers had obtained a disposal order from the Ministry of Public Service, Labour and Welfare decreeing that striking workers return to work and authorizing the bank to take

¹¹⁷ The comments of the Committee of Experts were further considered by the Conference Committee on the Application of Standards a number of times: in relation to Convention No. 98 in 2002, 2003, 2004 and 2005; and in relation to Convention No. 87 in 2006, 2007 and 2008.

¹¹⁸ 307th Report of the Committee on Freedom of Association, Case No. 1909, ILO, *Official Bulletin*, Vol. LXXX, 1997, Series B, No. 2, paras 489–495.

¹¹⁹ 309th Report of the Committee on Freedom of Association, Case No. 1937, ILO, *Official Bulletin*, Vol. LXXXI, 1998, Series B, No. 1, paras 421–452 (followed up 28 times).

disciplinary action. The bank allegedly dismissed 365 striking employees, who were obliged to reapply for their jobs and accept temporary contracts with lower terms and conditions.

- 199.** The Government clarified that the disposal order was issued pursuant to the Labour Relations Act, 1996, and that a case concerning the facts was still before the High Court. It further explained that the Labour Relations Act allowed for voluntary or compulsory arbitration; here, three grievances had been resolved during four meetings between the parties, and the parties had agreed that the one remaining matter should be referred to compulsory arbitration. The Government argued that the employees went on strike despite this agreement. The disposal order, which had been issued after a hearing at the Ministry, was sent to the employees by the bank, with a request that they return to work within two days, or disciplinary action would be taken.
- 200.** The Committee recommended amendments to the Labour Relations Act, and the reinstatement of the dismissed workers. The case was followed up by the Committee until 2007. A 1999 Labour Relations Tribunal order to reinstate 211 workers¹²⁰ was overturned by the Supreme Court in 2000 despite it having upheld the substantive decision;¹²¹ in 2001, the Committee was advised that a settlement agreement had been reached to the satisfaction of the workers and employers.¹²² In 2003, noting with interest that the provisions of the Labour Relations Act concerning compulsory arbitration had been amended, the Committee recommended further amendments to ensure that workers could take industrial action in relation to social and economic policy, that imprisonment for peaceful strikes was not possible, and that sanctions were proportionate to the seriousness of the infringements in the case of illegal strikes.¹²³
- 201.** In 1999, a complaint was brought by the ZCTU alleging serious violations of human and trade union rights in 1997 and 1998 (*Case No. 2027*). The ZCTU alleged that the police violently intervened in mass demonstrations on 9 December 1997, injuring scores of people in the ensuing confusion and stampede. Further allegations concerned an assault on the Secretary General in union offices on 11 December 1997 and arson in the union's western region offices on 5 March 1998; neither of these events resulted in a conviction by the courts. Finally, the complainants alleged that in November 1998 the President used the Presidential Powers (Temporary Measures) Act to declare all industrial action illegal, including a proposed ZCTU stay-away on 27 November 1998.
- 202.** The Government replied that the police had intervened in the mass demonstrations in 1997 on account of looting. It further stated that a person charged in relation to the assault on the ZCTU's Secretary General had been found not guilty, and that an arrest docket had been issued in relation to the arson. The Government explained that the prohibition on industrial action was due to ZCTU actions that were crippling the economy, despite an existing agreement between the social partners. It pointed out that the order in question had expired on 27 May 1999 and had not been renewed. Finally, the Government indicated that the ZCTU's

¹²⁰ 320th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXIII, 2000, Series B, No. 1.

¹²¹ 323rd Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXIII, 2000, Series B, No. 3.

¹²² 326th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXIV, 2001, Series B, No. 3.

¹²³ 331st Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 2.

economic sabotage involved a political agenda, as was evidenced by the union's president becoming the leader of the MDC.

- 203.** The Committee reiterated the importance of a climate in which violence was not tolerated. It recommended that independent inquiries be established in relation to the assault and arson, and trusted that the Government would refrain in future from restricting the right of workers' organizations to protest in respect of social and economic policies affecting workers, noting in this regard the existence of a draft Labour Relations Amendment Bill, which appeared to so restrict protest action.
- 204.** This case was followed up by the Committee until 2007. Despite amendments to the Labour Relations Act, now the Labour Act,¹²⁴ concerns remained. The Government continued, until 2007, to reiterate its position that independent inquiries in these cases were not appropriate and that further legislative amendments in accordance with the Committee's requests were not required. The Committee regretted the Government's "continued and long-standing failure to cooperate".¹²⁵
- 205.** In 2000, *Case No. 2081* was brought by the ZCTU concerning the power provided for in the Labour Relations Act for the Government to register and deregister trade unions and cause investigations into trade unions. Specifically, the ZCTU asserted that in February 2000 an investigator had been appointed to look into the ZCTU's affairs. The Government indicated that such provisions were necessary to ensure that funds and properties were being used for workers' activities. The Government contended that the ZCTU's formation of a political party – the MDC – was resented by some trade unions affiliated to it, as the MDC was using the union's offices and facilities.
- 206.** The Committee considered that the legislation infringed the requirements of the Conventions in that it entitled public authorities to enter trade union premises without prior authorization, provided for searches without a court warrant and allowed investigators to inspect financial and other records. The Committee held that in practical terms the investigation prohibited the ZCTU from engaging in political activities. The Committee recalled that governments should not attempt to interfere with the formal functions of a trade union movement because of its freely established relationship with a political party, and that provisions imposing a general prohibition on political activities by trade unions were contrary to the principles of freedom of association. Accordingly, the Committee urged the Government to stop the investigation into the ZCTU, and to introduce legislative amendments to the Labour Relations Act in this

¹²⁴ The Labour Relations Act until 7 March 2003, when the Act's short title was changed to the Labour Act by the Labour Relations Amendment Act 17/2002.

¹²⁵ 344th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. XC, 2007, Series B, No. 1, para. 247. See also 331st Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 2; 332nd Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 3; 333rd Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVII, 2004, Series B, No. 1; 336th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVIII, 2003, Series B, No. 1; and 340th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVIX, 2006, Series B, No. 2.

regard.¹²⁶ This case was followed up by the Committee until 2004, when it regretted that no action had been taken and referred the matter to the Committee of Experts.¹²⁷

- 207.** In 2002, two cases were filed with the Committee by the ICFTU. *Case No. 2184* concerned alleged interference and a threat of deregistration; *Case No. 2238* concerned alleged arrest, detention, assault and governmental interference. Both of these cases were listed as serious and urgent cases requiring the Governing Body's special attention.
- 208.** In *Case No. 2184* it was alleged that on 14 March 2002 police officers attempted to enter the headquarters of the ZCTU to monitor a meeting of its executive council. As the union leadership did not allow them to enter, the police prevented the meeting from taking place. Further allegations concerned the authorities' alleged intention to deregister the ZCTU.
- 209.** The Government stated that police officers approached the ZCTU to ascertain the nature of the meeting, at which point the executive council abandoned its meeting citing police interference. The Government stated that the police action was in accordance with the POSA, which required prior notification of public meetings and authorized their monitoring by police. It further informed the Committee that on the basis of a petition filed by the ZCTU, the High Court had held in April 2002 that the POSA did not, in fact, apply to ZCTU meetings. The Government alleged that the meeting was not a genuine trade union meeting but was aimed at planning mass action against the Government, as shown by the ZCTU's call for a stay-away two days later. The Government reiterated that it would not interfere in genuine trade union meetings, but if it had good cause to believe the meetings were of a political nature and contravened the POSA, it would do so.
- 210.** The Committee urged the Government to ensure that such interference by the authorities in the meetings and internal affairs of trade unions was not repeated and to implement the High Court order prohibiting police from attending a future ZCTU council meeting. The case was mentioned as a serious and urgent case.¹²⁸
- 211.** *Case No. 2238* concerned allegations that nine trade union leaders were arrested on 9 December 2002 and released on 11 December, after a judicial order for their release. One of the arrested trade unionists was beaten and warned that unless he ceased his trade union activities he would be "eliminated". The complainant further alleged that riot police had disrupted a ZCTU meeting and assaulted workers. The Government stated that the detention was for the purposes of questioning about a mass stay-away called by the ZCTU and that the persons in question were members of a political organization whose agenda was to topple the Government. They were questioned in this connection, and not in connection with activities linked to the ZCTU's mission.
- 212.** The Committee recalled that trade union activities cannot be restricted solely to occupational matters and workers' organizations should be able to voice their opinions on political issues in the broad sense of the word and it once again requested the Government to refrain from interfering in the ZCTU's trade union activities. The Committee was particularly concerned that the recurrent arrest and detention of trade union leaders would create an atmosphere of

¹²⁶ 323rd Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXIII, 2000, Series B, No. 3, paras 555–575.

¹²⁷ 333rd Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVII, 2004, Series B, No. 1, paras 177–180.

¹²⁸ 329th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXV, 2002, Series B, No. 3, paras 11, 818–831.

intimidation and fear prejudicial to the normal development of trade union activities. This case was listed as a serious and urgent case that was drawn to the special attention of the Governing Body.¹²⁹

- 213.** *Case No. 2313* was filed by the ICFTU in 2003 and concerned further allegations of intimidation, harassment, and arrest. It was followed up until 2007 and listed as a serious and urgent case twice. The complainants alleged that 165 trade union leaders were arrested, and some were seriously assaulted, during a national protest on 8 October 2003. Twenty trade unionists who refused to pay a fine, insisting that they had been conducting legitimate trade union activities, were charged under the Miscellaneous Offences Act. The complainants further alleged a series of arrests before, during and after a nationwide protest on 18 November 2003 (the complainants alleged 390 arrests while the Government alleged 193 arrests over two days). The ZCTU alleged intimidation and harassment of trade union members and leaders throughout the country, including interference by CIO operatives at one trade union workshop and hostile questioning by ZANU–PF activists at another.
- 214.** The Government replied that the trade unionists were arrested on 8 October 2003 and 20 November 2003 for organizing unlawful demonstrations, that they were all released after paying fines for breach of the POSA or appearing in court, and that there had been no assaults. The Government reiterated that many ZCTU officials were pursuing the political agenda of the MDC, which aimed to remove the Government by violence.
- 215.** The Committee observed that these incidents were similar to those in March 2002, discussed in previous cases, and reiterated that trade union activities could not be restricted solely to occupational matters. Pending additional information from both sides, the Committee recalled that the detention of trade union members or leaders for reasons connected with their activities constituted a serious interference with civil liberties in general and with trade union rights in particular. Yet again, the case was listed as a serious and urgent case.¹³⁰
- 216.** In 2006, the Committee noted that the Government had not sent its observations on further allegations of violence towards trade unionists on 8 October 2003. The Committee deplored the lack of cooperation and expressed deep concern over the arrests, delays in the hearing of cases, and the assaults and serious injuries. It again drew the Governing Body’s special attention to the situation.¹³¹
- 217.** *Case No. 2328* was filed by the OATUU, the UNI and the ICFTU in March 2004 and considered in March 2005. The complainants alleged that Mr Lovemore Matombo, President of the ZCTU, was dismissed on 23 January 2004 by ZimPost. This followed his earlier suspension for disrupting a board meeting on 11 December 2003 and an alleged absence from work without official leave when he was leading the union’s delegation to the Eighth Congress of the OATUU in Sudan.
- 218.** The Government stated that Mr Matombo had not completed the necessary leave application procedures before leaving for the Congress, and was subsequently charged with misconduct. Following a disciplinary hearing before a committee that included members of his own trade

¹²⁹ 332nd Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVI, 2003, Series B, No. 3, paras 4, 957–970.

¹³⁰ 334th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVII, 2004, Series B, No. 2, paras 4, 1090–1121.

¹³¹ 43rd Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVIX, 2006, Series B, No. 3, paras 4, 1149–1169.

union, he was dismissed, and the decision was appealed and submitted to the Ministry for final consideration.

- 219.** The Committee recalled that participation by trade unionists in international trade union meetings was a fundamental trade union right and that workers should enjoy adequate protection against all acts of anti-union discrimination such as dismissal, demotion, transfer or other prejudicial measures.¹³² It considered further information in 2006 and 2007, at which time appeals to the Labour Court were still pending.¹³³
- 220.** *Case No. 2365* was filed by the ICFTU in July 2004 and concerned further allegations of harassment, intimidation, arrests and detentions, and arbitrary dismissals and transfers. The case was considered serious and urgent in 2005, 2006 and 2007.
- 221.** The complainants alleged that on 17 February 2004 four trade unionists were detained by police in Bulawayo; on 4 March 2004 the President of the Zimbabwe Union of Journalists was dismissed after having addressed workers; on 25 March 2004 the car of the Secretary General of the Progressive Teachers' Union of Zimbabwe (PTUZ) was tailed and hit; on 27 March 2004 a group of 50 people besieged and vandalized the home of the Secretary General of the Zimbabwe Construction and Allied Workers' Union, and forced his wife and three children to march at gunpoint to a nearby hospital; and in April 2004 the Vice-Chairman of the ZCTU Chegutu district was transferred from his workplace in Chegutu to Harare on account of his "clandestine involvement in political activities".
- 222.** The Government replied to each allegation, variously stating that the trade union officials should have followed the normal channels of appeal, that the allegations were unfounded or unconnected with their trade union position, and that it could not interfere in matters between workers and their employers.
- 223.** The Committee requested reinstatement of any trade unionists found to have been dismissed for anti-union reasons and reiterated its concern that an absolute prohibition on trade unions engaging in political activities seemed to be recurrent. The Committee observed that these allegations followed similar events in March 2002, December 2002 and October–November 2003, expressed its deep concern with the extreme seriousness of the general trade union climate in Zimbabwe and called the Governing Body's special attention to it.¹³⁴
- 224.** The ICFTU presented further allegations relating to events from June 2004 to February 2005 that were considered by the Committee in June 2005.¹³⁵ These allegations concerned arrests of trade union leaders throughout the country on different occasions; court cases against trade unionists and the imposition of fines; the dismissal and suspension of striking workers and trade unionists involved in demonstrations; the deployment of armed personnel during a telecommunications strike in October 2004; and harassment and intimidation of strikers and union leadership. Finally, there were allegations that the Government had interfered in the

¹³² 336th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVIII, 2005, Series B, No. 1, paras 866–890.

¹³³ 349th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVIX, 2006, Series B, No. 1, paras 229–232; and 344th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. XC, 2007, Series B, No. 1, paras 248–250.

¹³⁴ 336th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVIII, 2005, Series B, No. 1, paras 891–914.

¹³⁵ 337th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVIII, 2005, Series B, No. 1, paras 4, 1633–1671.

visit by a trade union delegation from South Africa to Zimbabwe, culminating in its expulsion from the country on 26 October 2004, and that a further Congress of South African Trade Unions delegation was turned away at the border on 2 February 2005.

- 225.** The Government refuted the allegations. In relation to the allegations concerning the deportation of international trade unionists, the Government emphasized its right to determine its immigration policies and laws which trade union membership could not circumvent.
- 226.** The Committee repeated its earlier comments concerning the need for rapid judgements in the case of unionists who had allegedly been dismissed for strike action. It considered that visits by other trade union movements in the region represented a normal trade union activity and, while subject to national legislation, must be based on objective criteria and be free of anti-union discrimination. In 2006, the Committee deplored the fact that the Government had failed to take action to redress the violations.¹³⁶
- 227.** In 2007, the Committee examined additional information referring to intimidation, harassment and violence against trade union officials and trade unionists during the period from February 2005 to September 2006.¹³⁷ It was informed that some charges against trade union leaders had been withdrawn or dismissed for lack of evidence. One set of new allegations concerned interference by the authorities in the union's international cooperation activities and governmental interference in ZCTU affairs in an attempt to oust the union's leadership through internal conflicts in 2005. Other allegations concerned a police raid on ZCTU headquarters on 13 May 2005 during which financial documents were searched and files, computer disks, cheque books and foreign currency were seized. In November 2005, the Government started an investigation into alleged financial misconduct and breaches of the ZCTU constitution, allegedly based on the complaints of affiliate members who had been suspended in the earlier internal conflict. On 8 August 2006, the ZCTU Secretary General was interrogated by the serious fraud section of the Criminal Investigation Department on account of his responsibility for illegal foreign currency exchange as signatory to ZCTU bank accounts.
- 228.** Other allegations concerned the arrest, detention, intimidation and harassment of trade unionists in 2005–06, including death threats, disruption of ZCTU meetings by police, the alleged dismissal from TelOne of 1,254 workers for taking part in a strike on 6 October 2004, and the confiscation of flyers in a police raid. One particular set of allegations concerned a 13 September 2006 demonstration which was largely prevented from proceeding following the arrest or detention of 265 trade union officials and members around the country. There was heavy police and army involvement; other trade union officials and members were interrogated or intimidated; and ZCTU officials were seriously beaten.
- 229.** The Government replied to each allegation, repeating to a large extent its previous comments concerning the political nature of many ZCTU activities and declining an ILO high-level direct contacts mission.
- 230.** The Committee requested the Government to drop charges against those arrested and to ensure that no charges under the POSA were pending against trade unionists; to instigate an investigation into the alleged beatings at police stations and into the disruptions and assaults that allegedly occurred within the internal ZCTU conflict; to provide details of the outcome of

¹³⁶ 342nd Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. LXXXVIX, 2006, Series B, No. 2, paras 4, 1040–1053.

¹³⁷ 344th Report of the Committee on Freedom of Association, *Official Bulletin*, Vol. XC, 2007, Series B, No. 1, paras 4, 1333–1453.

financial investigations; to review legislation; and reconsider its request for a direct contacts mission. Once again, Zimbabwe was listed as a serious and urgent case calling for the Governing Body's special attention.

II. Committee of Experts

A. Application of Convention No. 98

- 231.** Following ratification of Convention No. 98 in 1998 and its entry into force in Zimbabwe one year later, the Committee of Experts examined the Government's first report and the relevant national legislation at its 2000 session. On that occasion and at its two subsequent sessions, in 2001 and 2002, the Committee of Experts addressed concerns involving insufficient legislative protection against acts of interference in trade union affairs, restrictive legislative provisions in respect of collective bargaining and the issue of the coverage of public servants.
- 232.** In particular, the Committee of Experts noted that sections 7, 8 and 9 of the Labour Relations Act did not ensure comprehensive and specific protection against acts of interference. It invited the Government to enact provisions pursuant to section 10(1) of the Act, which empowered the Minister to prescribe, by statutory instruments, acts or omissions constituting unfair labour practices by employers, employees, workers' committees or trade unions, in order to guarantee the application of Article 2 of the Convention.
- 233.** With regard to the application of Article 4 of the Convention, the Committee of Experts noted that sections 98, 99, 100, 106 and 107 of the Labour Relations Act granted the labour authorities the power to refer disputes in the context of collective bargaining to compulsory arbitration whenever they considered it appropriate. The Committee of Experts recalled that compulsory arbitration could only be imposed with respect to public servants engaged in the administration of the State and those working in an essential service in the strict sense of the term, meaning those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, and in the case of an acute national crisis. Accordingly, it requested the Government to amend these sections.
- 234.** The Committee of Experts also considered that section 17(2) of the Labour Relations Act, which provided that regulations made by the Minister prevailed over any agreement or arrangement, as well as section 22 of the Act, which stated that the Minister may, by statutory instrument, fix a maximum wage and the maximum amount payable by way of benefits, allowances, bonuses or increments, further limited the parties' right to collective bargaining. It asked the Government to take measures to amend them.
- 235.** Furthermore, the Committee of Experts requested the Government to amend sections 25(2), 79 and 81 of the Labour Relations Act, which required that collective agreements be submitted for ministerial approval in order to ensure that their provisions were not inconsistent with the national and international labour law and were not inequitable to consumers, to members of the public generally or to any other party to the collective bargaining agreement, so as to ensure that the power of the authorities to refuse the approval was limited to cases of procedural flaws or inconformity with the minimum standards laid down by general labour legislation.
- 236.** The Committee of Experts also considered that section 25(1) of the Labour Relations Act was not conducive to the promotion of collective bargaining as it allowed direct settlements and agreements signed between an employer and the representatives of a group of non-unionized workers, even when a union existed in the undertaking. Once again, the Committee of Experts requested the Government to amend the provision.

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- 237.** Finally, while noting the Government's statement that teachers and nurses negotiated collective agreements, the Committee of Experts requested the Government to take the necessary measures to ensure that the right to collective bargaining was granted to all public servants with the sole possible exception of those engaged in the administration of the State. In particular, the Committee of Experts requested the Government to ensure that prison staff and employees engaged in the framework of the Lotteries Act, excluded by the Public Servants Act, enjoyed the right to organize and bargain collectively.
- 238.** At its 2003 session, the Committee of Experts noted the adoption by Zimbabwe of the Labour Relations Amendment Act (No. 17/2002) and Statutory Instrument 131/2003. It noted with satisfaction that under the new legislation, certain issues it had previously raised were resolved. In particular, Statutory Instrument 131/2003 prohibited acts of interference by employers in trade union organizations and provided for sanctions such as fines and/or imprisonment in cases of infringement; new section 93(5) of the Labour Act made compulsory arbitration possible only with the agreement of the parties concerned or when conciliation procedures had failed in the essential services; and section 2A(3) explicitly stated that the Labour Act prevailed over any legislation, including the Public Service Act. The consequence of the latter was to ensure that workers engaged in the framework of the Lotteries Act and other categories of workers mentioned in section 14(c) and (h) of the Public Service Act were governed by the Labour Act and enjoyed the rights provided for in the Convention.
- 239.** However, prison staff, being members of a disciplined force, were excluded from the Public Service Act and from the Labour Act (section 3(2)(b) and 3(5)(a)) and therefore continued to be deprived of rights guaranteed by the Convention. The Committee of Experts therefore again considered that the Government should amend its legislation so as to ensure that prison workers enjoyed the right to organize and to bargain collectively.
- 240.** With regard to the need for ministerial approval of collective agreements and the right of the Minister to fix a maximum wage and other conditions of employment by statutory instrument, the Committee of Experts noted the Government's statement concerning the need to protect consumers and the general public and reiterated its request for legislative amendment. It once again requested the Government to amend section 25(1) of the Labour Act so as to ensure that when a union existed in the undertaking, even if it represented less than 50 per cent of employees, it enjoyed bargaining rights.
- 241.** At its 2004 session, the Committee of Experts noted the Government's indication that new legislation would be promulgated by June 2005 and recalled all previously raised issues. At its 2006 session, the Committee of Experts noted with interest that the following provisions of the Labour Act were repealed by the Labour Amendment Bill, 2005: a requirement for collective agreements to be submitted for ministerial approval in order to ensure that their provisions were equitable to consumers, to members of the public generally or to any other party to the collective bargaining agreement (paragraph (b) common to sections 25(2), 79(2) and 81(1)); and the power of the Minister to fix a maximum wage and the maximum amount that may be payable by way of benefits, allowances, bonuses or increments by statutory instrument prevailing over any agreement or arrangement (section 22). The Committee of Experts, however, stressed the need to repeal paragraph (c), common to sections 25(2), 79(2) and 81(1) of the Labour Act, which subjected collective agreements to ministerial approval on the ground that the agreement was or became unreasonable or unfair, having regard to the respective rights of the parties.
- 242.** Noting the ongoing labour law reform, the Committee of Experts drew the attention of the Government to the need to amend section 25(1) of the Labour Act in relation to the direct settlements between employers and non-unionized workers and to ensure the application of the rights provided for by the Convention to prison workers.

B. Application of Convention No. 87

- 243.** Following the ratification of Convention No. 87 in April 2004 and its entry into force in the country on 9 April 2005, the Committee of Experts examined the Government's first report at its November 2005 session.
- 244.** At this and its subsequent sessions, the Committee of Experts expressed its concern at the use of the POSA and, in particular, Part IV on public gatherings, to impose sanctions on trade unionists for conducting strikes, protests, demonstrations or other public gatherings. While noting the Government's statements that the POSA did not apply to the activities of trade unions and employers' organizations, in light of the Committee on Freedom of Association's conclusions in Cases Nos 2313 and 2365, the Committee of Experts felt compelled to stress that the development of the trade union movement and the increasing recognition of its role as a social partner in its own right meant that workers' organizations must be able to voice their opinions on political issues in the broad sense of the term and, in particular, to express their views publicly on a government's economic and social policy. It therefore requested the Government to take measures to ensure that the POSA was not used to infringe the right of workers' organizations to express their views on the Government's economic and social policy.
- 245.** The Committee of Experts raised the following legislative points with regard to the Labour Act. First, it stressed the need to ensure the right to organize in the prison service, excluded from the scope of application of the Act by virtue of its sections 2, 3(2)(b) and 5(a). Additionally, in relation to the application of Article 2 of the Convention, the Committee of Experts requested the Government to provide information in respect of the fact that while, pursuant to section 36(1) of the Act, the Registrar can refuse an application for registration of a trade union or employers' organization or federation, the legislation did not provide for grounds on which such a refusal could be based.
- 246.** Second, in relation to application of Article 3 of the Convention, the Committee of Experts expressed concern at the power of the Minister to supervise the election of officers of a trade union or employers' organization and to set aside any such election (section 51 of the Labour Act); and to regulate trade union dues as well as such matters as staff who may be employed by trade unions, their salaries and allowances, and the equipment and property that may be purchased by trade unions (sections 28(2), 54(2) and (3) and 55 of the Act). Furthermore, it noted that under the terms of section 120(2) of the Act, an investigator appointed by the Minister had powers to enter premises at reasonable times and without prior notice (paragraph (a)); to question any person employed on the premises (paragraph (b)); and to inspect, make copies of and take extracts from any books, records or other documents on the premises (paragraph (c)). The Committee of Experts considered that this section gave rise to two different sets of problems from the standpoint of freedom of association. In the first place, the Committee of Experts recalled that the right of the inviolability of trade union premises necessarily implied that the public authorities may not insist on entering such premises without prior authorization or without having obtained a legal warrant to do so and any search of trade union premises, or of unionists' homes, without a court order, constituted an extremely serious infringement of freedom of association. In addition, the Committee of Experts considered that the control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports. The discretionary right of the authorities to carry out inspections and request information at any time entailed a danger of interference in the internal administration of trade unions. The Committee of Experts considered that measures of administrative control over trade union assets, such as financial audits and investigations, should be applied only in exceptional cases, when justified by grave circumstances (for instance, presumed irregularities in the annual statement or irregularities reported by members of the organization), in order to avoid any discrimination between one trade union and another and to preclude the danger of excessive intervention by the authorities which might hamper a union's exercise of the right to organize

its administration freely, and also to avoid harmful and perhaps unjustified publicity or the disclosure of information which might be confidential. Consequently, the Committee of Experts considered that the powers of supervision contained in the abovementioned sections of the Labour Act were excessive and asked the Government to take the necessary measures to amend them so as to ensure the right of workers' and employers' organizations to organize their administration without interference by the public authorities.

- 247.** Third, with regard to the right to strike, the Committee of Experts requested the Government to delete reference to the power of the Minister to declare a service essential and thus prohibit the exercise of the right to strike in section 103 of the Labour Act. It also requested the Government to amend section 104(3)(e) of the Act so as to ensure that when a vote by workers was required in order to call a strike, account was taken only of the votes cast.
- 248.** The Committee of Experts also expressed its concern at the disproportionate penalties which could be imposed for strikes and therefore requested the Government to amend sections 109 and 112 of the Labour Act, which established excessive sanctions, including possible imprisonment for up to five years of individuals engaged in an unlawful collective action, and section 107 of the Act conferring the power on the Labour Court to dismiss an individual engaged in such action and to suspend or rescind the registration of the trade union involved in such action.
- 249.** At its 2006 session, the Committee of Experts had before it comments provided by the Government on most of the points raised previously. On the issue of registration, the Government explained that the Registrar could refuse an application for registration on the following grounds: (1) the organization had no constitution or its constitution fails to meet the requirements; (2) there was no proof of membership; (3) the leadership had a known and proven track record of illegal conduct; (4) there was no proof of a grouping (i.e. minutes of a congress); and (5) there were credible objections submitted during accreditation proceedings from stakeholders and existing trade unions in the particular industry indicating serious implications for the interests of workers in general. The Government added that transparency of the registration procedure was ensured by section 40(4) of the Labour Act, which required the Registrar to indicate the reasons for the suspension of registration of the trade union and provided for a right to appeal to the Labour Court against the Registrar's decision. In this respect, the Committee of Experts requested the Government to provide further information on the requirements to be met in a trade union constitution for registration purposes, to clarify the meaning of "credible objections by stakeholders and existing trade unions" and to provide examples, if any, of the denial of registration on that ground. The Committee of Experts also noted the Government's indication that the registration of trade unions or employers' organizations was not compulsory and that they could exist and perform their functions without being registered.
- 250.** The Committee of Experts further noted the Government's explanation of the application of section 51 of the Labour Act empowering the Minister to supervise the election of officers of trade unions or employers' organizations. According to the Government, those who supervised elections merely observed that the procedure and conduct of elections were followed in terms of the established rules and constitution of the trade union concerned. The Committee of Experts nevertheless pointed out that the autonomy of organizations could be effectively guaranteed only if their members had the right to elect their representatives in full freedom. It considered that legislative provisions, which enabled the public authorities to interfere in the election procedure, were contrary to the principles of freedom of association and therefore requested the Government to amend section 51 so as to ensure the right of employers' and workers' organizations to elect their representatives in full freedom and without interference from the authorities.
- 251.** With regard to section 55 of the Labour Act, while the Government explained that this section was intended to protect the interests of workers against the pegging of unsustainable trade

union dues, the Committee of Experts was bound to recall that problems of compatibility with the Convention arose when the law gave authorities powers to specify the amount of dues members should pay to their organizations and the proportion of dues that had to be paid to federations. The Committee of Experts further recalled that the freedom of employers' and workers' organizations to organize their administration implied that these organizations should be able to dispose of all their fixed and movable assets unhindered and it once again requested the Government to take the necessary measures to amend sections 28(2), 54(2) and (3) and 55 of the Act. The Committee of Experts also once again requested the Government to amend section 120(2) concerning the powers of an investigator appointed by the Minister to investigate a trade union or a federation of trade unions.

- 252.** With regard to the power of the Minister to declare any service essential (section 102 of the Labour Act), the Committee of Experts noted the Government's indication that in terms of section 102(b), the Minister could declare a service essential after consultations with a tripartite advisory council. In the Government's opinion, this ensured that employers' and workers' views and aspirations were considered. The Committee of Experts pointed out, however, that essential services were only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population and therefore asked the Government once again to amend section 102 of the Act so as to bring it into conformity with the Convention.
- 253.** With regard to the issue concerning the strike vote (section 104(3)(e) of the Act), the Committee of Experts noted the Government's indication that in practice account was taken only of the votes cast.
- 254.** With regard to excessive sanctions provided for by the legislation in the case of the organization of unlawful collective actions (sections 107, 109 and 112 of the Act), the Committee of Experts noted the Government's statement that the Labour Act penalized unlawful collective action just as much as any other law penalized criminal conduct. An unlawful collective action was an action not permitted in law, hence such conduct should be discouraged. The Government further indicated that the desirability of a particular penalty or its legitimacy rested with the courts of law as, in some cases, unlawful job actions resulted in injury to, or death of, innocent people. The Committee of Experts emphasized that all penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike. Furthermore, concerning the sanctions of dismissal and dissolution, the Committee of Experts recalled that no one should be penalized for carrying out or attempting to carry out a legitimate strike and that, in any case, the sanctions imposed should not be disproportionate to the seriousness of the violations. Therefore, the Committee once again asked the Government to amend sections 109 and 112 of the Labour Act so as to bring it into conformity with Articles 3 and 10 of the Convention.

