



ZIMBABWE

PERMANENT MISSION TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANISATIONS AT GENEVA

Note No: 317/2018

The Permanent Mission of the Republic of Zimbabwe to the United Nations Office and other International Organisations in Geneva presents its compliments to the Special Procedures Branch of the Office of the High Commissioner for Human Rights (OHCHR) and with reference to the latter's communication referenced AL ZWE1.2018, dated 22 May 2018, has the honour to forward herewith a preliminary report outlining the legal and regulatory frameworks in place designed to address issues of alleged human rights violations resulting from exposure of workers, including children, to toxic chemicals while working in tobacco farms as raised in the cited communication.

The Permanent Mission of the Republic of Zimbabwe to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Special Procedures Branch of the Office of the High Commissioner for Human Rights (OHCHR) the assurances of its highest consideration.

7 November 2018

**Special Procedures Branch
Office of the High Commissioner for Human Rights (OHCHR)
Geneva**



**MINISTRY OF PUBLIC SERVICE, LABOUR AND
SOCIAL WELFARE**



ZIMBABWE

**RESPONSES TO THE
COMMUNICATION FROM THE OFFICE
OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS REGARDING
ALLEGED HUMAN RIGHTS
VIOLATIONS RESULTING FROM
EXPOSURE OF WORKERS, INCLUDING
CHILDREN, TO TOXIC CHEMICALS
WHILE WORKING IN TOBACCO FARMS
IN ZIMBABWE**

OCTOBER 2018

Introduction

Zimbabwe is a member state of the International Labour Organisation and has ratified 26 ILO conventions of which 25 are in force. The ratified conventions are given effect to by the country's progressive constitution which provides for fundamental rights to be enjoyed in the labour market. In addition, the country's constitution clearly provides for the protection of children from exploitation and child abuse. Following the request by the United Nations Human Rights Special Procedures, the Government of Zimbabwe hereby submits responses to the questions and comments raised pertaining to allegation of human rights violations and alleged use of children in the tobacco growing sector.

1. Please provide any additional information and/or comments you may have on the above-mentioned allegations.

With respect to the comments and allegations made in the report, it is prudent to outline the historical facts of the land reform programme. Other issues raised will be addressed in sequence under the respective questions.

At independence, Zimbabwe inherited a racially skewed agricultural land ownership pattern where white large-scale commercial farmers, consisting of less than 1% of the population occupied 45% of agricultural land. Seventy-five (75) percent of this is in the high rainfall areas of Zimbabwe, where the potential for agricultural production is high. Equally significantly, 60% of this large-scale commercial land was not merely under-utilised but wholly unutilised.

Agrarian reform in Zimbabwe therefore revolves around land reform where the systematic dispossession and alienation of the land, from the black indigenous people during the period of colonial rule, are adequately addressed. The Zimbabwean Agrarian Reform involves restructuring of access to land, and an overall transformation of the existing farming system, institutions and structures. It includes access to markets, credit, training and access to social, developmental and economic amenities. It seeks to enhance agricultural productivity, leading to industrial and economic empowerment and macro-economic growth in the long term.

The problem of inequitable distribution of land in Zimbabwe dates back to the early days of the colonial era as spelled out in the British South Africa Company Royal Charter of 1889. The legal consequence of the order in Council was entrenched in the sovereign and the property rights in the British Queen thus nullifying the former Zimbabwean traditional leadership. Large stretches of land became alienated and indigenous people settled in small pocket of marginal and fragile Communal Areas.

The Land Apportionment Act of 1930, which set aside 51% of land for a few thousand white settlers, prohibited the indigenous people from owning and occupying

lands in white commercial farming areas. The African Purchase Areas were created between the Indigenous reserve areas and the Commercial white settlers' areas. The indigenous reserves became known as Tribal Trust Lands following the gazetting of the Act in 1965, whose title was later changed to communal area in terms of the Communal Lands Act of 1981. This situation therefore witnessed the creation of three separate categories of land classification in Zimbabwe namely the Communal Areas Small Scale Commercial and Large Scale Commercial Areas.

