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Freedom of Association and the Effective Recognition of the Right to Collective Bargaining

Abstract
ILO's 2000 global report on freedom of association and the right to organize in ILO's member countries.

Keywords
agreement, association, bargaining, Catherwood, collective, conduct, Cornell, corporate, declaration, effective, employment, freedom, fundamental, global, globalization, government, human, ILR, international, labor, labour, law, legislation, monitoring, NGO, organize, organization, organization, portal, principles, report, rights, standards, strikes, trade, unions, university, work, workers, workplace

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Freedom of association and the effective recognition of the right to collective bargaining

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Angola

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and collective bargaining are recognized.

The principle is explicitly recognized in the following laws:

— The Constitutional Law, Law No. 23/92, of 16 September (article 23);

— Law No. 14/91, of 11 May (Law on Associations);

— Law No. 23/92, of 15 June (Law on Strikes);

— Law No. 21-C/92, of 28 August (Trade Union Law).

The right to freedom of association is recognized for all citizens.

Article 7 of Law No. 14/91 of 11 May on associations provides for freedom of association for all citizens over the age of 18 years; minors under the age of 18 years may become members but cannot sit on the governing bodies.

No prior authorization is required to establish an association. However, an association can acquire legal personality only after its statutes have been registered at the Ministry of Justice (article 10 — Trade Union Law).

Legally, and in theory, there are no provisions allowing for state intervention.

Collective agreements do not have to be submitted for government approval.

Assessment of the factual situation

(a) A number of trade union associations exist. Most are affiliated to the following two trade union confederations: the National Union of Angolan Workers-Trade Union Confederation (UNTA-CS) and the Central Organization of Independent and FreeTrade Unions of Angola (CGSILA).

(b) It is difficult to assess the effective representativeness of these confederations in the absence of union elections.

(c) Trade unionists lack appropriate trade union training.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The aforementioned laws are instruments promoting freedom of association.

The Government has encouraged the social partners to conclude collective labour agreements with a view to avoiding collective or individual labour disputes.

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Talks and seminars should be organized to make social partners aware of the importance or advantages of such agreements in labour relations.

For this reason, ILO technical cooperation in this sphere is of prime importance.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been forwarded to the UNTA-CS and the CGSILA.

Observations received from employers' and workers' organizations

They have not contested its contents.

Bahamas

Means of assessing the situation

Assessment of the institutional context

While the Constitution of the Commonwealth enshrines this right, the Industrial Relations Act does not afford freedom of association as relates to workers groups. Association is by craft. However, the right to organize and bargain collectively is recognized and actively practised. It is recognized by Statute Law, e.g. IRA Chapter 296 and Amendment 1996.

No category of employers or workers is denied the right to organize at all levels.

The only process formally is where a petition by workers' organizers by at least 15 persons is necessary to organize a union *or* an employers' group. The recognition process requires 50+1 per cent of the employees within that bargaining unit are required as members in good standing in the organizing union.

Currently there are no provisions to permit Government to intervene in the functioning of an employers' or workers' organization unless they fail to hold elections of officers when constitutionally due (union constitution) or failing to submit audited financial report and an accompanying list of membership.

Agricultural workers (farm hands), domestic workers (maids in private homes), small motels with less than 50 rooms and fishermen are excluded from the right to collective bargaining.

Legislation provides for the authorization of collective agreements by a government agency — the Bahamas Industrial Tribunal — where the employer fails to negotiate an agreement in good faith with a union which is recognized as the bargaining agent.

A full panel (three), a judge and two panellists hear and conclude with the parties' input, an industrial agreement.

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The administrative means for implementing the principle lie with the Registrar of Trade Unions in the Department of Labour. The Bahamas Industrial Tribunal is the direct legal entity to deal with all matters arising out of an employment situation, negotiation and recognition process.

Assessment of the factual situation

Trends resulting from the indicators *or* statistics currently available show a reluctance of new employees joining the workforce to joining a trade union. The workforce is pegged at 148,000; indications from union membership show that only 20,000 workers are organized (13.5 per cent).

The public service sector has the greatest organization level in the country. The greatest concentration of the workforce is on New Providence. The workforce consists primarily of young professionals ranging in ages from 19 through 40.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Mechanisms are in place to ensure the process of establishing recognition however, with limitation to respective craft — e.g. hospitality industry, telecommunications and public service.

The Government has in place a mechanism to ensure that the process is not abused. The Minister of Labour is empowered to oversee the process and issue certificates to unions applying for recognition once the prerequisite conditions are satisfied.

The unions are free to organize workers as relates to their Constitution and satisfy the conditions, e.g. 50+1 per cent of the bargaining unit.

No other bodies can arbitrarily organize workers. This procedure must be led by someone who is or was in that discipline.

The Government has not confirmed the ratification of this Convention. However, the principles and rights are promoted and protected.

The Government has indicated that the ratification of Convention No. 87 might be given consideration at some future date. In the meantime, all others aspects of the Convention are observed. Government is also considering ways of strengthening the process of union recognition so that employers cannot challenge the Minister's directives.

Representative employers' and workers' organizations to which copies of the report have been sent

The representative employers' and workers' organizations to which this report was sent are:

- Bahamas Employers' Confederation;
- National Congress of Trade Unions;

- Commonwealth of the Bahamas Trade Union Congress.

Observations received from employers' and workers' organizations

We have received recommendations from the Commonwealth of the Bahamas Trade Union Congress which has been lobbying for ratification of Convention No. 87. There was no input from the Employers' Confederation.

Annexes (not reproduced)

Text of industrial agreements.

List of all current unions, associations and employers' organizations.

Bahrain

Means of assessing the situation

Assessment of the institutional context

The principle is recognized in the form and within the limits prescribed by national legislation in the Constitution, in the Labour Code and its executive decrees.

Workers are represented by the General Committee of Bahrain Workers and employers are represented by the Chamber of Commerce and Industry of Bahrain.

With respect to prior authorization necessary to establish employers' or workers' organizations, this falls within the framework of the Government's organization and not a prior authorization.

In relation to the question about the eventual intervention of the Government, cooperative relationships ensure the fulfilment of common interests.

In reply to the question of the existence of any category of employers or workers excluded from any systems/procedures that might exist to ensure recognition of the right to collective bargaining, the matter is determined by the rules in force as stated above.

In respect to authorization of collective agreements by the Government, please see above.

The means of implementing the principle are legislative and administrative, as indicated above.

Assessment of the factual situation

The General Committee of Bahrain Workers is considered to be the workers' organization that is recognized as being representative of the workers of Bahrain abroad at international, regional and Arab conferences, and domestically, as well as with the Higher Council for Vocational Training, the councils and tripartite committees where the Government and employers are represented under the Labour Code and the social insurance legislation.

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This labour organization with its present structure and subsidiaries represented in the workers' committees of enterprises seems to be the most suited to the country's labour market, as foreign labour accounts for more than 60 per cent of the force. This system is also the most appropriate for the country's economic and social circumstances.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Worker General Committee is encouraged to take part in the drafting of labour legislation and policies as well as in consultative councils such as the Shura (Consultative) Council. It is also encouraged to play a bigger role in many labour activities, in the creation of a centre for worker education, and supporting it materially, with books, reference material and publications and in developing and modernizing labour legislation.

The International Labour Organization and the Arab Labour Organization take part in supporting the efforts of the committee and its activities.

With a view to encouraging the observance, promotion or realization of these principles, the objectives of the Government are to enable workers to achieve self-sufficiency, defend their interests, and to improve their social and material circumstances.

Representative employers' and workers' organizations to which copies of the report have been sent

The General Committee of Bahrain Workers and the Chamber of Commerce and Industry of Bahrain.

Observations received from employers' and workers' organizations

No comments.

Bahrain

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

Trade unions are banned in Bahrain. The partially suspended 1973 Constitution recognizes the right to organize, but the labour law makes no mention of this right, nor of the right to bargain collectively, or to strike.

The 1974 Security Law forbids strikes which would undermine the existing relationship between employer and employees or damage the economic health of the country.

The law allows for elected workers' committees in larger companies, and a system of Joint Management-Labour Consultative Councils (JCCs) which can only be set up with

government permission. There are JCCs in 19 large joint venture and private sector companies. The Minister of Labour favours setting up JCCs in all workplaces with over 200 employees.

The workers' representatives on the JCCs are elected, but they are not allowed to hold election meetings or to campaign for election.

Although they represent workers' interests in discussions with management, they can only act as advisers and have no real power to negotiate or bargain. The Ministry of the Interior can exclude worker candidates from standing for election to the JCCs.

The elected worker members of the JCCs vote by secret ballot for the 11 executive members of the General Committee of Bahraini Workers (GCBW), which was set up in 1983 to coordinate and oversee the JCCs. It cannot recruit members or collect membership fees and the Ministry of Labour must approve its internal rules. The GCBW held elections in March 1998.

In recent years the GCBW has asked the Government to change the law to allow trade unions but has received no positive response.

Bahrain depends heavily on labour from other countries particularly India, Pakistan and the Philippines, and two-thirds of the workforce are expatriates. These workers are under-represented in the joint council system although they can and do participate. Bahrain's labour laws do not apply to domestic servants.

The GCBW can hear grievances from both Bahraini and foreign workers and can assist them in bringing these to court, or to the attention of the Ministry of Labour. However, the political climate makes this difficult. The official government policy is to try and replace the low-paid Asian expatriate workers with Bahraini nationals.

In 1997, the GCBW approached employers in the textile industry, where there is no JCC, to discuss working conditions in the industry. After complaints by employers, the Ministry of Labour told the GCBW that it was not their function to do this and they must not do it again. However, the Ministry has subsequently said that it has made an offer to the GCBW whereby they would continue their involvement in the sector.

The authorities keep a close eye on the GCBW. In recent years, some officials of the JCCs and the GCBW have been arrested and harassed, detained for several months without charge or trial, or had their passports taken away by the authorities because of their trade union activities.

[… Comment of a complaint-like nature concerning the GCBW …]

Bahrain

Government observations on ICFTU's comments

[In reply to the Office's letter transmitting the ICFTU's comments in respect of the fundamental principles and rights concerning freedom of association and the effective recognition of the right to collective bargaining, the Government sent a note relative to allegations raised in a complaint before the Committee on Freedom of Association which

has already been examined within that context. In these circumstances, and given that the ICFTU comments did not actually raise the allegations referred to by the Government, the Government's comment has not been reproduced.]

Brazil

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the right to collective bargaining are embodied in the Federal Constitution. In regard to freedom of association, article 5, paragraphs XVII to XX, of the Constitution state:

> XVII —.full freedom of association exists for lawful purposes, it is prohibited for purposes of a paramilitary nature;
>
> XVIII — the establishment of associations and, under law, that of cooperatives does not require authorization, and the State may not interfere in their functioning;
>
> XIX — the obligatory dissolution of associations or suspension of their activities requires a judicial ruling, the former requiring a court hearing;
>
> XX — nobody can be compelled to associate or to remain associated.

These rules are of a general nature and apply likewise to trade union associations. In the case of trade unions, however, the Federal Constitution itself lays down more stringent conditions for their establishment, in article 8, paragraphs I, II and V:

> Article 8. Freedom of occupational trade union association exists, in keeping with the following:
>
> I — the law may not require State authorization for the establishment of a trade union, with the exception of registration with the competent body, and public authorities may not interfere or intervene in trade union organization;
>
> II — at any level, no more than one trade union organization may be established to represent an occupational or economic category in a given territorial area, to be defined by the workers or employers in question, and which cannot be smaller than the area of a Municipality;
>
> V — nobody may be obliged to become or remain a member of a trade union.

The 1988 Constitution of the Republic eliminated previously existing government control over Brazilian trade union organization under which the Government had laid down requirements relating to trade union structures and could decide at its own discretion whether or not to recognize a trade union as being legal. The new Constitution gave unprecedented freedom to trade union activity in Brazil, although it still cannot be said that national legislation provides full freedom of trade union association. The single trade union requirement still exists (article 8, paragraph II) and all those belonging to the category represented by the trade union must pay dues.

Trade unions must take part in collective bargaining, under article 8, paragraph VI, of the Constitution which provides for the recognition of conventions and collective labour agreements, as a right of urban and rural workers (article 7, XXVI).

Pursuant to the single trade union principle, company-based trade unions are not permitted in Brazil. With the exception of members of the armed forces, all workers, including civil servants, are granted freedom of association, provided that there is only "one trade union organization, at any level, representing the occupational or economic category, in a given territorial area, to be defined by the workers or employers in question, which may not be smaller than the area of a Municipality" (article 8, II). The prohibition in relation to members of the armed forces is embodied in the Federal Constitution, article 142, section 30, paragraph IV:

> 3. Members of the armed forces are referred to as *militares* and are subject to the following provisions, in addition to those contained in the law:
>
> IV — members of the armed forces may not join trade unions or strike (article 142).

No authorization is required to establish employers' or workers' organizations. The Constitution merely refers to "registration with the competent body". Since regulations have not yet been introduced in connection with this article of the Constitution, the Supreme Court of Justice has ruled that competence in connection with the registration of trade unions lies with the Ministry of Labour and Employment, being the body which is best placed to monitor compliance with the single trade union principle.

Government intervention and interference in trade union organization is explicitly prohibited by article 8, paragraph I, of the Constitution.

In the private sector, recognition of collective labour agreements does not apply to domestic workers.

Neither is the right to collective bargaining recognized for civil servants. The Brazilian Public Administration is governed by the principle of legality, among others (article 37). This implies that the conditions of work and employment for civil servants, in whatever capacity, are established by law and that there is consequently no space for bargaining.

As stated previously, public authorities may not interfere or intervene in trade union organization. Therefore, conventions and collective agreements do not require authorization.

The Consolidation of Labour Laws (CLT) merely provides that collective instruments should be deposited (filed) at the Ministry of Labour and Employment, within 8 (eight) days from the date of signature, for purposes of updating and dissemination (article 614). Upon receipt of a convention or collective labour agreement, the Ministry may not make any value judgement on the content of the agreement. It should be emphasized that any incompatibility between the agreed clauses and labour legislation should be communicated to the Regional Labour Prosecutors Office which may, where appropriate, proceed with action to annul such clauses through the Labour Court.

Assessment of the factual situation

Prior to the entry into force of the 1988 Constitution, the State exercised absolute control over the establishment and functioning of trade unions. The legality of such bodies was

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conditional upon discretionary recognition by the State which assessed, on a case by case basis, the desirability and timeliness of each trade union's establishment, laying down the territorial area covered and the categories represented. Between 1931 and October 1988, during which period this system was enforced, some 10,600 (ten thousand six hundred) trade unions were recognized in Brazil.

The Constitution of 1988, as previously stated, eliminated the state authorization requirement for the establishment of trade unions. The registration formality continued to exist, solely for the purpose of verifying the formal aspects of a union's establishment. No precise statistics currently exist regarding the number of trade unions registered. It is however estimated that since October 1998 some 6,000 (six thousand) new trade unions have been established in Brazil, giving a current total of some 16,500 (sixteen thousand five hundred) bodies representing occupational and economic categories.

Since 1997, the Ministry of Labour and Employment's Labour Relations Secretariat has been keeping an information system which allows an assessment to be made of the progress of collective bargaining in Brazil, including mediation activity carried out by public mediators who are attached to that body, and conventions and collective agreements deposited with regional bodies, in compliance with article 614 of the abovementioned CLT.

The Labour Relations Information System (SIRT), reveals that 8,381 mediations were carried out in 1998, slightly exceeding the 8,258 mediations carried out in 1997.

The SIRT reveals that the number of conventions and collective agreements rose by approximately 21.5 per cent between 1997 and 1998 (9,380 deposited in 1997 and 11,399 in 1998).

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

In November 1998, the Executive submitted to the National Congress the Proposed Constitutional Amendment (PEC) No. 623/98, based on the following premises:

— freedom to establish trade unions, with no obligation to comply with the occupational or economic categories criterion or regarding obligatory membership.

— elimination of the representation monopoly inherent in the single trade union requirement, with provision for the drafting of legislation necessary to make the transition from the single trade union regime to one of freedom of association;

— elimination of the so-called confederative dues, to be replaced by dues established by the general assembly;

— revision of normative authority, maintaining the competence of the Labour Court for optional arbitration of collective economic disputes, at the joint request of the parties and, in the event of cases of public interest, the possibility of unilateral dispute settlement applications.

The Government hopes that, with the adoption of this Proposal, freedom of association will be made possible, as provided for in ILO Convention No 87, and simultaneously promoting collective bargaining and encouraging conciliation by reducing the normative powers of the Labour Court.

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Representative employers' and workers' organizations to which copies of the report have been sent

In keeping with the principles embodied in Convention No. 144 on Tripartite Consultation (International Labour Standards) 1976, a copy of this draft report was sent to the following employers' and workers' organizations, for examination and comment:

— National Confederation of Agriculture — CAN.

— National Confederation of Trade — CNC.

— National Confederation of Industries — CNI.

— National Confederation of Financial Institutions — CNF.

— National Transport Confederation — CNT.

— Single Confederation of Workers — CUT.

— General Confederation of Workers — CGT.

— Força Sindical — FS.

— Social Democracia Sindical — SDS.

A copy of the final report will be forwarded to these same employer and worker bodies.

Observations received from employers' and workers' organizations

No comments have been received from the abovementioned organizations.

Canada

Means of assessing the situation

Assessment of the institutional context

Canada respects and promotes the principle of freedom of association and the effective recognition of the right to collective bargaining.

Responsibility for the regulation of industrial relations in Canada is divided between the ten provinces and the federal Government. The constitutional division of legislative authority in Canada places most employees under the labour laws of the province in which they work. Workers employed in manufacturing, mining (with a few exceptions), forest products industries, construction, service industries (except federal ones such as banking), local transportation, and the provincial and local government sectors all fall within provincial jurisdiction. The Yukon, Nunavut, and Northwest Territories also have constitutional jurisdiction over labour matters but except for their government employees, are subject to federal industrial relations legislation.

Each province has adopted labour legislation regulating collective bargaining in its jurisdiction, and has an independent labour relations board to administer the legislation (except for Quebec which has equivalent administrative mechanisms and a labour court).