Part IV.

Information on the factual matters investigated by the Commission

- 255.** This Part of the report contains an analysis of the information considered by the Commission. The information received directly by the Commission includes communications and documentation submitted by the complainants, the Government, the national workers' and employers' organizations, and by the international workers' organization, as well as written and oral information gathered during its missions to Zimbabwe in May and August 2009.
- 256.** The chapters contained in this Part are organized thematically, in relation to the allegations made to the Commission. It commences with an overview addressing the allegation that the violations of Conventions Nos 87 and 98 were systematic.

11. The systematic and systemic nature of problems in the implementation of trade union rights

257. The Commission received allegations that an orchestrated campaign had been waged against the trade union movement amounting to a systematic violation of the freedom of association Conventions throughout the country, in every sector, over a large number of years and in relation to trade union leaders and members.¹³⁸ The allegations also claimed violations of civil liberties. Most of the allegations concerned events that occurred before the establishment of the inclusive Government, although the Commission received submissions that the systematic campaign had not been abandoned and had been used sporadically in recent months.
258. Many of the interlocutors whom the Commission met during its mission alleged a lack of rule of law and democratic governance in Zimbabwe which particularly impacted upon freedom of association and collective bargaining rights. Allegations were made concerning a failure to respect civil liberties and human rights, thus giving rise to a context in which, according to the complainants, trade union rights could not be freely exercised. The ZCTU asserted that the labour court system provided no protection for trade union or human rights.¹³⁹
259. The Commission received much information concerning the excessive involvement of the police and intelligence services in every aspect of trade union life. First, the police insisted on permission being requested, and on being present at, almost all trade union events. Second, trade unionists alleged the systematic use of violence, arrests and detention by the security forces as a form of intimidation. In this regard, a legal practitioner spoke to the Commission of an exceedingly high acquittal rate in relation to the hundreds of arrests of trade union leaders and members over the past ten years. Often trade unionists were arrested and detained, to be released some time afterwards without being charged. He indicated that no one had been convicted of any crime despite the many detentions, thus evidencing a campaign against the ZCTU that was not based on criminal actions on the part of union members, but was aimed at punishing trade union membership and activism.¹⁴⁰
260. Many of the interlocutors whom the Commission met described a personal effect on them of what they perceived to be systematic targeting on account of their trade union membership:¹⁴¹

The two events [detentions in relation to demonstrations on 28 August 2003 and 13 September 2006] made me angry because the people who arrested me had no reason to assault us ... After all we had demonstrated during broad daylight and everybody who was there were all well-known residents ... I can only conclude that the assault was only intended to punish or intimidate us. I felt frustrated by the two events. I felt violated by the assault at the hands of the police. I also felt dehumanized and disenfranchised; an alien in my own country. I had lost my basic freedoms due to the incarceration. There was nothing that I could

¹³⁸ The complaints from the Workers' and Employers' delegates submitted under Article 26 refer to trade unionists being "systematically arrested, detained, harassed and intimidated" and claim that the POSA and Criminal Law "have been systematically used to repress basic civil liberties and trade union rights".

¹³⁹ Meeting with the ZCTU, 12 Aug. 2009, Harare.

¹⁴⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare.

¹⁴¹ Meeting with the ZCTU, 14 Aug. 2009, Harare; written statement from trade union member, Aug. 2009.

do about it. I also felt exposed and vulnerable because the apparatus that I believed should have been protecting my basic rights was being used to assault them.

- 261.** Most officials and individuals whom the Commission met, including government officials, the employers' organization, both trade union formations and civil society organizations, explained that the ZCTU was perceived to be linked to the MDC political party.¹⁴² This perception caused a belief among the authorities that the union's actions were political in nature and not true trade union activities. ZCTU members asserted that, although the ZCTU facilitated the formation of the MDC in 1999 and many of its members were members or supporters of the MDC, ZCTU actions always had a true trade union motivation. The ZCTU had declared that it "shall jealously maintain its identity, autonomy and independent class position in as far as it relates to affiliation to party politics", stressing that its members, officials and staff have the right to participate on an individual basis in party politics of their choice, but "shall not attempt to bring into the ZCTU their political party's influence, orientation, policies, disciplines and priorities, etc."¹⁴³
- 262.** Trade union officials and members often contended that the police was controlled from outside the police force and that they felt unsafe on account of the perception that the Central Intelligence Organization (CIO)¹⁴⁴ was "everywhere".¹⁴⁵ It was explained to the Commission that the CIO was a non-uniformed intelligence force with branches throughout the country and operatives believed to be in many, if not all, workplaces, organizations and meeting places. A number of trade union members asserted to the Commission that the CIO and police acted together in the context of links between the ZANU–PF political party, the Government and its officials, the police and the CIO. Trade unionists believed that the police was pervasive and that the CIO was even more powerful. It was claimed many times that, as the CIO reported directly to the President of Zimbabwe, who was also the leader of the ZANU–PF political party, trade unionists had the impression that violence, harassment and discrimination against them had been sanctioned by the highest powers in the country.¹⁴⁶ For that reason, there was nowhere for them to turn to have the breaches of their rights remedied.¹⁴⁷ Members of the public service Apex Council stated that the intelligence services, the police and army were politicized and that they felt that there was "no one to protect you".¹⁴⁸
- 263.** On occasion, armed police and the army fired upon and killed demonstrators.
- 264.** It was further explained that the concerted campaign against the ZCTU and its affiliates was also being waged in the media. Media reports often described the ZCTU as a political force

¹⁴² See further Chapter 8 (Trade unionism in Zimbabwe: Historical and socio-economic context).

¹⁴³ ZCTU, 2000, *The "workers-driven" and "peoples-centred" development process for Zimbabwe* (Report for Advocacy Programme Beyond ESAP Phase I); meeting with the ZCTU, 14 Aug. 2009, Harare; ZCTU constitution (revised edition 2009).

¹⁴⁴ The Central Intelligence Organization (CIO) is a governmental organization under the authority of the Minister of State for National Security.

¹⁴⁵ Meetings with the ZCTU, Aug. 2009.

¹⁴⁶ Meeting with the ZCTU, Aug. 2009.

¹⁴⁷ See Chapter 14 (Intimidation and harassment), in which the link is discussed further.

¹⁴⁸ Meeting with the Apex Council, Aug. 2009, Harare.

involved with the imposition of international sanctions against the country.¹⁴⁹ The Commission was provided with reports from the state-run print and television media that persistently attacked the ZCTU and its leaders.¹⁵⁰ Certain trade unionists claimed that the intimidation against them had included threats that false reports would be written about them in the local or national media.¹⁵¹

- 265.** Allegations relating to the systematic violation of freedom of association fell into a number of categories. The extent of the interaction between these aspects resulted in a perception by the complainants of a systematic lack of protection of their rights. The first group of allegations concerned allegedly routine infringements of the right to strike and demonstrate.¹⁵² The second group concerned the widespread arrests, detentions, assaults and torture of trade union officials and members.¹⁵³ The third group of allegations concerned the intimidation and harassment of trade unions and their members and, in particular, of teachers, farm workers and the business community.¹⁵⁴ The fourth group concerned an alleged pattern of interference in trade union affairs and anti-union discrimination.¹⁵⁵ The fifth group concerned lapses in collective bargaining and social dialogue,¹⁵⁶ and the sixth group concerned a failure in the institutional protection of trade union rights.¹⁵⁷ In addition, the Commission heard statements concerning attempts at a healing and reconciliation process in Zimbabwe.¹⁵⁸
- 266.** Each of these sets of issues is addressed in the ten following chapters. As it was alleged that arrests, detentions and violence related to demonstrations and other trade union events amounted to intimidation, harassment and torture of trade unionists and interference with trade union activities, they are discussed in more than one chapter.

¹⁴⁹ E.g. “ZCTU: West’s useful idiots”, *The Herald*, 30 Sep. 2008 (p. 6); “Imperialists resort to new tactics”, *The Herald*, 27 Feb. 2005 (p. 9 alleging United States support for the ZCTU).

¹⁵⁰ E.g. “Workers, please reclaim ZCTU”, *The Herald*, 1 May 2007 (p. 7: “the marauders masquerading as workers’ representatives in the Zimbabwe Congress of Trade Unions”); “ZCTU has lost the plot”, *The Herald*, 8 May 2007 (p. 9).

¹⁵¹ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

¹⁵² See Chapter 12 (Freedom of demonstration and assembly and the right to strike).

¹⁵³ See Chapter 13 (Arrests, detentions, assaults and torture).

¹⁵⁴ See Chapters 14 (Intimidation and harassment), 15 (Intimidation and harassment of teachers), 16 (Intimidation and harassment of farm workers) and 17 (The experience of the business community).

¹⁵⁵ See Chapter 18 (Interference in trade union affairs and anti-union discrimination).

¹⁵⁶ See Chapter 19 (Collective bargaining and social dialogue).

¹⁵⁷ See Chapter 20 (Institutional protection of trade union rights).

¹⁵⁸ See Chapter 21 (The current situation: National healing and reconciliation).

12. Freedom of demonstration and assembly and the right to strike

- 267.** The Constitution of Zimbabwe guarantees freedom of association and assembly. The right of workers to undertake collective industrial action, and the procedure to be followed, is regulated by the Zimbabwean Labour Act. Meetings and demonstrations in Zimbabwe fall within the purview of the general public order statute, the Public Order and Security Act (POSA), and the criminal law.¹⁵⁹
- 268.** The approach of the authorities to the right to demonstrate and strike in Zimbabwe allegedly breached workers' and employers' rights to freedom from interference and arbitrary arrest and detention and amounted to a form of intimidation and harassment, as will be discussed in detail in Chapters 15–20 of this report.

I. Freedom of demonstration and assembly

- 269.** The complainants alleged systematic infringements of freedom of assembly and demonstration over the past ten years, often in relation to the implementation of the POSA. It was made known to the Commission that section 24 of the POSA required organizers of “public gatherings” to notify the police of those events except, inter alia, in relation to public gatherings “held by a registered trade union for bona fide trade union purpose for the conduct of business in accordance with the Labour Relations Act”.¹⁶⁰ The ZCTU and Attorney-General both noted that in law the POSA explicitly did not apply to trade union gatherings for trade union – rather than political – purposes.
- 270.** The ZCTU further stated that while they understood that their events, as trade union activities, did not require permission from the police under the POSA, as a matter of courtesy ZCTU officials uniformly advised the police of forthcoming events including national, regional and local meetings, stay-aways and marches. The police had either denied permission for such events to occur; granted permission for them to go ahead, on the proviso that certain conditions were followed; or obstructed them even when permission was granted without the attachment of any conditions.¹⁶¹
- 271.** The Attorney-General expressed his surprise that trade unionists had been prosecuted under the POSA and suggested that possibly the police had mistakenly believed that the organizations were not trade unions, or that people had pretended to be trade unionists when in reality they were not. In this connection, it was explained to the Commission that the general perception that the ZCTU was linked to the MDC meant that ZCTU activities were considered by the authorities not to be bona fide trade union events, but to be political in nature.¹⁶²

¹⁵⁹ See Chapter 9 (National legislation in relation to freedom of association).

¹⁶⁰ Schedule to the Labour Act; see Chapter 9 (National legislation in relation to freedom of association).

¹⁶¹ See Chapter 18 (Interference in trade union affairs and anti-union discrimination), where this is discussed in further detail.

¹⁶² See Chapter 11 (The systematic and systemic nature of problems in the implementation of trade union rights).

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- 272.** A Deputy Attorney-General explained that trade union meetings did not require permission from the police, in comparison with protests and marches outside trade union premises in public places, for which permission should be sought. The Ombudsperson noted that not all marchers were trade unionists and pointed out the State's obligation to ensure security.¹⁶³ In relation to the alleged excessive violence when policing demonstrations, the Co-Ministers of Home Affairs emphasized that Zimbabwe had a well-trained police force and, if anything, problems were not the fault of the police but of the "political order" in the country. They welcomed ILO support for further training, noting that police officers currently received training in the policing of demonstrations and civil liberties.¹⁶⁴ The Ombudsperson indicated that the Government would not refuse ILO technical assistance to teach workers how to conduct demonstrations and the police in how to deal with demonstrations.¹⁶⁵
- 273.** The Attorney-General said that a recent amendment to the POSA moved the onus onto the authority to show cause why a gathering should not go ahead.¹⁶⁶ The Ombudsperson advised that trade unions should appeal to the High Court against police decisions not to allow trade union demonstrations. This would require unions to file requests to the police sufficiently in advance of the proposed event.¹⁶⁷
- 274.** The Co-Ministers of Home Affairs, responsible for the POSA, noted that since the establishment of the inclusive Government they had clarified through the press the legal procedure to be followed if people wanted to express themselves through demonstration. The Permanent Secretary stated that the problem with the POSA was that it was not sufficiently understood; the police must be informed of a demonstration rather than permission being sought, as the duty of the police was to protect both demonstrators and the general public. With regard to the suggestion that the POSA be repealed or modified, a Co-Minister considered that the POSA should stay, but perhaps not in its present form. He explained that steps were being taken to modify the law to give people more space and freedom, indicating that new draft legislation would be presented to Parliament when it reconvened.¹⁶⁸
- 275.** One of the two factions of the ZFTU indicated that they had no problems in relation to police permission for demonstrations and gatherings. Unlike the ZCTU, they chose to shift their demonstrations to grounds outside Harare, as indicated by the police, and so their events were able to proceed without problems.¹⁶⁹

A. *The socio-economic component of events*

- 276.** During the past ten years, in the context of the economic crisis in Zimbabwe, the ZCTU voiced demands of a social and economic nature through its activities. For example, the ZCTU

¹⁶³ Meeting with the Ombudsperson, 21 Aug. 2009, Harare.

¹⁶⁴ Meetings with the Co-Ministers of Home Affairs, 22 May 2009 and 17 Aug. 2009, Harare.

¹⁶⁵ Meeting with the Ombudsperson, 21 Aug. 2009, Harare.

¹⁶⁶ Meeting with the Attorney-General, 20 Aug. 2009, Harare.

¹⁶⁷ Meeting with the Ombudsperson, 21 Aug. 2009, Harare.

¹⁶⁸ Meetings with the Co-Ministers of Home Affairs, 22 May 2009 and 17 Aug. 2009, Harare. This was confirmed by a number of other ministers, including the Prime Minister, in meetings in Harare in August 2009.

¹⁶⁹ Meeting with one faction of the ZFTU, 13 Aug. 2009, Harare.

organized nationwide stay-aways and demonstrations against the rampant inflation which made negotiated wages and salaries worthless; the cost of public transport and basic commodities, which impacted upon the worth of members' salaries; the availability of anti-retroviral drugs; and taxation. The ZCTU explained that these were socio-economic issues considered by workers to be of the utmost importance in relation to their employment and that human rights issues and socio-economic policy fell within trade union purview.¹⁷⁰ Members of EMCOZ explained that in many instances, employers supported these stay-aways and demonstrations, recognizing that, due to socio-economic factors, the salaries that they paid workers were worth significantly less than they had been at the time they had been negotiated.¹⁷¹

277. Government officials indicated that such stay-aways were considered to exceed traditional trade union topics for protests. The ZCTU stated to the Commission that such demonstrations were incorrectly deemed to be attempts to change the political leadership in Zimbabwe and that it was accused of fighting for regime change rather than being concerned with policies with a bearing on industrial relations.¹⁷²

B. Nationwide events

278. The ZCTU complained about the authorities' response to a series of nationwide stay-aways and demonstrations it had organized. It provided the Commission with information that security forces had prevented demonstrations from taking place, or had stopped them once they had started, through violence, intimidation, harassment, arrest and detention of trade unionists.¹⁷³

279. Trade unionists from around the country and from various economic sectors told the Commission of police intervention either before or during events organized by the ZCTU:¹⁷⁴

- On 18 November 2003, as trade unionists gathered in centres preparing to start a nationwide protest about the prices of basic commodities, the police arrested and detained a number of ZCTU leaders and members.
- In November 2005, another nationwide demonstration called by the ZCTU was prevented from taking place as the police arrested 37 trade unionists in Mutare and 119 activists in Harare who had gathered to start the march.
- On 13 September 2006, during a protest against poverty and high taxes, a large number of trade unionists were arrested, detained and assaulted in about nine locations throughout the country.¹⁷⁵

¹⁷⁰ Meeting with the ZCTU, 12 Aug. 2009, Harare.

¹⁷¹ Meeting with EMCOZ, 13 Aug. 2009, Harare.

¹⁷² Meeting with the ZCTU, 12 Aug. 2009, Harare.

¹⁷³ See Chapter 13 (Arrests, detentions, assaults and torture).

¹⁷⁴ These events are discussed in further detail in Chapter 13 (Arrests, detentions, assaults and torture).

¹⁷⁵ The Commission was provided with a copy of a newspaper article from the Zimbabwe *Sunday Mail* dated 10 September 2006, in which the Minister of State for National Security was reported as

- In relation to stay-aways planned for 3–4 April 2007 and 19–20 September 2007, a number of ZCTU officials and members were arrested and harassed beforehand and campaign material was confiscated.¹⁷⁶
- On 3 December 2008, during a protest against cash withdrawal limits when petitions were handed to branches of the Reserve Bank of Zimbabwe, a number of officials and members were arrested or assaulted in Harare (15 detentions), Kariba (five detentions), Karoi (four detentions), Gweru (32–35 detentions), Zvishvane (six detentions), Chipinge (28 detentions) and Bulawayo (seven detentions).

280. One ZCTU member from Bulawayo told the Commission that since 2003, at every event organized by the ZCTU, he had been held, and had slept, in prison.¹⁷⁷ Another trade unionist from Mutare told the Commission that every ZCTU activity that he had organized had been disturbed by the security forces.¹⁷⁸ A ZCTU member from a rural area stated that CIO operatives had harassed and detained him whenever he was involved with organizing ZCTU events, calling him an MDC activist even though he was not a member, let alone a leader, of the MDC.¹⁷⁹

281. A number of trade unionists alleged that they had often been arrested, detained or harassed immediately prior to ZCTU events. A trade unionist from Gweru stated that in the past eight years, every time that there was a ZCTU-organized event, union leaders were targeted by police prior to the action by being picked up from their homes very late at night on the day before the action, or early in the morning on the day of the action.¹⁸⁰ On 23 April 2003, for example, prior to a planned demonstration against high taxes, union leaders were picked up by the CIO from the union office in Gweru and detained for five hours. Prior to a planned action on the economic meltdown in November 2004, union leaders in Gweru were picked up from their homes and detained at the central police station for a number of hours. The union won an appeal to the Magistrates' Court against the police decision to deny permission for a Women's Day event in 2008.¹⁸¹

C. *May Day celebrations*

282. The Commission also heard evidence about the authorities' hostile attitude towards various events to mark May Day around Zimbabwe.

stating that if the ZCTU carried out its planned protest "the various arms of the State responsible for security are ready for them".

¹⁷⁶ Communication from the ITUC dated 23 May 2008 submitting a complaint to the Committee on Freedom of Association (Case No. 2645); meeting with a trade union organizer, 16 August 2009, Gweru. The Commission was provided with information detailing arrests in Harare, Masvingo and Bulawayo in relation to the April 2007 stay-away; and, in relation to the September 2007 stay-away, officials, members and family members of trade unionists were arrested in Masvingo, Plumtree, Mutare, Harare, Gweru, and Bulawayo.

¹⁷⁷ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

¹⁷⁸ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

¹⁷⁹ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

¹⁸⁰ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

¹⁸¹ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

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- 283.** In Harare, the ZCTU General Secretary was arrested in 2007 and again in 2008 when, together with the ZCTU President, he was charged with an attempt to overthrow the elected government in relation to their May Day speeches.¹⁸² ZCTU officials explained that the 2009 May Day event in Harare had proceeded without incident, but that the union had been required to apply for permission and the Minister of Labour had to intervene for permission to be granted.¹⁸³
- 284.** A ZCTU committee member from Rusape stated to the Commission that local May Day celebrations had been unable to go ahead in 2007 and 2008. In relation to the 2008 events, the Commission was provided with a letter from the district police, dated 1 May 2008, in which the union was “advised that the commemorations are likely to incite acts of violence” and that there was no “capacity to provide security during the commemorations because police officers are deployed elsewhere”; for that reason, it was “recommended” that the commemorations be cancelled.¹⁸⁴ Other trade unionists indicated that they had been detained at the district police station on that day, when the letter was handed to them and they were told that the police did not want the ZCTU in town.¹⁸⁵ The Commission was advised that in 2009, May Day commemorations in Rusape had been able to go ahead and approximately 400 people had participated.¹⁸⁶
- 285.** A trade unionist from Chitungwiza stated that preparation for May Day in 2006 had been interrupted by the police and in 2007 by ZANU–PF militia. In 2009, a May Day march had initially been denied by the police on the grounds that it was short of staff but, following an urgent application filed by ZCTU lawyers, the event was allowed at the last minute.¹⁸⁷

D. Other events

- 286.** The Commission was informed of numerous other protests, marches, demonstrations and gatherings organized by the ZCTU and its affiliates which had been disrupted by security forces or vigilante groups.
- 287.** A ZCTU regional officer indicated that at an event jointly organized by the ZCTU and the National Social Security Authority to commemorate World Health Day on 28 April 2005, the police had detained the ZCTU members in a vehicle for two hours; when the National Social Security Authority leadership had cancelled the event as the ZCTU colleagues could not participate, the police had released the ZCTU members from custody.¹⁸⁸ On 1 December 2005, during a World AIDS Day march in which ZCTU members joined members of other organizations in Harare, the police prevented those with ZCTU banners from taking part.¹⁸⁹ A trade unionist from the sugar industry trade union, a ZCTU affiliate, indicated that the police

¹⁸² Communication from the ITUC dated 23 May 2009.

¹⁸³ Meeting with the ZCTU, 12 Aug. 2009, Harare.

¹⁸⁴ Refusal by Rusape district police of May Day celebrations, dated 1 May 2008.

¹⁸⁵ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

¹⁸⁶ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

¹⁸⁷ Meeting with the ZCTU, 14 Aug. 2009, Harare.

¹⁸⁸ Meeting with the ZCTU, 14 Aug. 2009, Harare.

¹⁸⁹ Meeting with the ZCTU, 14 Aug. 2009, Harare.

had denied permission for a commemoration of National Human Rights Day on 10 December 2006 in Gweru.¹⁹⁰ The Commission was advised that, on an International Women's Day march in Bulawayo on 7 March 2009, the police had arrested all those present and detained them for three hours.¹⁹¹

- 288.** A member of a teachers' trade union informed the Commission that every time his union attempted to celebrate World Teachers' Day, the army, the CIO and the police would intervene and the leaders would be arrested.¹⁹² For example, on 6 October 2006, at the beginning of a World Teachers' Day event in Masvingo, about which the police had been notified in advance, more than 300 riot police had come to the ZCTU offices and detained the leadership for the entire time planned for the event so that it could not take place.¹⁹³ The Commission was provided with a copy of a letter from the Masvingo central district police, dated 2 October 2008, advising that a World Teachers' Day procession was prohibited as the PTUZ notice dated 17 September 2008 had not been received by the police seven days in advance of the march; the letter informed the organizers "that if you decide to go ahead, Police will arrest the participants".¹⁹⁴
- 289.** Following its mission to Zimbabwe, the Commission was informed that a commemoration of the 13 September 2006 violence against the ZCTU had been planned in Harare on 12 September 2009. After notifying the police of its intention to hold the commemoration in a shopping centre, the southern district police advised the ZCTU that it was unable to sanction the commemoration as the police had no capacity to cover the event. A High Court order subsequently declared that the event could go ahead. The Commission was informed that on the morning of 12 September 2009, police officers dispersed the participants and detained three trade union members for two hours before releasing them without charge.¹⁹⁵
- 290.** The Commission was further advised that on 8 November 2009 the ZCTU President and four ZCTU officials were arrested in Victoria Falls, and detained for four days in police cells, during the first event on a tour of the country to meet ZCTU affiliates.

II. Strikes

- 291.** The Commission noted that provisions relating to the right to strike were contained in the Labour Act.¹⁹⁶ Most notably, section 104 of the Act stated that "all employees, workers committees and trade unions shall have the right to resort to collective job action to resolve disputes of interest" and included procedural requirements of 14 days' written notice, an attempt for conciliation, and a secret ballot confirming the agreement of the majority of the employees.

¹⁹⁰ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

¹⁹¹ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

¹⁹² Meeting with the ZCTU, 16 Aug. 2009, Gweru.

¹⁹³ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

¹⁹⁴ Refusal by Masvingo central district police of the PTUZ World Teachers' Day commemoration and solidarity march, dated 2 Oct. 2008.

¹⁹⁵ Communications from the ITUC dated 14 Sep. and 8 Oct. 2009.

¹⁹⁶ See Chapter 9 (National legislation in relation to freedom of association).

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- 292.** The complainants alleged that the right to strike in Zimbabwe was subject to certain significant restrictions. First, strike was prohibited in essential services which, pursuant to the law, included a large number of workers.¹⁹⁷ Second, members of the Apex Council and PTUZ advised the Commission that, pursuant to the Public Service Act, public servants did not enjoy the right to strike and industrial action was illegal.¹⁹⁸ The Attorney-General noted that the basic labour rights of public servants were not protected under the law to the same extent as other workers in relation to matters such as strike. He indicated that since 1997 public service workers had the right to demand negotiation and compulsory arbitration from the Government without going on strike, but that this had never been exercised.¹⁹⁹
- 293.** Many interlocutors stated to the Commission that the right to strike did not exist in practice. Senior labour lawyers whom the Commission met indicated that reform of section 104 of the Labour Act relating to strikes may be desirable as judges had never declared a strike to be legal under this section. They explained that should a dispute not be resolved through conciliation, the Labour Court could decide that the collective job action was either legal or illegal following the purely procedural provisions of the Labour Act. If dismissals occurred in relation to a lawful strike, the Court would order reinstatement or damages instead of reinstatement and, in the case of an illegal job action, the Court would issue a disposal order stipulating certain measures against the workers. One expert observed that employers capitalized on the fact that employees “did not want to follow the procedures for strike” in the Labour Act, usually dismissing most or all of the strikers and targeting members of the workers’ committee. He noted that if the strike was illegal, then the dismissals would be considered fair by the Court.
- 294.** EMCOZ indicated that some strikes in Zimbabwe were organized by civil society and the ZCTU on topics such as high taxes and cash withdrawal limits. In terms of strikes under the Labour Act, members of EMCOZ also asserted that, in Zimbabwe, “it was literally impossible to engage in a lawful strike”.²⁰⁰
- 295.** ZCTU officials reaffirmed that it was rare for a strike to be considered legal in Zimbabwe.²⁰¹ A member of a ZCTU affiliate in the clothing and textile industry noted that there was a practical problem with the requirement for unions to call a secret ballot supervised by labour officers, as there were few labour officers; the cumbersome and lengthy process was exploited by employers. He also noted that sections 104–111 of the Labour Act contained civil and criminal sanctions against workers and trade unions in the case of an illegal strike.²⁰²
- 296.** The Commission was provided with details on the following strikes that had taken place in Zimbabwe in recent years and which had been treated by the authorities in a hostile manner.
- 297.** Following protracted wage negotiations in the clothing industry throughout Zimbabwe, workers staged a spontaneous collective job action in July 1997, which was declared illegal by

¹⁹⁷ See Chapter 9 (National legislation in relation to freedom of association).

¹⁹⁸ Meeting with the Apex Council, 12 Aug. 2009, Harare.

¹⁹⁹ Meeting with the Attorney-General, 20 Aug. 2009, Harare.

²⁰⁰ Meeting with EMCOZ, 13 Aug. 2009, Harare.

²⁰¹ Meeting with the ZCTU, 12 Aug. 2009, Harare. A number of non-governmental organizations likewise indicated that the right to strike did not exist in practice.

²⁰² Meeting with the ZCTU, 14 Aug. 2009, Harare.

the Ministry of Labour. The Commission received evidence that more than 13,000 workers were dismissed, some of whom were later reinstated on short-term contracts. By 6 October 2003, various judgements of the Labour Court had found that the dismissals were unlawful, but reinstatement was no longer feasible for all workers. An award of damages was agreed by the company on 16 October 2003 in lieu of reinstatement and an order was issued to that effect. A 2008 Labour Court decision concerning the quantification of those damages held that the calculation of damages should be based on the workers' salary in 2003 and not adjusted to 2007 levels. As a result, the workers were entitled to what amounted to \$0 at current rates because of the devaluation of the local currency.²⁰³

- 298.** The Commission was informed of a strike by 4,000 workers at the Zimbabwe Iron and Steel Company (ZISCO) in Kwekwe on 7–8 August 2001. The striking workers gathered peacefully on the company premises with the police present to monitor the situation. On 8 August, armed riot police and the army appeared and fired tear gas and workers started running. The army and police indiscriminately fired shots, as a result of which two workers were killed on the spot, another 1–2 workers died later from their injuries, and 22 workers were injured by gunshot, tear gas or beatings. In a judgement of the High Court delivered on 17 May 2006, the Court “accepted that the workers were peaceful and the soldiers and police unjustifiably aggressive in the use of excessive and unwarranted force in dealing with the workers”.²⁰⁴ The Court ordered the payment of damages for unlawful death which have reportedly not been paid to date.²⁰⁵
- 299.** A former teacher informed the Commission that, during industrial action organized by the PTUZ in 2002, he was abducted at gunpoint, blindfolded and detained in a car for three hours, after which he was instructed to telephone a colleague and call off the industrial action. Nevertheless, the trade unionist and his colleagues continued to mobilize others and did not call off the strike. He was arrested in October 2002, detained in custody for one night, and charged under the POSA that he had instigated teachers to rise and overthrow the Government. From then on, he was obliged to appear in Court every two months until 2005, when he was acquitted.²⁰⁶
- 300.** The Commission received written and oral information concerning three strikes in the communications sector. In June 2004, following a strike in NetOne in response to the employer's alleged refusal to negotiate, 56 workers were dismissed.²⁰⁷ An arbitration award on 1 October 2004 and a Labour Court decision of 7 December 2004 both ordered the reinstatement of the workers without loss of pay. The employer obtained a temporary stay and

²⁰³ *Maxwell Fambi and Others v. Winfields Clothing Ltd* (LC/H/49/2008, LC/H/17/2002, Labour Court, Harare, 4 Mar. 2008); written statement from a trade union official relating to strikes in the clothing industry dated 20 Aug. 2009; meeting with the ZCTU, 14 Aug. 2009, Harare.

²⁰⁴ *Mwachinduka v. Minister of Home Affairs* (HC 56-2006, HC 3240/02, High Court, Harare, 17 May 2006); meeting with the ZCTU, 16 Aug. 2009, Gweru.