The Land Reform Programme therefore started in 1980 with the objective of addressing the imbalances in land access ownership and use, which existed in Zimbabwe before independence.

2. Please provide information on existing measures, including policies, legislation, and regulations your Excellency's Government has put in place to ensure occupational health and safety and the protection of workers from pesticides, industrial chemicals and other hazardous substances.

Zimbabwe has enacted various pieces of legislation and regulations for the protection of the health and safety of workers in all sectors of the economy, including the tobacco growing sector. Below are some of the acts and regulations:-

The Children's Act [5:06] prohibits child labour and further specifies that hazardous work for children includes any work, "which is likely to jeopardise or interfere with the education of that child or young person"; "involving contact with any hazardous substance, article or process..."; "that exposes a child or young person to electronically-powered handtools, cutting or grinding blades"; and "that exposes a child or young person to extreme heat, cold, noise or whole body vibration...."

The Factories and Works Act [14:08] of 1996- Factories and Works (Boiler) regulations (Statutory Instrument 279 of 1976) outlines safety requirements in the utilization of boilers in agriculture so as to safeguard agricultural workers against boiler explosion accidents.

•**Factories and Works (Building, Structural and Excavation Work) Regulation 264 of 1976** is applied in agriculture to regulate safety and health with regards to, for example, excavation work especially where dam construction for purposes of harnessing water for irrigation is undertaken.

•**Factories and Works (Machinery) Regulation 302 of 1976** on machinery safety requirements

•**Factories and Works (Pressure Vessels) Regulation 303 of 1976** on pressure vessels safety requirements.

•**Environmental Management Act (EMA) Chapter 20:27** which provides for the prevention of pollution that can cause occupational health challenges. Section 55-86 of EMA which deals with environmental quality standards for water pollution(section

57-59), waste management (section 69-76), noise (section 80-81), Noxious smells (section 82), Littering (section 83) and Air quality (section 63-68) can be used to address safety and health concerns in agriculture by prescribing emission limits and quality standards for various pollutants.

- Water Act Chapter 20:24** where in section 68(1) prohibits the discharge or disposal of any organic and inorganic matter into any surface or ground water either directly or indirectly so as to cause pollution. Most water sources apart from being used for irrigation purposes are also used by workers for their drinking and therefore discharge of these pollutants into water bodies will consequently affect the health of the workers

- The Public Health Act: Chapter [15:09]** - Under the Public Health Act, the protection from smoking (control of tobacco) regulation Statutory Instrument 264 of 2002 prohibits smoking in enclosed public places or in some specified areas can be applied in enclosed areas in agriculture (offices) to safeguard workers against the health danger posed by smoking or as well as against the risk of fire.

- The Labour Act Chapter [28:01]** is an important instrument that is used to address safety and health concerns in agriculture. This act on section 104 (4) is used to deal with safety and health concerns from agriculture workers as it empowers them to go for a collective job action without notice in order to avoid any occupational hazard which is reasonably feared to pose an immediate threat to their health or safety. It also ensures that employers do not cause persons under 18 to perform any tasks that are likely to jeopardize their health or safety

- HIV/ AIDS) regulation S. I. 105 of 2014** which provides for the provision of protective clothing and other safety devices to prevent the spread of AIDS/HIV at workplaces including mandatory education and information programmes on HIV/AIDS.

- The Collective Bargaining Agreement for the Agricultural Industry, Statutory Instrument 116 of 2014** is another piece of instrument that is used to protect the safety and health of agricultural workers by requiring employers to provide their employees with appropriate protective clothing and such devices to protect them from harmful substances.

- The S. I 68 of 1990** - This instrument mainly provides for the injured or killed workers compensation or financial relieve, provision of advisory services on safety and health and provision for rehabilitation of disabled employees. Above all it outlines clearly the duties of employers, workers, supervisors and manufactures in accident prevention at all workplaces, agriculture included.