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Some jurisdictions have separate collective bargaining legislation for specific groups of employees, such as government workers, police, firefighters and teachers or, in some cases, for the construction industry.

The federal sector encompasses less than 10 per cent of the Canadian workforce but includes workers in a number of key areas of the economy. Federally regulated private sector industries include:

- international and inter-provincial transportation by land and sea, including railways, pipelines, shipping and many truck and bus operations;
- airports and airlines;
- communications and broadcasting, including telecommunications and radio and television broadcasting;
- federally chartered banks;
- ports operations and long-shoring;
- certain federal Crown Corporations such as Canada Post and the national museums;
- industries declared by Parliament to be for the general advantage of Canada such as grain handling and uranium mining.

Part I of the *Canada Labour Code*, which covers employees engaged in these federal industries, also provides the legislative framework for the conduct of industrial relations in the Yukon, Nunavut and the Northwest Territories (except for employees of the territorial governments who are covered by territorial industrial relations legislation). In all, some 700,000 employees are subject to Part I of the *Canada Labour Code*. Separate legislation, the *Public Service Staff Relations Act*, applies to collective bargaining in the federal public sector which encompasses approximately 200,000 employees.

Collective bargaining in Canada is largely a decentralized process. Bargaining usually takes place and collective agreements are most frequently concluded at the level of the plant or undertaking. Industry level bargaining is not common and where it does occur, it is usually on a voluntary basis. In recent years, the construction and forestry industries and the unions representing their employees have tended to approach collective bargaining at the industry level; however, national, multisectorial bargaining, such as is found in some European countries, is not practised in Canada. Labour relations legislation in Canada generally reflects the decentralized nature of collective bargaining.

Generally, industrial relations legislation in Canada, both federal and provincial/territorial, guarantee workers the right to join unions and to participate in their lawful activities. The provisions of the *Canada Labour Code* and the equivalent provincial laws ensure not only that the right to organize exists, but also that it is protected. Federal and provincial statutes contain provisions that protect worker and employer organizations against interference by the other party, and there are mechanisms at the federal and provincial levels to ensure that these protective measures are enforced and complied with.

The legislation generally promotes free collective bargaining and recognizes the right to strike or lockout. Some Canadian collective bargaining statutes contain a preamble expressly stating that it is in the public interest to encourage the practice and procedure of collective bargaining. Measures built in to the legislation set conditions for the exercise of strike and lockout rights and at the same time encourage the bargaining parties to engage in

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meaningful bargaining to achieve an effective collective agreement which will meet the respective socio-economic needs of the parties.

The *Canadian Charter of Rights and Freedoms* applies to Parliament, the provincial/territorial legislatures and the federal and provincial/territorial governments. Any action which is perceived to contravene guaranteed rights and freedoms may be challenged.

Section 1 of the Charter guarantees rights and freedoms "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". The right to belong to an association such as a trade union is protected under section 2 of the *Canadian Charter of Rights and Freedoms*, as well as article 3 of the Province of Quebec's *Charte des droits et libertés de la personne* (LRQ, c. C-12) which applies to the government and to the provincial private sector.

Freedom of association and collective bargaining are recognized in the following legislation in Canadian jurisdictions. (The right of public employees to unionize and engage in collective bargaining is enshrined in law, much as it is in the private sector.)

Federal

Canada Labour Code (Part I).

Public Service Staff Relations Act.

Status of the Artist Act.

Alberta

Labour Relations Code (LRC).

Public Service Employee Relations Act (PSERA).

Police Officers Collective Bargaining Act (POCBA).

British Columbia

Labour Relations Code.

Public Service Labour Relations Act.

Manitoba

Labour Relations Act.

Civil Service Act (certain sections).

Public Schools Act.

Fire Departments Arbitration Act.

New Brunswick

Industrial Relations Act.

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Public Service Labour Relations Act.

Newfoundland

Labour Relations Act.

Public Service Collective Bargaining Act.

Interns and Residences Act.

Newfoundland Teachers Collective Bargaining Act.

Fishing Industry Collective Bargaining Act.

Royal Newfoundland Constabulary Act.

St. John's Firefighters Act.

Nova Scotia

Trade Union Act.

Teachers' Collective Bargaining Act.

Corrections Act.

Civil Service Collective Bargaining Act.

Highway Workers' Collective Bargaining Act.

Ontario

Labour Relations Act, 1995 (LRA).

School Boards and Teachers Collective Negotiations Act, 1993.

Crown Employees Collective Bargaining Act.

Public Service Act.

Colleges Collective Bargaining Act.

Hospital Labour Disputes Arbitration Act.

Police Services Act.

Fire Protection and Prevention Act, 1997.

Public Sector Transition Stability Act, 1997.

Prince Edward Island

Labour Act.

Civil Service Act and Regulations.

School Act.

Quebec

Code du travail (LRQ, c. C-27) (Labour Code).

Loi sur le régime de négociations des conventions collectives dans les secteurs public et parapublic (Act in respect of the process for negotiating collective agreements in the public and parastatal sectors).

Loi sur les relations de travail, la formation professionnelle et la gestion de la main-d'œuvre dans l'industrie de la construction (LRQ, c. R-20) (Act in respect of labour relations, vocational training and manpower management in the construction industry).

Loi assurant le maintien des services essentiels dans le secteur de la santé et des services sociaux (Act to ensure that essential services are maintained in the health and social services sector).

Loi sur le statut professionnel et les conditions d'engagement des artistes de la scène, du disque et du cinéma (LRQ, c. S-32.1) (Act concerning the professional status and conditions of engagement for performing artists, recording and film artists).

Loi sur le statut professionnel des artistes des arts visuels, des métiers d'art et de la littérature et sur leurs contrats avec les diffuseurs (LRQ, c. S-32.01) (Act in respect of the professional status of artists in the visual arts and crafts and literature and their contracts with promoters).

Saskatchewan

Trade Union Act.

Police Act.

Fire Departments Platoon Act.

Construction Industry Labour Relations Act.

Northwest Territories and Nunavut

Public Service Act.

Yukon

Education Act.

Public Service Staff Relations Act.

Canadian legislation generally does not restrict the right of employers and workers to organize and to participate in collective bargaining. However, while the right to form associations to further interests is universal, not all workers and employers are covered by collective bargaining legislation.

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Groups such as members of the medical, dental, architectural, legal and engineering professions, when employed in their professional capacity, agricultural workers and privately employed domestics are excluded from coverage under the legislation of some jurisdictions, but are nevertheless entitled to negotiate with their employers on a voluntary basis. Such voluntary negotiations routinely take place in Canada, for example by the Alberta and Ontario Medical Associations which negotiate physician fees.

Agricultural workers are covered under collective bargaining statutes of most jurisdictions. A few jurisdictions exclude them entirely or partly or require that there be a minimum number for certification. However, no jurisdiction prevents the establishment of, and workers joining, associations designed to further the interests of agricultural workers, and employers can voluntarily recognize and negotiate agreements with such associations.

Domestic workers are excluded from the coverage of collective bargaining legislation in some jurisdictions. This sector involves generally individual workers, geographically dispersed, with many employers. However, even when they do not have collective bargaining rights, domestic workers are accorded statutory (minimum standards) protections in most jurisdictions. Associations and organizations of domestic workers have been established and engage in legislative lobbying on their members' behalf.

The statutory definitions of employee, employer, and bargaining unit and the relevant case law developed on these issues determine who can participate in collective bargaining. In the determination of who is an employee for the purpose of collective bargaining jurisdictions generally exclude workers who exercise managerial functions or who act in a confidential capacity in matters relating to industrial relations, so as to avoid conflict of interest or domination of unions. Some jurisdictions give supervisors the right to collective bargaining and most grant collective bargaining rights to dependent contractors.

No prior authorization is necessary to establish employers' or workers' organizations. The Government cannot intervene in the functioning of an employers' or workers' organizations.

No category of employers or workers is excluded aside from occasional exclusions from collective bargaining statutes, as outlined previously. Some workers in some Canadian jurisdictions are not covered by collective bargaining legislation so that their access to collective bargaining is on a voluntary basis.

Groups such as police and firefighters in a majority of jurisdictions, government employees in several jurisdictions, as well as designated employees in hospitals and nursing homes or those providing other essential services do not have the right to strike in Canada and their collective bargaining disputes are subject to mechanisms such as binding arbitration by independent third party arbitrators or boards.

Public servants have the right to collective bargaining in all jurisdictions.

To supplement the information given in reply to the previous questions, the following are features of the Canadian labour relations system including the collective bargaining framework:

Labour Relations Boards

Each Canadian jurisdiction has established its own structure for administering its collective bargaining laws. The usual one is the labour relations board although an important

variation of this structure can be found in Quebec. Labour relations boards are autonomous quasi-judicial bodies which generally report to the legislature through the Minister responsible for labour. They are, as a rule, tripartite, being composed of independent chairpersons, and an equal number of representatives of trade unions and representatives of employers appointed for a fixed term.

As administrative tribunals, labour relations boards derive their authority from the collective bargaining legislation they administer. These statutes not only provide for the rights and obligations of trade unions and employers but also provide the structure and procedure for the assertion of these rights.

The functions performed by labour boards are both administrative and adjudicative. In carrying out the latter, labour boards bear some resemblance to courts. The chairperson presiding over hearings makes evidential and procedural rules, and reasons are usually provided for any decision of significance. Board procedures are marked by greater informality and are generally more expeditious than those of the courts. The presence of board members, experienced labour relations practitioners, representing the two sides is another characteristic of labour boards that distinguishes them from courts. The appointment of board members occurs after consultation with either major employer organizations or major trade union associations, as the case may be.

The primary function of labour relations boards is to ensure that the provisions of collective bargaining statutes and the principles they contain are respected. Among their various functions, the boards determine the appropriate bargaining units, oversee the certification process and determine various types of complaints such as undue interference by employers, dismissal for union activity, failure to bargain in good faith, illegal strikes or lockouts, etc. Many boards also assist the parties in resolving labour relations issues in the workplace.

The boards can order a party to comply with the statutory duty to bargain in good faith, etc., and can issue orders to end illegal strikes and lockouts. A number of boards also have the authority to arbitrate first-agreement bargaining disputes. The boards can issue orders providing a wide range of remedies and, typically, the orders may be filed with the appropriate Court and then become enforceable as orders of the Court.

In the Province of Quebec, the Office of the Labour Commissioner-General, which is part of the Department of Labour, and a Labour Court (the Tribunal du travail) fulfil functions similar to those of labour relations boards.

Recognition of representative trade unions for the purpose of collective bargaining: Certification

Labour laws in the various jurisdictions enable bargaining rights to be granted to trade unions with majority support of members of bargaining units at the plant or undertaking level. Certification is the principal means through which a union can acquire collective bargaining rights in Canada. On application, the labour board grants exclusive bargaining rights to the bargaining agent for a specified group of employees determined by the board to constitute an appropriate bargaining unit. To be certified as the exclusive bargaining agent, a trade union must demonstrate that it represents the majority of employees in the unit either by way of documents showing the level of support or by way of a secret ballot.

Once certified, a trade union becomes the bargaining agent for all the employees in the bargaining unit, even those who are not members of the union. As a corollary to this right

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of exclusive representation, the union has a duty to represent all the employees in the bargaining unit fairly and without discrimination.

In practically all jurisdictions, voluntary recognition by employers of bargaining agents and the units they represent is also possible. A voluntarily recognized union can negotiate a collective agreement with an employer, and fulfil other labour relations duties in the same manner as a certified trade union.

Prohibition of unfair labour practices

The Canadian industrial relations system provides for a range of unfair labour practices and prohibitions relating to both employers and trade unions. The employer is prohibited from interfering in the formation or operation of a trade union including participation in a legal work stoppage. The trade union is obliged to represent fairly and without discrimination all employees in the bargaining unit, and the employer is prohibited from disciplining, dismissing or discriminating against any person because of his participation in a trade union. Trade unions are prohibited from interfering in the foundation or operation of employers' organizations.

Good faith bargaining

Certified bargaining agents and employers concerned have a duty to meet and bargain in good faith which is understood to mean that they will meet for purposes of collective bargaining and make every reasonable effort to conclude a collective agreement. A complaint may be made by either party, to the appropriate labour board where good faith bargaining is felt to be absent, in order to obtain a remedial order. The parties' right to negotiate collective agreements is thus guaranteed in all jurisdictions.

Third party assistance in collective bargaining disputes

The importance of conciliation and mediation as a means of helping the parties to come to an agreement voluntarily is recognized across Canada. Labour relations laws in Canada provide for conciliation or mediation assistance where the parties have been unable to resolve differences. Certain time periods are provided for the application of assistance and in a majority of jurisdictions the right to strike or lockout is acquired only after resorting to compulsory mediation/conciliation assistance.

All Canadian jurisdictions also permit voluntary arbitration. Although voluntary arbitration results in a collective agreement being imposed, the autonomy of the parties is maintained since the decision to submit to arbitration is the choice of each party.

The difficulties in securing a first collective agreement are recognized in most Canadian jurisdictions which provide special dispute resolution mechanisms to assist the parties to achieve agreement and if necessary to refer unresolved issues to arbitration.

The resolution of grievances

A major feature of the Canadian industrial relations system is the concept that legal strikes or lockouts may not occur during the term of the collective agreement.

Legislation requires that all collective agreements contain a provision whereby disagreements over the interpretation, application and administration of the collective agreement are settled without recourse to strike or lockout action.

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Collective agreements usually contain a provision for final settlement of grievances by an arbitrator or an arbitration board. The parties sometimes agree to expedited or accelerated grievance procedures to deal with certain types of grievances. Where there is no arbitration clause, the parties must use the one provided in the legislation.

Protection of bargaining rights and collective agreements on sale/transfer of business

When a business or part of a business is sold, or ownership is transferred in some other way to another employer, and there is a continuation of the business activity, the general rule is that any bargaining rights and collective agreements continue to exist, and the new employer replaces the previous one in any proceedings before the labour relations board.

Assessment of the factual situation

Labour force highlights

In the period between 1980 and 1998, the Canadian labour force grew by 30 per cent, mirroring the growth in the Canadian population over 15 years old (see table 1). Therefore, the participation rate of Canadians in the labour force has remained largely constant, at around 65 per cent, for these two decades, rising only slightly during the late 1980s and early 1990s (see table 1a).

Beginning this same period at 7.5 per cent, and after rising during the early 1980s and again in the early 1990s, the unemployment rate has ended the period at 8.3 per cent (see table 1a). The percentage of the employed labour force that is considered to be "employees" has fallen from 85.9 per cent in 1987 to 82.4 per cent in 1998, as more and more Canadians have become self-employed (see table 3).

Of those considered "employees", 22 per cent work in the public sector, down from a peak of 25.4 per cent in 1992 (see table 3). The tables mentioned have not been reproduced.

Freedom of association [1]

A survey of union membership conducted by Human Resources Development Canada indicated that in 1998 there were 1,031 unions in Canada (231 national unions, 48 international unions, and 752 others), covering 3.94 million employees. This is up from 1,016 unions in 1990, but down in the number of employees who are members from 4.03 million (see table 5).

The same HRDC survey reveals that membership in both the public and private sectors as a percentage of non-agricultural paid workers has fallen slightly from 35.7 per cent in 1980 to 32.5 per cent in 1998 (see table 4). It is generally accepted that there are some Canadian workers who are covered by a collective agreement even though they are not union members. Historical experience indicates that there is a 5-6 per cent difference between the reported unionization rate and the coverage rate (in Quebec the difference is about 7-8 per cent).

[1] Includes directly chartered unions and independent local organizations.

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Collective bargaining in Canada [2]

There is an estimated total number of 27,000 collective agreements in Canada in the public and private sectors (Third Edition of Contract Clauses, Jeffrey Sack, Q.C. and Ethan Poskam, Lancaster House, 1996).

According to a Statistics Canada survey, in the public sector 76 per cent of employees were covered by a collective agreement in 1998 as opposed to 21 per cent in the private sector.

Work stoppages

The number of work stoppages in Canada, as well as the number of days lost and workers involved, have all fallen by nearly 50 per cent since 1982 (see table 7).

In addition to the above information, the following documents provided by various jurisdictions and included with this report contain information which has either been included in or supplements the information contained in the attached statistical tables and charts.

Alberta

Labour Relations Board Annual Report, 1996-97.

Alberta Human Resources and Employment: Mediation statistics 1995/96-1999/2000; union membership and coverage of employees by selected characteristics; Strikes/lockouts in Alberta vs. Number of Expired Agreements 1990-1999.

Manitoba

Manitoba Labour Board statistics.

Newfoundland

Labour Relations Board 1998 Annual Report.

Nova Scotia

Statistical summary.

[2] The process for collecting data on collective bargaining coverage and unionization rates in Canada has undergone change in recent years. Statistics Canada used to collect data in a census of all unions with more than 100 members. This data was collected until 1996, but only analysed and published until 1992. Starting in 1997, data on unions has been captured in the general labour force survey. This survey has a greater margin for error but includes a wider range of characteristics. An analysis of the intervening years (1993-96), including indications of how to make the transition is due to be published in early 2000. At the same time, the Workplace Information Directorate of Human Resources Development Canada administers its own survey of membership in unions with more than 50 members. This explains some of the minor differences in the figures.

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Ontario

Office of Collective Bargaining Information, Ontario Ministry of Labour: statistics on percentage of labour force unionized; number of workers' organizations.

Quebec

Summary of indicators and trends in annual department of labour reports 1995-98.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

See the previous comments and in addition the following selective sampling of initiatives and measures to promote freedom of association and the right to collective bargaining. Each Canadian jurisdiction has a wide range of such approaches which, to avoid repetition, may not have been summarized in this report.

Federal

Under Part I of the *Canada Labour Code* conciliation and mediation assistance is provided to federal private sector employers and unions. In the calendar year 1998, 302 disputes were handled; 195 of which arose during the calendar year with 107 carried over from the previous year. Of this total caseload, 213 cases were settled during the 1998 calendar year with 203 of these, or 95.3 per cent, being settled without the parties resorting to strike or lockout action.

This success rate of over 90 per cent of disputes settled without a work stoppage has been the norm for many years.

Comprehensive and innovative preventive mediation services may also be used by federally regulated employers and unions to help them solve problems during the term of a collective agreement. Work stoppages are prohibited during the term of a collective agreement in Canada.