²⁰⁵ *Mwachinduka v. Minister of Home Affairs* (HC 56-2006, HC 3240/02, High Court, Harare, 17 May 2006) and certificate of death dated 7 Sep. 2001.

²⁰⁶ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

²⁰⁷ Communication from the ITUC dated 22 July 2009.

appealed to the Supreme Court which, in a decision delivered on 9 March 2006, overturned the two earlier orders and “declared that the dismissal of the 56 employees was lawful”.²⁰⁸

- 301.** The Commission was informed that 1,020 workers were dismissed from ZimPost and 1,403 workers from TelOne following a strike for non-payment of salary increments awarded in arbitration in October 2004.²⁰⁹ The Commission was advised by the Secretary General of the Communications and Allied Workers’ Union, a ZCTU affiliate, that it believed that the strike was legal as they had followed the relevant procedures, such as a secret ballot among the members of the union, and that 14 days’ notice had been given.²¹⁰ The strike was ended after 15 days by the intervention of armed personnel at major post offices and telecom exchanges nationwide. A number of members of the union were arrested and obliged to pay fines. In total, 2,479 workers were dismissed without benefits, many of whom were women. Although many of the dismissed workers had 10–25 years of service, they received no pensions.²¹¹
- 302.** In October 2005, the High Court in relation to TelOne, and in November 2005, the Labour Court in relation to ZimPost, held that there was no “lawful basis upon which to dismiss the workers”.²¹² Nevertheless, the workers were not reinstated nor were damages paid. A September 2006 decision of the Supreme Court declared the dismissals to be justified;²¹³ in its May 2009 decision, the Supreme Court reached the same conclusion in relation to the ZimPost strike.²¹⁴
- 303.** The Commission was told by the ZCTU that 453 of the dismissed workers had since died and 235–250 were unaccounted for. Several of the dismissed workers with whom the Commission spoke during its visit to Zimbabwe explained they had experienced divorces caused by stress, the inability to send children to school, loss of homes and health problems.²¹⁵ One woman told the Commission that she had stopped taking her diabetes medication because it was too expensive; after 26 years of service and “working so hard” she had lost her job and could not afford anything.²¹⁶

²⁰⁸ *NetOne Cellular (Private) Limited v. Communications and Allied Services Workers’ Union of Zimbabwe* (SC 89/05, Civil Appeal No. 31/05, Supreme Court, 9 March 2006).

²⁰⁹ Communication from the ITUC dated 22 July 2009; meetings with the ZCTU, 14 Aug. 2009, Harare and 16 Aug. 2009, Gweru.

²¹⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²¹¹ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²¹² *ZimPost (Pvt.) Ltd v. Communication and Allied Services* (LC/H/131/2006, Case LC/H/387/2005, Labour Court, Harare, 30 November 2005).

²¹³ *TelOne (Pvt.) Ltd v. Communications and Allied Services Workers’ Union* (SC 26/06, Civil Appeal No. 337/05 Supreme Court).

²¹⁴ *ZimPost (Pvt.) Ltd v. Communications and Allied Workers’ Union* (SC 23/09, Civil Appeal No. 360/06, Supreme Court, 19 May 2009). Meeting with the ZCTU, 14 Aug. 2009, Harare.

²¹⁵ Meetings with the ZCTU, 14 Aug. 2009, Harare, and 16 Aug. 2009, Gweru.

²¹⁶ Meeting with the ZCTU, 14 Aug. 2009, Harare.

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- 304.** The ZCTU believed that there was government involvement in the decisions of the Supreme Court in the three cases in the telecommunications industry,²¹⁷ as it had done everything to ensure that the strikes were in conformity with the law and were legal. In all three cases in the telecommunications industry, the Supreme Court overturned a series of earlier decisions of the lower courts that had found the dismissals to be unjustified which, the complainants alleged, illustrated a politicization of the judiciary.²¹⁸
- 305.** The Commission received written information and oral testimony concerning a recent strike in the motor industry.²¹⁹ One trade union official from the ZCTU affiliate in the motor industry explained that on 25 February 2009, 200 workers at the Willowvale Mazda Motor Industries plant staged a sit-in strike on the basis of the “no pay, no work” principle, as workers had been given coupons to buy food, but had received no salary with which to pay rent or school fees for their children.²²⁰ The employer closed the plant between 9 and 13 March 2009 while it carried out an informal inquiry into the strike, following which it suspended without pay or benefits 11 workers on 16 March 2009.²²¹ The Commission was advised that the matter was heard by the Labour Court on 16 September 2009 and judgement was reserved.²²² A trade union official from the ZCTU affiliate in the motor industry explained that the Government owned 51 per cent of Mazda and many politicians were in managerial positions in motor vehicle plants.²²³
- 306.** The Commission received information concerning a strike of approximately 1,500 workers at ZIMASCO (Pvt) Ltd Kwekwe Division, a mining company.²²⁴ The strike concerned occupational health and safety and the Ministry of Labour issued a show cause order on 22 June 2009. The Labour Court in Gweru then declared the strike to be unlawful on 2 July 2009 and made a disposal order ordering the striking workers to return to work within 24 hours and authorizing the company to take disciplinary action.²²⁵ After returning to work, the workers were subject to disciplinary hearings. The majority of the workers were reinstated (some with warnings), but all the trade union officials (12 individuals) and the entire workers’ committee (11 individuals) were dismissed. These workers were awaiting judgement in an appeal against the dismissals.

²¹⁷ That is, in NetOne, TelOne and ZimPost.

²¹⁸ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²¹⁹ Meeting with the ZCTU, 14 Aug. 2009, Harare; communication from the ITUC dated 22 July 2009.

²²⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²²¹ It should be noted that some written documentation provided to the Commission in this connection refers to the suspension of 37 workers: communication from the ITUC dated 22 July 2009.

²²² As at the adoption of this report, the judgement was apparently still pending.

²²³ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²²⁴ Communications from the ITUC dated 22 July 2009 and from the ZCTU dated 8 Sep. 2009; *ZIMASCO v. ZIMASCO Workers’ Committee* (LC/MD/15/09, Labour Court, Gweru, 25 June 2009).

²²⁵ *ZIMASCO v. ZIMASCO Workers’ Committee* (LC/MD/15/09, Labour Court, Gweru, 25 June 2009).

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- 307.** The Commission was informed of a strike in the Shabanie Mine in Zvishavane that commenced on 31 August 2009 in response to the alleged non-payment of workers' salaries since January 2009. ²²⁶ On 25 September 2009, the strikers expected to meet the company management, but instead riot police "holding teargas canisters and branding AK 47 rifles ... ordered the workers to disperse". One worker was beaten with a gun and shot in his hand and leg after inquiring about the absence of the enterprise management. Tear gas was thrown at the sitting workers and two further workers were injured by shots that were fired as they fled.
- 308.** The Commission was informed that the injured workers were kept under police guard in hospital. When their lawyer attempted to visit them on that day, police officers arrested him and later released him without charge. Over 50 workers were arrested and detained at the police station on 25 September, 12 of whom spent the weekend in police cells before being taken to court and charged with public violence on 28 September 2009. The Magistrates' Court released them on bail and ordered the police not to harass those in hospital.
- 309.** On 29 September 2009, armed police officers, CIO operatives and security guards from the mines allegedly went to the workers' residences and ordered them to return to work the following day under threat of eviction from company houses. Approximately 75 per cent of the workers returned to work the next day at gunpoint. Eight workers were dismissed by the management on the grounds of being absent from work without leave, defying the general manager's memorandum to return to work and being part of an illegal work stoppage. Police officers allegedly went to the home of the secretary of the Zvishvane district ZCTU and warned him not to meet the striking mine workers.

²²⁶ Communication from the ITUC dated 8 Oct. 2009.

13. Arrests, detentions, assaults and torture

310. The Commission heard stories of arrest, detention, assault and torture from many ZCTU officials and members whom it met in Zimbabwe. It heard statements from trade unionists who had been detained for periods of time varying from a few hours to a few weeks and who described violence by the security forces in many cases of arrests, detentions or abductions. Most incidents occurred within the context of planned or actual demonstrations, and others allegedly occurred as forms of harassment.²²⁷ The Commission was told that in urban centres trade unionists were arrested during the protests and demonstrations, while in rural areas of the country the trade unionists were often detained in the lead-up to events, to prevent them taking place. In some instances, trade union leaders were arrested on their own or in small groups, and at other times ZCTU nationwide actions resulted in nationwide mass arrests. The Commission received information alleging mass arrests and detention, and often assaults, in connection with nationwide demonstrations on 22–23 April 2003, 8 November 2005, 13 September 2006, 3–4 April 2007, 19–20 September 2007, 3 September 2008, and 3 December 2008.²²⁸

I. Conditions in detention

311. The Commission was informed that after being arrested on account of trade union activities, many trade unionists were detained without charge, or prior to being charged, in police holding cells. It heard a number of statements concerning trade union members' experience of conditions in those holding cells, some of which amounted to torture.

312. The Commission was provided with a copy of a decision of the Zimbabwean Supreme Court relating to the detention of the Secretary General of the ZCTU at Matapi police station in December 2002. In that case, the Supreme Court was called upon to consider an application brought, inter alia, by the Secretary General of the ZCTU in relation to the conditions in police cells at Matapi police station in Harare. The leading judgement, to which the other members of the Court adhered, held:²²⁹

I have no doubt, in my mind, that the holding cell that the court inspected ... does not comply with elementary norms of human decency, let alone, comply with internationally accepted minimum standards. In particular, the failure:

- (a) to screen the toilet facility from the rest of the cell to enable inmates to relieve themselves in private;
- (b) to provide a toilet flushing mechanism from within the cell;
- (c) to provide toilet paper;
- (d) to provide a wash-basin; and
- (e) to provide a sitting platform or bench;

²²⁷ See Chapter 12 (Freedom of demonstration and assembly and the right to strike) and Chapter 14 (Intimidation and harassment).

²²⁸ The Commission received further information concerning violence against trade unionists in Bulawayo in the context of nationwide demonstrations in Oct. 2003.

²²⁹ *Kachingwe and Others v. Minister of Home Affairs NO and Another* (17/03) [2005] ZWSC 134; SC145/04 (18 July 2005). The case concerned a complaint brought by the ZCTU Secretary General referring to Matapi police station, and another complaint referring to Highlands police station; the decision of the court did not distinguish between the two police stations.

constitute inhuman and degrading treatment prohibited in terms of section 15(1) of the Constitution.

- 313.** In view of this finding, the Supreme Court directed the Minister of Home Affairs and the Commissioner of Police to take immediate measures to ensure that the police station cells in question had toilets that were screened off from the living area, with flushing mechanisms from within the cells, wash-basins and toilet paper.
- 314.** In relation to detentions both before and after that judgement, trade union officials and members from throughout the country described police holding cells and prisons within which they were detained varyingly as “horrible”, “inhumane”, “filthy”, “smelly”, “unhygienic” and “pathetic”.²³⁰
- 315.** More than one trade unionist indicated that prisoners in Zimbabwe detention centres and prisons could not expect food and so, in the case of those trade union members and officials who were moved around police stations so that their families and organizations could not find them, they experienced “starvation on top of the other torture”.²³¹ Other workers indicated to the Commission that they were not allowed to have access to lawyers or their medications.²³² A ZCTU lawyer stated that it had often been necessary to obtain court orders allowing access to detained ZCTU members so as to be able to provide legal advice. ZCTU lawyers further stated that they had themselves been harassed and intimidated by security forces by being threatened, pushed, or followed after having visited detained trade unionists.²³³

II. Nationwide events 2003–05

- 316.** The Commission was informed of arrests and detentions during this period and in particular in relation to ZCTU-organized nationwide events from 22 to 23 April 2003 and on 8 November 2005.
- 317.** One trade union member stated that he had been detained in April 2003, when he had first spent three days at one police station, before being transferred at midnight on the third day to another with one colleague, while his other four colleagues were transferred to two further police stations in the district. After another two days, he was again transferred. The worker explained to the Commission that rural police cells had no water and that they were transferred around police stations so that the ZCTU and their relatives could not find them. As a result, there was no one to provide them with food. The Commission was informed that charges against him were dropped once he appeared in court.²³⁴
- 318.** A ZCTU regional officer provided the Commission with details of six detentions in police cells between 2003 and 2004, during which he had been subjected to violence and humiliation.

²³⁰ Meetings with the ZCTU, 12 and 14 Aug. 2009, Harare; 15 Aug. 2009, Bulawayo; 16 Aug. 2009, Gweru; and 22 and 23 Aug. 2009, Mutare. Holding cells exist in police stations throughout Zimbabwe for which the Commissioner of Police is responsible. Prisons are administered by the prisons service.

²³¹ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

²³² Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

²³³ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²³⁴ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

These detentions were all in the context of the preparation for planned stay-aways, including being picked up while distributing flyers or from home in the early hours of the morning.²³⁵

- 319.** The Commission received much information relating to the mass arrests and detentions of trade union leaders following a demonstration on 8 November 2005 calling for economic and political reforms relating to high taxation. A ZCTU regional officer stated that he was one of six workers arrested in Chinhoyi the night before the 8 November 2005 event, in what the police law and order branch termed as “preventive detention” as they were not formally charged. They were released in the evening after the demonstration was due to have ended.²³⁶
- 320.** It was alleged that 37 trade unionists were arrested in Mutare and 116 were arrested in Harare as they gathered to start a march on 8 November 2005. A ZCTU regional official stated that he was one of the 116 workers arrested and taken to Harare central police station. At 7 p.m., the police moved the detainees in one vehicle to Chitungwiza police station, where they were detained for four days in “filthy cells” that, as they were too crowded for people to be able to sit, they had to stand up day and night. He explained to the Commission that the cell had no functioning toilet, just one bucket for the detainees to share even though it was difficult for them to move through the cell to the bucket. As the bucket was not emptied, there was overflowing human waste in the cell. He indicated that on the third day the workers were taken in groups of six to seven to different holding cells which had even worse conditions, with no water and no food. During the detention, the HIV-positive detainees were refused access to their medications; detainees were interrogated one by one and threatened.²³⁷ The Commission was advised that the trade unionists were released at 5 p.m. on 11 November 2005.

III. Nationwide demonstration, 13 September 2006

- 321.** The Commission was informed of particular violence by security forces associated with the ZCTU-organized nationwide demonstration on 13 September 2006.²³⁸ It was alleged that in Harare 14 trade union officials were arrested and transported in a truck that was so overcrowded that many suffered injuries on the way to the Matapi holding cell. Once there, the trade unionists were taken into cells two at a time to be beaten by five police officers for 20–45 minutes.
- 322.** Many trade unionists mentioned that they had seen the ZCTU President, who had been in the first group, coming out bleeding and weeping.²³⁹ He stated “I never thought that I was going

²³⁵ Written statement from a trade union official dated 19 Aug. 2009.

²³⁶ Written statement from a trade union official dated August 2009.

²³⁷ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²³⁸ See Saki, O., Mukwewa, T. and Hofisi, D., 2006, *In defence of the right to organize: Trade unions as human rights defenders in Zimbabwe* (Access to Justice Series, Zimbabwe Lawyers for Human Rights).

²³⁹ Meeting with the ZCTU, 14 Aug. 2009, Harare.

to survive”.²⁴⁰ The ZCTU President described the incident as “excruciatingly painful for him” and a medical report listed bruising, a fractured finger and anaemia secondary to injury.²⁴¹

- 323.** The Commission heard a harrowing statement of the assault and torture of the Secretary General of the ZCTU. He stated that he had lost consciousness after he had been beaten until the next morning when he woke to find himself soaked in blood, and was only admitted to hospital with the rest of the group 24 hours after the beatings; the trade unionists were only treated another 12 hours later.²⁴² A medical report listed fractures to his wrists and hand, a laceration to his scalp and bruising.²⁴³ The Commission was told that the injury to his wrist and hand had resulted in permanent damage.
- 324.** Many trade unionists indicated that, as they had received medical treatment late, they had experienced permanent health problems.²⁴⁴ One trade unionist stated that he had been beaten on the soles of his feet and since then had not been able to wear closed shoes. He stated that he needed painkillers with him at all times and was disabled for life.²⁴⁵
- 325.** Other trade unionists were arrested and beaten in approximately eight other locations throughout the country during the 13 September 2006 demonstration.²⁴⁶ An official from Mutare indicated that he had been interrogated for most of the day at the charge office about the demonstration, during which time he had not been allowed food or water and had been “poked with sticks”. His lawyer had been told by the police that he and his colleagues would be released without charge after the interrogation.²⁴⁷ Another trade union member asserted that the police had threatened him by saying “we are not trained to write dockets, we are trained to kill” when they detained and assaulted him.²⁴⁸
- 326.** The Commission was provided with 14 medical and psychological reports from the estimated 83 workers arrested and detained on that date in Chegutu, Chinhoyi, Chitungwiza, Gweru, Harare, Hwange, Kwekwe, Rusape and Victoria Falls.²⁴⁹ These medical reports detailed injuries such as fractures, lacerations, bruises, swelling and blood loss leading to anaemia. Many of the medical evaluations described the “possibility of permanent injury” as “likely” and the “amount of force likely to have been used” as “moderate” to “severe”. Some trade unionists were diagnosed with post-traumatic stress disorder, depression and anxiety, on the

²⁴⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²⁴¹ Medical report dated 16 Oct. 2006.

²⁴² Meeting with the ZCTU, 14 Aug. 2009, Harare.

²⁴³ Medical report dated 16 Oct. 2006.

²⁴⁴ Meeting with the ZCTU, 14 Aug. 2009, Harare; undated written statement from a trade union member.

²⁴⁵ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²⁴⁶ Meetings with the ZCTU, 14 Aug. 2009, Harare; 15 Aug. 2009, Bulawayo. See further Chapter 14 (Intimidation and harassment).

²⁴⁷ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

²⁴⁸ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²⁴⁹ See Saki, Mukwewa and Hofisi, 2006, *op. cit.*

basis of observed nightmares, poor concentration, difficulty in controlling their temper, irritability and memory flashbacks.

IV. Nationwide stay-aways, April and September 2007

327. The Commission was informed of further arrests in relation to the April and September 2007 stay-aways. One ZCTU official stated that the police had arrested, detained and beaten workers who had taken part in the April stay-away, before releasing them to their workplace.²⁵⁰ A ZCTU organizer indicated that he had been beaten as he distributed flyers for the stay-away on 19–20 September 2007 and was then detained by police for three nights. He was charged under the criminal law with public nuisance, but the case was dismissed on summons.²⁵¹

V. Nationwide demonstration, 3 December 2008

328. The Commission was provided with many statements concerning arrests and detentions in connection with a ZCTU-organized nationwide demonstration on 3 December 2008 called to protest against limits on the amount of cash that could be withdrawn from banks. It was estimated that there had been approximately 97 arrests or detentions in at least six locations throughout the country.²⁵²

329. A ZCTU district chairperson informed the Commission that when he was arrested during the demonstration, as the trade union leader in the group, he had been taken to the high officers in the security forces – the officer-in-charge of the police, the CIO, and an army general – who verbally abused him for two hours while he argued that the event had not been political.²⁵³

330. A trade union official from Gweru indicated that he had been detained with 30 other detainees in one prison cell when he was arrested following the 3 December 2008 protest. He stated that the overcrowding was even more acute as this was during the cholera outbreak in the country.²⁵⁴ A member of the PTUZ stated that he had been held in a police cell together with eight other detainees, with only two blankets between them.²⁵⁵ The Commission was provided with a medical report relating to one trade unionist who was injured while running away from

²⁵⁰ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

²⁵¹ Written statement from a trade union official dated August 2009. Trade unionists and family members were arrested in approximately six locations around the country during the September 2007 stay-away: communication from the ITUC dated 23 May 2008.

²⁵² Communications from the ITUC dated 3 and 4 Dec. 2009.

²⁵³ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²⁵⁴ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

²⁵⁵ Meeting with the ZCTU, 23 Aug. 2009, Mutare.

riot police,²⁵⁶ and another two medical reports of serious blunt force trauma during the demonstration on that day.²⁵⁷

- 331.** Another trade union official indicated that he had been arrested on 3 December 2008 by masked riot police, who had pushed with their batons and kicked the workers to get them into the truck. After remaining from 8.45 a.m. to 5 p.m. without any food or a docket being issued, he was taken to a police cell. The rules implemented by the police were that detainees had to relinquish their mobile telephones, shoes, socks, and all except one layer of clothing. He stated that there were 18 people in one small cell, which was so overcrowded that it was not possible for people to sit down and they therefore had all to remain standing. According to him, there were smelly and lice-filled blankets on the floor and no ventilation; “no one could hear our complaints”. He stated that at midnight, by which time people had started vomiting, he had been moved to a different cell with a non-functioning toilet. He remained in the cells from 3 to 8 December 2008. During that time he was interrogated by law and order police, who threatened him that he would be made to disappear, and stamped on his feet. On 8 December, after appearing in court, he was bailed and since then he has appeared in court 17 times with the case still not finalized.²⁵⁸

VI. Impact on women

- 332.** The police rule that detainees could wear only one layer of clothing had a particular impact on women.²⁵⁹ The Commission heard a statement from a trade union official that she was detained for one week in 2004, when she was left in one layer of clothes despite the cold weather and lack of heating in the cells.²⁶⁰ Another trade unionist stated that she had been detained for four days in a police cell in March 2003 wearing only a bra and trousers.²⁶¹ Yet another trade union member from the rural sector indicated that she had been made to take off her underwear in the cells by a male police officer.²⁶²
- 333.** Another woman indicated that during a six-day detention in police cells following a demonstration on 3 December 2008, she and a colleague had their menstrual periods and were denied sanitary pads or water to wash. During the same incident, another woman who was

²⁵⁶ Medical report dated 3 Dec. 2008.

²⁵⁷ Two medical reports dated 3 Dec. 2008.

²⁵⁸ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo; see further Chapter 20 (Institutional protection of trade union rights).

²⁵⁹ One male trade unionist stated that during two days of detention, he had been made to take his clothes off in front of women and sing, before having his case dismissed when he was taken to court: meeting with the ZCTU, 14 Aug. 2009, Harare.

²⁶⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare. Several trade unionists told the Commission that with only one layer of clothing, a limited number of blankets and no heating, they had been extremely cold during their detention in police cells.

²⁶¹ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

²⁶² Meeting with the ZCTU, 14 Aug. 2009, Harare.

arrested with a child whom she was breastfeeding was detained in the charge office for one night, together with the child.²⁶³

- 334.** One woman stated that she had been detained for three hours in March 2009 after an International Women's Day celebration, during which she had not been allowed to use the toilet or given water with which to take her medication; she was released without charge.²⁶⁴
- 335.** The Commission was further informed of the one-night detention of the wives of 22 mineworkers from the ZIMASCO mine on 15 January 2007, who had been protesting against their husbands' salaries. Some of the detained women were pregnant or had small babies.²⁶⁵

VII. Mistreatment in custody

- 336.** In addition to the above examples, trade union leaders and members indicated particular instances when they had been mistreated while in custody.
- 337.** Many workers stated to the Commission that they had been beaten during interrogations.²⁶⁶ A number of trade unionists explained that they had been beaten on the soles of their feet, with wooden bats from the colonial period, sjamboks or batons, and still experienced problems with walking or wearing shoes.²⁶⁷ The Commission received a medical report relating to one trade unionist detained in November 2004 providing evidence of blunt force trauma on his body, including the soles of his feet; a psychiatric examination diagnosed post-traumatic stress disorder and panic attacks, concluding that "it is the psychiatrist's opinion that his symptoms and clinical condition can be attributed to the torture".²⁶⁸
- 338.** Some trade unionists asserted that they had been interrogated at gunpoint²⁶⁹ and others noted that they had been interrogated in the middle of the night.²⁷⁰ Certain workers claimed that they had received death threats,²⁷¹ or had been subjected to treatment designed to humiliate them.²⁷²

²⁶³ Written statement from a trade union member dated 21 Aug. 2009.

²⁶⁴ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

²⁶⁵ Communication from the ITUC dated 23 May 2008.

²⁶⁶ Meetings with the ZCTU, 14 Aug., Harare; 16 Aug., Gweru; 15 Aug. 2009, Bulawayo; and 22 Aug. 2009, Mutare.

²⁶⁷ Meeting with the ZCTU, 14 Aug., Harare; written statement from a trade union official dated 19 Aug. 2009.

²⁶⁸ Meeting with the ZCTU, 14 Aug. 2009, Harare; medical and psychological report dated 9 Nov. 2004 and Apr. 2008.

²⁶⁹ Meetings with the ZCTU, 14 Aug. 2009, Harare.

²⁷⁰ Meetings with the ZCTU, 15 Aug. 2009, Bulawayo; and 16 Aug. 2009, Gweru.

²⁷¹ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

²⁷² Meeting with the ZCTU, 22 Aug. 2009, Mutare.

VIII. Detention and assault by the Central Intelligence Organization (CIO) ²⁷³

339. Many trade unionists stated to the Commission that they had been the subject of particular violence by CIO operatives. ²⁷⁴ The Commission was provided with information concerning a campaign of harassment and intimidation against a trade union official from Rusape by two CIO operatives. The official indicated that he had been harassed or picked up by those CIO operatives on 11 September 2006, 4 March 2007, 25 June 2008, 9 March 2009 and 4 May 2009. As a result, he had obtained a Magistrates' Court's order restraining the two named CIO operatives "from harassing assaulting or threatening to assault the applicant and from interfering with applicant's trade union activities and work" for a period of 12 months from 20 May 2009. ²⁷⁵

IX. Recent allegations

340. The Commission received information concerning arrests, detentions and assaults of trade union officials and members in September and November 2009, following its mission to the country. It was informed that three trade unionists had been detained for two hours during a demonstration on 12 September 2009, and that the ZCTU President and four ZCTU officials had been arrested during a trade union meeting on 8 November 2009 in the Victoria Falls district and detained for four days. In both instances, the trade unionists were released without charge.

X. Other statements

341. One of the two factions of the ZFTU indicated that there had been no arrests of its members, but that it was aware of arrests of ZCTU members. ²⁷⁶ The other faction of the ZFTU did not deny that there was violence during economic difficulties and especially during presidential elections, but stated that the violence was not directed against workers but was between political parties. The ZFTU, unlike the ZCTU, was apolitical and therefore its members did not suffer. ²⁷⁷

342. The EMCOZ indicated that it was aware of arrests of ZCTU members and further noted that not less than 1,000 employers had been arrested for breach of price control regulations in the same period. ²⁷⁸

²⁷³ See Chapter 11 (The systematic and systemic nature of problems in the implementation of trade union rights).

²⁷⁴ Meetings with the ZCTU, 15 Aug. 2009, Bulawayo; 16 Aug. 2009, Gweru; and 22 Aug. 2009, Mutare.

²⁷⁵ *Masumuse v. Chigango and Chiutsi* (238/2009, Magistrates' Court, Mutare, 20 May 2009).

²⁷⁶ Meeting with one faction of the ZFTU, 13 Aug. 2009, Harare.

²⁷⁷ Meeting with one faction of the ZFTU, 17 Aug. 2009, Harare.

²⁷⁸ Meeting with EMCOZ, 13 Aug. 2009, Harare. See Chapter 17 (The experience of the business community).

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- 343.** During meetings in May and August 2009, the Co-Ministers of Home Affairs indicated to the Commission of Inquiry that wrongdoings on the part of the police had been related to the situation that had existed in the country, which was now in a transition to something new, and that there had been no fresh incidents.²⁷⁹ It was noted that recent guidelines established by the Co-Ministers of Home Affairs would, if followed, ensure that the tension between the police and citizens would disappear. One Co-Minister acknowledged a sense of fear of the security forces that would take some time to remedy. The Ministry considered that the CIO should be on board in the process. The police were already reaching out to the people to explain the role of the security forces.
- 344.** The Acting Deputy Commissioner for Prisons indicated to the Commission that the prisons service did not divide the prison population so as to distinguish trade union prisoners from other prisoners. He explained that the two types of prisoners in Zimbabwe were the 75 per cent convicted prisoners and the 25 per cent awaiting trial, often for a period of two years. Once a sentence was handed down by the Court, all prisoners were treated the same. He stated that food, sanitation, clothing and bedding for prisoners had all been a problem for economic reasons and, that between 2008 and March 2009, conditions in prisons were “appalling”. With no food in the country, food rations for prisons had diminished. He indicated that the prisons service still experienced problems when no money was received from the central government, and so relied on the support of the Red Cross and local church organizations.²⁸⁰

²⁷⁹ Meetings with the Co-Ministers of Home Affairs, 22 May 2009 and 17 Aug. 2009, Harare.

²⁸⁰ Meeting with the Deputy Commissioner of Prisons, 18 Aug. 2009, Harare.

14. Intimidation and harassment

345. The complainants alleged wide-scale intimidation and harassment of trade unionists over a period of years. It was alleged that a pattern of arrest, detention, violence and torture by the security forces was used as a method of intimidation and harassment against trade unionists in the country.²⁸¹ The Commission heard statements illustrating that such a pattern of intimidation and harassment had resulted in fear on the part of trade unionists, interfering with their ability to carry out their trade union activities. The Commission was told of severe physical and psychological harm, including torture, inflicted on trade union officials and members and their families throughout Zimbabwe.

I. A pattern of intimidation and harassment

346. The Commission heard from rank and file members of the ZCTU that they had been targeted by the authorities on account of their trade union membership and activities. Many individual workers made statements such as “all we wanted to do was to hand a petition over”, seemingly confused as to why the weight of the authorities had been directed at them.²⁸² One union official indicated that she had been picked up in April 2008 by a group of CIO operatives and police officers who had accused her of being a rebel wanting to overthrow the Government; she stated “I thought it was a joke on their approach, but later to discover they were really serious about it”.²⁸³

347. Other trade union leaders were clear in their statements that anything they did was seen as political and so was targeted. ZCTU leaders argued that the authorities attacked those fighting for democracy, who were seen as anti-government in the context of a highly polarized society. The ZCTU believed that what had happened was based on the perception that it was the “arch-enemy of the State” and its involvement in the establishment of the then opposition MDC party.²⁸⁴ Many of the trade unionists whom the Commission met indicated that intimidation and harassment intensified in connection with ZCTU-organized nationwide demonstrations and during election periods in the country, as all ZCTU members were treated as being MDC supporters.²⁸⁵

348. Many individuals whom the Commission met signalled the involvement of the CIO and ZANU–PF militia²⁸⁶ and officials, as well as the police, particularly in rural areas. One trade union official indicated that while the police would beat any trade unionist, the CIO targeted the leadership.²⁸⁷ A worker whom the Commission met explained that, for example, the local

²⁸¹ See Chapter 13 (Arrests, detentions, assaults and torture).

²⁸² Meetings with the ZCTU, 15 Aug. 2009, Bulawayo; and 16 Aug. 2009, Gweru.

²⁸³ Written statement from a trade union member dated 21 Aug. 2009.

²⁸⁴ Meetings with the ZCTU, 12 and 14 Aug. 2009, Harare.

²⁸⁵ See Chapter 11 (The systematic and systemic nature of problems in the implementation of trade union rights).

²⁸⁶ The “ZANU–PF militia” was consistently referred to in information given to the Commission, which understood it as a commonly accepted appellation for a group operating in the country.