- The Road Traffic Act** is quite handy in addressing safety and health concerns with regards to traffic in agriculture. Part 2 section 6 of this act compels all drivers of motor vehicles to be licensed and also stipulates the minimum age of sixteen years for anyone to drive on the road any motor vehicle. Furthermore under part 2 section 8 it compels tractor drivers to be holders of tractor driving permits and confines the tractor to be driven within the area of the farm specified in the permit.

- Currently consultations are ongoing to come up with a new OSH Act that will among other key issues address the current shortcomings in the coverage of occupational safety and health in agriculture.

3. Please provide information on existing initiatives to ensure workers are fully informed on the chemicals and other hazardous substances they handle or could potentially be exposed to and on the required precautions to avoid and respond to exposure.

At national level;

•The Zimbabwe Occupational Safety and Health Council (ZOSHC) is a tripartite body that comprises of Government, Labour and Employer ensures that there is consultation and cooperation between Employers and Labour. The National Social Security Authority (NSSA) Board is also tripartite and that tripartism facilitates cooperation and consultation among Government, employers and workers. Consultations with regards to occupational safety and health in agriculture targeting employer and employee bodies is done on an ongoing basis through workshops organized by NSSA, Zimbabwe Congress of Trade Unions (ZCTU), International Labour Office (ILO) and the National Employment Council (NEC) for Agriculture. For example the joint workshops organized by Ministry of Labour and Social Welfare, ILO and NSSA on the code of practice on OSH in Agriculture conducted in 2011, 2012 and 2013.

At sectoral level;

National Employment Councils (NECs) are bipartite institutions of employer and employee organisations who meet regularly to consult and agree on Collective Bargaining Agreements (CBAs) which instruments have aspects which promote good safety and health practices. Cooperation between management and workers in agriculture on occupational safety and health is achieved through the establishment of safety and health committees. Safety and health committees offer a platform for management and workers to freely discuss and resolve occupational safety and health challenges emanating from their operations. Establishment of functional safety and health committees is mandatory under SI 68 of 1990 third schedule section 15(5) 1q. Taking cognizance of this statutory requirement, safety committee have widely been established in large organizations, but however functional safety committees are a challenge in small to medium enterprises.

Statutory Instrument 12 of 2007 of the Environmental Management Act gives the following requirements on handling of hazardous substance in Zimbabwean agriculture:-

- Section 9(1) highlights that no person shall use herbicides, pesticides, fungicides or toxic substance for commercial agriculture or public health pest control or veterinary vector control without a licence.
- Section 7(1) of the same instrument points out that no employer shall authorize the handling of any hazardous substance unless he/she ensures that:-
 - i. Persons handling the hazardous substance are aware of the prescribed warnings, signs, symbols and risks involved in exposure to such substance.
 - ii. On conclusion of an operation involving such substance, employees wash thoroughly all parts of their bodies, change and launder their protective clothing daily
 - iii. Take frequent rest breaks to remove protective clothing if high temperatures make the wearing of protective clothing unbearable.
 - iv. Protective clothing is regularly inspected and replaced if damaged.
- Section 7 (1) (b) notes that persons not handling the hazardous substance must be kept away from exposure of such substance and made aware of the risk of exposure.

Statutory Instrument 10 of 2007 of the Environmental Management Act gives the following requirements on the disposal of hazardous substance in Zimbabwe:-

- Section 3 (1) explains that no person shall generate, store, sell, transport, use, recycle, discharge or dispose of hazardous waste to the environment, except under a licence.

4. **Please indicate specific initiatives taken to ensure the protection of agricultural workers exposed to hazardous substances. Please also indicate specific regulations if any, relating to the handling and exposure of toxic chemicals and other hazardous substances in relation to agricultural workers.**

Same as in question 2 and 3 above.