During 1998, the preventive mediation programme of the Federal Mediation and Conciliation Service (FMCS) was actively involved in a number of seminars, workshops and presentations relating to interest-based bargaining, committee effectiveness training, negotiation skills training, relationship-by-objectives and problem solving. These programmes provide federally regulated employers and unions with tools to improve their workplace relations and to explore non-traditional approaches to dispute resolution.

FMCS officers were also involved in some 52 grievance mediation assignments of which approximately 90 per cent were resolved prior to arbitration. Preventive mediation facilitations and/or other involvements numbered over 20.

The Labour Program, Human Resources Development Canada (HRDC) shows a consistent annual success rate of over 90 per cent of disputes resolved without work stoppage. Its preventive mediation and grievance mediation efforts have resulted in a high level of client satisfaction with services provided by the Department.

The Workplace Information Directorate (WID) of the Labour Program of HRDC provides a full range of industrial relations facts and figures, including information on collective

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bargaining, current labour relations developments and innovative workplace practices in Canada to assist the parties in participating in and understanding the negotiation process in Canada and to promote effective and informed discussion and research on industrial relations matters.

Housing of the most comprehensive, multi-jurisdictional collective agreements library in Canada (approximately 6,000 agreements) and regular monitoring of major contract talks (covering 200 or more employees in the federal jurisdiction and 500 or more under provincial jurisdiction) enable the WID to provide a vast array of information pertaining to negotiated wage adjustments, benefits, working conditions and innovative workplace practices in Canada. The Directorate also compiles and disseminates information on work stoppages, and on unions and other labour organizations in Canada.

In an effort to better address evolving client needs and interests, the Workplace Information Directorate has undertaken a number of initiatives related to its analysis of major collective agreement provisions. The first undertaking has been the review of the content and procedures related to the database of major collective agreements in Canada. The purpose of this review is to update the breadth and scope of the analysis on collective agreement provisions to better reflect the content of current collective agreements, including more recent innovative clauses. The Directorate is also considering a move towards a stratified sample of collective agreements to include bargaining units of 100 or more employees. These initiatives result from a series of recent client consultations which identified both the need for information on smaller bargaining units and for additional information on emerging issues in collective bargaining.

As a means of supporting the Labour Program's responsibility towards the provision of timely and useful information while making use of the most efficient technologies available, the Workplace Information Directorate is also currently developing a database of major collective agreements in Canada to be made accessible on the Internet. In addition to the information on labour-related issues which is already available on the Labour Program website, this initiative will ensure that a greater segment of the industrial relations community in Canada and abroad, has greater access to vital information as it relates to collective bargaining and other workplace-related issues.

The Workplace Information Directorate's flagship publication, the *Workplace Gazette*, which recently marked its first anniversary with the release of its Spring 1999 edition, continues to fulfil its purpose and to gain recognition as a valuable tool which can assist the parties in preparing for and resolving issues at the bargaining table and help clients keep abreast of the most recent developments in industrial relations.

Newfoundland

The Labour Force Adjustment and Productivity Council was established in 1993 with a view to providing a forum for open dialogue and consultation between Newfoundland Association of Public Employees and Public Sector Employers, thereby increasing the level of understanding between the parties and fostering a cooperative labour management climate within the public sector. The Labour Relations Division has worked closely with the Council on an initiative designed to revitalize the Labour Management Committee system within the public sector.

The Labour Management Committee revitalization plan was a three-phase process aimed at creating a more productive and healthy organization. Stakeholders had an active and

integral role in creating and reviewing the system they use. The plan focused on information gathering, analysis and design, education and implementation.

Through this partnering effort, the Labour Relations Division assisted in implementing a Labour Management Committee system whose design was not imposed but emerged from the stakeholders themselves making it more likely to succeed.

Input from labour and employers are sought on a regular basis on any amendments to collective bargaining legislation.

Ontario

The Government continues to monitor labour relations legislation to ensure: that it balances the needs of employers, employees and their representatives; that it provides the parties with the tools to negotiate solutions to labour relations problems; and that mechanisms are in place to resolve disputes when the parties are unable to find mutual solutions. The Ministry of Labour participates in and in some cases sponsors labour relations networks, such as the Toronto Area Industrial Relations Association (TAIRA), a group intended to foster constructive dialogue between unions and employers.

Saskatchewan

Freedom of association and the right to bargain collectively is recognized in legislation. Statistics are compiled regarding unions and unionized workers, collective agreements, etc. Organizations such as the Saskatchewan Federation of Labour and the Saskatchewan Labour Force Development Board promote workplace education. The Prevention Services Branch of Saskatchewan Labour provides workplace education and training programmes. The Labour Relations, Mediation and Conciliation Branch of Saskatchewan Labour also provides education and training, including focusing on interest-based bargaining.

Representative employers' and workers' organizations to which copies of the report have been sent

Canadian Employers' Council.

Canadian Labour Congress.

Confédération des syndicats nationaux.

Observations received from employers' and workers' organizations

No observations were received.

Annexes (not reproduced)

Table 1. General Labour Force Statistics, 1980-1998

Table 2. Labour Force Participation Rates, by age and sex, 1994-1998

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Table 3. Employment, by class of worker, 1987-1998

Table 4. Union Membership in Canada, 1980-1998

Table 5. National/International Composition of Unions, selected years

Table 6. Bargaining Agent Certifications, selected jurisdictions

Table 7. Work Stoppages, 1982-1998

Figure 1. General Labour Force Trends, 1980-1998

Figure 2. Union Membership in Canada, 1980-1998

Figure 3. Work Stoppage Statistics, 1982-1998.

Canada

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The Government of Canada has told the ILO that the ratification of ILO Conventions comes under both federal and provincial/territorial jurisdiction, the legislation of several Canadian provinces/territories is not compatible with Convention No. 98, and these provinces do not intend to amend their laws.

The federal Government, as well as the various provincial governments, have used and continue to use legislation to interfere into the collective bargaining process in violation of the trade union rights of public employees. The following are some of the more recent examples:

- The Manitoba Public Schools Amendment Act of 1997, which circumscribes the jurisdiction of interest arbiters.
- The federal Bill C-24, the Postal Services Continuation Act, 1997, which impedes collective bargaining.
- Ontario — the Savings and Restructuring Act, 1996 (Bill 26), in particular Schedule Q; the Public Sector Transition Stability Act, 1997 (Bill 136), in particular Schedule A; the Public Sector Dispute Resolution Act, 1997; the Social Contract Act, 1993 (Bill 48). These laws deal with compulsory interest arbitration in specific areas of the public sector and allow the authorities to interfere in arbitration and labour tribunals.
- The Ontario Education Quality Improvement Act of 1997, which interferes into collective bargaining.
- The Maintenance of Saskatchewan Power Corporation's Operations Act, 1998, which extended an expired agreement, imposed new wage rates, and took away the right to strike for three years.

Furthermore, in Ontario, agricultural workers, domestic workers, architects, dentists, land surveyors, lawyers and doctors are excluded from the legal framework protecting trade union rights. The Ontario Labour Relations and Employment Statute Law Amendments,

1995, excluded these categories of workers from the protections of the Ontario Labour Relations Act and from other statutes regulating collective bargaining for employees in specific sectors. The existing organizing rights of these workers were terminated as a result of this law and collective agreements that were in force were nullified. The same legislation also removed existing protection of trade union recognition and collective agreements for contract service workers, such as cleaning crews, food service workers and security guards, in the event of a sale of business or of a change in contractor.

In the private sector, Alberta's Labour Relations Code allows excessive government intervention in collective bargaining and provides ways for the employer to bypass the union as collective bargaining agent. The scope for employer interference has made it virtually impossible for workers in the retail and banking sectors to organize against determined opposition from employers. A 1998 revision of the Code removed the jurisdiction of the Labour Relations Board to automatically certify a bargaining unit where serious unfair labour practices had been found.

Canada

Government observations on ICFTU's comments

We note from your letter that the ICFTU's communication regarding Canada will be reflected in the ILO's annual report regarding freedom of association and collective bargaining "to the extent that it does not constitute a complaint that would fall outside the Follow-up to the Declaration". To determine whether or not the ICFTU communication in fact falls within the framework of the Declaration follow-up, and if the information should be reflected in the annual report, it would be useful to recall that an Office paper (Document 274/2) submitted to the Governing Body last March, described the framework and its implications for submissions as follows:

> 3. The strictly promotional objective of the Annex is intended to encourage the efforts made by Members to implement the principles set out in the Declaration and to assess the effectiveness of the Organisation's action in this area. This means that the follow-up cannot serve as a basis for complaints regarding Members' observation of these principles. Nor can it lead to a dual examination of situations that are already the subject of supervisory procedures with respect to the obligations entailed by Conventions or in those procedures being held up, since by definition its purpose is not the same. The follow-up will hence not lead to any questions being reopened that have already been discussed or are being discussed through the supervisory procedures, or to any new questions being examined under those procedures. *Should such questions be raised, they would have to be declared outside the scope of any of the components of the follow-up on the Declaration* (italics added).

The five items which the ICFTU has listed in paragraph 2 of its communication have already been examined in detail by the appropriate supervisory body, the ILO Committee on Freedom of Association, which has issued decisions on these cases after due consideration of the complaints and the replies of the governments concerned. Similarly, the legislation mentioned in paragraph 3 of the ICFTU submission has already been the subject of detailed examination and decision by the ILO Committee on Freedom of Association, comments by the Committee of Experts, and discussion in the Conference Committee on the Application of Standards. It is therefore our position that, in accordance

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with the criteria referred to above, these questions clearly fall outside the scope of the Declaration follow-up and should not be reflected in the annual report.

With respect to the question raised in paragraph 4, we are not in a position to comment on whether or not they would fall under the Declaration follow-up, in so far as they are unclear and appear to contain a number of inaccuracies including incorect references to jurisdictions. For example, the Alberta Labour Relations Code does not apply to the banking industry as the communication seems to imply, nor was it sbject to a review in 1998. On the other hand, in 1998, a remedial certification provision was added to the federal Canada Labour Code, which applies to the banking sector. We therefore have concerns as to the appropriateness or usefulness of reflecting these comments in the annual report, and wish to refer the Office to Canada's report on the principles of freedom of association and the right to collective bargaining, which provides complete and accurate information with respect to collective bargaining legislation in Canada, including protections against employer interference and other unfair labour practices.

China

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in China.

The relevant laws and regulations in China contain explicit provisions with regard to freedom of association and the effective recognition of the right to collective bargaining.

The Constitution of the People's Republic of China (revised edition in 1999) stipulates in article 35 that "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration".

The Trade Union Law of the People's Republic of China stipulates in article 3 that "All manual or mental workers in enterprises, institutions or state organs within the territory of Chine who rely on wages or salaries as their main source of income, irrespective of their nationality, race, sex, occupation, religious belief or educational background, have the right to organize and join trade unions according to law".

The Labour Law of the People's Republic of China stipulates in article 33 that "The staff and workers of an enterprise as one party may conclude a collective contract with the enterprise on matters relating to labour remuneration, working hours, rest and vacation, occupational safety and health, and insurance and welfare. The draft collective contract shall be submitted to the congress of the staff and workers or to all the staff and workers for discussion and adoption. A collective contract shall be concluded by the trade union on behalf of the staff and workers with the enterprise; in an enterprise where the trade union has not yet been set up, such contract shall be also concluded by the representatives elected by the staff and workers with the enterprise". It further stipulates in article 35 that "Collective contracts concluded in accordance with the law shall have binding force on both the enterprise and all of its staff and workers. The standards on working conditions and labour payments agreed upon in labour contracts concluded between individual

labourers and the enterprise shall not be lower that those as stipulated in collective contracts".

Regulations Concerning the Congress of Staff and Workers in Industrial Enterprises Owned by the Whole People stipulates in article 9 that "A collective contract or a common agreement shall be signed by both the factory director on behalf of the management and by the president of the trade union on behalf of staff and workers when convening a congress of staff and workers in order to share obligations for and ensure the implementation of the common goal of the development of an enterprise".

The Interim Regulation of the People's Republic of China on Private Enterprises stipulates in article 33 that "A trade union in a private enterprise shall have the right to sign a collective contract with the enterprise on behalf of staff and workers in order to protect rights and interests of its members and support the activities of production and management of the enterprise".

Regulations on Collective Contracts promulgated by the Ministry of Labour contain explicit provisions with regard to matters of collective consultations and collective agreements, and these provisions shall apply to all enterprises within the territory of China.

In accordance with Criminal Law of the People's Republic of China (revised edition in 1977), section 7, Chapter 3, Part One, only those who are sentenced to deprivation of political rights by law as a result of serious violation of criminal law of the country shall have no freedom of association.

In accordance with relevant laws and regulations in China, prior authorization is needed to establish employers' or workers' organizations. In China, employers' organizations fall into the category of social organizations. Regulations Concerning the Registration of Social Organizations stipulate in article 9 that "In order to apply to establish a social organization, an initiator shall submit, after the review and approval by the competent sectoral administration, an application for preparations to the registration organ". Trade Union Law of the People's Republic of China stipulated in article 12 that "The All-China Federation of Trade Unions shall be established as the unified national organization". And, it further stipulates in article 13 that "The establishment of basic-level trade union organizations, local trade union federations, and national or local industrial trade union organizations shall be submitted to a higher-level trade union organization for approval".

The Government cannot intervene in the legitimate activities of the employers' and workers' organizations.

No category of employers or workers is excluded from the system of collective bargaining. Regulations issued by the Government concerning collective bargaining and consultation shall apply to all enterprises.

Collective agreements shall not be subject to the approval of the Government. However, the legislation in China requires that collective agreements must be submitted to the competent government organ for review and registration. Labour Law of the People's Republic of China stipulates in article 34 that "A collective contract shall be submitted to the labour administrative department after its conclusion. The collective contract shall go into effect automatically if no objections are raised by the labour administrative department within 15 days from the date of the receipt of a copy of the contract". Regulation on Collective Contracts promulgated by the Ministry of Labour contains in Chapter 3 detailed provisions with regard to the review of collective contracts. It stipulates

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in article 21 that "The organs in charge of the review of collective contracts in the labour administrative department of the people's government at a county level or above shall review collective contracts". It specifies in article 24 the elements to be reviewed in a collective contract as follows: (1) whether the qualifications of both parties to the contract accord with the law and regulations; (2) whether the collective consultations are conducted in a way that conforms to the principles and procedures contained in the law and regulations; and (3) whether the various specific labour standards applied in the collective contract meet the minimum standards provided for in the laws and regulations.

The means of implementing the principle are as follows: first of all, the legislation is such as to show respect for and observation of this principle. We monitor the enforcement of these laws and regulations by many means such as labour inspections and people's supervision. In addition, we engage in international cooperation and organize training in the area of collective bargaining.

Assessment of the factual situation

The statistics concerning the membership of employers' and workers' organizations are available in China Enterprises' Federation and All-China Federation of Trade Unions.

China Enterprises' Federation is mainly composed of enterprises, companies, entrepreneurs, provincial and municipal enterprise associations, sectoral associations and trade associations. At the present time, China Enterprises' Federation has 436,000 members widely spread over 30 provinces, autonomous regions and municipalities directly under the central Government as well as 260 districts and cities.

The statistics of All-China Federation of Trade Unions show that currently there are 130 million trade union members in China. The number of trade unions organized in foreign-capital enterprises and private enterprises is growing.

By the end of 1998, the number of collective contracts signed through consultation and submitted for record to the labour security department has reached 150,000, involving more than 50 million staff and workers.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The State and Government promulgate relevant laws and regulations, promote them and put them into effect in accordance with the law.

The main means deployed by the Government is to enforce the laws by administrative decrees. Furthermore, the Government attaches importance to the organization of trade unions. For example, it transmitted to the entities concerned on 16 April 1994 the Report on Labour Relations and the Organization of Trade Unions in Foreign-Capital Enterprises submitted by All-China Federation of Trade Unions.

The International Labour Organization carried out a series of technical cooperation projects with the Chinese tripartite members: in 1997, the International Labour Office and Chinese Entrepreneurs' Association jointly organized in Dalian a seminar on skills for conducting collective bargaining; in September 1998, the International Labour Office and Chinese Entrepreneurs' Association jointly organized in Beijing a training course on

industrial relations; in July 1999, the International Labour Office and China Enterprises' Federation jointly organized in Beijing and Zhejiang, respectively, seminars on labour legislation and practice in China; in 1999, the International Labour Office and China Enterprises' Federation jointly organized in Xian and Shenzhen a training course on collective bargaining and consultation; in August 1997, the International Labour Office and All-China Federation of Trade Unions jointly organized in Qingdao a seminar on collective bargaining and collective contracts; in December 1997, the International Labour Office and All-China Federation of Trade Unions jointly organized a tour to Asian countries to study the issue of industrial relations; in April 1998, the International Labour Office and All-China Federation of Trade Unions jointly organized a tour to European countries to study the issue of industrial relations; in December 1998, the International Labour Office and All-China Federation of Trade Unions jointly organized a trainers' course on collective bargaining and collective contracts; in August 1999, the International Labour Office and All-China Federation of Trade Unions jointly organized in Hefei a training course on training materials for collective bargaining; in August 1999, the International Labour Office and All-China Federation of Trade Unions jointly organized in Harbin a trainers' course on wage negotiation.

The All-China Federation of Trade Unions has made a lot of efforts to promote the establishment of trade unions. As state-owned enterprises have generally established trade union organizations in conformity with the Trade Union Law, All-China Federation of Trade Unions focuses its attention on the organization of trade unions in foreign-capital enterprises and private enterprises. In 1994, it issued the Opinion of All-China Federation of Trade Unions on Accelerating the Organization of Trade Unions and on the Enhancement of the Work of Trade Unions in Foreign-Capital Enterprises. It convenes annual meetings on the organization of trade unions. Leaders of All-China Federation of Trade Unions, local trade unions and sectoral trade unions go regularly to enterprises, especially to foreign-capital enterprises and private enterprises, to offer advice and help in matters of organizing trade unions and establishing the system of collective consultation. In addition, they have implemented a pilot project of introducing regional and industrial collective contracts in some regions with better conditions.