²⁸⁷ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

Member of Parliament in Rusape was an important ZANU–PF figure and at times had assembled people and threatened them in the presence of the police and CIO, thus emphasizing the links between ZANU–PF, the CIO and the police in the town.²⁸⁸

II. Trade union leadership

- 349.** Many allegations of serious harassment and intimidation concerned identifiable members of the trade union leadership.²⁸⁹ It was explained to the Commission that governmental authorities considered many of the trade union leaders to be political figures, rather than true trade union leaders. The ZCTU President further stated that CIO operatives had humiliated him at every International Labour Conference in Geneva that he had attended, except for that in 2009, through public manhandling and questioning. He noted that in 2005, the Government refused to include him in the Zimbabwe delegation to the Conference paid for by the Government, and arrested him; after being released, he had attended the Conference for its last two weeks, paid for by the international trade unions.²⁹⁰
- 350.** Regional ZCTU leaders and leaders of ZCTU affiliates also provided the Commission with details of alleged systematic harassment and intimidation. The Secretary General of one regional ZCTU branch indicated to the Commission that at every trade union activity the trade union leaders were targeted, as their names were kept in files. He stated that the leadership would be picked up very late at night from their homes, or taken early on the day of the action.²⁹¹ A worker representative from Bulawayo explained how during his detention in connection with the 3 December 2008 demonstrations, CIO operatives had taken photographs and profiles of him and his colleagues, and had warned that they could make them disappear. He indicated that he was fearful as the security forces had said that they would come to his house if further ZCTU activities were organized.²⁹²

III. Effect on trade union members

- 351.** Individual trade union members from throughout the country spoke of a strong sense of fear, of being unsafe and victimized, and an overriding threat of violence and harassment.²⁹³ A number of times the Commission heard statements such as “you could disappear in Zimbabwe”, “some of our colleagues have died”, and “my life is not secure, I am always

²⁸⁸ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

²⁸⁹ The ITUC considered the Government to have “a long history of targeting trade union leaders, in particular the President and the General Secretary of the ZCTU”: communication from the ITUC dated 23 May 2008.

²⁹⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²⁹¹ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

²⁹² Meeting with the ZCTU, 15 Aug. 2009, Bulawayo. See further Chapter 13 (Arrests, detentions, assaults and torture).

²⁹³ Meetings with the ZCTU, 14 Aug. 2009, Harare; 16 Aug. 2009, Gweru.

vigilant”.²⁹⁴ Members of the public service told the Commission they had been “traumatized”.²⁹⁵

- 352.** The Commission was told by one trade unionist, who had been detained for three days in March 2004, that he was still haunted by the time that a police superintendent asked him “if we kill you, who should we advise?”; he had answered his wife.²⁹⁶ In relation to harassment by the CIO during the 2008 election run-offs, a trade union official stated to the Commission that “during these days, people in Rusape were being killed so I was worried that it was the end of my life”.²⁹⁷ A ZCTU district chairperson informed the Commission that, after his release from detention in December 2008, CIO operatives had come to his home and told him to leave the ZCTU.²⁹⁸ A trade union member who had been the first person beaten by the police with baton sticks during the 3 December 2008 demonstration in Harare stated that she had been too afraid to go at the front of demonstrations since then.²⁹⁹
- 353.** Other workers talked of being publically identified and humiliated. A trade unionist from the farm workers’ union explained that she had felt humiliated when, during a search of her house in 2003, police officers had handcuffed her and had blown their car horn to attract her family and neighbours.³⁰⁰ Another trade union member recounted that on the one occasion when he had been arrested, the law and order division of the local police had taken his photograph and included it in a poster that was still on display at the station with the heading “Most notorious people in the district”.³⁰¹
- 354.** Another ZCTU leader indicated that she had been arrested in 2006 in front of her child. After spending the night at Gweru police station, she was taken to Harare Central police station in the morning in leg irons and handcuffs by public bus in a six-and-a-half hour journey. She stated that she was humiliated because people had spoken about her to the police officers as a criminal. After five minutes in court, the warrant to arrest was declared null and her release was ordered. The Commission was informed that after receiving a court order preventing those people from harassing her, the police had guarded her for some time before refusing to enforce the court order because she was an MDC member.³⁰²
- 355.** Two workers, from Karoi and Kariba, stated that during detentions at police stations on 3 December 2008, although they had not been beaten themselves, they had felt frightened. One indicated that he had been made to take his shoes off and had been shown weapons; the other stated that he had been made to sit with his legs out in front of him and had been

²⁹⁴ Meetings with the ZCTU, 15 Aug. 2009, Bulawayo; 16 Aug. 2009, Gweru.

²⁹⁵ Meeting with the Apex Council, 12 Aug. 2009, Harare.

²⁹⁶ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

²⁹⁷ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

²⁹⁸ Meeting with the ZCTU, 14 Aug. 2009, Harare.

²⁹⁹ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³⁰⁰ Written statement from a trade union member dated 21 Aug. 2009.

³⁰¹ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³⁰² Meeting with the ZCTU, 14 Aug. 2009, Harare.

threatened.³⁰³ Another trade unionist stated that the day after a trade union official had been beaten in police custody, another committee member handed in his resignation to the police, rather than to the trade union. As everyone knew what had happened in their small town it was very difficult to replace the committee member.³⁰⁴

IV. Rural areas

- 356.** Some workers indicated that in rural areas the intimidation and harassment of ZCTU members was particularly strong.³⁰⁵ A number of workers in rural areas indicated to the Commission that their homes and property had been destroyed and that they, with their families, had been forced to flee their communities after harassment and intimidation.³⁰⁶
- 357.** The Commission heard the statement of a member of the ZCTU from Gwenzi who explained that on 18 January 2002 her husband, a ZCTU regional chairperson and town council worker, had been abducted and beaten up before being returned to the home at 2 a.m. The next morning, some workers from the Ministry of Construction, on orders from the District Administrator, came to the house and removed roofing sheets, threw all possessions into the street (including clothing and furniture) and stated that her husband should leave the house. The family had lived in the open for one week, with their possessions being rained on, before she went to their rural home with their children while her husband remained behind. On 18 April 2002, her husband died.³⁰⁷ She indicated that, together with her five children, she was being supported by donor agencies and was destitute, without a home, property or money to send the children to school.³⁰⁸
- 358.** One worker described a series of “troubles with the CIO” he had experienced since his election as chairperson of a rural ZCTU sub-district in 2006. He indicated that two days before the 2006 nationwide demonstration CIO operatives had thrown detergent at him and made froth on his head at the local police station and threatened him by making him take his shoes off. Because of fear of the CIO operatives, three members of the ZCTU committee had resigned after having witnessed what had happened to him.³⁰⁹
- 359.** A trade unionist indicated that ZANU–PF and war veterans had held open meetings in March and April 2008 in which he was discussed and then told to leave the area because he had influenced people in the elections. After his landlord had been threatened, he had been given

³⁰³ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³⁰⁴ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

³⁰⁵ See Chapters 15 (Intimidation and harassment of teachers) and 16 (Intimidation and harassment of farm workers).

³⁰⁶ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

³⁰⁷ The Commission was provided with a copy of his death certificate.

³⁰⁸ Meeting with the ZCTU, 23 Aug. 2009, Mutare (note that she was pregnant when her husband died).

³⁰⁹ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

seven days' notice to leave his accommodation. He indicated that he had been stranded with nowhere to go and had to be assisted to relocate.³¹⁰

- 360.** Another trade union official stated that she had received anonymous telephone calls and felt watched. After she had been out of town on ZCTU business, callers had asked her “how many did you recruit this time?” She stated that, when she had gone to the CIO to confront them about the continual intimidation, they confirmed that they had all her contact details.³¹¹

V. Medical attention

- 361.** The Commission was informed that victims of violence required a police order before they could be examined and treated by a medical doctor. In some cases, trade unionists indicated that hospital doctors refused to treat victims of “political violence” or had been warned not to treat individuals who had been beaten by ZANU–PF militia.³¹² One trade unionist indicated that she had been obliged to pay an administrative admission-of-guilt fine to the police as a condition for receiving an order for treatment.³¹³ A number of trade unionists indicated that they had been examined, but had not received treatment immediately; instead they had been given painkillers.³¹⁴ As a result, some trade unionists who had been subjected to violence at the hands of the authorities or ZANU–PF militia alleged that they had experienced long-lasting or permanent damage to their health that would not otherwise have occurred.

VI. ZCTU nationwide demonstrations

- 362.** Many workers indicated that the pattern of intimidation and harassment had been heightened immediately before or during ZCTU-organized nationwide demonstrations. One trade union official indicated that the CIO had approached him when he was organizing ZCTU activities and did not otherwise harass him.³¹⁵
- 363.** The Commission received significant statements concerning the effect of the widespread arrests and detentions in connection with the 13 September 2006 nationwide demonstration. In addition to the severe physical and psychological harm recognized by medical and psychologist reports produced in 2006, it appeared that many trade unionists continued to suffer physical and emotional effects three years later in 2009.³¹⁶
- 364.** One trade unionist stated that since being detained for five days, he would no longer go out at night alone and he was always concerned about who was following him. He stated that it had

³¹⁰ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³¹¹ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

³¹² Meeting with the ZCTU, 23 Aug. 2009, Mutare.

³¹³ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³¹⁴ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

³¹⁵ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

³¹⁶ The Commission was provided with 14 representative medical reports: see further Chapter 13 (Arrests, detentions, assaults and torture). These include reference to anaemia, broken bones, abrasions, hearing loss, inability to wear shoes for long periods of time, headaches, post-traumatic stress disorder and anxiety. Meeting with the ZCTU, 14 Aug. 2009, Harare.

traumatized his entire family, and his wife had asked him to stop his ZCTU activities.³¹⁷ Another trade union official stated:³¹⁸

To make matters worse the reports which were coming from government-owned media which is accessible to the majority of the people in the country were contrary to what was happening. It gave the impression that we were bad people who had been caught trying to topple the Government ... This left me confused, before this I had a strong feeling of being protected. Now it's different. Now whenever I meet a member of the Zimbabwe Republic Police in uniform who shows signs of aggression I become filled with unreasonable fear. I quickly associate that with what happened on 13 September.

- 365.** The secretary of a ZCTU district committee indicated to the Commission that he had been accosted at his home at 2.30 a.m. on 13 September 2006 by four plain-clothed police officers, who woke his wife and three-year-old child, as well as all the neighbours, asking why he had distributed ZCTU flyers that day. He stated that he had been dragged by the throat, threatened and kicked, and his house was searched. His employer was threatened and told that he was employing someone who wanted to topple the government. The union official was subsequently demoted and he stated that he was “living in fear that he will be dismissed”.³¹⁹

VII. Intimidation and harassment by ZANU–PF militia

- 366.** A number of trade unionists noted that they had been detained on ZANU–PF premises or beaten by youths in ZANU–PF regalia, who had often assumed a link between ZCTU membership and MDC sympathies.³²⁰ Notably, a teacher allegedly died after her health deteriorated following a severe beating on ZANU–PF premises in February 2008.³²¹
- 367.** One trade unionist indicated that he had needed 30 days’ sick leave after being beaten by ZANU–PF militia on account of his ZCTU membership. As a result of fears for his safety, he stated that he had moved towns and was working in a lower grade job.³²²
- 368.** Two ZCTU members stated that during a civic education activity in January 2002 they had been beaten by 15 ZANU–PF youths, with open hands, boots and an assortment of weapons. One of the members indicated that the police had “just stood by” as they were beaten. They claimed that they were then marched 20 kilometres into the countryside near a deserted wildlife area with lions, where they had been left to sleep the night in trees. In the morning, a police car had come and driven them to a town where they could telephone colleagues for

³¹⁷ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

³¹⁸ Written statement from a trade union official dated 21 Aug. 2009.

³¹⁹ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³²⁰ Meetings with the ZCTU, 14 Aug. 2009, Harare and 16 Aug. 2009, Gweru; and meeting with the Apex Council, 12 Aug. 2009, Harare.

³²¹ Meeting with the ZCTU, 14 Aug. 2009, Harare. See also Chapter 15 (Intimidation and harassment of teachers).

³²² Meeting with the ZCTU, 23 Aug. 2009, Mutare.

help. It was explained to the Commission that they “did not report the matter to the police as we considered them as accessories”.³²³

- 369.** A chairperson of a commercial workers’ union stated that, following the dispersion of a demonstration in October 2003, he was driven to an area of abandoned farms in the bush with colleagues, blindfolded with their own shirts and made to sing ZANU–PF songs. The police had stated “today you die”. Once there, they had been made to lie face down, beaten and left. The workers were later able to reach the main road and made contact with a colleague in town.³²⁴
- 370.** A worker from the textile industry informed the Commission that in February 2007, he and a friend had been approached by six to eight youths wearing ZANU–PF T-shirts who took his ZCTU cap and trade union strategy document, and his friend’s telephone and bag. They were taken to ZANU–PF offices, where they were threatened and beaten for 20–30 minutes. Afterwards, they made a report at Harare central police station and returned to the ZANU–PF offices with the police, where the youths refused to return their possessions; when the police left, they had no choice but to follow.³²⁵
- 371.** Another worker indicated to the Commission that after “ZANU–PF guys” had stopped the May Day 2008 event that he was involved in preparing, he had received threats at night and was forced to leave his home.³²⁶
- 372.** The Commission received information concerning a trade unionist who was twice beaten by men in ZANU–PF T-shirts in 2008. In May, two men broke into her house saying that they were going to teach her a lesson because she pretended to be ZCTU but was really MDC. Her neighbours heard her screaming and saved her; together with the mother of one of the perpetrators, she went to the police station where she got a docket and was able to be treated in hospital, but the police never arrested anyone. In June, after the door of her house had been broken down and some of her possessions stolen, she was warned to move out. While fellow employees helped her pack, 20 men in ZANU–PF regalia came to the house and said that they “wanted her head” as she was mobilizing workers to vote for MDC under a ZCTU banner. She was taken to the ZANU–PF base, placed under a cold shower, and beaten. After 12 hours at the base, she stated that she could not hear anything and had “cried until I could cry no more”. When she was released it was 2 a.m. and she stumbled to a cousin’s home in the darkness. Again, she obtained a police docket to receive treatment after going to the main police station. She indicated to the Commission that she still had permanent injuries, back problems, could not read or walk, and was unable to do the work that she used to do. She explained that her employer gave her extra leave time, as he knew that she was only ZCTU and not MDC. She stated that she had lost confidence, had no energy and was still fearful and traumatized that the militia might come back and “finish me off”.³²⁷

³²³ Written statement from a trade union official dated August 2009; meeting with the ZCTU, 14 Aug. 2009, Harare.

³²⁴ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

³²⁵ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³²⁶ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³²⁷ Meeting with the ZCTU, 14 Aug. 2009, Harare.

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- 373.** Two trade union officials, from two different parts of the country, indicated that they had each been arrested when they had attempted to report to the police, in different years, that they had been beaten by ZANU–PF militia.³²⁸

VIII. Effect on families

- 374.** Many workers informed the Commission that their families also experienced harassment and intimidation. One trade unionist indicated to the Commission that she had been told by the CIO that they would “get” her family.³²⁹ The ZCTU President indicated that, in one incident, as he was not there when the police arrived at his house, they had arrested his brother, who was then beaten and detained for 48 hours before being released without being taken to a court. Another worker was advised that if he stayed with the ZCTU he would continue to have the same experience. This had made both him and his family fearful.³³⁰
- 375.** A trade unionist from Mutare stated that in August 2003 he had been beaten and arrested, firearms had been discharged and his house destroyed in a chaotic scene that had traumatized his four-year-old daughter to such an extent that she had hidden in the bush and it had taken them days to find her.³³¹ A regional officer for the ZCTU in the western region indicated that the effects of six detentions by the security forces in 2003–04 had traumatized his family and induced “unnecessary fear on them, especially my children”.³³²
- 376.** A trade unionist from Rusape informed the Commission that, after his employer had warned him not to remain at home one night in January 2002, his house had been broken into, his wife beaten and his property looted by ZANU–PF thugs. Since then, his wife was no longer able to read properly and the whole family had been forced to leave the town from which they came. They now had no jobs or home and could not afford to send their children to school. He stated that his oldest children were so traumatized that they refused to return to the town despite it being the community from which both sides of the family came.³³³
- 377.** One official stated that security forces (sometimes the police, sometimes the CIO, and sometimes both) had come to his home and had threatened his family and maid, so that the family was also traumatized. As he was the sole breadwinner, it was especially hard on his family on the ten occasions that he had been arrested in the past seven years. The same official indicated that recently his young granddaughter had said to him “it’s been seven months since you were arrested”.³³⁴
- 378.** Another official said that CIO officers had drawn a swastika and the words “leave the trade unions alone” on his house and that he had not been allowed to clean it. He also indicated that

³²⁸ Meetings with the ZCTU, 14 Aug. 2009, Harare and 22 Aug. 2009, Mutare.

³²⁹ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

³³⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³³¹ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

³³² Written statement from a trade union official dated 19 Aug. 2009.

³³³ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

³³⁴ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

he had been threatened at a railway station with his wife and son, in addition to experiencing “normal assaults, victimization and harassment” in 2005–07.³³⁵

- 379.** Another worker described the effect on him of being detained before a march in April 2003 for which he had been on the organizing committee. He stated that he had been detained for “five horrible days” in police cells in which he was denied food provided by the ZCTU, water was rationed, he was beaten during interrogation, and his wife and children did not know where he was for the first few days. He indicated that his family were disturbed and he did not wish to revisit the experience even by telling someone.³³⁶
- 380.** Most recently, the Commission was informed that on 3 November 2009, armed men trying to locate the Secretary General of the General Agricultural and Plantation Workers’ Union of Zimbabwe had entered her home and threatened her family.

IX. Recent allegations

- 381.** Some trade union members stated that incidents of harassment and intimidation had reduced since the formation of the inclusive Government. For example, the president of a ZCTU-affiliated organization indicated that for many years state security officers had been assigned to him and were often parked outside his house. He stated to the Commission that the last time that he had seen them was at the time the GPA was signed.³³⁷
- 382.** Despite the above, trade unionists were often still fearful and felt threatened on the basis of their trade union membership.³³⁸ They made statements such as “the police pretend to have changed”³³⁹ or “we still have the same fear as they are threatening that this is not a permanent thing”.³⁴⁰ In some instances, trade union members reported recent harassment. For example, it was alleged that on 9 April 2009 CIO officers had warned one worker not to testify before the Commission of Inquiry and said that if he did, they would make his life difficult through false reports in local newspapers. On 3 June 2009, he obtained a court order requiring two named CIO operatives to stop harassing him.³⁴¹

³³⁵ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

³³⁶ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³³⁷ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³³⁸ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³³⁹ Meeting with the ZCTU, 23 Aug. 2009, Mutare.

³⁴⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³⁴¹ *Masumuse v. Chigango and Chiutsi* (238/2009, Magistrates’ Court, Mutare, 20 May 2009).

X. Other statements

- 383.** One of the two factions of the ZFTU indicated that the violence in Zimbabwe during elections was not directed at workers, but was between political parties and, as the ZCTU was involved in high-level politics, it attracted violence.³⁴²
- 384.** During meetings in May and August 2009 with the Commission of Inquiry, the two Co-Ministers of Home Affairs indicated that, since being appointed, they had publically called on all parties to tell their members to desist from violence and that, following a period of grace, anyone committing crimes would be arrested. In addition, the Co-Ministers noted that moving forwards required an acknowledgement of past facts: in the case of Zimbabwe's recent history, all parties made mistakes which resulted in the police making corresponding mistakes. They considered that all wrongdoings (both commissions and omissions) were related to the situation that had existed in the country. The country was now in a transition to something new and it was necessary to give it space both to fail and to succeed.³⁴³
- 385.** The Co-Ministers of Home Affairs noted that a fundamental issue was how the Government could gain the trust of people who had been traumatized. It also needed to reassure them that the Government is taking steps so that such events do not reoccur. While the Co-Ministers indicated that things had happened in the past, they stated that there had been no fresh incidents. They explained that they had recently established guidelines which, if followed, would ensure that the tension between the police and citizens would disappear. It was acknowledged that a sense of fear of the security forces existed and that it would take some time to remedy this. The police were already reaching out to the people.³⁴⁴

³⁴² Meeting with one faction of the ZFTU, 17 Aug. 2009, Harare. See Chapter 13 (Arrests, detentions, assaults and torture).

³⁴³ Meetings with the Co-Ministers of Home Affairs, 22 May 2009 and 17 Aug. 2009, Harare.

³⁴⁴ Meetings with the Co-Ministers of Home Affairs, 22 May 2009 and 17 Aug. 2009, Harare.

15. Intimidation and harassment of teachers

386. Serious allegations of intimidation and harassment of teachers were made in written statements by the complainants and in meetings that the Commission had with teacher union leaders and teachers during its mission to Zimbabwe. The Commission heard statements from other interlocutors recognizing the particular intimidation of teachers. For example, the ZFTU noted that it knew about teachers and their problems with the police,³⁴⁵ and the Prime Minister indicated that he was aware of thousands of cases of harassment and intimidation.³⁴⁶ The Minister of Education stated that many teachers had been brutalized and it was necessary to restore an environment where they could return to teaching.³⁴⁷ It was stated to the Commission that the systematic targeting of teachers covered every aspect of their lives and there was collusion between the police, the CIO and the Government.³⁴⁸

I. Workers' organizations representing teachers

387. It was explained to the Commission that teachers, as members of the public service, were denied full rights to organize and bargain collectively pursuant to the legislation. The Minister of Education indicated that there were three workers' organizations in the education sector: the Zimbabwe Teachers' Association (ZIMTA), the oldest teachers' association and a member of the Apex Council; the Progressive Teachers' Union of Zimbabwe (PTUZ), an affiliate of the ZCTU; and another, smaller, organization called the Teachers' Union of Zimbabwe. Despite the provisions of the law, the PTUZ was a legally registered trade union. The Minister of Public Service indicated that he was aware of competition between the PTUZ and ZIMTA in relation to their representation on the Apex Council, but had refused to become involved.³⁴⁹

388. In terms of membership, the Commission was informed that ZIMTA had approximately 45,000 members, while the PTUZ had approximately 12,000 members of whom approximately 5,000 joined for the first time in the months following the establishment of the inclusive Government. The PTUZ leadership indicated that since the inclusive Government was formed teachers were no longer so frightened to join the PTUZ.³⁵⁰

389. Prior to that, the PTUZ believed that lists of its members to be victimized had existed. The PTUZ stated that it had had difficulties in organizing teachers because head teachers, operating under orders from the authorities, did not allow them to enter schools. The PTUZ believed that it was regarded as a militant organization: "whatever we say, we're regarded as MDC because the ZCTU formed the MDC".³⁵¹ The Commission was told that the President

³⁴⁵ Meeting with one faction of the ZFTU, 13 Aug. 2009, Harare.

³⁴⁶ Meeting with the Prime Minister, 13 Aug. 2009, Harare.

³⁴⁷ Meeting with the Minister of Education, 19 Aug. 2009, Harare.

³⁴⁸ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³⁴⁹ Meeting with Minister of Public Service and Members of the Public Service Commission, 19 Aug. 2009, Harare.

³⁵⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³⁵¹ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

of Zimbabwe had specifically mentioned the PTUZ as an organization colluding with Western nations during a speech in February 2007.³⁵²

- 390.** In the opinion of the PTUZ, ZIMTA was either a pro-government trade union or had benefited from government support.³⁵³ One PTUZ official stated that some ZIMTA membership was forced and members of their union had experienced difficulties in revoking ZIMTA membership.³⁵⁴ ZIMTA representatives did not accept that it was a government-sanctioned organization.

II. Personal experiences

- 391.** The Commission heard statements from teachers from both ZIMTA and PTUZ that they had been traumatized. Stories were recounted to the Commission of other teachers having been flogged in front of their pupils; of teachers having disappeared; of women teachers being forced to sit on white-hot stones; of teachers moving away from rural areas out of fear, leaving their possessions; of threats that they would be thrown into crocodile-infested rivers; of schools being closed; of beatings and rapes at schools and abductions from schools; and of at least six deaths of teachers between May and June 2008.³⁵⁵

A. Election periods

- 392.** During its mission to the country, the Commission met teachers from both the ZIMTA and PTUZ unions from throughout Zimbabwe. Many teachers indicated to the Commission that intimidation of trade unionists during election periods – and most particularly the presidential run-off elections – was particularly targeted at teachers in rural areas, with one teacher stating to the Commission that he believed that it was better not to have elections.³⁵⁶ Another teacher stated that people lived easily together except during election time.³⁵⁷
- 393.** The Minister of Education stated that teachers had been perceived to be aligned with the political opposition during the elections, a perception that was reinforced as they were often better educated strangers who had transferred into the community.³⁵⁸ A teacher explained to the Commission that teachers in rural areas were victims as in small communities they had

³⁵² Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³⁵³ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³⁵⁴ The Commission received a copy of a judgement of the High Court of Zimbabwe ordering ZIMTA and the Salaries Service Bureau to cease deducting dues from six teachers' salaries, who were "hereby declared as non-members" of ZIMTA: *Elsie Madzonga and Others v. The President N.O ZIMTA* (HC2347/08, 27 Aug. 2008).

³⁵⁵ Meeting with the Apex Council, 12 Aug. 2009, Harare; meetings with the ZCTU, 14 Aug. 2009, Harare, and 16 Aug. 2009, Gweru; written statement from a trade union official on persecution of teachers and teacher union leaders May 2008–April 2009.

³⁵⁶ Meeting with the Apex Council, 12 Aug. 2009, Harare; written statement from a trade union official on persecution of teachers and teacher union leaders May 2008–April 2009.

³⁵⁷ Meeting with the Apex Council, 12 Aug. 2009, Harare.

³⁵⁸ Meeting with the Minister of Education, 19 Aug. 2009, Harare.

information and knowledge and were perceived as being opposition supporters.³⁵⁹ Another teacher stated that members of the PTUZ had been killed by ZANU–PF supporters in rural areas because teachers in general were accused of “turning the tables” against ZANU–PF during the presidential run-off elections. The teacher stated that intimidation and harassment of teachers was planned systematically because of the influence that teachers had throughout Zimbabwe.³⁶⁰ In rural areas, one teacher stated that the only people who could give information to the community were teachers and party leaders. In deprived areas, it was alleged that party leaders needed only to provide food and drink to receive support.³⁶¹

- 394.** A head teacher, who emphasized that he had no political affiliations, explained that in mid-June 2008 he had left the rural area in which he worked as he had received threats that if he slept at his house he would not see the next day. After having voted, despite being warned that he should pretend to be illiterate, he stated that he had been harassed by four people assuming that he was one of the three MDC votes cast at his polling station. He indicated to the Commission that he had been warned recently that people had been told to eliminate individuals like him because there would soon be elections again.³⁶² Another teacher stated that he had been assaulted and arrested, and at one point had found a paper in his office saying “we are watching you”.³⁶³ Yet another teacher, with 13 years’ experience, stated that she had been harassed and had lost her job in a rural area because her husband was an MDC politician.³⁶⁴ A teacher from Chipinge stated that he had been harassed due to his membership of the PTUZ as it was seen as a front for the MDC; he indicated to the Commission that as a teacher he believed himself to be a human rights defender and so taught all political beliefs and did not go to political rallies of either ZANU–PF or MDC.³⁶⁵
- 395.** ZIMTA provided statements to the Commission detailing the number of its members affected during the presidential run-off elections between May and June 2008 in various districts. The union provided a list of 106 teachers throughout Zimbabwe who had been harassed in approximately 52 schools; 62 teachers who had been severely assaulted in approximately 48 schools; the death of a head teacher in Mashonaland East; 141 teachers who had experienced emotional harassment; and four cases of arson in Mashonaland East and Manicaland.³⁶⁶
- 396.** The Commission was provided with a statement from a member of ZIMTA from the Midlands province in which he indicated that three schools in the province had closed down in May 2008 after ZANU–PF militia had carried out a campaign of violence and threats against teachers during the elections, forcing them to flee. He indicated that he had been warned to

³⁵⁹ Meeting with the Apex Council, 12 Aug. 2009, Harare.

³⁶⁰ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

³⁶¹ Meeting with the Apex Council, 12 Aug. 2009, Harare.

³⁶² Meeting with the Apex Council, 12 Aug. 2009, Harare.

³⁶³ Meeting with the Apex Council, 12 Aug. 2009, Harare.

³⁶⁴ Meeting with the Apex Council, 12 Aug. 2009, Harare.

³⁶⁵ Meeting with the ZCTU, 23 Aug. 2009, Mutare.

³⁶⁶ Written report providing details of allegations of violations against teachers before, during and after the 2008 elections.

leave the area as he was on a “hit list” and that, when the militia could not find him, they had beaten family members and neighbours from the village.³⁶⁷

- 397.** Similar threats of violence, intimidation, the use of abusive hate language, and panic among teachers were made in relation to members of ZIMTA in Matabeleland South, including reports of “base camps” being established in schools in seven districts and schools that had closed down as the teachers had fled.³⁶⁸ In relation to Manicaland, the Commission received information that at least three teachers associated with ZIMTA had their personal properties destroyed, and that children had been caught up in the violence either by being beaten or arrested.³⁶⁹
- 398.** The Commission was advised by both ZIMTA and PTUZ members that teachers considered that the attacks on them were organized from within ZANU–PF, and were not random. The Commission was told that this meant that friends in rural communities were able to tell intended victims that something would happen at a particular time, so that they could escape. One teacher indicated that he was saved from a beating as the perpetrator was a former student.³⁷⁰ The Commission was informed that, in another incident, a teacher had been abducted from PTUZ premises after being warned by his headmaster that he would be abducted that night.³⁷¹
- 399.** One woman from Chimanimani indicated that she and her husband, members of the PTUZ, had never had any involvement in the MDC. She provided copies of affidavits signed in 2002 by her husband and a former colleague, both of whom were teachers at village primary schools in the area, in which they sought a magistrates’ court order to stop five named respondents, all believed to be war veterans and ZANU–PF supporters, “terrorizing and victimizing” them.³⁷² The Commission also received a copy of a letter dated 25 March 2002 from local ZANU–PF offices to the headmaster of a primary school, referring to her husband and two colleagues by name, and advising that they “must not report on duty” as they were supporters of the MDC.³⁷³ The Commission was informed that in 2002 her husband accordingly left Chimanimani to work as a college lecturer in Harare while she remained in the village as a primary school teacher. During the run-off elections in 2008, she contended that the threats against her had intensified and that on 12 July 2008 she ran away with her children as she had been warned that there was a plan to attack her that night; the next day, she was advised that her home and possessions had been destroyed.³⁷⁴ She had sought a transfer from her home village and now worked as a primary school teacher in Harare, where her family lived in one

³⁶⁷ Written report providing details of allegations of violence against teachers, April–June 2008.

³⁶⁸ Written report providing details of allegations of violence against teachers, April–June 2008.

³⁶⁹ Written report providing statistics of allegations of politically affected teachers in Manicaland, May–June 2008.

³⁷⁰ Meeting with the Apex Council, 12 Aug. 2009, Harare.

³⁷¹ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³⁷² Undated affidavits by two trade union activists.

³⁷³ Letter from Samuel Nkosi, ZANU–PF Offices, to headmaster, Mtendeudze School dated 25 Mar. 2002. See Chapter 18 (Interference in trade union affairs and anti-union discrimination).