5. **Please provide information on any mechanisms or initiatives by your Excellency's Government in relation to data collection, measuring, monitoring, reporting and verification of information on health of workers in the tobacco industry and nearby communities, as well as contamination of water, air, soil and food.**

With respect to information on mechanisms in relation to data collection, measuring, monitoring, reporting of workers' health in the tobacco industry and contamination of

water, air, soil and food, Zimbabwe has enabling legal instruments which provide for the recording and notification of occupational accidents, injuries and ill health to the National Social Security Authority (NSSA). NSSA is a statutory body responsible for collecting and collating occupational accident statistical information. The Factories and Works Act Chapter 14:08, Section 14, Subsection 1-5 and Factories and Works (General) Regulation, Government Notice 263 of 1976, Sections 28 and 29, provides for and compels employers or occupiers of workplaces to report and notify occupational accidents to relevant authorities such as NSSA. The Statutory Instrument 68 of 1990 sections 47-51 on Accident Prevention and Workers' Compensation Notice also compels enterprises to report and notify all occupational accidents to the General Manager of NSSA and such reports on accidents are then used to process compensation for injured workers.

Through the Workers' Compensation System, NSSA collects, collates and publishes occupational injury statistics annually, which statistics highlights injury trends in all major sectors of the economy. The injury statistics are published in the NSSA Annual Statistical Report and latest such report being that of 2014 and also in the annual OSH Divisional Reports of activities for the respective year.

Statutory Instrument 10 of 2007 of the Environmental Management Act gives the following requirements on the disposal of hazardous substance in Zimbabwe:-

- Section 3 (1) explains that no person shall generate, store, sell, transport, use, recycle, discharge or dispose of hazardous waste to the environment, except under a licence.

This helps avoid contamination of water, air, soil and food used by communities.

- 6. Please indicate any steps your Excellency's Government plans to take to fulfil its obligation to respect protect and fulfil human rights in a way that complies with international human rights standards especially the right to the highest attainable standard of physical and mental health of the affected children including access to healthcare and access to education.**

Health Assistance

The Government pays for health fees to institutions for general and specialized health services for vulnerable people through the Assisted Medical Treatment Order. The Ministry of Labour and Social Welfare partnered by World Education is currently reviewing health assistance policy under the Assisted Medical Treatment Order. The intention is to develop a health insurance scheme that addresses the health needs of

vulnerable people. As at 31 December 2015, the Ministry paid out \$570 000.00 to national, district and mission hospital.

Basic Education Assistance Module (BEAM) Programme

The Basic Assistance Education Module (BEAM) programme is a social protection intervention which was established by the Government in 2002 as a community based social safety net system to ensure access to education for vulnerable children. The primary objective of the BEAM programme is to reduce the number of children dropping out of school and reach out to children who have never been to school due to economic hardships through the payment of levies, tuition and examination fees as well as boarding fees for children with special needs enrolled in registered special schools. BEAM provides fee waivers for eligible primary and secondary school children for tuition, examination fees and applicable levies.

- 7. Please indicate particular measures, including policies, legislation, and regulations your Excellency's Government has put in place to uphold its international human rights obligations to protect children from the worst forms of child labour including addressing work of children in an unhealthy environment where they are exposed to hazardous substances, agents or processes. Please specify how existing measures, policies, legislation and regulations are effectively implemented.**

Government has taken deliberate moves to address the child labour issue in a holistic manner. From the studies that Government has undertaken, it has been noted that **the root cause of child labour is poverty**. Resultantly, children are forced out of school. Furthermore, the prevalence of the HIV and AIDS pandemic in recent years has resulted in the emergence of child headed households. In addressing these challenges, the following interventions have been put in place:-

National Programmes

The findings of the various child labour surveys pointed to the need to fight poverty and ensure access to education as the effective means through which child labour can be eradicated. The need for a holistic approach was also emphasized. In this regard, Government has put in place various social safety nets to protect children from vulnerabilities.