With a view to observing, promoting and realizing these principles and rights, the Chinese Government ensures the enforcement of relevant laws and regulations, further implements the system of collective consultation and collective contracts, and secures the protection of the legitimate right and interests of workers.

The conditions needed are an increase in the cooperation and exchanges with the International Labour Organization, accelerating the process of adopting the law on collective contracts and updating the relevant laws and regulations; in addition, it is necessary to improve the negotiation skills of government staff, managing personnel of enterprises and trade union representatives.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been sent to China Enterprises' Federation and All-China Federation of Trade Unions.

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Observations received from employers' and workers' organizations

No observations have been received.

China

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

China's 1992 Trade Union Law prevents the establishment of trade unions, which are independent of the public authorities and ruling party, and which exist to defend the interests of their members.

The Act says the aim of trade unions is to regulate labour so as to improve labour productivity and economic efficiency, and to play an active role in socialist modernization under the Chinese Communist Party. Unions are to act as intermediaries between workers and management if a dispute occurs.

The Act provides for the existence of a trade union monopoly. This is the All China Federation of Trade Unions (ACFTU) which is part of the ruling Party's apparatus and exists to carry out its policy.

The Act provides that the establishment of unions at any level must be submitted to the ACFTU for approval. All unions must be under ACFTU leadership. Only one union is allowed at any level of organization.

The ACFTU constitution was revised in 1993. It defines unions as "the link and bridge between the Chinese Communist Party and the working masses, and the representative of the interests of union members and non-union members".

The ACFTU held its 13th Congress in October 1998. In an editorial, the *Peoples' Daily*, the organ of the ruling Communist Party, reminded trade unions that they must accept the leadership of the Party while working independently in line with the law and their constitution.

A top official of the political branch of the Chinese People's Liberation Army (PLA) addressed the Congress. He said that the PLA, the armed police and the working class were "inseparably related like flesh and blood". He added that over past years unions at all levels had united and mobilized working people to devote themselves to economic reforms and to maintaining stability, by implementing national defence education, encouraging working people to take part in militia activities and reserve service training, and organizing activities to foster cooperation and support to the army and police.

The ACFTU has been instructed to set up unions in foreign-owned enterprises or joint venture companies. At the end of 1997 it was reported that 153,000 had been set up in the private sector, in rural enterprises and in foreign-owned and joint-venture companies. A set of Implementing Regulations were passed recently telling the ACFTU to speed up the establishment of those unions.

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Unions are largely symbolic, sometimes amounting to little more than the opening of an ACFTU office in an industrial district. They are either under the control of the Communist Party, or the factory directors, who often simultaneously hold union office. Both employees and management are members of trade unions. Many of them are turned into cultural or social clubs, and often workers are unaware of their existence.

In nearly all cases, local union committee members are Communist Party or higher level union ACFTU appointees. Committee sessions can be regarded as formalities for reaffirming party or enterprise plans. Union members are entitled to various welfare benefits.

1995 labour law

In 1995 China's first ever unified national Labour Code came into force. The Government said that it had introduced it to prevent abuses of workers' rights in foreign-owned and joint-venture enterprises. It aimed to standardize employment principles and requirements in all types of enterprises. However, the Code is still often ignored by enterprise managers and enforcement by the authorities is minimal.

The Code included four new principles:

- formal labour contracts for all workers in all types of enterprises;
- labour arbitration and inspection divisions to be established at all levels of provincial and local government to resolve labour disputes and ensure compliance with labour regulations;
- workers in all types of enterprises can engage in collective consultations in negotiating labour contracts;
- enterprises can fire workers for economic reasons without state approval.

In theory, collective consultative contracts can be concluded through negotiation between enterprise management and enterprise union officials or, in the absence of a union, by elected worker representatives. The contracts provide for the legal minimum provisions in the law with minor improvements in respect to working hours, sick and vacation leave, workplace safety, sanitation and welfare. In practice, employers often draw up employment contracts, which are not set by law.

Very little, if any, genuine collective bargaining takes place. The Code restricts free collective bargaining by requiring that the local labour authorities must approve any collective consultative contract within 15 days.

Strikes

The Trade Union Act does not mention the right to strike. This right was removed from the Chinese Constitution in 1982 on the grounds that the political system had "eradicated problems between the proletariat and enterprise owners". The 1995 labour law provides for dispute settlement, involving mediation, arbitration and a labour court appeal, which does not allow for the possibility of strike action. Binding arbitration can be imposed unilaterally to end a dispute.

Strikes at enterprises are usually spontaneous and are frequently repressed. ACFTU unions do not initiate strikes. In fact, they are often called in by employers and local authorities to get strikers back to work. The labour disputes arbitration committee also gives preferential

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treatment to employers during mediation of labour disputes, as often there is an overlap between enterprise management, local party and government personnel.

Most strikes arise from non-implementation of the labour law; non-payment of wages and low wages; poor working conditions; low health and safety standards; long hours and forced overtime; unreasonable management discipline; insults and increasing physical abuse of workers by managers.

Labour disputes have increased continuously since 1992, growing annually at around 50 per cent except for 1995 when the number rose by 73 per cent. In 1997, official figures say there were 71,000 strikes, double the 1995 figure.

A strike policy adopted in the southern Province of Guangdong in 1994 by the provincial labour office said that its local branches must report a strike with 30 or more participants to the provincial labour office within four hours, and send a detailed report in eight hours. In "serious cases and threats to stability", local government officials should be at the scene within two hours to prevent an escalation of the strike. If necessary, the authorities could use force or threats to end the strike.

At the beginning of 1997, a document issued by the CCP central committee noted an increase in organized demonstrations, riots and petitions against local authorities. The Public Security Bureau (PSB) issued guidelines on keeping social order for trade unions which said that during labour disputes the union must assist enterprise directors and party and government leaders to promote public security. It said that unions must coordinate with the PSB. In some large plants, work committees. comprising officials from local ACFTU branches, the local labour bureau authorities and the Public Security Bureau (PSB), have been set up to monitor and pre-empt worker action. Many medium and large enterprises have detention facilities and security officials can detain and sentence protesting workers to three years in a labour camp.

The National Security Law, the Regulations on Re-education through Labour and the Regulations on Reform through Labour allow activists who attempt to organize independent labour action to be detained and imprisoned. Re-education through labour is used as a form of administrative detention because it avoids the need for a trial and allows local police to hand out sentences of up to three years in a forced labour camp. The sentences can be, and often are, extended for up to one year for bad discipline or other reasons.

Millions of workers were laid off from state-owned factories in 1998 as the Government continued its reforms. Many of the factories were bankrupt, and in many cases they owed the workers back wages, subsistence allowances, lay-off wages, or pensions. Protests and small-scale demonstrations took place with increasing frequency across China as the newly unemployed felt they were losing out to market reforms.

Central and municipal government officials tolerated isolated protests by laid-off workers, although there were periodic crackdowns. Many of the demonstrations were held at local government offices or blocked main highways. The police generally sought to defuse demonstrations by arbitrating between workers and their employers, and protesters dispersed peacefully. Often after local government officials had agreed to look into their concerns.

[Reference is made to ACFTU policy and to a number of demonstrations in specific enterprises, the arrest and detention of demonstrators and police action.]

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At the end of 1997, after China had signed the UN Covenant on Economic, Social and Cultural Rights (which it has still not ratified because of its reservations over Article 8 on the right to organize trade unions and to strike), and continuing in early 1998, labour activists and dissidents made public appeals to workers to set up independent trade unions in order to defend their rights in the face of the lay-offs. The Government cracked down on them, making it clear that it would not tolerate attempts to organize unions or activist groups for the unemployed.

[Reference of a complaint-like nature is made again to specific government action, including re-education through labour, following calls for free and independent trade unions.]

Chinese seafarers contracted by the State to work aboard foreign-owned ships, often under flags of convenience, are liable to imprisonment for complaining about their working conditions, or contacting the International Transport Workers' Federation.

[Reference is made to the situation of a specific seafarer.]

[Comments concerning working conditions generally in a number of named enterprises.]

China

Government observations on ICFTU's comments

The Chinese Government has always been committed to the protection of workers' fundamental interests and rights. As you might have noticed, on 1 November 1999, we submitted to the ILO our replies to the questionnaire to the Follow-up to the Declaration. We provided detailed information on legislation and practice in China relating to the three categories of principles and rights, i.e. freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; and the elimination of discrimination in respect of employment and occupation. As China has ratified the Minimum Age Convention, 1973 (No. 138), the measures to give effect to the principle of abolition of child labour will be duly reflected in our article 22 report.

During the discussion of the Declaration, consensus was made on the promotional nature of the Declaration. It had been further decided that the follow-up should not constitute a complaint-based procedure nor a double scrutiny practice. It is, therefore, our understanding that the compilations of the annual report will make reference to official information provided by member States rather than other resources and no individual cases should be involved.

The Government is not going to make any observations on the substance of the communication from the workers' organization since it goes against the follow-up procedure, the contents of which have already been examined in the Committee on Freedom of Association.

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Democratic Republic of the Congo

Means of assessing the situation

Assessment of the institutional context

The principle is recognized in the Democratic Republic of Congo in:

— Constitutional Executive Order No. 003 of 27 May 1997 relating to the organization and exercise of power in the Democratic Republic of Congo;

— Legislative Ordinance No. 67/310 of 9 August 1967 concerning the Labour Code;

— Act No. 81/003 of 17 July 1981 providing the staff regulations for permanent civil servants.

No category of employers or workers is excluded from the right to organize. Article 224 of the Labour Code grants workers and employers and all persons employed in agriculture the right to form an organization with the precise objective of studying, defending and developing their occupational interests and of promoting the social, economic and moral advancement of their members.

— Article 2 of Constitutional Statute No. 003 guarantees the exercise of individual and collective rights and freedoms provided that the law, public order and morality are observed;

— Chapter VIII of Act No. 81/003, which relates to rights, duties and incompatibilities, grants civil servants the right to organize.

Article 225 of the Labour Code provides the following: “No prior authorization shall be required for forming a workers’ or an employers’ organization”.

The Government does not intervene in the operation of either an employers’ or a workers’ organization. However, in article 231 of the Labour Code workers’ and employers’ organizations are requested to register with the Ministry of the Civil Service, Labour and Social Security, where the register of trade unions and employer associations is kept.

The existing procedures do not exclude any categories of employers or workers from the effective recognition of the right to organize.

The legislation does not make provision for government authorization of collective agreements, since the collective agreement is defined in article 266 of the Labour Code as an agreement in writing pertaining to working conditions and labour relations, which is concluded between one or several employers’ organizations on the one hand and one or several trade unions on the other. However, all agreements are subject to the certificate of conformity issued by the Labour Inspector (art. 274).

The only means employed to date are the provisions of the Labour Code and the measures taken to apply that Code.

Assessment of the factual situation

No statistics and information are available for assessing the situation. The Ministry does not have the statistical tools at its disposal for providing this information.

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Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Efforts have been launched at the national level to ratify Convention No. 87 concerning freedom of association and the effective recognition of the right to bargain collectively as well as other Conventions (C. 144, C. 151) concerning tripartite consultations relating to international labour standards and labour relations in the public service respectively. All of these documents are currently submitted for approval at the level of the Office of the President of the Republic.

— Trade union elections are scheduled to be organized in the public service in the year 2000.

Means deployed or planned to promote the principle:

1. By our Government:
   - manifest awareness taking the form of tripartite social dialogue in the context of the 29th Session of the National Labour Council (Conseil National du Travail — CNT) with a view to laying down the guaranteed minimum wage;
   - collective bargaining has been conducted between the Government and the public service unions in the context of the joint committee and has led to the signing of a draft agreement, a copy of which is attached to the present report.
2. By the Organization:
   - a mission was organized in April 1997 to assess the problems relating to freedom of association, on which occasion the Union Nationale des Travailleurs du Congo (UNTC) held a seminar on freedom of association with the technical assistance of two officers from the ILO in Geneva, who attended the seminar;
   - furthermore, all of the questions raised in the context of the ILO monitoring bodies have been studied jointly with specialists and subsequently discussed with the Ministry of the Public Service and the Ministry of Labour and Social Security;
   - a tripartite seminar on collective bargaining was held last June by the experts of the ILO multidisciplinary team in Yaoundé.

The Government's objectives are:

— to achieve the application of the principles of *de jure* and de facto freedom of association and collective bargaining freedom;

— to guarantee peace in industrial relations in the labour world.

There is a need for training in trade union affairs in particular in the public service.

There is a need to promote the application of the principles of freedom of association in the private sector and in particular in small and medium-sized enterprises.

Before providing that training, one could start by conducting an impact assessment, which would be submitted for discussion on a tripartite basis with a view to defining a national strategy on the subject.

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These efforts to raise awareness will be targeted at three main groups (employers, the informal sector and the Labour Inspectorate) in the context of freedom of association and productivity.

Representative employers' and workers' organizations to which copies of the report have been sent

Employers:

1. Federation of Enterprises of Congo (FEC)
2. National Association of Investment Enterprises (ANEP)
3. Confederation of Congolese small and medium-sized enterprises (COPEMECO)

Workers:

1. National Union of Workers of Congo (UNTC)
2. Trade Union Confederation of Congo (CSC)
3. Democratic Confederation of Labour of Congo (CDT)
4. Central InterProfessional Union of Workers and Professionals of Congo (SOLIDARITE)
5. Organisation of Unified Workers of Congo (OTUC)
6. Cooperation of Unions in Public and Private Enterprises in Congo (COOSEPP)

Observations received from employers' and workers' organizations

This report was been drawn up with the collaboration of the (FEC) and of the (UNTC).

El Salvador

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association is recognized in article 7 of the Constitution of the Republic of El Salvador, which states that inhabitants of El Salvador have the right to associate freely and to meet peacefully, without arms, for any purpose that is considered lawful. No one is obliged to become a member of an association. A person cannot be restricted from carrying out a lawful activity because they do not belong to a given association. Armed political, religious or labour groups are prohibited. This article recognizes in a general and broad sense, the right to freedom of association and the right to assemble. There are certain organizations for which the exercise of these rights is recognized in a special way: for example, political parties, churches and workers' and employers' organizations.

The right to associate should be understood to mean the right to set up organizations in order to carry out lawful and peaceful activities of a religious, political, economic, labour, social, communal and cultural nature.

The right to assemble is the right to meet in any place at any time, provided that it is for peaceful purposes, and for reasons that are not illegal. The right to assemble encompasses the rights of groups to a legal personality, to be represented legally, to set up their statutes and internal rules to organize internal elections and not to be dissolved.

The principle of freedom of trade unions is recognized in article 47 of the Constitution of the Republic of El Salvador. It states that employers and workers in the private sector regardless of their nationality, sex, race, creed or political opinions, type of activity or the nature of the work in which they are engaged, have the right to associate freely to defend their interests and to set up professional associations or trade unions. Workers in independent official institutions shall have the same right.

These organizations have the right to a legal personality and to be duly protected in the exercise of their activities. Their dissolution or suspension can only be decided according to the legally prescribed procedures laid down by the law.

Special standards for the establishment and functioning of professional organizations, trade unions in rural and urban areas should not contravene the principle of freedom of association. Provisions which have the effect of excluding certain groups are prohibited.

Union leaders shall be Salvadorans by birth and during the time of their election and term of office; up to a year after the end of their functions they cannot be dismissed, suspended for disciplinary reasons, transferred or be subject to less favourable working conditions, unless this is considered to be justified by the competent authority.

Article 204 of the Labour Code guarantees to the following persons, the right to freedom of association in order to defend their common economic and social interests, through professional associations or trade unions, regardless of nationality, sex, race, creed or political opinions:

A. private sector employers and workers;

B. workers in autonomous official institutions.

Membership in more than one trade union is prohibited.

The right to collective bargaining is recognized in article 39 of the Constitution and articles 268 to 294 of the Labour Code.

Article 39 of the Constitution. The law regulates the conditions under which contracts of employment and collective agreements may be concluded. Their provisions shall apply to all the workers in the enterprises which are signatories to those agreements even if they workers do not belong to the trade union that is a party to the agreement. They shall also apply to workers joining those enterprises during the time that the contracts or agreements are in force. The law will stipulate the procedure by which working conditions in different economic activities would be harmonized based on the provisions in the majority of employment contracts and collective agreements which are in force and cover each type of activity.

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Collective contract of employment. This is an agreement concluded by one or several trade unions with an employer. Its purpose is to: (i) regulate working conditions in the enterprise, institution or establishment; and (ii) to establish the rights and duties of the trade union or unions and the employer.

The collective agreement applies to all workers in the enterprise or establishment, without distinction between the unionised and non-unionized workers or between old and new workers.

Collective agreement. This is an agreement concluded between one or several trade unions with an employers' organization. Its other features are similar to those of a collective contract of employment.

When labour contracts or collective agreements applicable to the majority of enterprises in a given industry (chemical, textile, construction, etc.) have clauses or provisions that are identical or very similar, they should be unified and made binding on all employers involved in the same activity.

[Articles 268 to 294 of the Labour Code are cited in the report.]

The three principles referred to are embodied in instruments such as the Constitution of the Republic of El Salvador, the Labour Code and the Civil Code.

It must be noted that with respect to the Right to Free Association, there is no restriction or limit to exercising that right depending on the category of the employer or worker (article 7 of the Constitution of the Republic). However the right to join a union (freedom of association) is defined in article 204 of the Labour Code which gives to the following persons, "the right to freedom of association in order to defend their common economic and social interests, through professional associations or trade unions, regardless of nationality, sex, race, creed or political opinions:

A. private sector employers and workers;

B. workers in autonomous official institutions."

Membership in more than one trade union is prohibited.

Article 2 of the Labour Code regulates the work relationship between private employers and workers and the work relationship between the State, municipalities, autonomous and semi-autonomous official institutions and their employees.

This Code does not apply when the relationship between the State, municipalities and autonomous and semi-autonomous official institutions on the one hand and their employees on the other, is if a public nature. The same applies when the relationship is the result of an administrative decision — such as the appointment of an official to a job which according to the Wage Law which must be paid from the special fund from these institutions, or municipal budgets or when the relationship is based on a contract for the provision of professional or technical services.

For the purposes of this Code the Salvadoran Social Security Institute (ISSS) is considered to be an autonomous official institution.