³⁷⁴ The Commission received a copy of a police report concerning the destruction of her house and property dated 21 May 2009.

room and, on the public service allowance that she and her husband earned, they could not afford to send their children to school.³⁷⁵

B. Demonstrations, strikes, meetings and commemorations

- 400.** The Commission was told of harassment of teachers from the PTUZ in relation to trade union-organized demonstrations, strikes, meetings and commemorations. For example, one trade unionist indicated that both he and his family had been threatened and that he had been arrested and charged under the POSA with instigating teachers to rise and overthrow the Government in relation to the organization of a strike in 2002.³⁷⁶ The PTUZ informed the Commission that the police had detained its leadership in relation to commemorations of World Teachers' Day in Masvingo in 2006.³⁷⁷ One PTUZ official stated that he had been arrested under the POSA by plain-clothes police officers who had attended a trade union education meeting at a school; when he asked under which section of the POSA he had been arrested, the officers replied "all of POSA".³⁷⁸ In relation to a term-long strike by teachers between 28 January and 2 March 2007, PTUZ officials in Harare and Mutare were repeatedly arrested to be later released without charge.³⁷⁹ In the context of a September 2007 strike, the PTUZ headquarters was ransacked.³⁸⁰
- 401.** The Commission was told of harassment of union officials in February 2008 in the context of a PTUZ "Save our education" campaign, including the dismissal of the union's chairperson. The Commission heard statements that ZANU-PF militia abducted nine PTUZ members and subjected them to torture and beatings by eight-person teams using logs and iron bars. One teacher informed the Commission that a perpetrator had stamped on his neck. He then mentioned "I was better off because I was a man", indicating that he had seen perpetrators holding one of the two women's legs apart and stamping on her genitals.³⁸¹ Six of these trade unionists were detained for four days, and the other three for seven days.³⁸² The Commission was informed that one of the teachers who had been beaten on 19 February 2008, Ms Linda Mphanda, had died on 3 June 2009 as her health had deteriorated since the beating.³⁸³

³⁷⁵ Meeting with the ZCTU, 22 Aug. 2009, Mutare. The Commission was provided with a letter written by the woman to the Minister of Education setting out her alleged concerns, dated 20 July 2009.

³⁷⁶ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo. See Chapter 12 (Freedom of demonstration and assembly and the right to strike).

³⁷⁷ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³⁷⁸ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³⁷⁹ Meeting with the ZCTU, 16 Aug. 2009, Gweru; undated written statement from a trade union official concerning harassment and detention 2003-09.

³⁸⁰ Communication from the ITUC dated 23 May 2008.

³⁸¹ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³⁸² Communication from the ITUC dated 23 May 2008.

³⁸³ Meeting with the ZCTU, 14 Aug. 2009, Harare.

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- 402.** A trade unionist indicated that in June 2008 he had closed down a PTUZ office and left his small town after he had received death threats from CIO operatives.³⁸⁴ A number of teachers from Gweru, Masvingo and Bulawayo indicated that they had been arrested and detained during the ZCTU-organized demonstration on 3 December 2008 and had spent up to eight days in the cells in inhuman conditions, where family members were not able to bring food to them, before being released without charge after being taken to court.³⁸⁵ The Commission was told that during the ZCTU-organized demonstration on cash withdrawal limits on 3 December 2008 the only trade unionists picked up by the police from a crowd of hundreds in Karoi were two women teachers, who were paraded around town in a police vehicle, detained at a police station, interrogated and then released without charge.³⁸⁶
- 403.** The Commission was informed that on 26 January 2009 the PTUZ had organized an information desk with flyers and placards to explain its year-long industrial action under its “Save our education” campaign, in particular informing parents that there were no teachers at school. Although the police had been advised and permission granted beforehand, on the morning of the planned event, police and CIO operatives indicated that they had decided to cancel the activity for security reasons and that the union should distribute flyers only to its members; trade unionists would be held responsible for any flyers found on the roadside or elsewhere.³⁸⁷
- 404.** Certain teacher union leaders provided statements to the Commission alleging harassment and intimidation targeted against them in their leadership capacity. The Chairperson of the PTUZ, for example, detailed being:
- arrested in March 2003 in Mutare, beaten, threatened that his leg would be cut off with an axe, and then released without charge;
 - interrogated and threatened by CIO operatives at his workplace on several occasions in 2004;
 - arrested with other leaders in Masvingo on World Teachers’ Day 2006;
 - arrested and subsequently released without charge four times between January and March 2007 in relation to the ongoing strike, and that on one of these occasions he had been detained at a police station for three days, assaulted by police officers, interrogated by CIO operatives, and given blankets that had first been used to cover a non-flushing toilet;
 - suspended in April 2007 for 14 days from the university at which he worked for allegedly destabilizing the institution and the country at large;
 - abducted by ZANU–PF militia during a PTUZ campaign on 19 February 2008 with other leaders, when he was beaten, forced to chant ZANU–PF slogans, hospitalized under guard, and then charged with criminal nuisance;

³⁸⁴ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³⁸⁵ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³⁸⁶ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³⁸⁷ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

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- dismissed from his job as a university lecturer at the Great Zimbabwe University on 23 February 2008, while he was hospitalized due to the beating;
 - threatened in June 2008 by youth militia and war veterans;
 - arrested and detained for five days in September 2008 without food, water or blankets; and
 - detained and interrogated by police on the morning of the ZCTU-organized demonstration on 3 December 2008.³⁸⁸

405. The Chairperson of the PTUZ further informed the Commission that his dismissal in February 2008 was subsequently found to be an unfair labour practice by the Ministry of Labour, and that he was currently appealing to the Labour Court against the university's decision to pay compensation rather than reinstate him in his job. He indicated that as he was considered to be an "academic terrorist" for organizing teachers and lecturers and was believed to have insulted the President of Zimbabwe, he would not be able to work in any state university as the President of Zimbabwe was Chancellor of them all.³⁸⁹

406. The Secretary General of the PTUZ was also a particular target for harassment and intimidation. He had been arrested on numerous occasions since the formation of the union, often to be released without charge within 24 hours. He had been one of the union leaders arrested on 6 October 2006 in connection with the World Teachers' Day celebrations in Masvingo; on 14 February 2007 in Harare in relation to the industrial action that was under way; and on 19 February 2008 by ZANU-PF militia in Harare, when the trade unionists were seriously beaten and tortured. The Commission was informed that he had been arrested on 15 April 2008 and charged with spreading unsubstantiated information in newspapers concerning political violence targeted at teachers in rural areas. On other occasions his wife had been harassed and he had received strange telephone calls at home, and he believed that his home had been under 24-hour surveillance.³⁹⁰

III. Other statements

407. The Commission met the Minister of Education, who informed it that the education sector accounted for over 50 per cent of public servants, amounting to 80,000 teachers.³⁹¹ He stated that the difficulties in the country had started to stabilize with the establishment of the inclusive Government. He indicated that he enjoyed cordial and constructive relationships with all three teachers' trade unions and, since taking office, he had activated a National Education Advisory Board which included the presidents of the three trade unions. Within weeks of having taken office, an agreement had been reached on how to end the ongoing strike by teachers. The Minister had given three major undertakings about conditions of service, some of which were still being implemented.

³⁸⁸ Meeting with the ZCTU, 16 Aug. 2009, Gweru; undated written statement from a trade union official concerning harassment and detention 2003-09.

³⁸⁹ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

³⁹⁰ Written statement from a trade union official on persecution of teachers and teacher union leaders May 2008-April 2009.

³⁹¹ Meeting with the Minister of Education, 19 Aug. 2009, Harare.

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- 408.** The first undertaking was a ministerial directive exempting the children of teachers from paying school fees in public schools as a short-term measure until the Government was able to pay teachers a viable salary. The Minister noted that he had introduced nominal fees for children at urban primary schools and zero fees for children at rural primary schools. The Minister acknowledged that the salary of teachers in Zimbabwe was significantly below the regional average and indicated that he hoped to increase the current payment to US\$500 per month in line with the average in 1999, but that this would depend on improvements in the country's economic situation. The Apex Council explained that teachers, like other public servants, were being paid a monthly allowance as at August 2009 of US\$115–200. A head teacher, for example, would receive US\$155 per month. Teachers indicated to the Commission that on such allowances they were unable to send their own children to school.³⁹²
- 409.** The second undertaking aimed to encourage the return to teaching of the 20,000 teachers who had left the profession due to economic distress or political harassment by creating an amnesty for those teachers to avoid cumbersome regulations for re-engagement. The amnesty was open to all teachers who had left the profession since 1 January 2007 on the grounds of economic distress or intimidation, although most had left during the elections in 2008. The Minister indicated that the amnesty had encountered problems in implementation and as a result not many teachers had yet re-entered the profession.
- 410.** The third undertaking aimed to address the ongoing fears of teachers in rural areas as a result of intimidation and harassment. The Minister indicated that he had no way of knowing whether or not the specific allegations were true as no empirical study had been done to ascertain their truth. In terms of dealing with the allegations of harassment, the Minister believed that he had to take the complainants seriously and indicated that some of the reports that he had himself received were credible. As a result, he explained that he had released a policy directive stressing that educational institutions should be only for educational, and not political, purposes and that only teachers, parents and children should be on school premises. This directive aimed to bring previously existing policy to public attention and he hoped eventually to make the entry of school premises by unauthorized people an offence. In this regard, the Minister indicated that 7,000 copies of the statement explaining the policy directive had been distributed to all schools in Zimbabwe.
- 411.** In addition, the Minister informed the Commission that he was implementing a new human rights and civic education curriculum, teaching democracy, tolerance and non-violence. He emphasized that the vast majority of Zimbabweans were peace-loving people despite having experienced a tragic history of violence and war.

³⁹² Meeting with the Apex Council, 12 Aug. 2009, Harare.

16. Intimidation and harassment of farm workers

412. The Commission received written and oral statements from farm workers and their representatives alleging particular intimidation and harassment of rural workers. The Commission was informed that intimidation and harassment of farm workers had occurred in connection with ZCTU-organized nationwide events and had intensified during the election periods in the country, in common with teachers and other trade unionists working in rural areas. In addition, the Commission received information alleging the breach of trade union rights in connection with the country's land reform programme. In this regard, the Commission made it clear that it would consider the land reform programme in Zimbabwe to the extent that it affected the trade union rights of workers on farms.

I. Arrangement of the agricultural sector

413. The Commission received varying data concerning the agricultural sector. According to ZCTU interlocutors, the agricultural sector, prior to the economic crisis facing the country, had been the largest employer in Zimbabwe, accounting for 500,000 workers employed in 4,200 commercial farms.³⁹³ The Minister of Lands and Rural Development indicated that previously white farm owners, who accounted for 1 per cent of the population, had owned 15.5 million hectares, or 45 per cent of land with good agricultural potential. He stated that in comparison, 700,000 people were crowded onto less arable communal land.³⁹⁴

414. In relation to the present situation, ZCTU representatives estimated that there were 200–400 commercial farms in Zimbabwe employing 150,000 workers.³⁹⁵ The Minister of Justice explained that there were currently 3–4 million farm workers in Zimbabwe out of a total population of 12–13 million Zimbabweans.³⁹⁶ ZCTU interlocutors estimated that approximately 20–25 per cent of the farm workers in Zimbabwe were women, with the largest proportion in the horticultural sector. While it was estimated that 70 per cent of farm workers in Zimbabwe were descendents of non-native Zimbabweans, all workers in Zimbabwe were covered by the Labour Relations Act.³⁹⁷ The Minister of Justice indicated that these workers were entitled to citizenship.

415. The Commission was informed that the General Agriculture and Plantation Workers' Union of Zimbabwe (GAPWUZ), a ZCTU affiliate, was the largest trade union in the rural sector. It was alleged that there were over three unions in the agricultural sector that were government-sponsored. In 2000, GAPWUZ had a membership of approximately 200,000 workers and had negotiated a minimum wage that allowed farm workers to educate their children, sustain themselves and enjoy health care. GAPWUZ representatives alleged that after the

³⁹³ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³⁹⁴ Meeting with Minister of Lands and Rural Development, 20 Aug. 2009, Harare.

³⁹⁵ Meeting with the ZCTU, 14 Aug. 2009, Harare.

³⁹⁶ Meeting with Minister of Justice and Legal Affairs, 24 Aug. 2009, Harare.

³⁹⁷ Meeting with the ZCTU, 14 Aug. 2009, Harare.

commencement of the land reform programme in 2000, there had been violence against the union and its members. Its current membership was 25,000 workers.³⁹⁸

416. GAPWUZ officials stated that most of the perpetrators of the violence in the country resided in rural areas as the political elites were the new farm owners. This caused difficulties when trade union officials attempted to organize workers, carry out their representation duties, or bargain collectively. They had been threatened and described particular threats against them when they sought to document the use of child labour at two farms. War veterans had said to them that they must be opposition supporters as they came from the ZCTU and that they were not therefore welcome.³⁹⁹

II. Election periods and demonstrations

417. GAPWUZ officials and members reported having been harassed, intimidated, verbally and physically abused or abducted by CIO operatives and ZANU–PF militia during election periods or as they mobilized workers during union education events. Other farm workers indicated that they had been the victims of violence during demonstrations and protests.⁴⁰⁰

418. For example, during a campaign of harassment and intimidation associated with the ZCTU-organized nationwide demonstration on 18 November 2003, a child labour specialist in the union was assaulted and her husband kidnapped, tortured and left for dead in the bush; and the GAPWUZ offices in Chinhoyi had been burnt down.⁴⁰¹

419. In connection with the 13 September 2006 demonstration, the Commission was informed that a number of farm workers had been detained in cells for two days. A trade unionist informed the Commission that, after their release, agricultural workers had received death threats from the CIO and ZANU–PF militia; he and colleagues ran away from their farms because they feared for their lives. They explained that they had experienced emotional and psychological effects from the harassment and intimidation. One union member stated that she had been beaten on the soles of her feet and that since then, she had not been able to wear shoes for the whole day. The trade unionists stated that they were acquitted of the charges laid against them. Despite the Court having ordered that the police officers responsible for the serious assaults be investigated, this had never happened.⁴⁰² The Commission received a statement that since then two trade union officials had been arrested in the run-up to elections and that they were currently being harassed for distributing humanitarian assistance packages to internally displaced farm workers.⁴⁰³

420. The Commission was informed that about 34 workers at Glenara Estate had been dismissed after attending the ZCTU May Day celebrations in 2008. It was further stated that 105 workers

³⁹⁸ Meeting with the ZCTU, 14 Aug. 2009, Harare; see Chapter 18 (Interference in trade union affairs and anti-union discrimination).

³⁹⁹ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁰⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare; undated written report of alleged gross violations on farms. See further Chapter 19 (Collective bargaining and social dialogue).

⁴⁰¹ Undated written report of alleged gross violations on farms.

⁴⁰² Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁰³ Undated written report of alleged gross violations on farms.

from Chegutu, Kariba, Karoi and Shamva had been forcibly evicted from their homes during the run-up to the elections, and that there had been other incidents of forcible evictions.⁴⁰⁴

- 421.** In relation to the 3 December 2008 demonstration, another union official indicated that two policemen had held her while another two charged at her. The Commission was provided with a medical statement noting that her injuries had been caused by several blunt trauma blows delivered with severe force and that there was a serious possibility of permanent injuries. On another occasion, a policeman had taken the same official and her four-year-old son from church to the police station, where she was beaten and detained. She indicated that she is now fearful of the police, “especially those with batons”, and her son refuses to go to church.⁴⁰⁵

III. Land reform programme

- 422.** Several representatives of the Government emphasized the centrality of the issue of land to the current situation in Zimbabwe. The Minister of Lands and Rural Development indicated that the Government’s perspective was that all black Zimbabweans were entitled to land.
- 423.** In relation to the breach of trade union rights within the context of the land reform programme, the Secretary General of GAPWUZ reiterated that the union viewed “the land reform as a good initiative to give land to those who need and use it”, but argued that the majority of farm workers had not received land and had become unemployed and internally displaced as a result of the changes in the rural sector. She explained that the minimum wage for farm workers in Zimbabwe was US\$10 per month plus accommodation and a food hamper. It was estimated that 1,500 farm workers – 5,000 people including their families – had been displaced in the past year. Many workers were living in tobacco barns or on the roadside.⁴⁰⁶
- 424.** The Commission heard statements concerning a group of GAPWUZ members who had worked at Wilton Farm near Mutare.⁴⁰⁷ The Commission was informed that the white farm owners had employed approximately 100 workers and the new farm owner had retained 35 of these workers after he took ownership in 2004.⁴⁰⁸ All the farm workers who had another home to go to had left, leaving on the farm only those who had no other home.⁴⁰⁹

⁴⁰⁴ Undated written report of alleged gross violations on farms.

⁴⁰⁵ Meeting with the ZCTU, 14 Aug. 2009, Harare; medical report dated 3 Dec. 2008.

⁴⁰⁶ Meeting with the ZCTU, 14 Aug. 2009, Harare; undated written report of alleged gross violations on farms.

⁴⁰⁷ The Commission also received statements concerning a similar case involving farm workers from Silver Bow Farm in Rusape, who were evicted on 3 July 2009, their houses were destroyed and they were living on a roadside where they had been harassed by police. The children were unable to attend school and there was a heightened risk of cholera as they were using water from a river one hour’s walk away. The new farm owner was believed to be the nephew of the Minister of State Security; written statement concerning farm workers at Silver Bow and Odzi Farms dated 24 Aug. 2009.

⁴⁰⁸ The Commission was informed that the new farm owner, Mike Madiro, was the Chairperson of ZANU–PF in Manicaland Province.

⁴⁰⁹ The Commission was informed that the new farm owner had chosen not to employ one farm worker who was responsible for her family and who, with nowhere to go other than the farm on

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- 425.** The Commission was told that the workers were not being paid a fixed amount and that certain of the 35 workers on the farm had been persistent in claiming their wages. The local GAPWUZ official informed the Commission that it had been extremely difficult for the union to organize the workers, as the farm owner refused the union access to the workplace, chasing the officials off the property on the ground that he would not let MDC supporters talk to the workers.⁴¹⁰
- 426.** The Commission was informed that on 1 March 2009, after five years of working for the new farm owner, a summons was served on the farm workers informing them that on 3 March 2009 the Magistrates' Court in Mutare would hear an application for their eviction.⁴¹¹ The farm workers were unable to attend the court hearing as they had not been paid and so had no money for the transport costs of getting to Mutare with two days' notice. The order was accordingly made in their absence.⁴¹²
- 427.** On 5 June 2009, various interlocutors stated to the Commission that the new farm owner, together with police officers and an official of the Court, arrived at the farm workers' homes and threw their belongings outside, burnt the homes, seized farm implements, and took the 28 workers and their families in tractors to the roadside along the Mutare-Harare road near the Odzi river. Seven workers remained at the farm. The Commission was informed that, as the workers had no other home than the farm, they had stayed on the roadside for a number of months, despite being told by the District Administrator that they should leave the area and being harassed and intimidated by the authorities on a number of occasions.⁴¹³ It was alleged that on 12 August 2009 the District Administrator warned the farm workers that "at the Chiadzwa diamond mine we killed 15,000; here you are just a few".⁴¹⁴
- 428.** It was made known to the Commission that the farm workers were fearful for their lives and that they had received threats that their roadside tents would be destroyed at the end of August. It was reiterated that the farm workers had nowhere else to go. Some farm workers had been told that they were of Zambian, Malawian or Mozambican descent. Most, if not all, of the farm workers had been born in Zimbabwe and had Zimbabwean identity cards. They had never been to those countries nor did they speak their languages.⁴¹⁵

which she had lived her entire life, had remained on the farm for five years without working: meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁴¹⁰ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁴¹¹ The summons for ex parte chamber application included an application for judicial seizure of certain property that the workers maintained belonged to them: a wheel barrow, a 200 litre black drum, a sowing machine, a pick and a plough (*Madiro v. Nduna et al.* (42/09, Magistrates' Court, Mutare, 16 Feb. 2009)).

⁴¹² Meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁴¹³ The Commission was informed that the International Organization for Migration had provided tents and assistance for the farm workers and their families, officially recorded as 28 families, composed of 128 individuals. Many of the workers were supporting elderly family members and children who were not able to attend school or health centres; living conditions were substandard, they were relying on assistance from other people to be able to pay for food and clothes, and they were vulnerable and unprotected in tents by the side of the road: meeting with ZCTU, 22 Aug. 2009, Mutare.

⁴¹⁴ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁴¹⁵ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

429. A union official indicated that he had handed the case concerning the dismissal and underpayment over to the National Employment Council (NEC) at the beginning of August 2009, but the farm owner had apparently refused the summons to appear before the NEC, stating that the ZCTU and the farm workers were all politicians.⁴¹⁶ An appeal against the eviction notice was heard on 14 August 2009 and was unsuccessful on the grounds that the proceedings were time-barred.⁴¹⁷ The most recent information received by the Commission was that the farm workers had been moved from their temporary roadside camp and were dispersed in small groups in the surrounding hills.

IV. Other statements

430. The Minister of Lands and Rural Development explained that the GPA stated that all those who needed land and applied for it would get it, with farm workers considered in the same way as others. The Minister of Lands explained that farm workers would be eligible under the “A1” land distribution scheme, under which up to six hectares of arable land could be allocated for communal grazing.⁴¹⁸ The Minister acknowledged that the Government probably needed to make more effort to reach farm workers in the redistribution process.

431. The Ombudsperson indicated that she had been approached in relation to a similar situation during the farm reallocations by a large number of people camping on the roadside in Mashonaland West. Following her intervention with the Governor of the Province, all of those farm workers had been allocated land.⁴¹⁹

432. The Minister of Lands noted that many farm workers remained on farms after ownership changed hands as some of the associations formed to support farm workers did not encourage them to find work elsewhere. There was also disruption between old and new farm workers when former farm workers remained on compounds without working for the new owner, but continued to use the accommodation. He also noted that some of the farm workers were from neighbouring countries and had not therefore been absorbed into local communities. He had no personal knowledge of constraints on membership of trade unions and was not aware of problems such as unionized workers being singled out for eviction.⁴²⁰

433. The Minister of Justice informed the Commission that many foreigners were recruited during colonial times to work in the mines, railways and farms because the indigenous people of Zimbabwe refused to cooperate with the colonial powers in the context of forced labour and forced auctions dispossessing people of their lands. He noted that this was the most exploited and oppressed class in Zimbabwean society, as they had worked on the farms without wages until independence in 1980. With intermarriage, differences between the farm workers and indigenous Zimbabweans had almost been eliminated, with the people in question speaking

⁴¹⁶ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁴¹⁷ *Nduna et al. v. Michael Madiro and Messenger of Court* (Case No. 42/09, Magistrates’ Court, Mutare, 14 Aug. 2009).

⁴¹⁸ Meeting with Minister of Lands and Rural Development, 20 Aug. 2009, Harare. There are two land distribution schemes. Under the A2 scheme, the aim was to create large-scale black commercial farms of between 15 and 2,000 hectares.

⁴¹⁹ Meeting with the Ombudsperson, 21 Aug. 2009, Harare.

⁴²⁰ Meeting with the Minister of Lands and Rural Development, 20 Aug. 2009, Harare.

the local languages, and being assimilated into the community. The Minister of Justice stated that “there is no black person in Zimbabwe who has nowhere to go”.⁴²¹

- 434.** He noted that farm workers were again being exploited by the white farm owners. He stated that in 2000–01 they had been manipulated by the white owners with the fear of unemployment, so that most of the violence against the new farmers was carried out by the farm workers. In relation to the current situation, the Minister of Justice stated that there was a shortage of labour on the farms, caused by white farm owners telling farm workers not to seek alternative employment as they would soon recover their farms. The Minister stated that they were wrong to think that the land reform policy was temporary.⁴²²

⁴²¹ Meeting with the Minister of Justice and Legal Affairs, 24 Aug. 2009, Harare.

⁴²² Meeting with the Minister of Justice and Legal Affairs, 24 Aug. 2009, Harare.

17. The experience of the business community

- 435.** The complaint concerning violation of trade union rights in Zimbabwe was filed by Workers' and Employers' delegates. While the complaints did not explicitly refer to the violation of employers' rights under Conventions Nos 87 and 98,⁴²³ the Commission met the Employers' Confederation of Zimbabwe (EMCOZ) to obtain their views on the situation of freedom of association in Zimbabwe.⁴²⁴
- 436.** When asked about employers' experience of freedom of association, the EMCOZ representatives stated that "employers had no problem with freedom of association": unlike trade unions, they could join any employers' association they wished. With regard to the registration process, EMCOZ representatives explained that, while the "bureaucratic process was long", i.e. much longer than the 30 days provided for by the legislation, they did not have complaints in this respect.⁴²⁵
- 437.** In relation to the envisaged labour law harmonization process and eventual labour law reform, the EMCOZ representatives considered that the current Labour Act was "adequate and not difficult for employers". They admitted that the current labour laws were more favourable to employers than to workers and referred to the right to strike. In this respect, employers' representatives pointed out that "strike is the ultimate 'sanction' workers have at their disposal against an employer". However, while the Labour Act recognized this right, in practice "it is literally impossible to engage in a lawful strike in Zimbabwe", as "strikes are to be authorized by police, which never allows for that to happen".⁴²⁶
- 438.** Furthermore, EMCOZ representatives admitted that under the current system "it is very difficult for workers to fight an employer": employment grievance procedures were long, costly and frustrating for workers. EMCOZ explained that courts tended to be "practical" and therefore more favourable to employers. In the case of a dismissal, for example, because the courts expected a worker to be proactive and look for new employment instead of waiting for compensation for years, the amount of damages awarded by the court was unlikely to represent the amount of wages due from the date of the dismissal to the date of the court's final decision.⁴²⁷
- 439.** Describing their relationship with workers, EMCOZ indicated that employers were affected by trade union dissatisfaction with the Government. Furthermore, their relationship with workers was detrimentally affected by the general environment in the country and, in particular,

⁴²³ See Chapter 1 (Filing of the complaints and appointment of the Commission); this was reaffirmed by the representative of the Employers' group, Mr Edward Potter, in a meeting with the Commission of Inquiry on 5 Oct. 2009, Geneva.

⁴²⁴ Meetings with EMCOZ, 13 and 18 Aug. 2009, Harare. The Commission also met representatives of the SADC Employers' group during its visit to South Africa.

⁴²⁵ Meeting with EMCOZ, 13 Aug. 2009, Harare.

⁴²⁶ Meeting with EMCOZ, 13 Aug. 2009, Harare. See Chapter 12 (Freedom of demonstration and assembly and the right to strike).

⁴²⁷ Meetings with EMCOZ, 13 and 18 Aug. 2009, Harare.

economic policies adopted by the Government, including price control and foreign currency regulations.⁴²⁸

- 440.** In relation to the price control regulations, it was explained to the Commission that these operated regardless of the cost of production. The result of this was that many businesses closed down as they could not cover their costs by sales.⁴²⁹ The foreign currency regulations were twofold. First, the Reserve Bank would take a percentage of foreign exchange, giving Zimbabwe dollars at a lower rate. Second, employers were forced to use the remainder of the foreign currency within a certain number of days as otherwise it would be converted to Zimbabwe dollars, which were worthless. As a result, it was not possible for businesses to save. EMCOZ indicated that it perceived the forced retention of foreign currency by the Reserve Bank as an extra taxation on employers on top of regular taxation.⁴³⁰ In addition to the price control and foreign currency regulations, the Reserve Bank of Zimbabwe had held a percentage of company profits for government purposes, thus depriving businesses of funds to operate.⁴³¹
- 441.** The Confederation of Zimbabwe Industries indicated that it represented enterprises from the manufacturing sector, many of which had closed or were operating with smaller numbers of employees. It agreed with the Zimbabwe National Chamber of Commerce, which for the most part represented both small and large employers in the service industries, that price control regulations had made it impossible to manage businesses and caused many of them to close down. The Confederation noted that dollarization was a huge relief and that the flood of commodities had led to a reduction in prices. Nevertheless, the price of utilities was still high, there were limited numbers of Zimbabweans with disposable income, and businesses still had little working capital.⁴³²
- 442.** The Commission was given the example of a company which had employed 120 workers in 2006, but by 2008 had to reduce its staff to 47 workers. It was explained that it was more profitable, for a variety of reasons, for industries to buy goods from South Africa and resell them in Zimbabwe, than to re-open industries to produce the goods in Zimbabwe.⁴³³
- 443.** EMCOZ reiterated that the economic policies unfavourable to business created a situation in which employers could not meet workers' demands. The collapse of the national currency meant that pensions could not be paid. While pension payments were currently rising slowly, the absence of a conversion scheme continued to affect pension funds. The high taxation introduced by the Government impacted equally on employers and workers, as it made it impossible for employers to give workers what they sought, in particular as regards wages. Inevitably, in such circumstances, collective bargaining was negatively affected, and to a large

⁴²⁸ Meetings with EMCOZ, 13 and 18 Aug. 2009, Harare.

⁴²⁹ Meeting with EMCOZ, 18 Aug. 2009.

⁴³⁰ Meeting with EMCOZ, 18 Aug. 2009, Harare.

⁴³¹ Meeting with EMCOZ, 18 Aug. 2009, Harare. For example, the Commission was informed that as proceeds of gold sales were held by the Reserve Bank, all gold mines had closed after two years; some mines were starting to open again as new regulations allowed individual miners, through the Chamber of Mines, to sell gold. Now, approximately 60 per cent of gold mines were open, although they were still only operating at 40 per cent production and there were problems with recapitalization as equipment had been left idle for some time.

⁴³² Meeting with EMCOZ, 18 Aug. 2009, Harare.

⁴³³ Meeting with EMCOZ, 18 Aug. 2009, Harare.

extent, shaped by the authorities. EMCOZ therefore concluded that while they had no problem with the exercise of their right to organize, they could not fully enjoy the right to bargain collectively.⁴³⁴

- 444.** With regard to the alleged mistreatment of ZCTU members, EMCOZ representatives stated that they were aware of the intimidation and harassment suffered by the ZCTU leaders and, from the outside, the employers had felt uncomfortable with what had happened to the trade unions.⁴³⁵ One EMCOZ official indicated that he had visited the Secretary General of the ZCTU in hospital following the September 2006 events.⁴³⁶
- 445.** EMCOZ added that prior to the establishment of the inclusive Government, its members also experienced intimidation and harassment, in particular in the context of the price control and foreign currency policies. EMCOZ explained that many employers had been “incarcerated for running their businesses”. These employers were often detained in custody for up to three days, before being released without charge. During the detention, employers may have been kept naked in small, overcrowded, and unhygienic cells. While noting that they had no information of torture or physical ill-treatment of employers, the EMCOZ representative pointed out that the mere fact of incarceration was traumatic. He also clarified that there had been no cases of detention following the establishment of the inclusive Government.⁴³⁷
- 446.** EMCOZ considered that social dialogue was the only way forward to improve economic conditions in the country and that issues such as wages and salaries should be decided by involving all social partners.⁴³⁸
- 447.** With regard to the allegation that some of the unions were excluded from the NECs, EMCOZ stated that employers were willing to negotiate with any registered trade union representing workers and that if some trade unions were not represented in a particular NEC, that had nothing to do with the employers.⁴³⁹ It was up to the respective social partners to determine who would be negotiating on their behalf. Workers decided themselves which union would represent them according to the principle of proportional representation. Employers had no say in this respect and would “stay neutral”.