- a) National Action Plan for Orphans and Vulnerable Children (NAP for OVC) Programme**

This is a community based child protection programme which uses a multisectoral approach in supporting the protection of children. It has four thematic pillars which

are Household Economic Security, Access to Basic Social Services, Child Protection and Safeguarding Systems Strengthening.

b) Food Deficit Mitigation Programme/ Drought Management

In drought situations children are often forced into selling labour to get food for themselves and their families. To avoid that, the Ministry implements the Food Deficit Mitigation Programme whose key objective is to mitigate the impact of drought among both labour and non labour constrained households whilst building community livelihoods.

c) Harmonised Social Cash Transfer Programme

The objective of the Harmonised Social Cash Transfer (HSCT) Programme is to provide social cash transfers to vulnerable households in Zimbabwe and to compliment social cash transfers with other Social Protection initiatives that include Child Protection and Access to Basic Social Services. The scheme targets labour constrained and food poor households that are estimated to be about 10% of the Zimbabwean Household population. The HSCT, as a Social Protection intervention, is a predictable, consistent and sustainable way of addressing chronic household poverty arising out of ageing, chronic illness and the burden of care for the elderly, orphans and the sick. It aims at increasing incomes for those households without labour capability and are food poor, particularly providing support for the care and protection of children, most of whom are Orphans and Vulnerable Children. It also aims at reducing the incidence of negative and unsafe coping mechanisms by families and children in the face of multiple deprivations.

The HSCT programme commenced in 2011 with household targeting surveys in ten districts identified and ranked according to poverty levels within households from each of the ten provinces of Zimbabwe. These were districts identified from national surveys such as PASS 2003, Zimbabwe Vulnerable Assessment Committee (ZIMVAC) 2010 and Zimbabwe Demographic Health Survey 2011 to have had a significant percentage of households being chronically food poor and insecure. The Phase 1 districts targeted in 2011 include Chivi (Masvingo Province), Mangwe (Mat South), Rushinga (Mash central), Makoni (Manicaland), Kariba (Mash West), Goromonzi (Mash east), Epworth (Harare), Umguza (Mat North) Zvishavane (Midlands) and 6 wards in Bulawayo. 19 000 beneficiary households from these districts have been receiving social cash transfers since February 2012. Re-targeting exercise was completed in the same districts so as to reassess poverty and vulnerability of households after two years of implementation.

d) Public Assistance

The Ministry of Labour and Social Welfare also implements the Public Assistance monthly maintenance allowance program for vulnerable people and households in

districts where the HSCT is yet to commence. The beneficiaries are entitled to S\$20 per month irrespective of family size.

Over time, Government intends to replace the Public Assistance program with the more comprehensive HSCT program. For 2015, 6 payments were successfully made to 12 238 beneficiaries in 45 districts.

e) Health Assistance

See responses under question 6 above

f) Basic Education Assistance Module (BEAM) Programme

See responses under question 6 above

g) Proposed Baseline Survey

The Government of Zimbabwe is working on conducting a comprehensive national survey on labour abuses on tobacco farms. The gathering of detailed statistical information on the nature and extent of labour abuses is consistent with ILO Recommendation 190 on Worst Forms of Child Labour of 1999, and serves as a basis for the Government to determine priorities for national action. The gathering of information on prevalence of labour abuses will also enable the State to clearly lay out the expectation that all business enterprises domiciled in Zimbabwe should respect human rights throughout their operations, in line with the UN Guiding Principles on Business and Human Rights.

The survey will determine where each company is at in terms of policy, due diligence and remedies. This initiative will be coordinated by the Government with support from the Tobacco Industry Marketing Board (TIMB) and it is expected that this will culminate in the establishment of an Agricultural Labour Practices desk for monitoring and ensuring compliance with Zimbabwean law on tobacco farms.

8. Please indicate if your Excellency's Government has put in place legislation on labour standards. Please also refer to any oversight mechanism which inspect the working conditions in tobacco farms and specify the regularity of such inspections.