Workers in autonomous official institutions have the right to freedom of association in order to defend their interests, to set up professional associations or trade unions and to conclude collective labour contracts in accordance with the provisions of this Code.

The term "worker" covers employees and workers, but excludes public sector workers and employees from the having the right to set up unions. However they can set up staff associations or non-profit foundations in accordance with article 7 of the Constitution of the Republic.

As regards the negotiation of collective labour contracts, this can be undertaken only by legally established trade unions and employers (article 269 of the Labour Code). This means that only the employers and workers with the right to organize can engage in collective bargaining.

Prior authorization is needed before establishing employers' and workers' organizations. For trade unions, the authorization is granted by the Ministry of Labour and Social Security. For a staff association or foundation or non-profit foundation, the Ministry of the Interior grants the authorization. In the case of a political party, authorization is given by the Electoral High Court.

The Constitution widely recognizes the right of private employers and workers to organize (including those in rural areas) and also workers in autonomous official institutions. The staff associations referred to are in reality associations which are governed by civil law and are distinct from workers' associations which have a different form and organizational practices. In addition, our Constitution recognizes the right to union protection (*Fuero Sindical*) which guarantees union officials security of employment even up to one year after having completed their term of office.

The Government of El Salvador does not have the right to interfere in the functioning of an employers' or workers' organization (trade unions). Under article 256 of the Labour Code the Ministry of Labour and Social Security is responsible for ensuring that the activities of trade unions are in conformity with the law. The supervision and the handling of financial aspects of trade union activities are the responsibility of the Ministry of Labour and Social Security and the Ministry of the Economy through their corresponding offices.

When carrying out their monitoring activities the public authorities shall refrain from all forms of intervention or interference which tend to restrict the rights guaranteed under the Constitution and those granted to trade unions under the Labour Code.

As noted earlier, the right to form trade unions may be exercised by certain employers and workers only. Consequently, public sector employees are excluded from collective bargaining, except those who work in autonomous institutions, such as the ISSS, which is an autonomous official institution.

The law provides for collective labour contracts to be subject to the authorization of the Government when it involves an autonomous official institution, in keeping with article 287 of the Labour Code.

Assessment of the factual situation

With respect to trade unionism, it must be pointed out that there are registers with information on the number and type of trade unions, number of members including by sex,

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the federation to which they are affiliated as well as their sector of economic activity (tables annexed to report, not reproduced).

It is important to note that the right to unionize and engage in collective bargaining is promoted by the Government through the provision of advisory services and assistance to workers by the General Labour Office (*Dirección General de Trabajo).*

Data for the first six months of 1999 show that there were at that time 138 unions with 120,444 members of whom 109,952 were men and 10,492 were women. As regards collective agreements, there were 428 in force, covering 68,738 workers (tables not reproduced).

Also annexed to the report is a table (not reproduced) for 1997 which provides various indicators on different aspects of the social situation of the country. They are published annually in the household survey.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Government of El Salvador in its plan provides for the following in the field of labour:

— The prevention of labour disputes in enterprises. To this end the Secretariat for Labour and Social Security will take the following measures:

1. Training of labour inspectors in techniques for identifying possible labour disputes in enterprises in the country.

   Training of labour inspectors in techniques for preventing labour disputes.

   Draw up an institutional policy which makes the prevention of labour disputes as the basis on which there would be interventions by labour inspectors. Give preference to the use of technical and legal recommendations that are oriented towards the prevention of legal disputes.

2. Strengthen the activities of the institutional committee for the prevention of labour disputes in free zones and fiscal enclaves by taking the following measures:

   Analyse problems related to the functioning of the committee and examine its legal framework.

   Draw up a proposal for strengthening the functioning of the committee.

   Training the officials of the committee so that its role in preventing labour disputes could be easily fulfilled.

   Set up mechanisms for cooperation with the General Labour Inspection Office (*Dirección General de Inspección de Trabajo)* and the General Social Security Office *(Dirección General de Previsión Social).*

   Promote legal reforms towards labour market flexibility.

   Carry out a legal study on labour relations to determine the extent to which it is becoming flexible.

Draw up a proposal for improving the legal framework governing labour relations as well as set up and implement a process of consultations at the national level.

Put forward a proposal to the senior labour adviser.

Initiate a law.

Promote the initiative in the legislative assembly.

Promote worker-employer committees.

Make known the need to create such committees.

Prepare reports on the outcomes.

The Constitution, under article 7, guarantees the right to associate freely and to gather peacefully for lawful purposes. One way in which this right is assured is through the Law on constitutional procedures which gives all citizens the right to legal recourse when an authority violates their constitutional rights. The remedy of *amparo* is open to all citizens of the Republic when there such a situation arises, and it implies the suspension of the act against which the recourse was made.

Citizens also have the right to resort to Habeas Corpus when an authority or individual detains them illegally. They also have the right to challenge the unconstitutional nature of decrees and laws that are contrary to the Constitution.

Such recourse is also applicable in cases where the right to freedom of association and collective bargaining are violated. The right to freedom of association has the special characteristic of also encompassing the right of all groupings to have a legal personality, to have legal representation and to draw up its own internal regulations. They also have the right to hold free elections within the framework of their association and protection against arbitrary dissolution. These rights enable such groups to exist and develop in accordance with the national laws.

Our country adheres to the Constitution of the ILO. It has always fulfilled its obligation to inform the Director-General of the ILO, as required by the Governing Body, on the state of its national law and practice with respect to non-ratified ILO Conventions. It always specifies the extent to which it has either given effect to or proposes to give effect to the provisions of those Conventions, by legal or administrative means as well as through collective agreements or in other ways. It indicates the difficulties that hinder or delay ratification of this set of Conventions.

The labour tribunals are the labour courts. The labour tribunals can, when they hand down sentences, draw on the international treaties ratified by the country which become law from the moment that they enter into force in keeping with their provisions and those of the national Constitution.

Moreover, in the event of conflict between the treaty and the national law, the former will prevail. Similarly, the provisions of a treaty or Convention can be declared inapplicable if they are judged contrary to the constitutional provisions in the context of a judicial procedure.

The Government of El Salvador states that by virtue of its membership of the ILO the country accepted the principles and rights enunciated in its Constitution and in the Declaration of Philadelphia. Therefore, it has a commitment to make all possible efforts to

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attain the general objectives of the Organization. To the fullest extent possible and bearing in mind its specific conditions, with a view to respecting, implementing and promoting these rights.

The way in which the preceding proposals could be implemented would be by requesting international assistance from the ILO with a view to improving as much as possible the effective application of these rights within the framework of the Declaration.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report were made available to the following governmental institutions and representative employers' and workers' organizations.

Government

- Ministry of Labour and Social Security
- Ministry of the Economy
- Ministry of Education
- Ministry of Public Security and Justice
- Ministry of the Interior
- Ministry of Agriculture and Husbandry
- Social Housing Fund
- Salvadoran Institute for Vocational Training

Employers

- National Association for Private Enterprise (ANEP)
- Salvadorian Association of Industrialists (ASI)
- Chamber of Commerce and Industry of El Salvador
- Salvadoran Chamber for the Construction Industry (CASALCO)
- National Council for Medium and Small Enterprises of El Salvador (COMAPES)
- Union of Cooperatives resulting from agrarian reform: producers, shareholders and exporters in the coffee industry (UCRAPROBEX)
- Association of Entrepreneurs in small and medium-sized firms in El Salvador (AMPES)
- Sugarcane Producers (PROCAÑA)

Workers

- Federation of Trade Unions in the Construction Industry and Allied Activities, Transport and Other Activities (FESINCONSTRANS)
- Federation of Independent Associations or Trade Unions of El Salvador (FEASIES)
- National Trade Union Federation of Salvadoran Workers (FENASTRAS)
- Federation of Unions of Workers in the Food, Drink and Allied Industries (FESINTRABS)

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- General Confederation of Unions (CGS)
- Trade Union Federation of Workers of El Salvador (FESTRAES)
- Federation of Trade Unions of Workers of El Salvador (FESTES)
- Salvadorian Single Trade Union Federation (FUSS-UNTS)

Observations received from employers' and workers' organizations

No observations were received from any of the organizations mentioned.

Annexes (not reproduced).

A. Constitution of the Republic of El Salvador, Decree No. 38 of 15 December 1983 published in Official Gazette No. 234, vol. 281 of 16 December 1983.

B. Labour Code Decree-Law No. 15 of 30 June 1972, Official Gazette No. 142, vol. 236 of 31 July 1972, last amended Decree-Law 859 of 21 April 1994 published in the Official Gazette No. 87bis, vol. 323 of 12 May 1994.

C. Law on the Organization and Functions of the Labour and Social Security Sector, Decree-Law No. 682 of 11 April 1996, published in the Official Gazette No. 81, vol. 331 of 3 May 1996.

D. Penal Code, Decree-Law No. 904 of 4 December 1996, published in the Official Gazette No. 11, vol. 334, of 20 January 1997.

E. Statistics on legally authorized trade unions.

El Salvador

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

El Salvador has not ratified either of ILO Conventions Nos. 87 and 98 and has not signalled that there are any prospects of this taking place in the near future.

El Salvador's Labour Code bans trade unions and strikes in the public sector — disputes are to be settled by compulsory arbitration. Public sector workers can form associations which, in practice, engage in collective bargaining and go on strike. The Code also bans strikes in nine autonomous government agencies. Trade unions cannot engage in party political activities.

There continue to be violations of trade union and employment rights in El Salvador's export processing zones (EPZs). While the situation has improved dramatically since 1995-96, when violence against workers trying to form unions was exposed internationally, and particularly in the United States, there is still reportedly only one trade union in the zones. Employers illegally harass and sack workers to prevent unions from recruiting the 50 per cent of the workforce needed in order to gain recognition for collective bargaining.

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Equatorial Guinea

The Office received no report from the Government.

Equatorial Guinea

Observations submitted to the Office by the General Union of Private Enterprises (UGEPRIGE)

Means of assessing the situation

Following discussions during the Tripartite Workshop which took place in Dakar from 6 to 8 October 1999, we note that according to the ILO Declaration adopted by the International Labour Conference in June 1999, all Members, even if they have not ratified the fundamental Conventions, have an obligation, arising from the very fact of membership in the Organization, to respect, promote and realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.

As a result of a regular follow-up by our Organization under article 19, paragraph 5(e) of the ILO Constitution with regard to changes in legislation and the fact that a number of Conventions have not been ratified by our Government, we were pleased to learn that five Conventions which have not been ratified by our country will be ratified in the near future, at the latest by the end of 1999.

The working party from Equatorial Guinea at the Dakar Workshop noted with satisfaction the model report form for freedom of association and the effective recognition of the right to collective bargaining.

The ILO has been considering a number of social issues relating to private enterprises and specifically to multinational enterprises which play a dominant role in the economies of most countries and in international economic relations, and which are of growing importance for governments, employers, workers and their respective organizations.

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining is guaranteed in Equatorial Guinea by Act No. 12 of 1992. The principle is also embodied in the Constitution and in legislation regulating the existence, operation and freedom of association and the freedom of trade unions.

As regards the possible exclusion of any category of employers or workers from the application of the right to organize, there are no substantial restrictions at any level in enterprises or any other sector that have caused concern to employers' organization.

Authorization is necessary to set up associations in order to prevent clandestine activities. However, if associations and unions adapt their statutes to the terms of the abovementioned law (Act No. 12/92), authorization is granted without further formalities, in accordance with the Act.

The Government can intervene in the functioning of an employers' or workers' organization if the actions of some members are such that they create controversy which could lead to social disorder.

No category of employers or workers is excluded from systems and procedures to ensure the effective recognition of the right to collective bargaining, although it is recommended that collective agreements be examined by legal experts and tripartite representatives. There are legal and administrative means for implementing the principle.

Assessment of the factual situation

We have no statistical indicators to enable us to assess and appreciate the situation in the country.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Measures have been adopted as described in Act No. 12/92 (sections 28 and 29) relating to the promotion and effective recognition of bargaining rights and collective agreements. Means are provided under the terms of Act No. 12/92 and in the basic law.

Our Organization provides for the application of this principle in its own statutes, and considers that negotiations are necessary in the light of structural and conjunctural economic developments, etc. The Ministry of Labour and Social Security also helps to promote these principles.

The Government's objectives for encouraging respect, promotion and realization of the principles are set out in sections 25, 26 and 27 of Act No. 12/92. UGEPRIGE considers that the conditions necessary for attaining these objectives include technical cooperation which may in future fulfil the wishes of employers. This can be done through the ILO and through consensus with the Government and workers, tripartite meetings, and with the development of indicators which facilitate negotiations. Our Organization's goal is to build consensus with the Government and we emphasize that labour standards should not be used for political or commercial ends.

UGEPRIGE undertakes to respect, promote and realize the principles on fundamental rights which are the aim of all social and labour relations, as well as to encourage respect for freedom of association and the effective recognition of the right to collective bargaining.

We take this opportunity to ask the ILO for appropriate advice to enable the employers of Equatorial Guinea, especially those in the national sector, to obtain adequate training and logistical means to become competitive and develop their economic activities in order to contribute to the economic and social development of the country. In this respect, we urge the ILO to assist employers in obtaining training and advice which will help them in different economic sectors to produce goods and services and contribute effectively to social and economic development.

UGEPRIGE believes that underdeveloped countries need technical assistance and expert advisory services from the ILO in the areas of training for both employers and workers and the creation of enterprises in specific sectors, and in accordance with the country's needs.

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Equatorial Guinea

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The Trade Union Organization of Workers of Equatorial Guinea (UST) founded in 1990, has not been registered by the regime and is forced to carry out its activities clandestinely.

The *Sindicato Independiente de Servicios* (SIS) first applied for registration in early 1995. Although the application met all the requirements under the 1992 Trade Union Law, the authorities refused to register it, objecting to the word "independent" in the union's name. Subsequent applications in 1995 and in 1996 were also rejected.

Trade unionists said that immediately after they submitted applications for union registration they were intimidated by security officials who visited their homes.

There continue to be reports that workers must be members of the ruling party to get jobs in both the public and private sectors.

[Reference is made to the hiring and wage practices in the oil industry.] …

The law does not recognize the right to collective bargaining. There is no protection in the law against acts of anti-union discrimination. Strikes are prohibited.

Eritrea

Eritrea has ratified on 15 October 1999, 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). The relevant instruments of ratification have been sent to the ILO for official registration.

This report was prepared, in consultation with the social partners, in order to assess the national situation of Eritrea and the Government's objectives to ensure respect, promotion and realization of the principle of freedom of association and the effective recognition of the right to collective bargaining.

[Note by the Office: Up to 31 January 2000, the original instruments of ratification of the abovementioned Conventions had not been registered with the Director-General of the ILO.]

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Eritrea by article 19 of the National Constitution of 23 May 1997. This article provides, inter alia, that: (i) every person shall have the freedom of thought, speech, expression, including freedom of the press and other media; (ii) all persons shall have the right to assemble and demonstrate peaceably together with others,

and; (iii) every citizen shall have the right to form organizations for political, social, economic and cultural ends (see copy of the Constitution of Eritrea (text not reproduced)).

Moreover, the Labour Proclamation No. 8/1991 (articles 61 to 67) provides for the right for employers to establish associations and for the right for workers to organize, and to establish or join a trade union (cf. copy of articles 61 to 67; copy of the Labour Proclamation No. 8/1991 in Tigrinyan, attached — no official English version of this text is currently available).

Article 26.1 of the Constitution provides that the fundamental rights and freedoms guaranteed in the Constitution may be limited only in so far as in the interests of national security, public safety or the economic well-being of the country, health or morals, for the prevention of public disorder or crime or for the protection of the rights and freedoms of others. However, any law providing for the limitation of these fundamental rights and freedoms must be consistent with the principle of democracy and justice and is subject to certain restrictions (article 26.2 of the Constitution). In addition, the provisions of article 26.1 of the Constitution are not, inter alia, applicable to the right to freedom of thought, conscience and belief as per article 19.1 of the Constitution.

As concerns the legislative framework, the Labour Proclamation No. 8/1991 is being revised by the Government, in consultation with social partners, in order to consider the amendments suggested by the ILO concerning the principle of freedom of association and the effective recognition of the right to organize and to collective bargaining. Therefore, further information in this regard will be provided once this revision process is completed.

The means of implementing the principle of freedom of association and the effective recognition of the right to collective bargaining are both administrative and legal; especially through registration, the right to appeal and the supervision of labour inspection.

Assessment of the factual situation

In Eritrea, there is one registered confederation of trade unions (the National Confederation of Eritrean Workers, NCEW) composed of five trade unions federations, and one registered employers' federation (the Eritrea Federation of Employers, EFE) which is now planning to establish six regional federations in order to have a national confederation of employers. Around 500 employers are members of the EFE.

It is currently difficult to provide a factual assessment due to lack of data and statistical information.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The application of the principle of freedom of association and the effective recognition of the right to collective bargaining is supervised by the Department of Labour (DOL) of the Ministry of Labour and Human Welfare (MOLHW), especially though labour inspection services.

No survey has been yet undertaken to appraise the extent to which the principle of freedom of association and the effective recognition of the right to collective bargaining is applied

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in the country. However, the Government is promoting tripartite participation in its activities concerning social issues.

In addition, labour inspectors, stakeholders (including officers of the Ministry of Justice), social partners and NGOs have been generally sensitized on this issue during the National Workshop on International Labour Standards and the 1998 ILO Declaration on Fundamental Principles and Rights at Work organized by the ILO in Asmara in August 1999.

During the same period, the ILO EAMAT, Addis Ababa and ILO Cairo, have assisted the Government in defining its country objective programme under the Support for Policy and Programme Development (SPPD) Project in which freedom of association, collective bargaining and labour administration issues have been taken into consideration.

In October 1999, a national tripartite delegation participated in the First African Regional Workshop on Promoting the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up organized in Dakar, Senegal.

In November 1999, the Specialist on International Labour Standards briefed the DOL and social partners on the 1998 ILO Declaration and assisted the Government in preparing reports under the 1998 ILO Declaration in consultation with the social partners.