⁴³⁴ Meetings with EMCOZ, 13 and 18 Aug. 2009, Harare.

⁴³⁵ Meeting with EMCOZ, 21 May 2009.

⁴³⁶ See Chapter 13 (Arrests, detentions, assaults and torture).

⁴³⁷ Meeting with EMCOZ, 13 Aug. 2009, Harare.

⁴³⁸ Meeting with EMCOZ, 13 Aug. 2009, Harare.

⁴³⁹ NECs are bodies composed of representatives of labour and management, which negotiates industry-wide collective agreements. See Chapter 19 (Collective bargaining and social dialogue).

18. Interference in trade union affairs and anti-union discrimination

448. The Commission received allegations of governmental interference in the activities of trade unions and anti-union discrimination in relation to trade union members and officials.⁴⁴⁰ In particular, it was alleged that there had been interference in trade union internal affairs, that the authorities had “taken sides” with ZANU–PF against “particular unions”, and that there was a lack of protection against interference and anti-union discrimination.⁴⁴¹

I. Interference in trade union affairs

A. *Demonstrations, marches and meetings*

449. The Commission heard numerous statements concerning interference by the Government in the organization of nationwide demonstrations and protests, as well as local and regional trade union meetings, conferences and forums. Despite the law not requiring trade unions to obtain police permission for such activities, it appeared that this was expected in practice and that, in many cases, permission to hold events was denied by the police.⁴⁴²

450. The Commission was provided with 85 documentary examples of notifications to the police by the ZCTU of planned events, and the police responses, during the period 2003–08. According to these documents, permission was refused for all processions, mass protests and demonstrations, often with no reason given for the refusal.⁴⁴³ When grounds for refusal were given, these often simply referred to a lack of capacity on the part of the police to cover the event.⁴⁴⁴ At other times, the stated grounds for refusal included that the event was likely to provoke public disorder, lead to the disruption of public thoroughfares or that “criminal elements will exploit the gathering/procession and cause mayhem”.⁴⁴⁵

451. The Commission was provided with one document in which the police refused permission for two labour meetings in February 2003, stating that “your fora definitely need the coverage of police. The main reason why the fora are not approved is that during this period police are

⁴⁴⁰ See further Chapter 11 (The systematic and systemic nature of problems in the implementation of trade union rights): it was stated to the Commission that trade union members considered the ZANU–PF militia to be part of the state authorities on account of the ZANU–PF leader being the Head of State and Head of the CIO.

⁴⁴¹ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁴² See Chapter 12 (Freedom of demonstration and assembly and the right to strike).

⁴⁴³ E.g. letter dated 21 Feb. 2003 from Bulawayo central district police refusing permission for a demonstration in Bulawayo to be held on 21 Feb. 2003.

⁴⁴⁴ E.g. letter from Victoria Falls district police dated 30 Aug. 2006 concerning ZCTU district elections to be held on 2 Sep. 2006. Other reasons for the lack of capacity included previous commitments, such as forthcoming senatorial elections (e.g. letter from Bulawayo central district police dated 4 November 2005 concerning a ZCTU procession).

⁴⁴⁵ E.g. letter from Makonde district police dated 12 Sep. 2006 concerning a ZCTU procession to the Governor’s Office during a protest “against employers and government” in Chinhoyi on 13 Sep. 2006.

committed with Cricket World Cup Games being held in Bulawayo”.⁴⁴⁶ It was stated to the Commission that more recently police permission for the May Day 2009 commemorations in Harare was granted only following intervention by the Minister of Labour.⁴⁴⁷

452. In many cases, permission for labour forums, conferences, commemorations and celebrations was granted by the police, although often with conditions. Often, permission was granted on the condition that there was no discussion of “issues related to any political party”,⁴⁴⁸ that “no derogatory or inflammatory statements are made” and that there was no “shouting slogans or any other thing which expressly or impliedly denotes politics”.⁴⁴⁹ In addition, certain permissions required the organizers to ensure that there was no “grouping” before and after the meeting, and/or that there was no singing and “toy-toying” during or after the meeting.⁴⁵⁰ At other times, the permission was granted on condition that uniformed and plain-clothed police officers were present to monitor the event,⁴⁵¹ or that “they are provided with whatever information they should wish to know concerning the event”.⁴⁵² Other common conditions included that the event did not exceed the stipulated times, that no thoroughfare or public place was “blocked or obstructed in any manner”, and that the “smooth flow of traffic is not disrupted”. The police permission often expressly stated that the POSA would be applied if the event resulted in public disorder, breach of the peace or disorderly or riotous conduct.⁴⁵³ In most cases, more than one condition was required of the trade union.

453. In some situations, events were disrupted by arrests, detentions and violence on the part of the security forces.⁴⁵⁴ Often this disruption occurred before the event took place, while trade unionists were distributing flyers or other information concerning upcoming demonstrations or

⁴⁴⁶ Letter from Bulawayo central district police dated 26 Feb. 2003 concerning ZCTU labour forums intended to be held on 18 and 28 Feb. 2003.

⁴⁴⁷ Meeting with the ZCTU, 12 Aug. 2009, Harare.

⁴⁴⁸ The condition that “politics” were not discussed at gatherings was imposed in several cases: e.g. in relation to a Labour Forum in 2003 in Bulawayo, International Women’s Day 2004 in Harare, a Labour Forum in 2004 in Harare, a ZCTU district conference in 2006 in Chitungwiza, Health and Safety Day 2007 in Harare, Occupational Health and Safety Forum in 2003 in Bulawayo, mining disaster commemorations in 2003 in Bulawayo, and a ZCTU Labour Forum in 2003 in Bulawayo.

⁴⁴⁹ E.g. letter from Harare central district police dated 3 Mar. 2004 concerning an International Women’s Day event to be held “from 0900 hours to 1200 hours [at] town house”.

⁴⁵⁰ E.g. letter from Bulawayo west district police dated 28 Apr. 2004 concerning May Day celebrations.

⁴⁵¹ E.g. letter from Nyanga district police dated 24 Aug. 2006 concerning a ZCTU district conference. A number of other documents required the presence of the police “both in uniform and plain clothes” at the event (e.g. documents concerning Workers’ Day 2006 in Harare, Workers’ Day 2005 in Harare, International Human Rights Day 2005 in Harare and International Women’s Day 2009 in Harare). See further Chapter 12 (Freedom of demonstration and assembly and the right to strike).

⁴⁵² Letter from Chitungwiza district police dated 24 Apr. 2006 concerning May Day and letter from Harare central police dated 5 June 2007 concerning Health and Safety Day.

⁴⁵³ E.g. letter from Bulawayo central district police dated 8 Mar. 2006 concerning International Women’s Day commemorations.

⁴⁵⁴ See Chapter 13 (Arrests, detentions, assaults and torture).

stay-aways.⁴⁵⁵ In other cases, the authorities interrupted trade union meetings. For example, in 2004, several ZCTU members indicated that plain-clothes police officers broke into a labour forum providing feedback on negotiations in the Tripartite Negotiating Forum (TNF) to local trade union members in Gweru. The police stated that the meeting was illegal as permission pursuant to the POSA had not been requested. Trade union officials explained to the Commission that they had thought that they were acting within the law because it was a trade union meeting with its members and so did not require permission under the law.⁴⁵⁶ The Commercial Workers' Union of Zimbabwe stated that armed police interrupted a meeting at which trade union leaders were intending to give feedback to members on complicated negotiations at the NEC in July 2006.⁴⁵⁷ On another occasion, police allegedly entered the board room of the south-eastern region ZCTU on 24 March and 7 April 2007 during meetings to prepare for May Day and ordered all those present to leave.⁴⁵⁸ In all of these cases, trade union leaders were detained under the POSA before the charges were eventually dropped.

- 454.** In any event, it was alleged that police or CIO officers were covertly or overtly present at all ZCTU meetings:⁴⁵⁹ sometimes they would be the “first to arrive at the meeting”; there would “always be someone who came in and sat in the corner”.⁴⁶⁰ A trade unionist indicated that there was no requirement in the law that a member of the police or security forces attended trade union meetings, but that in practice the ZCTU would not be able to have a meeting if they had not applied for permission and someone was present.⁴⁶¹ The Commission was provided with a copy of a letter dated 24 August 2006 from the Nyanga district police to the eastern region ZCTU in which one of the conditions upon which a ZCTU district conference was approved was that “any number of law enforcement agents shall have access to the meeting”.⁴⁶² The Commission was told that workers often did not wish to speak as a member of the security forces was at every ZCTU meeting.⁴⁶³

⁴⁵⁵ E.g. written statement from a trade union official dated August 2009 detailing an instance in which ZCTU members who had been handing out flyers concerning the September 2007 event in Harare were assaulted, arrested and detained in police cells for three nights before being charged with public nuisance; these charges were subsequently dismissed on summons.

⁴⁵⁶ Meetings with the ZCTU, 14 Aug. 2009, Harare and 16 Aug. 2009, Gweru.

⁴⁵⁷ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁵⁸ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁵⁹ See further Chapters 12 (Freedom of demonstration and assembly and the right to strike) and 14 (Intimidation and harassment). The Commission was further informed of a PTUZ meeting in October 2002 when plain clothed police officers afterwards arrested the union leader: meeting with the ZCTU, 16 August 2009, Gweru.

⁴⁶⁰ Meeting with the ZCTU, 23 Aug. 2009, Mutare.

⁴⁶¹ Meeting with the ZCTU, 23 Aug 2009, Mutare.

⁴⁶² A labour forum in Mutare was approved with a similar condition in a letter from the Mutare central district police dated 8 Aug. 2006 that stated “security and law enforcement agents shall attend the meeting without any restrictions”.

⁴⁶³ Meeting with the ZCTU, 23 Aug. 2009, Mutare.

B. Search and seizure

- 455.** The Commission was provided with information concerning the search and seizure of trade union premises. A ZCTU Regional Secretary General informed the Commission that on 28 July 2006 four police officers had come to her office asking about flyers that she was distributing to workers concerning taxation. As she felt threatened and was afraid, she gave them the 2,000 copies of the flyers.⁴⁶⁴ Another ZCTU officer indicated that during a search by police of the ZCTU offices in the context of preparations for a stay-away in April 2007, he had been slapped and beaten in front of other ZCTU members, and had afterwards experienced pain and blurred vision for three weeks.⁴⁶⁵ A trade union organizer stated that flyers had been taken by police officers from regional offices of the ZCTU and the Domestic Workers' Union on 29 March 2007, as they prepared for the 3–4 April 2007 stay-away.⁴⁶⁶
- 456.** The Commission also received information concerning the search and seizure of private premises of trade union officials and members, often associated with the preparation of ZCTU-organized nationwide demonstrations and protests.
- 457.** A ZCTU official from Rusape indicated that at 3 a.m. on 13 January 2002, ZANU–PF youths, war veterans and CIO operatives had searched his house for ZCTU and MDC materials, finding only ZCTU T-shirts.⁴⁶⁷ Another trade unionist indicated that in May 2003, ZANU–PF youths abducted and assaulted him, and then searched his home, taking ZCTU material and regalia that he had there. He stated that this had traumatized his wife and two children to the extent that they had asked him to leave the ZCTU, but he had refused as it was a “calling” for him.⁴⁶⁸ A ZCTU official from Gweru stated that in the context of a communication workers' strike in 2004, police had taken him in leg irons to his home and searched it, but found nothing.⁴⁶⁹ Other ZCTU officials told of having their houses searched and of ZCTU flyers, banners and T-shirts being confiscated by plain-clothes police officers or CIO operatives in relation to the 13 September 2006 demonstration⁴⁷⁰ and during the run-up to the elections in 2008.⁴⁷¹

C. Financial matters

- 458.** The Commission was advised that the Labour Act conferred power on the Minister to order investigations into trade union financial affairs.⁴⁷² The Commission was informed that the

⁴⁶⁴ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁶⁵ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁶⁶ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

⁴⁶⁷ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁴⁶⁸ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁶⁹ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

⁴⁷⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁷¹ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁴⁷² See Chapters 9 (National legislation in relation to freedom of association) and 10 (Zimbabwe and international labour standards: Consideration by the ILO supervisory bodies).

Minister of Labour had ordered investigations into the finances of the ZCTU in 2006.⁴⁷³ A ZCTU official alleged that the investigation was not impartial and that ZCTU staff were treated as convicts and threatened.⁴⁷⁴ The ZCTU Secretary-General explained that following the investigation, the courts found that the ZCTU had done nothing wrong.⁴⁷⁵

- 459.** The ZCTU stated that it had been “brought to its knees” by the huge number of arrests and detentions of its members. The resources of the ZCTU had been “depleted” by the cost of the legal fees, bail fines, provision of food to detained trade unionists, transport for lawyers and officials searching for those detained in police cells around the country, and medical costs. The union indicated to the Commission that overseas donors had “rescued” the union by transferring money to its bank accounts.⁴⁷⁶
- 460.** The ZCTU further explained that the Reserve Bank of Zimbabwe had created its own ZCTU account in which all overseas-sourced ZCTU funds were kept; to use the money, the ZCTU had to make a request to the Reserve Bank, which would sometimes give the money and other times not. As a result, the ZCTU was unable to pay staff, which caused disaffection and had led to a number of resignations. The Commission was advised that since 22 August 2008 the Reserve Bank had held US\$99,621 of ZCTU money; on 13 August 2009, immediately after the Commission’s arrival in the country, the money had been released to the ZCTU.⁴⁷⁷

D. Interference in trade union affairs

- 461.** It was alleged to the Commission that government-sponsored unions parallel to ZCTU affiliates had been established. The Commission received information that a parallel union had been established in the commercial workers’ sector which was involved in physical violence.⁴⁷⁸ It was stated that a number of government-sponsored unions had been formed in the agricultural sector, amidst allegations of pressure on workers to renounce GAPWUZ and on employers not to transfer trade union dues to GAPWUZ and to dismiss GAPWUZ leaders.⁴⁷⁹ The Commission was informed that in 2000, GAPWUZ had a membership of approximately 200,000 workers. After the commencement of the land reform programme in 2000, union officials were beaten, workers were forced to renounce GAPWUZ and the ZCTU, and union offices were closed, and in some cases burnt, down. The current membership of GAPWUZ was 25,000 workers, which included members who were “non-subscribed” as the new farm owners would not allow membership nor deduct dues.⁴⁸⁰
- 462.** The Commission received information suggesting governmental interference in the ZCTU-affiliated sugar industry trade union. It was alleged that in September 2001 ZANU–PF, the President of Zimbabwe and the Minister of Labour deployed war veterans to take over this

⁴⁷³ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁷⁴ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁷⁵ Meeting with the ZCTU, 12 Aug. 2009, Harare.

⁴⁷⁶ Meeting with the ZCTU, 23 Aug. 2009, Mutare.

⁴⁷⁷ Meeting with the ZCTU, 23 Aug. 2009, Mutare.

⁴⁷⁸ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

⁴⁷⁹ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁴⁸⁰ Meeting with the ZCTU, 14 Aug. 2009, Harare.

trade union. It was indicated that this was done by force, with workers obliged to side with the new leadership of the union. The Commission was advised that in February 2009 some workers formed a splinter trade union to see if there were still workers who were faithful to the ZCTU; 8,000 workers registered with the new ZCTU affiliate, out of a total workforce of 15,000 workers at the plant.⁴⁸¹

E. Other statements

- 463.** The Commission met the Ombudsperson, who indicated that most of the complaints that she had received from trade unions had concerned delays to their registration. She stated that all these cases had been resolved and the trade unions concerned were now registered. She indicated that one of the cases with which she had dealt involved the PTUZ, and she had indicated that it was their right to be registered. She further indicated that it was hoped that a further two trade unions for teachers would soon be registered.⁴⁸²
- 464.** The Commission also met both ZFTU factions, which stated that they had no issue of interference or anti-union discrimination and were able to do as they wished.

II. Anti-union discrimination

- 465.** A number of ZCTU trade union officials and members recounted having been the victims of anti-union discrimination in their workplaces. It was alleged to the Commission that the authorities often forced employers to discriminate against trade union officials and members.
- 466.** One ZCTU member from a rural area stated that in 2003 he had been dismissed from his position as a human resources officer in the town council that he had held for five years for “trying to champion workers’ rights” by refusing to replace council workers with ZANU–PF supporters. In addition, his property (clothing, furniture, personal documentation including diplomas) was taken from his home and put into locked storage that he could not access. He was forced to leave the area with his wife, seven children and widowed mother as he was receiving threats against his life from war veterans; and, when he attempted to return to work following rulings by a labour officer and senior labour officer that he should be reinstated, the police locked him up for a day and armed security guards at his workplace refused his entry. He was still unemployed and living on charity as, without proof of his qualifications in his personal papers, he was unable to get another job.⁴⁸³
- 467.** Another ZCTU official explained that in 2002, following threats to his employer by ZANU–PF youth, war veterans and CIO operatives, he was dismissed.⁴⁸⁴ The ZCTU President indicated to the Commission that he believed that his dismissal from ZimPost in January 2004 was based on his trade union activities.⁴⁸⁵

⁴⁸¹ Meeting with the ZCTU, 16 Aug. 2009, Gweru.

⁴⁸² Meeting with the Ombudsperson, 21 Aug. 2009, Harare.

⁴⁸³ Meeting with the ZCTU, 23 Aug. 2009, Mutare. See Chapter 20 (Institutional protection of trade union rights).

⁴⁸⁴ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁴⁸⁵ Meeting with the ZCTU, 12 Aug. 2009, Harare. See Committee on Freedom of Association Case No. 2328.

468. The Commission was informed that a number of agricultural workers were dismissed after attending ZCTU May Day celebrations in 2008⁴⁸⁶ and it was alleged that the land reform programme was used as an excuse to dismiss farm workers who were trade union activists.⁴⁸⁷

469. The Commission was provided with a letter dated 25 March 2002 from a local ZANU–PF office referring by name to three PTUZ members, in which the headmaster of a primary school was advised that:⁴⁸⁸

... the following teachers must not report on duty on the second term due to the fact that, during the Presidential Election Campaign 2002, they were not doing their job which they were employed for by the Zimbabwean Government. They are supporting the opposition party MDC whilst they are getting paid by the government which is ruling today.

The Commission was advised that the three teachers accordingly lost their jobs and had to move to a different part of the country.⁴⁸⁹

470. A number of ZCTU members stated that they had been transferred without their consent on account of their trade union activities.⁴⁹⁰ One former trade unionist explained that, after his house had been burnt down and property destroyed in 2002, he was transferred from Manicaland to Mashonaland.⁴⁹¹ Another ZCTU member who had been transferred within his workplace stated that the management had “been forced to mistreat us at work”, not allowing trade union activists to meet with employees or telling employees not to listen to the trade union leaders.⁴⁹² A trade unionist who had been detained in April 2007 noted that he had been transferred when he returned to work; he stated that things were still difficult for him at work.⁴⁹³

471. Another trade union member stated to the Commission that after the police, accompanied by ZANU–PF youth, had told his employer that he was someone who wished to topple the Government, he had been demoted in January 2009, and now lived in fear that he would be dismissed. He stated to the Commission that efforts were made to get him to leave the ZCTU, offering him a position in the ZANU–PF party in return.⁴⁹⁴

⁴⁸⁶ Undated written report on gross violations in farms.

⁴⁸⁷ See Chapter 16 (Intimidation and harassment of farm workers). The Commission was informed that 105 farm workers from Chegutu, Kariba, Karoi and Shamva were dismissed and forcibly evicted from their homes during the run-up to the elections, and that there were other incidents of forcible evictions.

⁴⁸⁸ Letter from Samuel Nkosi, ZANU–PF Offices, to Headmaster, Mtendeudze School, dated 25 Mar. 2002. See also Chapter 15 (Intimidation and harassment of teachers).

⁴⁸⁹ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁴⁹⁰ Transfer could mean being moved to other parts of the country with a different dominant language.

⁴⁹¹ Meeting with the ZCTU, 23 Aug. 2009, Mutare.

⁴⁹² Meeting with the ZCTU, 23 Aug. 2009, Mutare.

⁴⁹³ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁴⁹⁴ Meeting with the ZCTU, 14 Aug. 2009, Harare.

472. Many interlocutors with whom the Commission spoke during its mission to Zimbabwe indicated a general sense of lack of protection of trade unionists by the courts.⁴⁹⁵ This was often related to a belief that there was governmental influence in judicial decisions. There was an assumption that court orders would not be enforced by the police or the courts.⁴⁹⁶ It was further explained to the Commission that in the case of a worker who had been unfairly dismissed, it was most likely that the employer would prefer to pay damages, a decision that the Labour Court was likely to uphold.⁴⁹⁷

⁴⁹⁵ E.g. see the NetOne, ZimPost and TelOne court decisions as discussed in Chapter 12.

⁴⁹⁶ See Chapter 20 (Institutional protection of trade union rights).

⁴⁹⁷ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

19. Collective bargaining and social dialogue

473. The Commission received information on the functioning of collective bargaining and social dialogue in Zimbabwe. Most of those whom the Commission met from the trade unions, employers' organizations and Government indicated that they were largely satisfied with the established collective bargaining and social dialogue practices. They noted, however, some problems in legislation and in practice. The President of the ZCTU, for example, stated to the Commission that collective bargaining itself had survived in the industrial relations system in Zimbabwe. He further stated that some form of discipline had been maintained and that parties by and large still adhered to the collective bargaining process.⁴⁹⁸

I. Collective bargaining

474. The Minister of Labour explained to the Commission the existing levels of collective bargaining in the country. First, at the enterprise level, works councils were composed of equal numbers of employees' and employers' representatives which negotiated collective agreements. Once an agreement had been negotiated, it would be referred to the employees and trade union concerned. If it was approved by the trade union and more than 50 per cent of employees, the agreement became binding on the employer and employees concerned.⁴⁹⁹

475. The Commission was provided with a copy of an enterprise-level collective agreement from a dairy company in force from 1 July to 30 September 2009 (see box below) that illustrates the impact of the economic situation in the country on collective bargaining.⁵⁰⁰

The Collective Bargaining Agreement for [a company and workplace-level union] reached by all parties on 23 July for the period 1 July 2009 to 30 September 2009

Overview

Both parties have taken into consideration the following key factors as precursors to the collective bargaining negotiations for the period 1 July 2009 to 30 September 2009.

- The commitment to ensuring that conditions of service are market related
- That conditions of service must be sustainable
- That all parties to the discussion recognise that the group still faces challenges related to
 - Shortage of forex and spares
 - Low- and poor-quality raw milk supplies
 - High cost of utilities
 - Inconsistent supply of utilities e.g. coal, electricity and water
 - Plant breakdowns
 - Depressed sales volumes
 - Low capacity utilization

⁴⁹⁸ Meeting with the ZCTU, 12 Aug. 2009, Harare.

⁴⁹⁹ Meeting with the Minister and Deputy Minister of Labour, 12 Aug. 2009, Harare; written response by the Ministry of Labour and Social Services to ILO Commission of Inquiry questions, Aug. 2009.

⁵⁰⁰ See Chapter 17 (The experience of the business community).

- Erratic fuel supplies
- Unavailability of favourable lines of credit
- Emerging competition

Collective bargaining agreement

Items agreed upon by both Management and the Union for the period covering 1 July 2009 to 30 September 2009, **which applies to non-managerial employees** and to be implemented with effect from 1 July 2009, are as follows:

Conditions of service

Salary review

In this collective bargaining agreement “**salary review**” means review **of salaries and conditions of service**.

The least paid employee will earn a total package of US\$200 split as US\$187 cash and 1 tube of milk in July 2009. The cash component will be implemented according to grade differentials and paid through the banks.

The parties agreed that the above minimum will be on condition that employees will work one month paid and the next month as unpaid leave provided that:

- it is management’s sole prerogative to determine which employee will go for unpaid leave and when
- the period of one month will be determined by operational needs and may not necessarily be a calendar month and could be broken down on a weekly basis.

Conditions of service refunds agreed to are as follows:

Parties also agreed that conditions of service refunds will remain as follows:

Stand by refunds

US\$1 per week for July 2009

Shift refunds

US\$1 per shift for July 2009

Travelling and subsistence refunds effective 1 July 2009 will be as follows:

- Overnight refund for any night spent away from home station on company business is US\$1 per night.
- Breakfast – US\$2 per day. This is to cover the cost of breakfast when an employee is not booked in or before arriving at a hotel.
- Lunch – US\$2 per day. This is to cover the cost of lunch when away from home station and if not provided with accommodation.
- Dinner – US\$2 per night. This is to cover the cost of dinner for any night spent away from home station and not provided with accommodation.
- Claim on private accommodation – US\$1 per night.

Signed at Harare on this 24th day of JULY 2009

Chairperson: (Signed)

Union President: (Signed)

476. The second level of collective bargaining in Zimbabwe was at the industry level between organized labour (i.e. trade unions) and organized employers’ organizations in NECs.⁵⁰¹ After negotiation, collective agreements were submitted to the Registrar for registration for record purposes. However, where any provision of a collective bargaining agreement appeared to the Minister to be inconsistent with the Labour Act or unfair with regard to the respective rights of the parties, the Minister could direct the Registrar not to register the collective agreement until

⁵⁰¹ See Chapter 9 (National legislation in relation to freedom of association).

it was suitably amended by the parties. It was the parties' duty to negotiate such amendments and the Minister would consult with the trade union in the exercise of his or her power to require amendments. The Ministry of Labour stressed to the Commission that "sections 27 and 28 of the Labour Act were merely procedural provisions which do not in any way interfere with the operation of the organization". Once a collective agreement at the industry level was registered, its provisions would prevail in any conflict between its provisions and those of an enterprise-level collective agreement unless the later was more favourable to the employees.⁵⁰² The Commission was informed by the Ministry of Labour that there were 45 NECs in Zimbabwe and "as such there are 45 collective bargaining agreements at the industrial level".⁵⁰³

- 477.** In addition, the Commission was informed that a separate procedure existed for unorganized workers, such as unclassified employees and domestic workers. For such workers, a NEC did not exist in the absence of organized worker and employer organizations. Rather, a Wages Advisory Committee advised the Minister on the conditions of service that should be applied to such workers.⁵⁰⁴
- 478.** The Commission was provided with information suggesting problems in the practice of collective bargaining in certain sectors. In particular, trade unionists representing farm workers stated to the Commission that they had been verbally abused and guns had been shown to them as threats during negotiations.⁵⁰⁵ It was further alleged that one new farm owner had refused to negotiate with the trade unions, or to engage with the NEC in the rural sector, as he considered them to be "politicians".⁵⁰⁶ Other trade union officials stated that collective bargaining in the motor vehicle industry was not fair due to governmental influence through its part-ownership and that many managerial positions in motor vehicle plants were held by politicians.⁵⁰⁷
- 479.** One of the two factions of the ZFTU stated that it experienced problems with employers not recognizing its affiliates. It was their belief that all registered trade unions should have the right to participate in NECs, whereas NECs now often refused to include their members. This resulted in the situation where they lost membership as they were not able to represent their members in negotiations.⁵⁰⁸ EMCOZ stated that it would negotiate with any registered trade union organization on the NEC as determined by the workers themselves.⁵⁰⁹

⁵⁰² Written response by the Ministry of Labour and Social Services to ILO Commission of Inquiry questions, Aug. 2009.

⁵⁰³ Written response by the Ministry of Labour and Social Services to ILO Commission of Inquiry questions, Aug. 2009. The Commission was provided with copies of three representative collective agreements bargained at the NEC level.

⁵⁰⁴ Written response by the Ministry of Labour and Social Services to ILO Commission of Inquiry questions, Aug. 2009, and meeting with Minister and Deputy Minister of Labour and Social Services, 12 Aug. 2009, Harare.

⁵⁰⁵ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁵⁰⁶ Meeting with the ZCTU, 22 Aug. 2009, Mutare.

⁵⁰⁷ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁵⁰⁸ Meeting with one faction of the ZFTU, 17 Aug. 2009, Harare.

⁵⁰⁹ See Chapter 17 (The experience of the business community).

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- 480.** In relation to collective bargaining in the public service, the Commission had meetings with the Apex Council, which represented workers in the public service, the Minister of Public Service and members of the Public Service Commission (PSC).
- 481.** The Commission was made aware that the conditions of service of public servants, including remuneration, benefits, hours of work, leave of absence and discipline, were determined by the PSC in consultation with the Minister.⁵¹⁰ The PSC engaged in regular consultations with recognized associations with regard to public servants' conditions of service, but the conditions of service it fixed would not be invalid solely because they were not subject to prior consultations or were not agreed upon by all the parties to a prior consultation.⁵¹¹
- 482.** The Chairperson of the PSC explained that it had never refused a request from public service association representatives to discuss a particular point in their negotiations. It was indicated that, pursuant to law and the Constitution, it was composed of three to eight members, including a chairperson. While previously the members of the PSC had been appointed by the President of Zimbabwe, by virtue of the arrangement under Amendment No. 19 to the Constitution, members of the PSC now were appointed by the President after consultation with the Prime Minister and Deputy Prime Minister.⁵¹²
- 483.** It was explained to the Commission that the National Joint Negotiating Council was composed of equal numbers of representatives of public servants and public service employers. Its objective was to engage in mutual consultations and to negotiate salaries, allowances and conditions of service in the public service.⁵¹³ Its duty was to conclude and enter into agreements on salaries, allowances and conditions of service for submission to the Minister for his or her consideration.
- 484.** The Apex Council explained to the Commission that it represented recognized public service associations in relation to the Government. It claimed that there was no real collective bargaining in the public sector as the Government imposed figures at the negotiation table. In this sense, it described itself as "powerless" and stated that it was unable to represent its members effectively.⁵¹⁴
- 485.** The Commission met the Health Services Board, which was responsible for setting conditions of service for public service workers in the health sector. It explained that its Bipartite Negotiating Panel was responsible for "engaging in mutual consultations and negotiate salaries, allowances and conditions of service in the health service".⁵¹⁵ The Board stated that

⁵¹⁰ Section 19(1) of the Public Service Act, 1996.

⁵¹¹ Section 20 of the Public Service Act, 1996. In this respect, the Public Service Regulations provide for the right of a recognized association or organization to make representations to the Commission and the Minister concerning the conditions of service of the members of the public service (Reg. 6(2)(a), Public Service (Formation and Recognition of Associations or Organizations) Regulations, 1998).

⁵¹² Meeting with Minister of Public Service and Members of the Public Service Commission, 19 Aug. 2009, Harare.

⁵¹³ Regulation 3 of the Public Service (Public Service Joint Negotiating Council) Regulations, 1997.

⁵¹⁴ Meeting with the Apex Council, 12 Aug. 2009, Harare.