Zimbabwe has put in place both legislative and administrative measures to address the child labour dynamics. At the international level, Zimbabwe has ratified all key international and regional instruments which relate to the welfare and rights of children such as the United Nations Convention on the Rights of the Child, 1989; the International Labour Organization main instruments on child labour, i.e. the Minimum Age Convention, 1973 (No.138) and the Worst Forms of Child Labour,

1999 (No.182). At the continental level, Zimbabwe ratified in 1995 the African Charter on the Rights and Welfare of Children. On the domestic front, there are some pieces of legislation that are reasonably protective of children against economic exploitation in general and child labour in particular.

Specifically, the country's Constitution in section 81 provides for the protection of children from all forms of economic exploitation and protects them from being recruited into a militia force or take part in armed conflict or hostilities, which are some of the worst forms of child labour. Further, the Children's Act (Chapter 5: 06) provides, inter-alia, for the protection, welfare, and supervision of children and makes it an offence to exploit or abuse children in the process of involvement in child work. The Labour Act [28:01] also provides in section 11 for the employment of young persons. In 2015, the Labour Act was amended to increase the age of admission into employment from 15 to 16 years. Essentially this was done with the aim of encouraging children to complete Ordinary Level before they can be admitted into employment.

9. Please provide information on initiatives by your Excellency's Government aimed at guaranteeing minimum living conditions of vulnerable families in rural Zimbabwe. Please indicate any prevention measures aimed at reducing the entry of children into the labour market.

As highlighted in Government's response to Question 7 above, the Harmonised Social Cash Transfer programme is aimed at assisting vulnerable families together with the Basic Education Assistance Module (BEAM) which provides school fees to ensure that children remain in school and do not prematurely enter the labour market. In addition, the Labour Act [28:01] has raised the minimum age for entry into the labour market from 15 to 16.

10. Please provide information on any measures, including policies, legislation, regulations and adjudication your Excellency's Government has put in place to prevent, investigate, punish and redress human rights abuses by business enterprises in the tobacco industry within its territory and/or jurisdiction especially with respect to hazardous substances.

The Labour Act [28:01] provides for the enforcement of labour legislation in section 126 which gives Labour Officers the right to enter and inspect any workplace for purposes of ensuring compliance with the legislation. The inspection of workplaces is done by labour officers, designated agents and the National Social Security Authority. The Committee is informed of Government's commitment to carrying out labour inspections as prioritized through the second phase of the President's 100 days plan in July 2018. The labour inspectorate surpassed a target of inspecting over a thousand

workplaces in two weeks. It should be noted that the inspectorate covers all work places inclusive of tobacco farms. In the case of disputes that arise out of the workplace, these are referred to the labour office or the National Employment Council (NEC) for the respective sector.

11. Please indicate what measures your Excellency's Government has put in place to ensure that companies, including companies sourcing tobacco from Zimbabwe, respect human rights, conduct human rights diligence and provide victims with access to an effective remedy as set forth in the UN Guiding Principles on Business and Human Rights.

All companies operating in Zimbabwe are obliged to respect the laws of the land. In line with the tripartite arrangement in Zimbabwe, employers are organized within sectors and at national level. This allows all business enterprises to comply with the necessary regulations. In the event of breach of legislation, such cases are reported to the relevant institutions for redress. In addition, the Zimbabwe Human Rights Commission has been established through the national constitution and is in existence to address human rights violations. The ZHRC works through its Thematic Working Groups (TWGs) and has operationalized the Economic, Social and Cultural Rights Thematic Working Group to deal with issues raised by the Committee above.

Government also submits that there is a National Steering Committee on Child Labour in place which is comprised of various Government ministries, employers, workers, Non-Governmental Organisations and United Nations Agencies. The NSC was formed in 2008 when the members collaborated in conducting the Rapid Assessment Survey on the Worst Forms of Child Labour. The NSC will resume its meetings to work on the proposed study on labour abuses in the tobacco sector. It is expected that the meetings will begin before the end of 2018.