Given that no survey has been done in the field of freedom of association and the effective recognition of the right to collective bargaining, specific actions need to be developed in this respect, such as:

(1) sensitizing policy-makers and social partners to understand the principle of freedom of association and the effective recognition of the right to collective bargaining;

(2) collecting information on the application of the principle of freedom of association and the effective recognition of the right to collective bargaining;

(3) gathering, assessing and analysing data on trade unions, employers' organizations and workers' and employers' perceptions on the application of the principle of freedom of association and the effective recognition of the right to collective bargaining in the country;

(4) enhancing and promoting the application of the provisions of the Freedom of Association and the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

These considerations should be taken into account in the framework of a national survey to come up with recommendations for action in promoting the principle of freedom of association and the effective recognition of the right to collective bargaining.

The national survey on freedom of association, together with its recommendations should therefore be discussed in a national tripartite forum in order to define a national strategy to promote the principle of freedom of association and the effective recognition of the right to collective bargaining.

This national strategy should involve:

– plan of action;

– targets;

– objectives;
– time-frame;
– results;
– tripartite evaluation;
– follow-up actions, etc.

In order to develop this strategy successfully, the DOL and the social partners need to be trained and strengthened in their action to promote the principle of freedom of association and the effective recognition of the right to collective bargaining, including special actions in tripartism and collective bargaining techniques.

The Government would welcome any ILO assistance to carry out the above national programme of action for promoting the principle of freedom of association and the effective recognition of the right to collective bargaining.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to:

– the Eritrea Federation of Employers (EFE); and
– the National Confederation of Eritrean Workers (NCEW).

Observations received from employers' and workers' organizations

Any possible comments made by these organizations will be forwarded to the ILO upon receipt by the Government.

Annexes (not reproduced)

The National Constitution of Eritrea, 23 May 1997.

Labour Proclamation No. 8/1991 (document available in Tigrinyan only).

Gambia

Means of assessing the situation

Assessment of the institutional context

The Gambia participated in the Tripartite Workshop on ILO Declaration on Fundamental Principles and Rightrs at Work and its Follow-up held in Dakar from 6–8 October 1999. The Dakar meeting agreed that participating countries fulfil the reporting obligations and complete the work initiated in Dakar. In that regard, the Department of State for Trade, Industry and Employment, which is responsible for labour matters and is the parent body

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of the department of Labour, initiated triparte consultations to solicit views from workers' and employers' representatives. The objective of the consultation was to seek input on the strategies that need to be adopted for implementing the Declaration and its attendant obligations.

The Gambia has advanced in the ratification of the seven fundamental Conventions. As we write this report, the National Assembly of the Gambia has included the ratification of the seven fundamental Conventions in the agenda of the next sitting of the National Assembly in two weeks. The Conventions have been approved for ratification by the Gambian Cabinet, the Ministry of Justice and the procedure leading to ratification involved extensive consultation with workers and employers as recommended in the relevant ILO Conventions and Recommendations.

The principle of collective bargaining is indeed recognized and practised in the Gambia. Collective bargaining is recognized by the Labour Act of 1990.

All categories of workers have the right to organise except civil servants. However, government teachers have a national union that represents their interests; this is explicit.

No prior authorisation is necessary to register employers' or workers' organisations. However there are legal requirements that organisations have to fulfill to get registered as specified in the Gambia Labour Act 1990.

Government can intervene in the function of unions under conditions such as those specified in the Labour Act.

The system does not allow for collective bargaining by government workers except teachers.

The principle is being administered. The administrative, legal and material support that is needed, will be part of the strategies/project proposals to be developed.

Assessment of the factual situation

There is a lack of accurate, timely and relevant statistics in this area.

Trends cannot be determined as statistics are not available.

Information that could give a better assessment of the situation include the Gambia Poverty Study, the Background Information to the National Employment Policy, the Macroeconomic Framework 1998-2000 and the National Population Census 1993 Report.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

No measures have been taken to promote the principle. Planned activities form the strategies to be adopted and implemented.

As for the Government, there will be a sensitisation of National Assembly members, members of the judiciary and policy-makers in the Government.

The objective of the Government will be to promote understanding of the principles, co-opt political leaders and policy-makers and to seek their support for the formulation and implementation of national policies, programmes and projects.

Conditions needed to meet these objectives include technical cooperation (expert service for review of relevant laws), technical cooperation (financial support for strengthening the various implementing agencies in the Labour Administrative System), technical cooperation in the design and implementation of surveys, research and workshops/seminars.

Because of the progress made in the ratification process, it has been determined that the Gambia should focus more on follow-up and implementation of the Declaration on Fundamental Principles and Rights at Work. Thus, the three parties (government, employers and workers) have consulted to develop plans for follow-up and implementation activities.

The plans envisaged will be undertaken in various organs such as legislature, civil society, executive (public administration and policy-making environment in government), the judiciary and law enforcement, employers and trade unions. It will also include institutional support and strengthening of the Department of Labour and the Employment Division of the Department of State for Trade, Industry and Employment. It will involve legislative reform (especially of the Gambia Labour Laws) and enactment, mass awareness campaigns using among other things print and electronic media, research and publication, IEC strategies.

Representative employers' and workers' organizations to which copies of the report have been sent

The employers' organisation to which a copy of this report has been sent, is the Gambia Chamber of Commerce and Industry (GCCI). The workers' organisations which have been sent a copy of this report include the Gambia Workers Union and the Gambia National Trade Union Congress.

Observations received from employers' and workers' organizations

Input has been received from workers' and employers' representatives.

Guinea-Bissau

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association is recognized in the national Constitution and other legislation in force. It is worth noting that the National People's Assembly already ratified this Convention on 27 October 1997 and only the registration of this document is now required.

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Institutional framework

- article 45 of the Constitution of the Republic;
- article 47 of the Constitution of the Republic concerning the right to strike;
- Act No. 8/91 concerning freedom of association, 3 October 1991;
- Act No. 9/91 concerning strikes, 3 October 1991;
- bill on collective bargaining;
- bill on the right to representation and the right to organize;
- establishment of a national body for social dialogue.

The armed forces and police services are excluded from the application of the law on freedom of association and the law concerning the right to strike.

It is not necessary to obtain special authorization before setting up any association. It is only necessary to fulfil the legal requirements and for the goals of the association to be considered beneficial.

By law, the Government cannot intervene in the functioning of an organization. Trade unions operate freely.

The question of negotiating collective agreements does not apply in the private sector. The State is the major employer. The negotiation of collective agreements only takes place in the banking sector.

All workers who are permitted by law to exercise the right to collective bargaining can do so.

Assessment of the factual situation

There are statistics on the number of trade unions but not for the informal sector which accounts for at least 70 per cent of the economically active population. Within the informal sector, some individuals have joined the Chamber of Commerce, thereby creating associations of small entrepreneurs.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The war which lasted for about one year almost paralysed the public administration. Consequently, it has compromised relations with the social partners. We are counting on the support which the ILO could give to our Government and to the employers' and workers' associations in order improve the situation.

Representative employers' and workers' organizations to which copies of the report have been sent

- the Chamber of Commerce, Industry and Agriculture (CCIA).
- the National Workers' Union of Guinea (UNTG) — Central Trade Union;

- the Association of Independent Trade Unions;

Observations received from employers' and workers' organizations

The employers' and workers' organizations are considering drawing up a report specifying their needs for submission through the Government and also through the ILO.

Annexes (not reproduced)

— excerpts of the Constitution of the Republic of Guinea Bissau;

— excerpts of Act No. 8/91 on freedom of association, 3 October 1991;

— excerpts of Act No. 9/91 on the right to strike, 3 October 1991.

India

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in India. Freedom of association is one of the fundamental rights guaranteed to the citizens of India under article 19(1)(c) of its Constitution which says: "All citizens have the right to form associations or unions." This right guarantees freedom to the citizens of India to form associations in order to safeguard and promote their interests. This right is a "fundamental" right implying that it cannot be taken away by the legislature.

As far as industrial workers are concerned, the right to form associations is protected under the Trade Unions Act, 1926. This Act allows workers to form trade unions. The Act defines a "trade union" as "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions". The Act also provides that: "Any seven or more members of a trade union may, by subscribing their names to the rules of trade union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the trade union under this Act."

As far as right to collective bargaining is concerned, the Industrial Disputes Act, 1947, recognizes the settlement reached between employers and workmen. Under section 2(p) of the Industrial Disputes Act, 1947, settlement means "a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings". Further, Section 18(1) of the Industrial Disputes Act, 1947, lays down that a settlement reached between the employer and his workmen shall be binding on the employer and the workmen who are party to the settlement. Though there is no central law as yet to recognize trade unions in the context of multiplicity of trade unions for the purpose of collective

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bargaining, many state governments have enacted such laws. The trade unions in such states are recognized under the law to facilitate collective bargaining with the employers.

No category of employers or workers is denied the right to organize at any level except the members of armed forces, police services and other paramilitary forces. Prior authorization is not necessary to establish employers' or workers' organizations. Government intervention is limited to the submission of returns by trade unions to the Registrar of trade unions. In case the returns are not submitted in time or the registration has been taken by misrepresentation or fraud, the Registrar is empowered to cancel the registration of the trade union under the Trade Union Act after giving due notice. The recognition of trade unions, wherever provided under the state laws, also requires the trade unions wanting grant of recognition to furnish certain information to the authority specified, for verification of membership/following of the trade unions on the basis of which the recognition is granted.

In India, the government servants exercising functions flowing from the sovereign functions of the Government, as they do, are not treated at par with industrial workers so far as trade union rights are concerned. A differential treatment to the government servants is to facilitate their functioning in an unbiased manner in an otherwise politically active free society. This was considered further essential in the context that trade unions in the country are highly politicized and are affiliated to one or the other political parties, and very often, they in turn are formed on sectarian considerations. In these circumstances, the political neutrality of government servants is absolutely essential for the functioning of a constitutional democracy.

Government servants enjoy a high degree of job security as laid down in the Constitution. There are also alternative mechanisms for their grievance redressal like the joint consultative machinery as well as administrative tribunals.

The legislation provides for settlements before conciliation officers as and when disputes are raised. The means of implementing the principles are as laid down in the Constitution, Industrial Disputes Act, 1947 and the Trade Unions Act.

Assessment of the factual situation

The number and membership of unions submitting returns in 1995 were 6,448 and 4,256,000.

Growth of trade unions and their membership

	1994	1995
(a) Number of registered trade unions:		
Employers' unions	828	832
Workers' unions	56 044	57 611
Total	56 872	58 443
(b) Numbers submitting returns:		
Employers' unions	12	26
Workers' unions	6 265	6 422
Total	6 277	6 448
(c) Membership of unions submitting returns:		

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Employers' unions	1 000	3 000
Workers' unions	4 093 000	4 253 000
Total	4 094 000	4 256 000

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The provisions of the Trade Unions Act, 1928, are liberal so as to promote formation of unions and associations by workers. Under state laws, unions having a majority following are recognized for the purpose of collective bargaining. There is no central law enabling the unions to obtain recognition. However, in some of the industries which have accepted the Code of Discipline, recognition is granted under the Code after verification of membership of the trade union.

The Government"s objective is to encourage unionization amongst workers so that they can protect and promote their interests and also enter into collective bargaining with the employers, leading to higher productivity and higher standards of living for the workers and industrial harmony. The present thinking in the Government is to support bipartism and resolution of all disputes or differences in the industry through bipartite consultations.

Government servants, who are excluded, are provided with a high degree of job security and alternative grievance redressal mechanism by legal and constitutional provisions. According to article 310 of the Constitution:

> Except as expressly provided by the Constitution, every person who is a member of defence service or of a civil service of the union or of an all-India service or holds any post connected with defence or any civil post under the union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor – of the state.

Article 311 of the Constitution provides that: "No person who is a member of a civil service of the Union or an all-India service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed." Comprehensive laws and regulations have been framed to implement these provisions. Grievance redressal mechanisms like the Joint Consultative Machinery and Administrative Tribunals also exist for government servants. Appropriate legal and constitutional provisions exist to safeguard these objectives. In addition, efforts are on to educate and motivate employers and workers to have a collective approach to resolution of disputes and differences and the workers of the trade unions in running the affairs of their trade unions. It can be of great help if these efforts are supplemented by those of any international agency.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report are being forwarded to the following All-India Organisations of Employers' and Workers:

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Employers' organizations: Council of Indian Employers; Employers' Federation of India; All India Organisation of Employers; Standing Conference of Public Enterprises; and All India Manufacturers' Organisation.

Workers' organizations: Bharatiya Mazdoor Sangh; Indian National Trade Union Congress; Centre of Indian Trade Unions; *Hind Mazdoor Sabha*; All India Trade Union Congress; United Trade Union Congress (IS); United Trade Union Congress; and National Front of Indian Trade Unions.

Observations received from employers' and workers' organizations

No observations were received from them.

India

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

India has not ratified ILO Conventions Nos. 87 and 98, and neither has it signalled that there are any prospects of this taking place in the short or medium terms.

The law draws a broad distinction between public servants and other workers, severely restricting the trade union rights of the former.

Furthermore, agricultural and contract labourers are denied the rights to organize and bargain collectively, and, while in theory unions can organize in export processing zones, in practice organizing in the zones obstructed by employers.

India

Government observations on ICFTU's comments

Freedom of association is one of the fundamental rights guaranteed to the citizens of India under its Constitution under article 19(1)(c) which says "All citizens have the right to form associations or unions". This right guarantees freedom to the citizens of India to form associations in order to safeguard and promote their interests. This right is a "fundamental" right implying that it cannot be taken away by the legislature or executive.

As far as workers are concerned, the right to form associations is protected under the Trade Unions Act, 1926. This Act allows the workers to form trade unions. The Act defines a "trade union" as "any combination, whether temporary or permanent formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions". The Act also provides that "Any seven or more members or a trade union may, by subscribing their names to the rules of trade union and by otherwise

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complying with the provisions of this Act with respect to registration, apply for registration of the trade union under this Act".

The Industrial Disputes Act provides a framework for collective bargaining in India. The Act recognizes the settlement reached between employers and workmen. Under section 2(p) of the Industrial Dispute Act, 1947, settlement means "a settlement arrived at in the course of conciliation proceedings and includes a written agreement between employer and workmen arrived at otherwise than in the course of conciliation proceedings". Further, section 18(1) of the Industrial Disputes Act, 1947, lays down that a settlement arrived at between the employer and his workmen shall be binding on the employer and the workmen who are party to the settlement". Though there is no central law as yet to recognize the trade unions, in the context of multiplicity of trade unions for the purpose of collective bargaining, many state governments have enacted such laws. The trade unions in such States are recognized under the law to facilitate collective bargaining with the employers.

It can be seen from the above that the Indian Constitution, laws and practices are by and large in conformity with ILO Conventions Nos. 87 and 98. The rights guaranteed under Conventions Nos. 87 and 98 are also applicable to industrial and other workers through laws and practices.

Despite these similarities of Indian laws and practices and the provisions of ILO Conventions Nos. 87 and 98, India could not ratify these two Conventions mainly because of the problem of a technical nature related to government servants in India. In India, the government servants exercising functions flowing from the sovereign functions of the Government, as they do, are not treated on a par with industrial workers as far as trade union rights are concerned. A differential treatment to the government servants is to facilitate their functioning in an unbiased manner in an otherwise politically active free society. This was considered further essential in the context that trade unions in the country are highly politicized and are affiliated to one or the other political parties, and very often they in turn are formed on sectarian considerations. In these circumstances, political neutrality of government servants is absolutely essential for the functioning of a constitutional democracy.

The government servants enjoy a high degree of job security as laid down in the Constitution. There are also alternative mechanisms for handling grievances like the joint consultative machinery as well as administrative tribunals. Government servants who are excluded are provided with a high degree of job security and alternative grievance redressal mechanisms by legal and constitutional provisions.

According to article 310 of the Constitution, "Except as expressly provided by the Constitution, every person who is a member of the defence service or of a civil service of the union or of an all-India service or holds any post connected with defence or any civil post under the union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor … of the State". Article 311 of the Constitution provides that "No person who is a member of a civil service of the union or an all-India service or a civil service of a State or hold a civil post under the union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed". Comprehensive laws and regulations have been framed to implement these provisions. Grievance redressal mechanisms like the joint consultative machinery and administrative tribunals also exist for government servants.

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It is already stated that freedom of expression and the right to form associations are fundamental rights in India. Therefore, these rights cannot be taken away by the legislature and executive through laws and regulations. However, the Constitution also provides for certain reasonable restrictions on government servants in order to ensure political neutrality. The exceptional high degree of job security flowing from article 311 of the Constitution and alternative grievance redressal machinery ensures neutrality of the government servants which is absolutely essential for operating the state machinery in a free and fair manner and for achieving unity in diversity in a free society which has several sectarian distractions.

These reasonable restrictions imposed on the government servants have, on several occasions, been challenged in the highest courts of India and the courts have upheld the constitutionality and reasonableness of these restrictions.

Ratification of ILO Conventions is a voluntary process and ratification is not an end in itself. A member country ratifies Conventions when their national laws and regulations are fully in conformity with the Convention. Just because a member country has not ratified Conventions Nos. 87 and 98, it cannot be concluded that the principles enshrined in these two Conventions are not available to the workers. Similarly, just because a member country has ratified the relevant Conventions it cannot also be concluded that these principles are observed in practice. Since the restriction put on government servants in India has not yet been found reasonable by the ILO, we are unable to consider the ratification of these two Conventions at this stage.

The rights to organize and collective bargaining are available to agriculture and contract labourers in India. Since most of the labourers in these two categories are in the informal sector, their effective unionization has not taken place for effective collective bargaining. It is up to the social partners to exercise constitutional and legal rights available to them and to unionize the unorganized labour.

The labour laws in India do not make any distinction between export processing zones and other areas, as well as between workers in these zones and other sectors. Some complaints received about obstacles in the way of union activities in the export processing zones have been looked into by the enforcement machinery for taking appropriate corrective action. The enforcement machinery is also involving trade union representatives in this process.

Iran, Islamic Republic of

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the right to collective bargaining is recognized in the Islamic Republic of Iran. The right to establish trade unions and employers' organizations and the right to engage in collective negotiations to conclude collective agreements between employers or their legal representatives and workers or their legal representatives are included in national legislation of the country.