⁵¹⁵ Section 3(1) of the Health Service (Health Service Bipartite Negotiating Panel) Regulations, 2006, statutory instrument 111 of 2006.

the Panel concluded agreements for submission to the Minister, through the Board, for his or her consideration.⁵¹⁶

II. National social dialogue

- 486.** In relation to social dialogue at the national level, the Commission was made aware that the Tripartite Negotiating Forum (TNF) was an institution for social dialogue that had existed since the late 1990s. It was explained that the TNF was composed of equal numbers of the tripartite members, with each party defining its own composition. The Government provided permanent secretarial arrangements and chaired the meetings. Employers were represented by EMCOZ, which was an umbrella body representing other employer bodies, such as the Chamber of Mines.⁵¹⁷ Workers were represented on the TNF “mainly” by the ZCTU, which then invited the ZFTU and civil service representatives. One faction of the ZFTU informed the Commission that it considered it inappropriate for the Government to pass the responsibility for determining the composition of the worker representatives onto the ZCTU, rather than retaining this responsibility for itself.⁵¹⁸
- 487.** Representatives of the ZCTU and EMCOZ stated to the Commission that the TNF had never operated satisfactorily.⁵¹⁹ The Commission was informed that in the past very little agreement had been reached within the TNF, with many statements not receiving the signatures of all three parties.⁵²⁰ Representatives of one faction of the ZFTU stated that there was much talk, but little action, in the TNF.⁵²¹
- 488.** Nevertheless, the Minister of Labour and Social Services, the ZCTU, both factions of the ZFTU and EMCOZ all indicated to the Commission that they were committed to the TNF and social dialogue as the way forward.
- 489.** Many interlocutors stated to the Commission that they had found the ILO-funded high-level retreat on social dialogue and associated study visit to the South African social dialogue institution, the National Economic Development and Labour Council (NEDLAC), to be particularly inspiring in terms of the future operation of the TNF. The ZCTU stated that, following those activities, it felt that “perhaps this time, it is going to work”.⁵²² The Minister of Labour stressed that the Government was open to social dialogue and that these activities closed the gaps between Government, workers and employers.⁵²³ EMCOZ agreed that these activities were very successful.⁵²⁴

⁵¹⁶ Meeting with Members of the Health Services Board, 18 Aug. 2009, Harare.

⁵¹⁷ Meeting with EMCOZ, 13 Aug. 2009, Harare.

⁵¹⁸ Meeting with one faction of the ZFTU, 13 Aug. 2009, Harare.

⁵¹⁹ Meeting with the ZCTU, 12 Aug. 2009, Harare, and with EMCOZ, 13 Aug. 2009, Harare.

⁵²⁰ In this regard, the Commission was informed that all members of the TNF signed the “Kadoma Declaration” on 4 September 2009. The Declaration had been first adopted in 2001, but had not received the signature of all parties.

⁵²¹ Meeting with one faction of the ZFTU, 13 Aug. 2009, Harare.

⁵²² Meeting with the ZCTU, 12 Aug. 2009, Harare.

⁵²³ Meeting with the Minister and Deputy Minister of Labour, 12 Aug. 2009, Harare.

⁵²⁴ Meeting with EMCOZ, 13 Aug. 2009, Harare.

20. Institutional protection of trade union rights

490. It was made known to the Commission that no specialized institutions for protecting trade union rights existed in Zimbabwe. Cases concerning trade unions and their legal rights would be dealt with in the Labour Court or the ordinary courts. The Commission heard statements concerning a lack of institutional protection of trade union rights in Zimbabwe. Allegations made to the Commission related to delays in court proceedings and the lack of enforcement of court orders, which appeared to reinforce a perception of bias.

I. Delays in judicial procedures

491. A number of trade unionists stated that there had been significant delays in court cases in which they had been involved. One ZCTU member explained that, after he had been dismissed in 2003, his employer refused to reinstate him despite a Ministry of Labour labour officer ruling in his favour. When he returned to his town with a letter from a senior labour officer stating that he should be reinstated, he had been detained by police and refused entry to his workplace. In April 2004, he appealed to the Labour Court and the case was heard in September 2006. Due to a mistake in the summons on the part of the court officers, his employer was not informed of the hearing date and so the case was postponed until January 2009; the Commission was informed that he was still awaiting the decision.⁵²⁵

492. Representatives of both the ZCTU and EMCOZ noted problems with the standing of the Labour Court, its resourcing, and the enforcement of decisions, which could be remedied by a specialist Labour Appeals Court.⁵²⁶ During the Commission's meeting with the Judge Presidents of the Labour Court, it was stated that a specialist Labour Appeals Court would be desirable as it would ensure consistency in labour-related cases, as suggested by the ZCTU. It was stressed, however, that this was a policy decision.⁵²⁷

493. One faction of the ZFTU indicated that the Labour Court was considered, in the case of dismissals, to issue judgements that were more favourable to employers.⁵²⁸ In comparison, arbitration decisions were considered to be more favourable to workers. It was explained that arbitration, however, cost a lot of money for workers, and decisions would be subject to a possible appeal to the Labour Court by employers which would, in turn, take an average of four to five years. The ZFTU representatives contended that delays in the Labour Court process could be partially solved by increasing the numbers and powers of labour officers.⁵²⁹

⁵²⁵ Meeting with the ZCTU, 23 Aug. 2009, Mutare. See further Chapter 19 (Interference and anti-union discrimination).

⁵²⁶ Meeting with the ZCTU, 12 Aug. 2009, Harare, and with EMCOZ, 13 Aug. 2009, Harare.

⁵²⁷ Meeting with Judge Presidents of the Labour Court, 21 Aug. 2009, Harare.

⁵²⁸ See Chapter 17 (The experience of the business community) where a similar view is recorded.

⁵²⁹ Meeting with one faction of the ZFTU, 13 Aug. 2009, Harare.

II. Enforcement of judicial decisions

- 494.** The Commission was informed of problems in the enforcement of court decisions of both the Labour Courts and the ordinary courts. The Apex Council informed the Commission that the only way to enforce decisions of the Labour Court was by going to the Supreme Court, but “who has resources to go to the Supreme Court when salaries are not being paid?”⁵³⁰ A ZCTU lawyer explained that the organization had brought contempt of court cases in relation to court orders that had been ignored by the police, none of which had been successful. He claimed that there was a general assumption that court orders would not be enforced.⁵³¹
- 495.** A number of trade union members indicated that they had received court orders in their favour in many cases.⁵³² These included cases concerning allegations of assault and detention by police officers and security forces, as well as cases involving strikes or permission for demonstrations. Trade unionists claimed that court orders in their interests were most frequently neither followed by those to whom they were directed nor enforced by court staff or police. A trade union official who had received a court order in relation to harassment against her stated that the initial protection provided by the police had soon stopped.⁵³³ Most recently, the Commission was informed that despite the ZCTU having received a court order allowing a commemoration on 12 September 2009, the police had intervened in the event on the day and detained trade union officials.⁵³⁴

III. Misuse of court process in detentions

- 496.** Many trade unionists contended that they had been detained by the police and security forces for periods of time exceeding that allowed for by Zimbabwean law or that the court system had been misused as a form of harassment. In this regard, the ZCTU provided information to the Commission that its lawyers often had to obtain urgent court orders so that its members would be brought to court for initial remand.⁵³⁵ The Commission was informed of a case in which a number of trade unionists, following a five-day detention in December 2008, had appeared in court 17 times; these trade unionists were allegedly required to attend court a further three times between September and December 2009. The Commission was advised that on each occasion the court hearing had been postponed.⁵³⁶
- 497.** In addition, the Commission was informed that when the ZCTU President and officials were detained in November 2009, they were charged by the police with contravention of the POSA and brought to court after four days in detention. The Magistrate reportedly found the charges unfounded and ordered their immediate release.

⁵³⁰ Meeting with the Apex Council, 12 Aug. 2009, Harare.

⁵³¹ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁵³² E.g. *Masumuse v. Chigango and Chiutsi* (238/2009, Magistrates’ Court, Mutare, 20 May 2009) ordering named CIO operatives to stop harassing a trade union official.

⁵³³ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁵³⁴ Communication from the ITUC dated 8 Oct. 2009.

⁵³⁵ E.g. a letter from legal practitioners to the law and order division of the Bulawayo central police station dated 24 April 2003, advising that if detainees are not taken to court for initial remand, an urgent order will be sought from the High Court for their release.

⁵³⁶ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

IV. Other statements

- 498.** The Commission met the Attorney-General, who informed the Commission of the significant economic constraints on the administration of justice. He indicated that the court system was operating on a 1 per cent budget and referred to a lack of human resources in his office and the judiciary as a result of a brain drain from the country.⁵³⁷ Although he stated that he was committed to delivering speedy trials, in such circumstances this was not possible. The Attorney-General remarked that currently it was a matter of “having to make do”. The Attorney-General further explained that the judiciary had the power to discontinue proceedings in cases of excessive delay in judicial proceedings on the grounds of constitutional infringement, should that be argued in court by defence lawyers.⁵³⁸
- 499.** In relation to the alleged lack of enforcement of court orders, a Deputy Attorney-General indicated that the police was expected to comply with court orders. The appropriate response in cases in which police officers did not comply with court orders was for the complainant to have the particular officer brought before court for contempt. He acknowledged that, with regard to the payment of damages, it was the duty of the Attorney-General’s office to remind governmental institutions of their duties before the law. The Attorney-General’s discretion not to prosecute did not extend to situations in which there was a clear violation of the law and only the President of Zimbabwe had the power to grant mercy to a convicted person. In a case in which the court process took too long, it would be possible for the procedure to move to summons, whereby the charges would be withdrawn and later reinstated when the prosecution was ready to proceed.⁵³⁹
- 500.** In its meeting with the Judge Presidents of the Labour Court, the Commission was informed that approximately 156 cases were set down each month and, on average, 71 cases were considered each month. The lack of financial and other resources was mentioned, related to a perceived problem with the standing in which the Labour Court was held. It was suggested in this regard that the Court would benefit from an institutionalized exchange between High Court and Labour Court Judges. It was also asserted that it would be proper for the Labour Court to be able to enforce its own decisions, make urgent orders, and enjoy an inherent jurisdiction.⁵⁴⁰
- 501.** The Commission also met the Chief Magistrate and magistrates of the Magistrates’ Court, and the Director-General of the Judicial College on behalf of the Judge President of the High Court. The Chief Magistrate stated that Magistrates’ Courts were endeavouring to render justice in the circumstances.⁵⁴¹

⁵³⁷ The Magistrates’ Court also commented on a lack of qualified staff: meeting with the Chief Magistrate and magistrates of the Magistrates’ Court, 20 Aug. 2009, Harare.

⁵³⁸ Meeting with the Attorney-General, 20 Aug. 2009, Harare.

⁵³⁹ Meeting with the Attorney-General, 20 Aug. 2009, Harare.

⁵⁴⁰ Meeting with the Judge Presidents of the Labour Court, 21 Aug. 2009, Harare.

⁵⁴¹ Meeting with the Chief Magistrate and magistrates of the Magistrates’ Court, 20 Aug. 2009, Harare.

V. Perception of bias

- 502.** Finally, the Commission was made aware that procedural problems allowed a perception of bias to exist on the part of many of the interlocutors whom it met. ZCTU interlocutors stated that they felt at “the mercy of the arm of Government” in that even when the courts ruled in their favour, the arms of State did something else.⁵⁴² It was explained to the Commission that the ZCTU believed that there was no separation of powers and that the Government saw the legislature and judiciary as belonging to it.⁵⁴³ In this regard, the President and Secretary General of the ZCTU indicated they had been charged with treason and actions “likely to lead to overthrowing the Government”.⁵⁴⁴
- 503.** ZCTU leaders stated that the ZCTU applied the law as interpreted by the courts, but “on the streets the police applies its own interpretation”.⁵⁴⁵ A ZCTU member from Bulawayo claimed that army or police would be present even at authorized demonstrations. He further claimed that the security forces would always find a reason to arrest workers under the POSA, such as causing traffic congestion or possession of weapons, which the police interpreted to include mobile telephones and books, as these could be thrown.⁵⁴⁶
- 504.** The Commission met a number of national non-governmental organizations which stated that there was a need for institutional reform in the judicial system to develop the confidence of the public and the legal profession. It was asserted that legislation had been used selectively and abusively and that, on the few occasions that perpetrators of violence had been arrested, they were either not prosecuted or had been selectively prosecuted. It was contended that disregard of court orders was “routine” in cases with a political component. It was stated that at the level of the Magistrates’ Court, judicial independence existed, except perhaps in some rural or provincial areas. In comparison, in the High Court and Supreme Court questions of independence were raised, extending even to a suggestion of a political component in the allocation of cases to judges. In general, there were significant delays and administrative problems in the court system, low salaries and lack of security of tenure, and no judicial code of conduct to guide judges.⁵⁴⁷
- 505.** EMCOZ stated that there was an impression of partisan administration of the legal process, leading some people to have no confidence in the existence of the rule of law in Zimbabwe. This perception was of serious concern to business because of its likely impact on the business environment. Some incidents of infringements of human rights had occurred and there were difficulties where the courts were considered to be compromised. It believed that much needed to be done in terms of the transparency of the legal system and the independence of the judiciary.⁵⁴⁸

⁵⁴² Meeting with the ZCTU, 12 Aug. 2009, Harare.

⁵⁴³ Meeting with the ZCTU, 12 Aug. 2009, Harare.

⁵⁴⁴ Meeting with the ZCTU, 12 Aug. 2009, Harare.

⁵⁴⁵ Meeting with the ZCTU, 12 Aug. 2009, Harare.

⁵⁴⁶ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

⁵⁴⁷ Meetings with non-governmental organizations, 24–25 Aug. 2009, Harare.

⁵⁴⁸ Meeting with EMCOZ, 21 May 2009, Harare.

506. The Prime Minister emphasized that the way forward was to ensure that the rule of law applied to all in Zimbabwe and that there was no more impunity. In his opinion, it was important “not only that justice was done, but also that it was seen to be done”.⁵⁴⁹

VI. Other institutions

507. The Commission was made aware of other possible institutions that could protect trade union rights in Zimbabwe. The Minister of Constitutional and Parliamentary Affairs explained to the Commission that the Constitution allowed for four independent commissions in Zimbabwe. He indicated that the process of appointing the members of the Media Commission, which was nearing completion, had involved the principals choosing nine appointees from 12 names. The Minister indicated that to ensure an enhanced accountability and transparency, applications had been invited for appointments to the Human Rights Commission, which would be judged by a panel of human rights experts. He indicated that a similar process was envisaged for the Anti-Corruption Commission and the Zimbabwe Electoral Commission.⁵⁵⁰

508. In addition, the Ombudsperson indicated to the Commission that she had considered cases concerning trade union rights, and that her Office would continue to welcome such cases in the future.⁵⁵¹

509. The Commission was further informed by many interlocutors of the important potential role of the Organ for National Healing, Reconciliation and Integration. This institution is discussed in more detail in the following chapter.

⁵⁴⁹ Meeting with the Prime Minister, 13 Aug. 2009, Harare.

⁵⁵⁰ Meeting with the Minister of Constitutional and Parliamentary Affairs, 19 Aug. 2009, Harare.

⁵⁵¹ Meeting with the Ombudsperson, 21 Aug. 2009, Harare.

21. The current situation: National healing and reconciliation

510. From the time that it began its work, the Commission of Inquiry was mindful of the political changes in the country that had occurred since the complaints against the Government were made to the ILO Governing Body. An understanding that Zimbabwe had moved towards a process of national healing and reconciliation, following the establishment of an inclusive Government, was the context against which the Commission exercised its duties, and was notably the reason for its initial goodwill mission to the country.⁵⁵² It hoped, while being faithful to its mandate, to contribute to the healing and reconciliation process in Zimbabwe.⁵⁵³

I. Acceptance that “things” occurred in the past

511. During its goodwill mission, the Commission was struck by what appeared to be a genuine commitment to work together towards a new future on the part of most, if not all, the Zimbabweans that it met. The Ministry of Labour stated that following the GPA there was “collective resolve among all Zimbabweans to move the country forward in harmony”.⁵⁵⁴ On many occasions, the Commission heard statements that there was a new sense of hope or optimism in the country, with the establishment of the inclusive Government.⁵⁵⁵ The Apex Council stated that since the establishment of the inclusive Government, violence had declined tremendously.⁵⁵⁶ Some members of the ZCTU stated that there had been fewer problems with harassment and violence since the establishment of the inclusive Government.⁵⁵⁷

512. One aspect of this commitment was an apparent acceptance, by governmental officials, trade union and employers’ organization representatives and other stakeholders that “things had happened” and that efforts should be directed towards ensuring that they were not repeated.⁵⁵⁸ Government representatives acknowledged the overall veracity of many of the allegations referred to the Commission, only disputing some details, their extent and the attribution of blame; the Ministers of Justice, Foreign Affairs and Media, for example, referred to some “gross exaggerations” in the complaints. Government representatives claimed, however, that such “things” were a matter of the past and that the current national healing and reconciliation process that was under way was part of a very real commitment to identifying what had

⁵⁵² See Chapters 3 (Political developments subsequent to the complaints) and 4 (First session of the Commission).

⁵⁵³ The Commission wrote to this effect to the African Union, SADC and the President and Prime Minister of Zimbabwe.

⁵⁵⁴ Communication from the Government, dated 29 June 2009.

⁵⁵⁵ E.g. meeting with EMCOZ, 13 Aug. 2009, Harare.

⁵⁵⁶ Meeting with the Apex Council, 12 Aug. 2009, Harare.

⁵⁵⁷ Meetings with the ZCTU, 22 and 23 Aug. 2009, Mutare.

⁵⁵⁸ Similar statements were made to the Commission of Inquiry in meetings in Zimbabwe with, inter alia, the ZCTU, EMCOZ, the Co-Ministers of Home Affairs and the Minister of Education, and in meetings with His Excellency, the Ambassador of Zimbabwe in Geneva.

happened and the appropriate way forward. The Prime Minister counselled that it was necessary to “distinguish between what happened and what is happening”.⁵⁵⁹

II. Organ for National Healing, Reconciliation and Integration (ONHRI)

- 513.** Many government ministers whom the Commission met commented on the fundamental role that could be played by the ONHRI. In its reply to the article 26 complaints, the Ministry of Labour hoped that the complaints of breach of freedom of association and collective bargaining rights “will get due consideration among other matters under the auspices of the said Organ”.⁵⁶⁰ The Prime Minister thought that the ONHRI could go a long way to educating people about how to be a tolerant society.⁵⁶¹
- 514.** During its goodwill mission in May, the Commission met all three Ministers of the ONHRI; it met the ONHRI again during its on-the-spot mission in August.⁵⁶² The members of the ONHRI explained that its three members, nominated by the President of Zimbabwe and each one a member of one of the three political parties to the GPA, were Ministers of State in the Office of the President, with their independence guaranteed by being outside Cabinet. They were considered to be senior “elders”. The ONHRI was established after the Cabinet had been sworn in, as an independent body and upon the basis of the GPA. Article VII(1)(c) of the GPA set out the mandate of the ONHRI as a mechanism to ensure Zimbabwean national healing, to deal with the long history of violent conflict, and to create a peaceful, tolerant and united society which resolved differences through dialogue. A main element of the ONHRI was to acknowledge past wrongs, in the spirit of article XVIII of the GPA. The ONHRI had decided that it should respond to the wishes of the country in terms of the approach it would take. It explained that its approach was to act within the African context, aiming to be participatory and inclusive. Its aim was to create an environment in which Zimbabweans could say what happened to them. The members of the ONHRI stressed that the answers to Zimbabwe’s problems were inside the country and not outside it.
- 515.** The Commission was informed that the President of Zimbabwe had declared 24–26 July 2009 as dedicated to the national healing and reconciliation process, with an awareness-raising campaign.⁵⁶³ Following that, the ONHRI began its next stage of engaging with civil society organizations in the provincial capitals on best practices and the way forward.⁵⁶⁴ The final stage would be for experts in conflict resolution to refine all the information, which would be

⁵⁵⁹ Meeting with the Prime Minister, 13 Aug. 2009, Harare.

⁵⁶⁰ Communication from the Government, 29 June 2009.

⁵⁶¹ Meeting with the Prime Minister, 13 Aug. 2009, Harare.

⁵⁶² Meetings with the Organ for National Healing, Reconciliation and Integration, 20 May and 20 Aug. 2009, Harare.

⁵⁶³ Inter-party Political Agreement – Declaration Authorizing the Organ for National Healing, Reconciliation and Integration to Embark on the National Dedication Programme (15 July 2009). The Commission was provided with copies of the addresses by the President and Prime Minister of Zimbabwe at the national dedication programme towards healing, reconciliation and integration, 24 July 2009.

⁵⁶⁴ The Commission was told that the ONHRI had no budget to pay for vehicles so that the three Ministers could go out to the regions and so the process was delayed: meeting with the Organ for National Healing, Reconciliation and Integration, 20 Aug. 2009, Harare.

deliberated upon and adopted in a large conference. The Commission was told that the ONHRI hoped to “cool the political climate” and to stimulate research into past abuses in Zimbabwe.⁵⁶⁵

- 516.** While acknowledging that there was some “vulnerability” and that the situation was “not settled”, the Ministers believed that things had changed in the country as people no longer accepted the slogans and were starting to reorganize their lives thanks to the GPA. It was stated to the Commission that people were waiting to hear what the ONHRI could do for them. It considered that the breaches of freedom of association rights that the Commission was called upon to consider had occurred “at the height of polarization” in the country and, since then, there had been a shift in the political environment.⁵⁶⁶

III. Recent developments

- 517.** The Commission was informed of a number of recent developments within the context of the inclusive Government and the national healing and reconciliation process. These included publicized action taken by the Co-Ministers of Home Affairs. First, the Co-Ministers had called on all parties to desist from violence and indicated that, following a period of grace, anyone committing crimes would be arrested. Second, the Co-Ministers had issued guidelines clarifying the legal procedures to be followed when individuals expressed themselves through demonstration. Third, the Co-Ministers had instructed the police to interact with communities to explain the role of the security forces. It was stated to the Commission that this process had already borne fruit by August 2009, as people felt able to express their personal views. Fourth, the National Security Council was established to deal with issues of how security forces would, and should, operate.⁵⁶⁷
- 518.** In addition, the Commission was informed of various decisions taken by the Minister of Education, including introducing human rights education as a component of the curriculum.⁵⁶⁸ The Commission also met the Minister of Media, Information and Publicity, who indicated that there was full media freedom and that the foreign press was present in the country.⁵⁶⁹ Many interlocutors mentioned the Constitution-making process under way in the country. While there were doubts by some Zimbabweans as to the process, others considered it to be an essential element of the way forward.
- 519.** The Commission was informed of planned legislative reform of relevance to freedom of association and collective bargaining rights. The Attorney-General confirmed that proposals for reform of the POSA and the harmonization of the Labour Law and Public Service Law were under consideration. In addition, concerning social dialogue, the Commission was further informed that the TNF had been revitalized, and the Kadoma Declaration had been signed by

⁵⁶⁵ Meeting with the Organ for National Healing, Reconciliation and Integration, 20 Aug. 2009, Harare.

⁵⁶⁶ Meeting with the Organ for National Healing, Reconciliation and Integration, 20 Aug. 2009, Harare.

⁵⁶⁷ Meetings with the Co-Ministers of Home Affairs, 22 May 2009 and 17 Aug. 2009, Harare.

⁵⁶⁸ Meeting with the Minister of Education, 19 Aug. 2009, Harare. See further Chapter 15 (Intimidation and harassment of teachers).

⁵⁶⁹ Meeting with the Minister of Media, Information and Publicity, 19 Aug. 2009, Harare.

all parties. There was agreement between the Government and the social partners on the need for legislative reform of the TNF.⁵⁷⁰

- 520.** A number of interlocutors stated to the Commission that they could not bear to consider that the inclusive Government would collapse as the “repercussions were too ghastly to contemplate”.⁵⁷¹ The ZCTU stated that despite believing that there were tough times ahead, it did not wish the country to “get into anarchy”.⁵⁷²

IV. Concerns

- 521.** The Commission heard many concerns with the process of national healing and reconciliation. The ZCTU stated that the ONHRI was a body without legal basis and had been established to provide an additional three ministerial positions not contemplated by the GPA. It considered that the ONHRI would only be successful if it was given a legal status.⁵⁷³ Some members of the Apex Council doubted the ONHRI’s potential.⁵⁷⁴
- 522.** Some trade union members stated to the Commission that the fear and victimization were still there and there had so far only been superficial changes since the establishment of the inclusive Government.⁵⁷⁵ It was claimed that Zimbabwe was “heading for the worst” and there was a fear that preparations were being made by ZANU–PF for “something massive”.⁵⁷⁶ A public service representative stated that problems had not been solved, but simply postponed.⁵⁷⁷ Many trade union members stated that, despite there having been few recent incidents, they still lived in fear.⁵⁷⁸ There was a perception that the “police pretend to have changed”.⁵⁷⁹
- 523.** The Commission was made aware of a recent shooting in the context of a strike at the Shabanie mine on 25 September 2009. Following another strike in the mining sector, all trade union officials and the entire works committee members were dismissed in July 2009. It was also informed of the denial of permission for demonstrations by the ZCTU since the formation of the inclusive Government in 2009, and the breaking up of a ZCTU event in Harare by police on 12 September 2009.⁵⁸⁰ In addition, it was made aware of the arrest and detention of the ZCTU President and four officials for four days in November 2009 during trade union

⁵⁷⁰ See further Chapter 19 (Collective bargaining and social dialogue).

⁵⁷¹ Meeting with EMCOZ, 21 May 2009, Harare.

⁵⁷² Meeting with the ZCTU, 12 Aug. 2009, Harare.

⁵⁷³ Meeting with the ZCTU, 12 Aug. 2009, Harare.

⁵⁷⁴ Meeting with the Apex Council, 12 Aug. 2009, Harare.

⁵⁷⁵ Meeting with the ZCTU, 23 Aug. 2009, Mutare.

⁵⁷⁶ Meeting with the ZCTU, 14 Aug. 2009, Harare.

⁵⁷⁷ Meeting with the Apex Council, 12 Aug. 2009, Harare.

⁵⁷⁸ Meeting with the ZCTU, 15 Aug. 2009, Bulawayo.

⁵⁷⁹ Meeting with the ZCTU, 23 Aug. 2009, Mutare.

⁵⁸⁰ See Chapter 12 (Freedom of demonstration and assembly and the right to strike).

activities; and was informed that threats had been made against the family of the Secretary General of the General Agricultural and Plantation Workers' Union of Zimbabwe (GAPWUZ) on 3 November 2009.

V. The role of the Commission of Inquiry

524. Most of the trade unionists whom the Commission met indicated that they felt that there was a need for a truth and reconciliation process. The Commission was told by individual workers that they wished to be able to state what had happened to them. They wished to hear an acknowledgement of what had happened and wanted the world to know the truth. Many union members indicated that they wanted the authorities to explain why this had happened and to apologize. Some trade unionists felt the need for the perpetrators to be punished and those who had suffered to be compensated. The Commission was told by a number of trade union members that the reconciliation process should engage with both victims and perpetrators, as both were fearful; the focus should be on allowing the country to move forward.⁵⁸¹ The Secretary-General of the ZCTU explained to the Commission what he wanted, at least in respect of his arrest and detention on 13 September 2006:⁵⁸²

I want my and my colleagues' assault investigated and that those who were behind the assault and the perpetrators be brought to book [justice]. They had no right whatsoever to act in the manner they did. I also want my and my colleagues' unlawful and unnecessary detention in police cells ... to be investigated and that those found responsible be made to pay for unlawfully detaining us ... I want the State to be held accountable for the detentions and the injuries therefrom.

525. In relation to the national process for healing and reconciliation, a number of governmental officials emphasized the detrimental effect on the country of the issue of land having been left unresolved at independence and the imposition of sanctions by the international community.⁵⁸³ In this regard, the Minister of Justice asked the Commission not to "reopen wounds" as the country was in a process of healing. He believed that it was best for such matters to be dealt with through the country's own process of healing and reconciliation rather than through an outside hand. He stated that the issue of land was what had divided Zimbabwe and that this was resolved in the GPA.⁵⁸⁴

526. The Minister of Labour asked the Commission of Inquiry to help the country in promoting national healing and social and economic growth. She stressed that there was a new dispensation that was addressing the problems so as to take Zimbabwe forward as a country. She stated that, after hearing the stories, the Commission was a way of closing the past and moving forward and, in that sense, it was a unifying process. She indicated that she hoped that the Commission would be able to persuade the country of the importance of social dialogue and partnership.⁵⁸⁵

⁵⁸¹ Meeting with the Apex Council, 12 Aug. 2009, Harare.

⁵⁸² Affidavit signed and dated 6 Oct. 2006.

⁵⁸³ E.g. Ministers of Media, Lands and Foreign Affairs during meetings in Harare, and the Ambassador of Zimbabwe in Geneva.

⁵⁸⁴ Meeting with the Minister of Justice and Legal Affairs, 24 Aug. 2009, Harare.

⁵⁸⁵ Meeting with the Minister and Deputy Minister of Labour and Social Services, 12 Aug. 2009, Harare.

527. The Prime Minister stated to the Commission that it would be best to discuss what had happened in the past only as a way of setting the record straight. He believed that people should be allowed to speak, as Zimbabwean people had gone through a series of traumatic experiences. There was a responsibility to allow victims and perpetrators to be heard, to ensure that society was able to heal. He considered that any mechanism should respond to the cries of victims as well as engage with the perpetrators so as not to perpetuate the divisions in the country. The Prime Minister stated that Zimbabwe could not hide what had happened, could not defend what had happened and needed to acknowledge what had happened. He stressed that the Government was seeking to ensure that the events of the past would not reoccur: it was a case of “never again”.⁵⁸⁶

⁵⁸⁶ Meeting with the Prime Minister, 13 Aug. 2009, Harare.

Part V.

Conclusions and recommendations

22. Conclusions

528. Having set out the allegations and information obtained from the written communications and oral statements provided to it, it is now for the Commission to put forward its conclusions on the complaints which the Governing Body referred to it for its consideration.

I. Terms of reference of the Commission

529. Article 28 of the Constitution of the ILO provides that the Commission shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken and the time within which they should be taken.

530. After the Commission had been appointed and before taking up its duties, its members made a solemn declaration, in accordance with previous practice and as had been suggested to the Governing Body by its Officers, undertaking to perform their duties and exercise their powers “honourably, faithfully, impartially and conscientiously”. In inviting them to make this declaration, Mr Juan Somavia, Director-General of the International Labour Office, said in particular: “The task entrusted to you is to establish the facts without fear or favour and in full independence and impartiality”.

531. It is in this capacity as an independent body called upon to make an objective and impartial evaluation of the issues in dispute that the Commission has sought to carry out its task.

532. It should be recalled that the role of a Commission of Inquiry, under article 26 of the Constitution of the ILO, is not confined to an examination of the information provided by the parties, but that the Commission must itself take all necessary steps to obtain full and objective information on the questions at issue, having regard to the public importance of the issues raised by the complaints. The Commission takes account of national circumstances, such as the history of labour relations and the social and economic context. Nevertheless, it is incumbent on the Commission to ensure that freedom of association principles apply uniformly and consistently among all countries.

533. As required by its terms of reference, the Commission must, in accordance with the Constitution of the ILO, record its conclusions and make recommendations on the substance of the case.

II. Preliminary matters

534. Before proceeding further, the Commission would like to draw attention to the special character of the case referred to it. The complaints referred to the Commission of Inquiry were made against a government that was subsequently replaced by a “government of national unity”, largely incorporating both the previous government and the former opposition.⁵⁸⁷ The new “inclusive Government” was established in the days prior to the swearing in of the Commission and had the stated aim of working together to overcome Zimbabwe’s problems and moving forward as a nation in a process of healing and reconciliation.

⁵⁸⁷ The complaints were submitted in June 2008 and referred to the Commission of Inquiry in November 2008; the inclusive Government was sworn in during February 2009.

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- 535.** From its first meeting, the Commission of Inquiry was mindful of the significance of these political developments. In terms of the impact on the substance of its task, the Commission was of the clear view that it wished its work to contribute to the process of national healing and reconciliation. It was mindful of the importance of freedom of association and collective bargaining rights to a fully functioning democracy and was pleased to note the commitment of the inclusive Government to promoting and protecting those rights. The political developments also had an impact on the practical organization of the Commission's work in that it conducted a preliminary goodwill mission to the country, supported the development of an ILO technical assistance programme in the context of the Government's 100-day plan to "get Zimbabwe working", and delayed its on-the-spot mission until that 100-day plan was completed.
- 536.** In addition, the Commission notes the fact that the matter referred to it was based on complaints from both Workers' and Employers' delegates to the International Labour Conference. As such it is unique in the history of ILO Commissions of Inquiry and illustrates a complementary concern on the part of both Workers and Employers as to the situation in Zimbabwe. The Commission has taken this concern into account, which it believes emphasizes its approach in seeking to support Zimbabwe in its process of national healing and reconciliation.
- 537.** The Commission wishes to record its appreciation to the Government of Zimbabwe for the cooperation it provided in respect of the Commission's work. During both its missions to Zimbabwe, the Commission was able to meet almost all of the government officials that it had indicated it wished to meet, with the exception of the President of Zimbabwe, the Minister of State for National Security, the Director of the Central Intelligence Organization (CIO) and the Commissioner of the Zimbabwe Republic Police. While the Government's cooperative attitude is indeed expected as a normal consequence of recognition of the constitutional obligations undertaken by member States, the Commission is grateful to the Government for this spirit of cooperation, which was of significant value to its ability to carry out its functions and task effectively.
- 538.** The Commission also wishes to thank the more than 300 persons whom it met in Zimbabwe, South Africa and Geneva for assisting in its work and its endeavours to collect the most complete information possible. It expresses its appreciation to the representatives of the workers' and employers' organizations with whom it had meetings during its time in Zimbabwe and wishes to acknowledge the more than 100 individual members of trade unions and employers' organizations whom it met, both for attending meetings with the Commission and for providing it with comprehensive documentation in relation to the complaints.
- 539.** As a final point, the Commission wishes to stress that it has taken the utmost care in the preparation of its report to ensure the confidentiality of the individual workers and employers with whom it met during its missions to Zimbabwe. In the part of the report concerning its findings as well as in these conclusions, the Commission has referred to the statements made by workers and employers without including details that may allow individuals to be recognized. It has done this in recognition of the request by most of the individuals with whom it met for their identities to be kept confidential and the perception by many that their safety would be threatened if it was known that they had spoken to the Commission.
- 540.** In this regard, the Commission recalls that it drew the Government's attention to the need to ensure that those with whom the Commission met enjoyed full protection against any kind of discrimination, intimidation, harassment or pressure on account of their meeting with the Commission. The Commission considers that, despite these precautions, it would be a significant breach of a country's obligations as a member State of the ILO if any person were to be victimized for speaking to, or providing information to, the Commission or to any of the ILO supervisory bodies. The Commission recalls that the Co-Ministers of Home Affairs

guaranteed that there would be no retribution or retaliation from their Ministry in relation to the Commission's work in Zimbabwe.

III. Summary of arguments presented by the parties

- 541.** The complainants referred to the systematic subjection of workers' organizations and their members to intimidation, harassment, interference and anti-union discrimination by the authorities and to other human rights violations. The complainants alleged a denial of the right to strike and violation of the right to demonstrate through the systematic arrests, detentions and physical violence committed against their members in connection with the exercise of their trade union rights. The complainants were concerned with the lack of protection of civil liberties and trade union rights in Zimbabwe. In this regard, the Commission records that workers in Zimbabwe only very rarely directed complaints against their employers, but that instead officials and members catalogued instances of their trade union rights being breached by the authorities.
- 542.** By and large, there is little disagreement between the complainants and the Government of Zimbabwe in relation to the veracity of many of the allegations and it is important to acknowledge and act on them. That is, the Government of Zimbabwe accepted that "things" had happened, that these "things" were regrettable, and that it was important to ensure that such "things" did not happen again. There was a certain amount of disagreement between the complainants and the Government as to the extent of the regrettable events and their causes, with many in the Government asserting that the reason that the ZCTU was targeted was due to its involvement in politics which exceeded its proper trade union role. Most importantly, government officials categorically and unanimously argued that these events were a matter of the past and that the allegations did not describe a current situation. They asserted that the entire country was involved in a process of national healing and reconciliation which would ensure that such things did not happen again. In comparison, the complainants pointed to a number of instances in which they alleged that freedom of association rights had been breached since the establishment of the inclusive Government.

IV. Conclusions on the substance of the case

- 543.** To allow a clear understanding of the issues at hand, the Commission has grouped its conclusions under the following three headings: freedom of association and civil liberties; freedom of association in law and practice; and the systematic and systemic nature of the matter.

A. *Freedom of association and civil liberties*

- 544.** The Commission feels obliged to start its substantive conclusions by emphasizing the importance it attaches to the principle affirmed in 1970 by the International Labour Conference in its resolution concerning trade union rights and their relation to civil liberties, which recognizes that "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated, in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and

Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights".⁵⁸⁸

The right to security of the person

- 545.** The Commission of Inquiry heard numerous statements that illustrated severe violence against trade unionists and explicit or implicit acceptance by government officials that such violence had occurred. The Commission was told of many instances in which trade union officials and members were severely beaten and, in some instances, tortured by members of the security forces and the ZANU–PF militia, resulting in serious and long-lasting physical and psychological injuries for many trade unionists, and the death of some. The Commission was concerned to hear allegations that family members of trade unionists were in some instances also victims of violence. It was also provided with information suggesting a significant psychological impact on family members, and most worryingly children, of the violence committed against trade unionists.
- 546.** Violence has been a common response to the exercise of the rights to strike and demonstrate and to trade union membership of some workers' organizations. The environment of fear induced by threats to the life and liberty of trade unionists in Zimbabwe had inevitable repercussions on the exercise of trade union activities. The threat of violence felt by many trade unionists was exacerbated by the general violence in, and high degree of polarization of, Zimbabwean society.
- 547.** In this regard, the Commission notes with particular concern the statements that it heard in relation to the complaints of torture of a group of teacher trade unionists on ZANU–PF premises, as well as the severe violence committed against national and local trade union leaders in the context of the 13 September 2006 nationwide demonstration. It also wishes to indicate its serious concern with the effect of the threat of violence against farm workers, which is accentuated by the impact on such workers of the loss of their livelihoods and homes. The Commission is also concerned about the lack of protection of displaced farm workers, particularly in view of their vulnerability.
- 548.** The Commission stresses that the climate of violence and uncertainty that has existed in Zimbabwe seriously hampers the operations of a genuinely free and independent trade union movement.

The right to be free from arbitrary arrest and detention

- 549.** Many incidents of violence were committed during the arrests and detentions of trade unionists. The Commission heard harrowing accounts of mass arrests, detentions and torture in police holding cells from trade union officials and members from throughout Zimbabwe. Trade unionists were beaten, interrogated, tortured and threatened in custody, and detained in conditions that the Commission can only conclude were calculated to dehumanize, psychologically harm and deter the detainees from the future exercise of their trade union rights.
- 550.** In this regard, the Commission was made aware of a judgement of the Supreme Court of Zimbabwe in which it described the conditions within which the ZCTU Secretary General was detained in 2002. It notes the Court's finding that the conditions in the holding cells at Matapi police station in Harare constituted inhumane and degrading treatment. The Commission is bound to observe that the conditions described in that judgement appear to be representative of

⁵⁸⁸ Resolution concerning trade union rights and their relation to civil liberties (ILC, 1970, 54th Session).

current conditions in police holding cells throughout Zimbabwe, with no improvements evident in the statements of the many trade unionists who described their own detentions in the years since 2002.

- 551.** The Commission is particularly concerned by the allegations that the authorities apparently routinely moved trade unionists around police stations in an attempt to prevent their families and trade union representatives from finding them so as to provide medical and legal assistance and food, which would otherwise not be provided in Zimbabwean detention centres. It is also concerned by the description of the police rules whereby detainees are obliged to wear only one layer of clothing and no shoes or socks, regardless of the weather, and the particular impact of the conditions in the cells on women detainees. The insanitary conditions in police holding cells are all the more disturbing given the prevalence of cholera in the country.
- 552.** In these circumstances, the Commission regrets that it was not able to meet the Police Commissioner and to learn whether there were any plans for the improvement of conditions in police holding cells.

Guarantee of due process of law

- 553.** The Commission considers that an aggravating factor in the violence, arrests and detentions of trade unionists was that most often either no charges were laid in connection with those detentions or any charges that were laid were unfounded and so dismissed by the Court at its first hearing. In this regard, the Commission received a statement on the absence of convictions in relation to the hundreds of arrests and detentions of trade unionists in Zimbabwe in recent years. The Commission can only conclude that detention in police holding cells, accompanied by sporadic violence by the CIO and ZANU–PF militia, was solely a systemic and systematic method of harassment and intimidation of trade unionists in Zimbabwe.
- 554.** The Commission heard many statements concerning significant delays in the legal process or delays in decisions being reached by courts, including one current instance when trade unionists had been required to appear in court 20 times in one year in relation to a detention during the 3 December 2008 ZCTU demonstration. The Commission was also informed of concerns relating to the enforcement of court orders and an apparent assumption that such orders will not be enforced. Many trade unionists stressed that, even when they identified the perpetrators of violence, no actions to investigate and prosecute were taken.
- 555.** The Commission reiterates that the absence of judgements against the perpetrators of atrocities creates a situation of impunity, which reinforces the climate of violence and insecurity and is extremely damaging to the exercise of trade union rights. The Commission must stress that the guarantee of due process of law is an essential requirement for the exercise of trade union rights. Thus, any trade unionists who are detained should be released or immediately brought before a court and have full access to lawyers and legal advice.
- 556.** The Commission is deeply concerned at the impression given to trade unionists that the higher judiciary was biased and the legal system was partisan. It notes that government officials emphasized the independence of the judiciary, while admitting some problems in the execution of justice, such as delays and problems with enforcement, largely caused by human resource and financial constraints. It goes without saying that the guarantee of judicial independence and rule of law is crucial for the protection of all civil liberties, including freedom of association rights, and that without a fully independent and credible court system a sense of lawlessness and lack of protection will exist. In this regard, the Commission wishes to state that what matters is not only that justice is done, but that it is seen to be done.

557. The role of the court system in relation to the guarantee of trade union rights cannot be overemphasized. The Commission is of the opinion that a properly resourced, speedy and independent judiciary would help to create a context in which the violation of trade union rights is not tolerated, and would also have a role in ensuring that appropriate measures, including compensation for damages suffered and the sanctioning of those responsible, are taken to ensure that there is no repetition of violations in the future. The existence of full rule of law in Zimbabwe would bring a sense of certainty to the country, which would not only assist in ensuring civil liberties, but also in economic and social revival.

Rights of assembly and demonstration

558. Many of the arrests and detentions of trade unionists occurred in the context of the exercise by trade unions of their rights of assembly and demonstration. In this regard, the Commission heard statements of a pattern of disruption of trade union events by the authorities.

559. In relation to both trade union meetings and public demonstrations organized by trade unions, the Commission was informed that the operation of the POSA in practice seriously interfered with the right of trade unions in relation to such events. While being aware that the POSA did not formally apply to trade unions carrying out trade union activities, the Commission was informed that it had been held, in practice, to apply to most trade union gatherings.

560. The basis for this application appears to be the belief by the authorities that the ZCTU was exceeding its trade union role when it organized public demonstrations on matters touching upon social and economic issues. The Commission wishes to categorically state that the exercise by trade unions of the right to demonstrate includes the right to freedom of expression in relation to matters of social and economic issues. In this regard, the Commission must reiterate the principle developed by the ILO supervisory bodies that the freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the Government's economic and social policy.

561. The Commission received much documentation and many statements concerning the way in which the requirement under the POSA of permission being granted by the police for trade union gatherings violated the Conventions. The Commission was told that ZCTU public meetings and demonstrations were almost uniformly refused by the authorities, and that trade union meetings, labour forums and conferences were, if allowed, subjected to the imposition of stringent conditions. In addition, the Commission is aware of the penal sanctions applicable to trade unionists who are found to be in contravention of the POSA and considers this to be a serious impediment to the right to demonstrate.

562. In this regard, the Commission is of the opinion that the way in which the POSA has been used in practice denies trade unions the right to demonstrate.

The right to protection of trade union premises and property

563. The Commission was informed of instances in which trade union premises and trade unionists' homes were searched by security forces and ZCTU materials were confiscated. Often, family members were present during searches of homes and allegedly were traumatized. Trade union staff present during searches of trade union premises told the Commission of violence and threats against them. This often occurred in the lead-up to trade union demonstrations or in relation to trade union awareness-raising campaigns.

564. In this respect, the Commission recalls that the inviolability of trade union premises is a civil liberty which is essential to the exercise of trade union rights. Any search of trade union premises, or of unionists' homes, without a court warrant constitutes an extremely serious infringement of freedom of association.

565. The Commission recalls and supports the position of the ILO supervisory bodies that respect for fundamental human rights, including the right of trade unionists to hold meetings, freedom of opinion expressed through speech and the press, and the right of detained trade unionists to enjoy the guarantees of normal judicial procedure at the earliest possible moment, is an essential prerequisite for the exercise of trade union rights. This principle applies to all member States of the Organization.

B. Freedom of association in law and practice

566. The Commission recalls that all member States of the ILO, by virtue of their membership, have accepted the obligation to ensure respect for the principles of freedom of association. Conventions Nos 87 and 98, which the Government of Zimbabwe has freely ratified, must be applied and fully implemented in law and practice.

The right to organize of public servants

567. The Commission observes that article 21 of the Constitution of the Republic of Zimbabwe provides that no one should be hindered in his or her right to freedom of assembly and association and, in particular, to establish and belong to trade unions and other associations for the protection of his or her interests.

568. Despite the importance accorded to the right to organize in Zimbabwe, the Zimbabwe Labour Act 2003 does not apply to the members of the public service, defined by section 14 of the Public Service Act as all persons in the service of the State. As a result, public servants in Zimbabwe do not have a right to form and join trade unions, nor do their organizations enjoy the consequent rights to collective bargaining and strike. In this regard, the Commission recalls that the Apex Council representing workers in the public service indicated the inability of public servants to organize and the discretion on the part of the authorities as to whether or not to recognize their associations. The Deputy Commissioner of Prisons likewise informed the Commission that prison officers, although not falling within the scope of the Public Service Act, were a disciplined force and so did not enjoy the right to organize.

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, correspondence and communications. It is clear to the Commission that the right of trade unions to be free from interference by the public authorities has been violated in law and practice in Zimbabwe.

Acts of anti-union discrimination

- 582.** A number of trade union officials and members alleged that they had been dismissed or transferred on account of their trade union activities. In some cases, it was alleged that pressure had been put on their employers by the security forces or ZANU-PF members. In the case of farm workers who had allegedly been dismissed on account of their trade union activities, this also resulted in eviction from their homes. The Commission was particularly concerned at the plight of the former farm workers from Wilton Farm, who had been dismissed, evicted and threatened in 2009.
- 583.** In addition, the Commission was made aware of instances in which teachers were transferred out of rural districts on account of their membership of PTUZ, and was informed that the union's president had been dismissed and believed that he could no longer be employed by any state university. The Commission also heard from a ZCTU member who alleged that his dismissal had anti-union motivation and that he was still awaiting the first court decision in his case in August 2009, six years after his dismissal. In this regard, the Commission is mindful of statements from EMCOZ and other interlocutors that the option of reinstatement of dismissed workers is unlikely in Zimbabwe, and that the amount of damages awarded will not compensate for the loss of pay.
- 584.** The Commission was disturbed to hear of a number of instances in which large numbers of striking workers were dismissed. Most notably, it was explained that 1,403 workers from TelOne, 1,020 workers from ZimPost and 56 workers from NetOne were dismissed in 2004. The Commission was told of dismissals of workers' representatives following strikes in February and June 2009.
- 585.** The Commission concludes that there is no adequate protection against anti-union discrimination in Zimbabwe. The Commission emphasizes that no one should be subjected to discrimination or prejudice because of legitimate trade union activities or membership. With

reference to the mass dismissals of strikers in Zimbabwe, the Commission considers that these involve a serious risk of abuse and place freedom of association in grave jeopardy.

- 586.** By virtue of its ratification of Convention No. 98, the Government of Zimbabwe is responsible for preventing all acts of anti-union discrimination and must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be expeditious – so that the necessary remedies can be really effective – inexpensive and fully impartial, and considered as such by the parties concerned. In other words, where cases of alleged anti-union discrimination are involved, the competent authorities dealing with labour issues should begin an inquiry immediately and take suitable measures to remedy any effects of anti-union discrimination brought to their attention. In this regard, the Commission stresses that the remedy of reinstatement should be available to those who are victims of anti-union discrimination and, if reinstatement is not possible, the Government should ensure that the workers concerned are paid adequate compensation which would represent a sufficiently dissuasive sanction for anti-trade union dismissals.

Collective bargaining and social dialogue

- 587.** The Commission was informed of a number of legislative problems in relation to collective bargaining in Zimbabwe. While section 74 of the Labour Act provides that trade unions may bargain collectively and that collective agreements can “regulate conditions of employment of mutual interest to the parties”, later sections of the Act empower the Minister to both issue regulations on an extensive list of matters including conditions of employment⁵⁸⁹ and to direct the Registrar not to register an agreement “if any provision appears to the Minister to be inconsistent with legislation or unreasonable or unfair”.⁵⁹⁰ Further, the Minister can “direct the parties to negotiate an amendment” to a registered collective agreement if it contains a provision “that is, or that has become, inconsistent with legislation in force or is unreasonable or unfair”. The Minister may then amend the agreement in accordance with the proposed amendment, or “in such other manner that is consistent with the considerations of legislative consistency, reasonableness and fairness”.⁵⁹¹ In addition, the legislation provides that disputes of interest in the essential services that have not been settled within 30 days or such other period as agreed by the parties will be referred to compulsory arbitration.⁵⁹² In other disputes, either party can apply to the Labour Court.⁵⁹³
- 588.** Both workers and employers whom the Commission met indicated that the economic climate had rendered collective bargaining ineffective, although the structures were still valid and functioning. EMCOZ explained that governmental economic policies had detrimentally affected collective bargaining by creating a situation in which employers were unable to accede to workers’ demands. In some instances, the Commission was told, employers refused to bargain collectively and in state-owned or controlled industries, it was stated that there was no real collective bargaining as the Government imposed figures in wage negotiations. For public servants, there are no collective bargaining rights.

⁵⁸⁹ Section 17.

⁵⁹⁰ Sections 78 and 79.

⁵⁹¹ Sections 25 and 81.

⁵⁹² Section 93(3-5)).

⁵⁹³ Section 93(7).

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- 589.** The Commission wishes to stress that all workers, including public servants, should be entitled to bargain collectively to determine their conditions of work. Only public servants, who by their functions are directly engaged in the administration of the State (that is, civil servants employed in government ministries and other comparable bodies), as well as officials acting as supporting elements in these activities, can be excluded from the protection of Convention No. 98. Furthermore, the Commission emphasizes that freely negotiated collective agreements should not be subject to ministerial approval. Legislation that allows the authorities full discretion to deny approval of a collective agreement makes the entry into force of the collective agreement subject to prior approval, which is a violation of the principle of autonomy of the parties.
- 590.** The Commission is concerned at the impact of the economic situation on collective bargaining in practice, and notes that otherwise the collective bargaining arrangements largely appear to operate to the satisfaction of the Government and social partners.
- 591.** In relation to social dialogue, the Commission notes that while the Tripartite Negotiating Forum (TNF) exists for institutionalized social dialogue, it does not appear to be functioning properly due to a lack of trust on the part of the social partners. In this respect, the Commission notes with interest the positive impact of the technical assistance provided by the ILO in July 2009. It appears that the high-level tripartite retreat and study visit to the social dialogue institution in South Africa, NEDLAC, were helpful in assisting the parties to reach agreement on the need to reform the TNF, and to commence steps in that direction.
- 592.** The Commission emphasizes the importance of social dialogue for democracy and the achievement of harmonious labour relations in any country. It wishes to express its firm hope that efforts will be made to capitalize on the first steps in relation to the social dialogue institution in Zimbabwe, so that a fully functioning body with the confidence of all parties is soon in existence.

C. *Systematic and systemic nature of the matter*

- 593.** As set out in the conclusions above, the Commission heard many and similar stories of serious violation of freedom of association rights from trade unionists from different sectors and different locations throughout the country. This information suggests that the violation of the Conventions in the country was systematic and even systemic.
- 594.** The Commission sees a clear pattern of arrests, detentions, violence and torture by the security forces against trade unionists that coincided with ZCTU nationwide events, indicating that there had been some centralized direction to the security forces to take such action. The Commission is of the opinion that there was another clear pattern of control over ZCTU trade union gatherings, be they internal meetings or public demonstrations through the application of the POSA. The Commission believes that the intimidatory nature of the detentions of trade unionists is evident in the fact that they were often for short amounts of time, were accompanied by violence and threats and did not lead to convictions in court.
- 595.** The Commission is particularly concerned by the fact that it appears that, in rural areas in particular, ZCTU officials and members were systematically targeted by vigilante mobs, based on a perception that all ZCTU members were supporters of the MDC political party. The Commission was told that this targeting involved significant violence, as well as anti-union discrimination in the workers' employment, with pressure being put on employers by ZANU–PF militia or the CIO. The leadership of the ZCTU and its affiliate organizations were likewise targeted, with what appears to the Commission to be a calculated attempt to intimidate and threaten ZCTU rank-and-file members.

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- 596.** The Commission understands that the effect on trade unions of the systematic arrests, detentions, violence, torture and targeting was severe. The Commission was told of an impact in terms of membership of the ZCTU-affiliate organizations and of a serious financial impact, both from the decrease in trade union dues being paid to the organizations and in terms of the cost for the organization in responding to the mass arrests and detentions. The Commission is aware of difficulties in recruiting officials for some affiliate organizations, and of pressure being put on trade union officials by their families for them to leave the ZCTU. The Commission must record its impression that there are a large number of extraordinarily courageous and committed trade unionists in Zimbabwe who are dedicated to the trade union cause.
- 597.** At the same time, the Commission is mindful of the steps that have been made in recent months towards the attenuation of these issues. The Commission considers that the signing of the GPA, the establishment of the inclusive Government and the commencement of a process of national healing and reconciliation are positive steps in the future of Zimbabwe. The Commission is pleased to note that all those whom it met shared the belief that social dialogue is the only way forward.
- 598.** The Commission is of the firmly held view that the bridge to the future cannot be built without tackling the systemic reasons for the violations of the Conventions. This would help the process of national healing and reconciliation. The Commission must stress that an acknowledgement of what happened is a fundamental prerequisite for Zimbabwe to be able to create a future society in which such serious violations of the freedom of association and collective bargaining Conventions are not repeated. In this regard, the Commission feels compelled to record its deep concern at reports that it has received of significant continued harassment of trade unionists through arrests, detentions and the breaking up of strikes and demonstrations in the months following its on-the-spot mission. Such events are all the more deplorable given the apparent assurances made to the Commission in August that Zimbabwe was moving forward, in a different and more positive direction.

23. Recommendations

- 599.** Having recorded our findings on the questions submitted to us, we proceed to make our recommendations. In doing so, our conclusions on the need to tackle the systemic reasons for the violations of the freedom of association Conventions, and the importance of that in any process of healing and reconciliation, are uppermost in our mind.
- 600.** The scale and duration of the systematic and systemic violations of trade union and human rights in Zimbabwe raise serious questions about the international responsibility of those who have led and perpetrated these atrocities. The mandate of the Commission of Inquiry is to consider the implementation of ILO Conventions and we have kept within this framework.

I. General comments

- 601.** We wish to reiterate that we have sought to pursue our mandate in the established judicial manner of ILO Commissions of Inquiry, while keeping in mind the efforts under way in Zimbabwe in pursuance of the Global Political Agreement. It is only if this agreement is implemented in good faith by everyone that it could help steer Zimbabwe on a new course towards stability and progress in the interests of its people.
- 602.** The Commission hopes that the following recommendations would help in building a bridge between the past and a future Zimbabwe in which the freedom of association Conventions are respected in letter and spirit. In this regard, we are mindful of the role that the process of the Commission has played in allowing Zimbabweans to tell their stories, and hope that this will assist the country in moving forward.
- 603.** For Zimbabwe to live in peace with itself and to prosper, it has to arrive at a point of truth and reconciliation with the past. Healing has to be achieved in a manner which respects the norms of justice. The future cannot be built on either vengeance or on disregarding injustices of the past. All parts of society have to come together to decide how to deal with their heavy inheritance. In order to bear fruit, and to enable Zimbabwe to rise and realize its potential, this process has to be truly inclusive and respect those who have suffered for standing up and claiming their rights.
- 604.** The responsibility to protect human rights is now one of the fundamental principles of modern international law. The Government of Zimbabwe will need to examine urgently what should be done to uphold this principle in Zimbabwe in future. In particular, it should be borne in mind that a State has a legal duty to take reasonable steps to prevent human rights violations – in this instance, particularly violations of the freedom of association and collective bargaining Conventions – and that the links between freedom of association, human rights and democracy cannot be overemphasized.

II. Recommendations

- 605.** Recalling that the Commission's mandate allows us to set out the time frame within which the recommendations should be implemented, we are of the opinion that they can, and should, be carried out without further delay. In particular, the Government should ensure that decisive action is taken with a view to the full implementation of these recommendations in time for it to report to the Committee of Experts in 2010, under article 22 of the Constitution of the ILO, concerning the measures it has taken to give effect to the provisions 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).

606. Looking to the future, and in a spirit of confidence building and reconstruction, we believe that it would be helpful to Zimbabwe for the Government to implement the following recommendations:

1. *The Commission recommends that the relevant legislative texts, and most particularly the Labour Act, the Public Service Act and the Public Order and Security Act, be brought into line with Conventions Nos 87 and 98, as requested by the ILO supervisory bodies and noted throughout this report.*
2. *The Commission recommends that all anti-union practices as set out in our findings – arrests, detentions, violence, torture, intimidation and harassment, interference and anti-union discrimination – cease with immediate effect and that steps are taken by the authorities to ensure that there is no repetition of such acts in the future. The Commission further recommends in this regard that steps be taken to bring all outstanding and pending court cases against trade unionists to an end.*
3. *The Commission recommends that, mindful of the role that its process played in allowing people to be heard, other national institutions continue this process so that trade unionists and perpetrators participate in a national process of truth and reconciliation. In particular, noting that the Zimbabwe Human Rights Commission and the Organ for National Healing and Reconciliation could play an important role in this regard, the Commission recommends that the Human Rights Commission be rendered operational as soon as possible and that the Government ensure that these institutions are adequately resourced so that they may contribute to the defence of trade union and human rights in the future.*
4. *The Commission recommends that the Government ensure that training, education and support be given to key institutions and personnel in the country, most notably the police, security forces and the social partners, in relation to freedom of association and collective bargaining, civil liberties and human rights.*
5. *The Commission wishes to stress the essential place of the rule of law and the role of the courts in ensuring that an environment exists in the country in which freedom of association and collective bargaining may be enjoyed in practice. The Commission particularly recognizes the special role that could be played by the Labour Court. In this regard, the Commission recommends that the Government take steps to reinforce the rule of law and the role of the courts in Zimbabwe by ensuring that the courts are respected and properly resourced in material and human terms, and that training, education and support in relation to freedom of association and collective bargaining, civil liberties and human rights are provided to members of the judiciary and court staff at all levels of the court hierarchy.*
6. *The Commission recommends that the Government continue to strengthen and support social dialogue in the country in recognition of the role that social dialogue plays in the maintenance of democracy.*
7. *The Commission recommends that the Government take advantage of technical assistance by the International Labour Office in relation to the implementation of these recommendations. We urge the ILO to pursue its assistance to the Government and social partners in this regard.*

III. Concluding observations: The path to truth, reconciliation and justice

- 607.** We wish to record that it was an honour to participate in the Commission of Inquiry on Zimbabwe's observance of Conventions Nos 87 and 98 at the present stage of the history of Zimbabwe. We were conscious of the challenge facing Zimbabwe: how to build a bridge from division and social tension to a peaceful and just future. The Commission is convinced that democracy, the rule of law and respect for human rights are prerequisites for the full exercise of freedom of association and collective bargaining rights. The implementation of those two Conventions equally paves the way to genuine democracy.
- 608.** The Commission witnessed a country in deep crisis. We firmly believe in a positive future for Zimbabwe, most particularly in light of the human and natural resources at its disposal that we were fortunate to see during our visits to the country. The move towards truth, reconciliation and justice needs to be sustained and we trust that the Commission's report will contribute to this process.
- 609.** The Prime Minister of Zimbabwe told the Commission when it met him that Zimbabwe was operating in a spirit of "never again" as far as the violations of the past were concerned. "Never again" requires acknowledging the past, drawing lessons from it, and putting in place measures to prevent the recurrence of past violations. All Zimbabweans should rise up, stand for, and uphold the responsibility to prevent future violations of human and trade union rights. The President of Zimbabwe, who led the fight for his country's independence, can once again lead it to higher ground. The rule of law, democracy and respect for human rights beckon Zimbabwe to higher ground. Zimbabweans expect, and deserve it.

Geneva, 18 December 2009

Raymond Ranjeva
Chairperson

Evance Kalula

Bertrand Ramcharan

The members of the Commission wish to thank the members of the secretariat, Ms Anna Donsimoni Pouyat, Ms Lisa Tortell, Ms Oksana Wolfson and Ms Anitha Nagarajan for the exceptional assistance they have provided to the Commission throughout its work. We wish, in particular, to express our appreciation of their extensive research, valuable insights, administration, organizational and secretarial support from which we have, collectively and individually, greatly benefited in our preparation of this report.

The Commission also wishes to acknowledge its deep appreciation of the unstinting support provided from the most senior level of the International Labour Office through the diplomatic efforts and astute analysis provided by Mr Kari Tapiola, Executive Director, Standards and Fundamental Principles and Rights at Work, Ms Cleopatra Doumbia-Henry, Director of the International Standards Department, and Ms Karen Curtis, Deputy Director and responsible for freedom of association.

Lastly, the Commission wishes to offer a special thanks to the acting Director of the ILO Subregional Office in Harare, Mr Alphonse Tabi-Abodo, Mr Limpho Mandoro and the other staff of the Harare Office, as well as to Mr Vic van Vuuren, Director of the ILO Pretoria Office, for the great assistance they have provided throughout its operations in the country and the region.

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