This recognition is through articles 26, 104 and 106 of the Constitution and articles 131, 140-146, 148 and 178 of the Labour Code. Article 26 of the Constitution states that parties, societies, trade unions and political associations are free and no one can be prevented from

their membership and no one can be compelled to join them. Article 131 of the Labour Code also explicitly provides that workers covered by the Labour Code and employers of any given trade or industry can establish unions to protect their rights and their legitimate interests and to improve their economic situation.

All workers and employers under the Labour Code have the right to establish trade unions and employers' organizations. There is no restriction in this regard. They can also have regional organizations at the level of district and province as well as national organizations. The area of activity is determined by the unions and organizations themselves through their own constitutions. The reference in the Constitution of the country to the right to organize is general and without any restriction.

Unions and organizations can establish without the need to seek prior authorization from any authority. The Ministry of Labour and Social Affairs shall provide the necessary cooperation to the founding members according to their own constitution and the relevant regulations.

The Government is involved only as far as drawing up the general regulations for the establishment of trade unions. The Government cannot intervene in the functioning of a workers' or employers' organization unless there is a breach of law. In case of a complaint by members of a union against heads of their organization, they would need to refer to the competent courts to have their complaint examined.

There are no exemptions as regards effective recognition of the right to collective bargaining for workers and employers.

In order to prevent the infringement of the minimum statutory rights of the workers and employers, the Ministry of Labour and Social Affairs can provide the two parties with its observations on the compliance of the text of a collective agreement with existing laws and regulations. These observations should be based on relevant documents and should be made available to both parties within 30 days. According to article 141 of the Labour Code any collective agreement is enforceable provided that it is not in contradiction of existing laws and regulations and it does not provide rights and privileges at a lower level than what has been provided in the Labour Code. The only occasion that the Government can directly intervene is on the protection of minimum wages which are themselves determined by a tripartite mechanism at the national level.

The principle is implemented through various administrative, legal and material means as explained above, including the Labour Code and its administrative directives. Article 178 of the same Code also provides that anyone preventing a worker from membership of workers' organizations can be sentenced to a fine or imprisonment.

Assessment of the factual situation

The present statistics are as follows:

- 260 employers' organizations;
- 416 workers' trade unions;
- 1,429 workers' representatives;
- 2,267 Islamic labour councils;
- 26 Islamic labour council centrals at provincial level;

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- one higher central of Islamic labour councils at national level.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to:

– Workers' House of the Islamic Republic of Iran.

– Employers' Confederation of the Islamic Republic of Iran.

Observations received from employers' and workers' organizations

No comments have been received to date.

Iran, Islamic Republic of

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

Iran has not ratified either of ILO Conventions Nos. 87 or No. 98, and has not signalled that there are any prospects of this taking place in the near future.

Iran's 1990 Labour Code gives a central place to Islamic societies and associations. Independent trade union organizations are not permitted.

The rules for the functioning of the Islamic labour councils, their constitutions and elections, are drawn up by the Ministry of the Interior, the Ministry of Labour and Social Affairs, and the Islamic Information Organization. The Council of Ministers approves them.

The Islamic labour councils are overseen by the Workers' House which is the only authorized national organization claiming to represent workers, and its work is mainly of a political, religious and welfare nature. Branches of the Workers' House exist in each town to coordinate the Islamic workplace council.

There is little collective bargaining. The Labour Code provides for it, but collective agreements must be submitted to the Ministry of Labour for investigation and approval.

While the law does not provide workers with the right to strike, they can suspend work while remaining in the workplace. The Government has powers to sack and detain strikers, and to use its security forces to end strikes. A 1993 law prohibits strikes by government workers, who are also forbidden from having contacts with foreigners.

In large factories, particularly in the oil and metal sectors, it is reported that workers have elected their own representatives, and over the past few years, these workers have gone on strike over bargaining demands.

Iraq

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

A 1987 law establishes a single trade union structure. Only the General Federation of Trade Unions (GFTU) can exist.

The GFTU is controlled by the ruling Ba'ath party and is used to promote party policy among workers.

There are no unions for public sector workers and workers in state enterprises. The State sets their wages.

Severe restrictions exist on the right to strike, including the threat of imprisonment. There are no reports of strikes taking place.

Iraq

Government observations on ICFTU's comments

The Government of Iraq would like to make the following observations about what has been mentioned in the report of the ICFTU concerning Iraq:

Concerning the existence of an organized single trade union structure which is the General Federation of Trade Unions: the Federation is the supreme organization of trade union organizations and leads the trade union movement in Iraq. This implies that there are several other trade union organizations, represented by subsidiary and general trade unions as well as other trade union federations, in every district of the country and confirms the existence of trade union plurality in the country. The General Federation of Trade Unions is entrusted with the general supervision.

Regarding the declaration of the ICFTU that the Baath Arab Socialist Party dominates the General Federation of Trade Unions in Iraq to promote the Party's policy among workers, the Government would like to explain the following: the trade union elections, beginning with the trade union committees and ending with the executive office of the Federation, are based on an election system which is free and democratic, and every worker who satisfies the requirements of a qualified candidate, whether belonging to the Baath Arab Socialist Party or not, is free to depose his candidature for the post he would like to occupy. If there is a larger number of candidates from the Party, that would mean that the electorate trust the Baath Party.

What the ICFTU says concerning the lack of rules ensuring the collective negotiation and protection of workers against discrimination on the grounds of trade union affiliation, there is no discrimination among workers on the grounds of trade union activities since all workers enjoy their rights and are socially protected regardless of their trade union affiliation, in accordance with the labour laws in force. Social dialogue among the production partners, including workers, is practised in the different fields as, inter alia, the inspection tripartite labour committees, the committee for fixing the minimum wage for

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non-skilled workers, the Committee for Tripartite Consultation, administrative councils of private external companies and the Convention of Arab Trade Union Freedoms and Rights No. 8 of 1997 which is ratified by Iraq by virtue of Act No. 194 of 1998 and which should be applied in accordance with the provisions of article 150 of Labour Law No. 71 of 1987.

Regarding the declaration of the ICFTU concerning the lack of trade unions in the public sector, i.e. in the state establishments, the Government would like to point out that the workers in the public sector are employees and subject to the laws and rules of service in force in the mentioned sector. These employees have their own trade unions which take care of their interests and advocate their rights such as, for instance, the engineers' trade union, accountants' and auditors' trade union, lawyers' trade union, physicians' trade union, pharmacists' trade union, chemists' trade union, agricultural engineers' trade union, teachers' trade union and economists' and geologists' trade union, etc.

Regarding the ICFTU's declaration about imposing restraints on the strikes and lacking reports about such actions, the Government would like to indicate that the collective labour disputes are dealt with regularly and according to the method described in Chapter 8 of Labour Code No. 71 of 1987 which provides for the adoption of a solution through dialogue among the production parties or resorting to labour jurisdiction. Workers have even the right to stop work when employers refuse to apply the decision of the labour court in favour of the workers and they have the right to claim their rights during this interruption period. As far as the lack of reports about strikes in the country is concerned, this could be taken as the best indicator that labour programmes are studied and dealt with through cooperation among production parties who will have no need to go on a strike.

Jordan

Means of assessing the situation

Assessment of the institutional context

Legislation in Jordan contains a number of provisions relating to freedom of association and protection of the right to organize. They constitute part and parcel of the Constitution, labour laws and the standing orders of both trade unions and the General Federation of Trade Unions in Jordan.

Article XXIII, paragraph 2(f), of the Constitution provides for the protection of labour by the State, and for enacting legislation based on the principle of "freedom of association within the law".

Labour Law No. 8 of 1996 contains a special chapter (i.e. Chapter XI) entitled "Trade unions and employers' associations" setting forth the provisions applicable to the establishment of trade unions, and the organization of their activities and status (articles XCVII-CXIX). Subparagraph (a), article XCVII provides for the right of workers in any given occupation to establish their own union in accordance with the relevant provisions in the Labour Law, and for such workers to join the said union if they fulfil the conditions of membership.

Subparagraph (b) of the same article prohibits employers from requiring non-membership of trade unions, or renouncing such membership as a precondition for employment, and from seeking the dismissal of potential employees from their trade union membership, or

violating their right to be members of such unions and to take part in their activities. Subparagraph (a), article XCVIII, provides for the right to establish a trade union by any group of no fewer than 50 persons of the same occupation, similar occupations, or occupations related to one another by the manufacture of the same products.

Subparagraph (a), article CVIII, provides for the right of employers to establish associations to promote their interests under the provision of this law.

Subparagraph (b) of the same article provides for the right to establish any employers' association by no fewer than 30 persons of the same occupation or occupations related to one another by the manufacture of the same products.

Standing orders

There are standing orders (statutes) for the General Federation of Jordanian Unions, and the trade unions themselves. These contain a number of provisions concerning the organization of trade union activities, and their relations with the General Federation of Jordanian Trade Unions.

The principle of freedom of association, the right to organize, and the right to collective bargaining are recognized in the aforementioned provisions. The question of collective bargaining and the outcome thereof is dealt with in the provisions of Chapter VI in a clear and explicit manner.

Freedom of association, protection of the right to organize, and the right to collective bargaining have been recognized in the Constitution, laws and regulations. Jordan has also ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Such recognition is evident in practice.

Public (civil) servants, municipal workers and agricultural workers, save those covered by provisions of the Labour Law by virtue of a government decision based on recommendations by the Minister of Labour; domestic workers (housemaids, etc.), gardeners, cooks and other similar employees, and members of the employer's family working in the latter's enterprise on a non-remuneration basis are among the categories of workers excluded from the application of the provisions of the Labour Law.

Public employees, civil and military, are subject to special laws and legislations regulating their relations with the State. Agricultural workers are excluded due to difficulties impeding the regulation of labour in this sector on account of its seasonal nature. Domestic workers are excluded again because of the nature of their work, and their special relationship with the employers, which makes it difficult to cover them by the Labour Law. Members of the employer's family working in the latter's enterprise on a non-remuneration basis are also excluded in view of their relationship with the employer. Workers' and employers' associations are, thus, private sector organizations, and are covered by the provisions of the Labour Law.

It is to be noted, however, that there are professional organizations consisting of members of the same profession, such as lawyers, engineers, physicians, artists, etc.

Article CII of the Labour Law provides for the submission of applications for the establishment of workers' and employers' associations, to be signed by the founders, and presented for registration with the Trade Union Registrar in the Ministry of Labour. Such applications must be accompanied by the standing orders of the proposed organization,

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indicating its name, headquarters, address, and the names of members of its first administrative committee elected by the founders.

The Trade Union Registrar is required to take a decision concerning the registration of an organization within 30 days of the submission of the application. Once approved, he proceeds to register the organization, and to publish the registration in the *Official Gazette*. If rejected, founders of the proposed organization may appeal against his decision before the Supreme Court of Justice within 30 days of their being notified of the decision. Any person sustaining any loss or damage by the authorization of such registration may appeal against it before the Supreme Court of Justice within 30 days of the publication of the registration of the *Official Gazette*.

Recourse to justice (i.e. the Supreme Court) which is a high-level administrative court, to repeal the decision of the Trade Union Registrar in cases where he rejects the application to register, is in itself a guarantee safeguarding the right of workers and employers to establish their own organizations, especially in view of the fact that the decisions of this Court are final and cannot be appealed or reviewed, but must be implemented as pronounced. Once the Court repeals the administrative decision giving rise to the appeal, all legal and administrative measures taken in pursuance of such decision become null and void as of the date of the Court's pronouncement.

The Government does not intervene in the functioning of an employers' or workers' organization, but it has been invested by law with the authority to supervise certain aspects of their work in accordance with the rules and regulations of such organizations.

The status of workers excluded from application of the principles and rights has been clarified above.

Collective contracts arising from collective bargaining are protected by law. Provisions require that copies of collective agreements be deposited at the Ministry of Labour for registration, and are binding as of the date specified therein, or, where they carry no date, from the date of registration with the Ministry. Legal provisions prohibit any violation by employers of the rights thus acquired by workers: article XLII specifies the categories of workers and employers bound by collective work contracts. The Minister may, at the request of workers or employers, and after a study which includes consideration of recommendations made by a committee of workers and employers nominated by himself, decide to extend the scope of any collective contract that had been in effect for no less than two months so as to have all its provisions apply to employers and workers in a given sector, or to a category of these in all areas, or a certain area, of the country. Decisions made on this basis are published in the *Official Gazette*.

The means of implementing the principle are primarily legal and also administrative.

Assessment of the factual situation

At the present time there are 17 trade unions and 31 employers' associations in the country. Twenty-one collective agreements were concluded in 1998, benefiting some 14,000 workers of both sexes. They were reached through collective bargaining, and focus on the food, banking, insurance, textiles, chemical industries, and the electric energy sectors.

The said process of collective bargaining focused on the improvement of workers' conditions, such as wage increases, introduction of bonuses or increasing them,

development of savings and health insurance schemes, and introduction of end-of-service indemnity systems.

The number of trade unions and collective agreements on improving conditions is expected to rise.

Collective agreements, and hence the benefits accruing to workers as a result, have both increased.

Increasing the number of trainees, and improving training programmes and educational methods.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The measures taken to promote and enhance freedom of association include the following:

— the right of workers and employers to establish organizations to promote their interests, and their right to draw up standing orders regulating their activities in general, provided effective legislations are generally respected;

— no distinction is made in our legislation regarding the sex of applicants who wish to establish workers' or employers' associations, to join such organizations, or to stand for election to their committees;

— the law provides that such applicants must be no less than 18 years of age to join as members, and no less than 25 years of age as founders;

— establishment of a workers' or employers' organization is a right enjoyed by all sectors, except the categories excluded from the provisions of the Labour Law;

— the setting up of a mechanism for the settlement of labour disputes in pursuance of the provisions of Chapter XII of the Law starting with a mediator, a reconciliation council, and then the Labour Tribunal;

— the right of workers to strike and employers to lock out by taking measures that are not detrimental to the interests of either party;

— an explicit provision stipulates that trade unions constitute the General Federation of Trade Unions which has a legal personality, and in which each union enjoys and exercises its own rights. The Federation comprises the members of unions constituting the Federation, which enjoys all the rights of the unions;

— the voluntary dissolution of a union by its general assembly;

— the right of any two or more unions to establish, with the consent of the General Federation, an occupational federation of their own;

— the right of the General Federation of Trade Unions and professional associations to join any Arab or international organization whose goals and means of achieving them are legitimate;

— the General Federation of Trade Unions may develop and adopt its own rules and regulations and those of other unions.

The Government's objectives are to provide job security and a social safety net for workers by:

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— promoting the spirit of democracy and pluralism among workers;

— protecting workers from dismissal and unemployment;

— compliance with the provisions of the Labour Law; recognition of the right of workers and employers to organize, and the workers' right to seek better working conditions through direct collective bargaining, and the need for supervising and supporting such bargaining by the State.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been sent to workers' and employers' organizations, namely: the Amman Chamber of Industry, Association of Jordanian Chambers of Commerce, Federation of Trade Unions in Jordan.

Observations received from employers' and workers' organizations

We have not received any comments or observations on the present report.

Jordan

Observations submitted to the Office by the International Confederation of Free Trade Unions

Public sector workers and non-nationals do not have the right to organize, bargain collectively or strike. Workers in some government-owned companies can form and join unions, but cannot strike.

Agricultural workers, domestic servants, gardeners and cooks are not covered by the Labour Code.

Trade unions have to be registered by the Ministry of Labour. Registration is directly linked to 17 professions and sectors, in which trade unions already exist, making trade union pluralism impossible in practice. Unions can appeal to the High Court if registration is denied.

The 1996 Labour Code does not protect trade unions from acts of interference by the authorities or employers, nor are trade unionists adequately protected against anti-union discrimination.

Permission must be obtained from the Government before a strike can take place. The government can impose cumbersome arbitration and independent tribunal procedures, during which strikes are prohibited.

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Kenya

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Kenya. It is recognized by the Constitution (section 80 provides for freedom of assembly and association), the law (the Trade Unions Act, Cap. 233 and Trade Disputes Act, Cap. 234), ratified international instruments (ILO Convention No. 98 and Convention No. 144), and the Industrial Relations Charter (it is not a legal document. It is a tripartite agreement between the Government, the workers' and employers' organizations).

No limitations on the exercise of these rights exist on employers. By law, workers are not denied representation or the right to associate. In practice however:

- The Civil Servants union was banned. The Government is looking into modalities of reviving the union.
- Management staff are not represented, as the relevant union (association) was proscribed in the early 1980s.
- Through mutual agreement (as in the Industrial Relations Charter) a category of workers (or by virtue of the nature of their work) can be denied representation.

Prior authorization is not required to set up employers' and workers' organizations. However, to operate, they need to be registered.

If it has been established that the trade unions' activities are in contravention of their stated objectives, the Government can intervene.

All collective bargaining agreements have to be vetted by the Government (before registration in the Industrial Court) to ensure that none of the agreed provisions are less favourable than the corresponding provisions in the law.

The means of implementing the principle are:

— through law enforcement;

— collective agreements;

— registration of collective bargaining agreements;

— free services to social partners (e.g. in dispute settlement, etc.); and

— tripartite consultations at various levels.

Assessment of the factual situation

The necessary data/trends can be obtained from the Register of Trade Unions, Ministry of Labour and Human Resource Development, Federation of Kenya Employers, and Central Organization of Trade Unions.

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Some information on redundancy serves as illustration of the dwindling strength of trade unions. Data on training courses for Ministry of Labour officials, workers and employer officials might allow a better assessment of the situation.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Efforts made include:

Training

— Senior staff have been sent for training on Declaration and Follow-up.

— Participation in the following seminars/workshops:

  – Seminar on Convention No. 87 in Dar es Salaam and Nairobi.

  – ILO Update Programme in Nairobi.

  – Seminar on Fundamental Principles at ARLAC, Harare, Zimbabwe.

The Ministry of Labour and Human Resource Development has already made an informal request to the ILO for technical assistance to run a promotional training programme for officials from the Government (various ministries), workers' and employers' organizations as well as other stakeholders.

The means deployed to promote these principles and rights include:

— training, tripartite consultation, education on use of dispute settlement machinery;

— technical cooperation, and availability of experts;

— UNDP, SIDA, JICA, FES, etc.

The objective of the Government is the realization of industrial peace and harmony through social dialogue as a prerequisite for social and economic progress and prosperity.

The conditions deemed necessary to meet this objective include:

— technical cooperation;

— capacity building;

  – training;

  – labour inspection;

  – dispute settlement;

  – translation and production of material;

  – advocacy;

— review of labour legislation.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies were sent to the Central Organization of Trade Unions (Kenya) and the Federation of Kenya Employers.

Observations received from employers' and workers' organizations

No observations were received.

Kenya

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

Kenya has not ratified ILO Convention No. 87 and neither has it signalled that there are any prospects of this taking place in the short or medium term.

Kenya's law is not compatible with the Convention. The Trade Union Registrar has the power to refuse registration or to deregister a trade union. This provision of the law has been used to deny trade union rights to public employees, university staff, doctors and dentists. Union officials (except the Secretary-General) must work in the industry that the union represents. There are restrictions on the right to strike.

Korea, Republic of

Means of assessing the situation

Assessment of the institutional context

The principles of freedom of association and the right to collective bargaining are recognized in Korea.

These principles are recognized in:

- the Constitution:
  - To enhance working conditions, workers shall have the right to independent association, collective bargaining and collective action (article 3, paragraph 1).
- Trade Union and Labour Relations Adjustment Act:
  - Workers are free to establish or join a trade union, except for the case of public servants or teachers who are subject to other enactment (article 5);

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– The representative of a trade union has the authority to bargain with employers or employers' association, and to make collective agreements for the trade union and union members (article 29, paragraph 1);

– A trade union and an employer or employers' association shall bargain, in good faith and sincerity, with each other and make a collective agreement, and shall not abuse their authority (article 30, paragraph 1).

Article 33, paragraph 2, of the Constitution specifies that "only those public officials who are designated by the Act, shall have the right to association, collective bargaining and collective action". Article 66 of the State Public Officials Act and article 58 of the Local Public Officials Act ban the labour activities of public officials, except for those public officials practically engaged in manual work.

*Scope of the public officials practically engaged in manual work: the public officials employed for technical and elementary jobs in the Ministry of Information and Communications, the National Railroad Administration and the National Medical Centre (article 28 of the Regulation on Duties of the State Public Officials). [3]

The Act concerning Establishment, Operation, etc. of the Workplace Association of Public Officials (February 24, 1998) allows the public officials of grade 6 or lower to organize a workplace association in each administrative agency and to negotiate on the improvement of their working conditions and working methods and effective resolution of their grievances. The teachers, who are entitled to freedom of association by a special law, the members of the armed forces and the police, and the fire fighters are excluded from the Act.

The Trade Union and Labour Relations Adjustment Act (TULRAA) of March 1997 adopted the principle of multiple unionism with a reservation that the union pluralism at the enterprise level will be effective from 2002 (article 5, paragraphs 1 and 3, of the TULRAA).

No prior authorization is required to establish trade unions. A trade union shall only submit a notification of union organization to the competent authority, in accordance with article 10 of the TULRAA.

Since trade unions shall be organized and operated autonomously by workers, the Government cannot intervene in the functioning of trade unions. However, the Government can intervene in the following cases, to support their activities:

– In case the representative of a trade union deliberately neglects or avoids the convening of the general meeting and when more than one-third of the union members or delegates submit a request for the nomination of a person to convene the meeting to a competent authority, the authority shall ask the Labour Relations Commission to make a decision and, upon the decision of the Commission, nominate the person who will convene the meeting of the trade union (article 18, paragraph 3, of the TULRAA).

– In case there is no person entitled to convene a general meeting or a council of delegates, the competent authority shall nominate a person when more than one-third of the union members or delegates submit a request for the nomination of a person to convene the meeting with agenda items to be referred to the meeting (article 18, paragraph 4, of the TULRAA).

[3] All text following an asterisk (*) is for clarification of the subsequent text.

– When the by-laws of a trade union violates the labour laws, the competent authority may, after the decision of the Labour Relations Commission, order the trade union concerned to remedy defects of the union by-laws (article 21, paragraph 1, of the TULRAA).

– When resolutions or measures of a trade union violate the labour laws or bylaws of the trade union, the competent authority may, after the decision of the Labour Relations Commission, order the trade union concerned to remedy the defects (article 21, paragraph 2, of the TULRAA).

*The procedure of the order to remedy defects of the resolutions or measures which violate the by-laws of the trade union shall be proceeded only when the interested party makes an appeal to the competent authority.

When the Special Mediation Committee within the Labour Relations Commission decides after every effort of mediation that a labour dispute in the essential public services, defined in article 71, paragraph 2, of the TULRAA — railroad and city bus services, water/electricity/gas supply, oil refinery and supply, hospitals, banking service and communications — will hardly be mediated, the Committee may recommend the Commission to refer the case to compulsory arbitration (article 74 of the TULRAA).

On receiving the recommendation above, the Chairman of the Commission shall decide, after consultations with the members of the Commission representing public interest, whether the case shall be referred to compulsory arbitration (article 75 of the TULRAA).

The workplace association of the public officials is not a trade union in terms of the labour laws and thus it does not have the right to collective bargaining.

Trade unions and the employers are free to conclude collective agreements and no laws and regulations provide for the Government's authorization of collective agreements.

Article 81 of the TULRAA provides that any act of employers' which infringes on the workers' rights, shall constitute an unfair labour practice. The law contains provisions for penalties against employers who commit such unfair labour practices and failed to fulfil the order issued by the Labour Relations Commission to remedy the wrong practices.

*Article 81 (unfair labour practices) of the TULRAA (quoted at length).

Employers shall not commit an act, which falls within any of the following subparagraphs (hereinafter referred to as "unfair labour practices"):

1. dismissal of or discrimination against a worker on the grounds that the worker has joined, or intended to join a trade union or to establish a trade union, or has performed a justifiable act for the operation of a trade union;

2. employment of a worker on the condition that the worker should not join or should withdraw from a trade union, or should join a particular trade union. However, in cases where a trade union is representing more than two-thirds of workers employed in the same business, a conclusion of a collective agreement under which a person is employed on condition that he/she becomes a member of the trade union shall be allowed as an exception. In this case, the employer shall not discriminate the worker for reasons that he was expelled from the trade union;

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3. refusal or delay of conclusion of a collective agreement or of collective bargaining, without justifiable reasons, with the representative of a trade union or a person who has been authorized by a trade union;

4. domination of or interference with the formation or operation of a trade union of the workers and wage payment for full-time officials of a trade union or financial support for the operation of a trade union. However, the employers may allow the workers to take part in consultation or bargaining with the employers during working hours, and may provide subsidies for the welfare of the workers, or for the prevention and relief of financial difficulties and other disasters, and may provide a union office of the minimum size; or

5. dismissal of or discrimination against a worker on the grounds that the worker has taken part in justifiable collective activities, or has reported the violation of the provisions of this article by the employer to the Labour Relations Commission, or has testified about such violations or has presented evidences to administrative authorities.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The principle of multiple unionism was adopted by the TULRAA of March 1997. However, multiple trade unions at the enterprise level will be effective from 2002.

With the Act concerning Establishment, Operation, etc. of the Workplace Association of Public Officials in place (enacted on 24 February 1998), public officials of grade 6 or lower are allowed to organize a workplace association at the level of an individual administrative agency and to negotiate how working conditions and working methods can be promoted and other grievances can be handled effectively.

The Act on the Establishment and Operation, etc., of Trade Unions for Teachers, which was enacted on 29 January 1999 and entered into force on 1 July 1999, entitles teachers to the right to organize and bargain collectively.

The Ministry of Labour is working on improvements to the legal system, in order to secure freedom of association and the effective recognition of the right to collective bargaining. The Act concerning Establishment, Operation, etc. of the Tripartite Commission was enacted in 1999 with a view to institutionally promoting social dialogue and improving industrial relations system. The Government is trying to reflect the agreement concluded by the Commission on national policy and legislation.

The Government devotes efforts to stimulating dialogue among social partners in the Tripartite Commission over promoting the freedom of association and the right to collective bargaining up to the internationally recognized level.

According to the agreement reached by the Tripartite Commission concerning the legalization of freedom of association of public officials, a two-step approach has been initiated:

— First step: Legalization of workplace association of public officials;

— Second step: Full authorization of freedom of association of public officials.

The first step is now in effect through the legislation of the Act concerning Establishment, Operation, etc. of the Workplace Association of Public Officials in place in February 1998.

The Government will make efforts to ensure effective establishment and operation of the workplace association of the public officials in order to advance to the second step in shortest time possible.

The Government will request, when it considers necessary, a technical cooperation and assistance of the ILO to promote tripartite dialogue, which often encounters impasse due to short experience, of great importance in improving industrial relations system.

Representative employers' and workers' organizations to which copies of the report have been sent

The representative employers' and workers' organizations which have been sent a copy of this report are: the Federation of Korean Trade Unions (FKTU) and Korea Employers' Federation (KEF).

Observations received from employers' and workers' organizations

- The FKTU:
  - argues to repeal the provision of the TULRAA banning payment to full-time union officials;
  - requests to revise the TULRAA in order to allow the unemployed to join the trade unions;
  - opposes the system of compulsory arbitration by the Labour Relations Commission in case of labour disputes in the essential public services when there is no possibility of mediation.
- The KEF insists to maintain the provision of the TULRAA banning payment to full-time union officials on the grounds of:

  The provision banning payment to full-time union officials is not intended to restrict their freedom of association, but to rule out employers' domination of or intervention in trade unions and ultimately secure independence of the unions.

Addition of 7 December 1999 to the Government's report

The Government of the Republic of Korea, after reviewing the written notification of establishment submitted by the Korean Confederation of Trade Unions (KCTU), determined that the notification fulfilled legal requirements for union organization and issued a written note of acceptance on 22 November 1999, thereby recognizing that the KCTU is a legal organization for workers.

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Korea, Republic of

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The Republic of Korea has not ratified either of ILO Conventions Nos. 87 or 98, and has not signalled that there are any prospects of this taking place in the short or medium terms.

The authorities have refused to register the Korea Confederation of Trade Unions (KCTU) for four years [4]. The reason currently given is the fact that dismissed workers cannot belong to trade unions, and union officials have to be elected from amongst union members. [Reference is made to a specific example in relation to the KCTU.]

Although public sector workers can now form associations, with certain exceptions, and can establish workplace councils with consultation rights on working conditions, they cannot bargain collectively or strike. While teachers can now form and join trade unions and engage in collective bargaining, they cannot go on strike. The list of essential services continues to be broadly defined.

The authorities issued arrest warrants on a large scale for workers striking over lay-offs in April and May this year, and continue to detain trade unionists who engage in trade union activities.

Korea, Republic of

Government observations on ICFTU's comments

The Government of the Republic of Korea considers, after careful examination of the information that ICFTU transmitted to the Director-General of the ILO, that the issues contained in the information are just a duplication of some of those in Case No. 1865 which is being dealt with by the Committee on Freedom of Association of the ILO, and furthermore that reflecting the information provided by the ICFTU in the compilation of the annual report would be inconsistent with the principle set out in the *Overall Purpose of Follow-up to the Declaration* — in particular, "specific situations within the purview of the established mechanism shall not be examined or re-examined within the framework of this follow-up".

The Government of the Republic of Korea also believes that it would be contrary to the *Overall Purpose of Follow-up to the Declaration* and its modalities to include information that is in the nature of a complaint in the compilation.

The *Annual Follow-up Concerning Non-ratified Fundamental Conventions* is to be based on the information submitted by the member States that have not ratified one or more of the fundamental Conventions under article 19, paragraph 5(e), of the Constitution. In this regard, the Government of the Republic of Korea believes that it would be inconsistent with the *modalities of the Annual Follow-up* to reflect the information communicated by

[4] Note by the Office: See the addition of 7 December 1999 to the Government's report.

international workers' organizations such as the ICFTU, which is not a member State nor a representative workers' organization under article 23 of the Constitution, in the compilation.

In this context, the Government of the Republic of Korea requests that the ILO reconsider its intention to reflect the ICFTU's information in the compilation of the annual report.

Kuwait

Means of assessing the situation

Assessment of the institutional context

The State of Kuwait ensures full protection for workers against all kinds of anti-union trade union discrimination in employment, through the Private Sector Labour Code No. 38 of 1964 and its mandates.

Article 78 of Law No. 39 of 1964 on work in the private sector is similar to the ILO provisions of Articles 1 and 2 of Convention No. 98. The Law reads:

> Any employer, or representative thereof, who dismisses or punishes a worker in order to force him to join, or refrain from joining, or withdraw from a union by reasons of his participation in or implementation of union activities shall be liable to the penalties provided for in Article 27 of the Kuwait Labour Law...

The Labour Law provision applies during the employment relationship and not before it as stipulated by Article 1 of the Convention. This would require amending the law to provide for the protection of the worker prior to his employment in order to bring national law into harmony with the text of the Convention.

With regard to the provisions relating to workers' and employers' organizations enjoying adequate protection against any acts of interference by each other, the 1964 Labour Law provides in articles 69 to 87 for procedures for the formation and administration of worker and employer organizations and for their protection against acts of interference. The articles guard against workers' organizations falling under the domination of employers' organizations. Article 90 of this same law stipulates that workers and employers may form joint committees for the settlement of disputes and the promotion, inter alia, of higher living standards, better services and wages for workers, as well as high productivity and other issues of interest to both parties. Article 92 provides for the establishment of a higher labour consultative committee composed of representatives from the Ministry of Labour and Social Affairs, other ministries concerned, employers and workers, to advise on labour legislations in an advisory capacity.

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Lebanon

Means of assessing the situation

Assessment of the institutional context

Convention No. 98

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) was ratified by Lebanon by virtue of Executive Order No. 70 of 25 June 1997.

The effective recognition of the right to bargain collectively is established by the Collective Agreement, Conciliation and Arbitration Act, which was enforced by Decree No. 17386 of 2 September 1964, and by the ratification of Convention No. 98.

Convention No. 87

As regards freedom of association, Chapter IV (articles 83-106) of the Lebanese Labour Code of 1946 deals with trade unions. Pursuant to that Code, Decree No. 7993 on trade union organization was issued on 3 April 1952.

The principle of freedom of association and of the right to bargain collectively is recognized in national legislation.

This principle is recognized by means of the following instruments, which Lebanon has promulgated or to which it adheres:

- the Lebanese Constitution of 1946 and the laws and decrees relating to that statute;
- the Collective Agreement, Conciliation and Arbitration Act, which was enforced by Decree No. 17386 of 2 September 1964;
- the International Declaration of Human Rights;
- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social and Cultural Rights.

The provisions of the Lebanese Labour Code, including those relating to trade union organization, govern all persons falling within the scope of the Code except those who are excluded by virtue of a specific statute.

Article 8 of the Labour Code provides for the following:

> Article 8. All employers and workers, with the exception of those excluded by a specific statute, shall be subject to the present Code. All establishments, including their commercial and industrial departments and branches, whether national or foreign, public or private, religious or secular, including national or foreign educational establishments and charitable organisations, shall also be subject to the present Code, as shall foreign companies which have a registered office, subsidiary or agency in Lebanon.

Article 7 of the Labour Code excludes the following persons or entities from its field of application:

1. domestic staff in the service of private persons;
2. agricultural trade unions which do not carry out commercial or industrial activities. These organizations will be governed by special legislation;
3. businesses which employ only members of the family under the management of the father, mother or guardian;
4. public administrative departments and municipal bodies as regards day labourers and temporary workers, who are not governed by the civil service regulations and who will be governed by special legislation.

It must be stated that there are agricultural trade unions which are actually governed by provisions of the Labour Code pertaining to trade unions.

In the state education field there are also teachers' associations at all levels: primary, secondary and university. These associations negotiate with the administrative departments concerned with a view to safeguarding the rights of their members and protecting their interests.

In the departments which are under state supervision and in undertakings responsible for running the public services on behalf of the State or in their own name there are legal trade union organizations which carry out all trade union activities and conduct collective bargaining with a view to concluding collective agreements in accordance with Decree No. 17386 of 2 September 1964 providing the law on collective agreements, conciliation and arbitration.

Article 86 of the Lebanese Labour Code stipulates the following: "Employers' and workers' organisations shall only be formed with the authorisation of the Minister of Labour."

The creation of a union is thus subject to authorization by the Minister of Labour and to the conditions required for setting up a union.

The authorization procedure is laid down in articles 87 and 88 of the abovementioned Code (text attached (not reproduced)).

The competence of the Ministry of Labour with regard to union activities is as follows:

- The council of the union draws up the internal rules of procedure and submits them to the general assembly for approval by a two-thirds majority. The internal rules of procedure are then submitted to the Ministry of Labour, which approves them once it has ensured that they are in conformity with the legislative provisions in force.
- In the event that a worker's application to join a union is refused, the worker can bring the matter to the attention of the Ministry of Labour, which then takes the necessary decision.
- The date for the election of the members of the union council is laid down by the outgoing council and communicated to the Ministry of Labour for information purposes. Where no date is laid down by the outgoing council for holding these elections or for holding any other ballot required by article 100 of the Lebanese Labour Code or by the union's internal rules of procedure for the replacement of council members whose legal term of office is coming to an end, the Minister of Labour lays down the date of the elections himself in order to avoid any vacuum which would be liable to harm the interests of the union and its members, and the

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competent department within the Ministry of Labour takes the necessary measures for that purpose after sending the council a *warning* through the council president or his deputy by means of a letter in writing and after allowing the council one month as of the date of the notice to fulfil its legal obligations in this respect.

(Article 3 of Decree No. 9773 providing union organization is attached to the present report, not reproduced)

- In order to ensure that the elections run smoothly, they are placed under the supervision of an election bureau composed of members appointed by the union council plus a delegate appointed by the Unions Department of the Ministry of Labour. In the absence of an election bureau set up by the union council, the ministry delegate is responsible for supervising the elections with the observers representing the candidates so as to ensure that the elections are held on the date scheduled by the union council with a view to observance of the legislation in force and the continuity of the union's activities.

  The tellers' report is submitted to the Unions Department of the Ministry of Labour. The results of the elections are declared valid when they are not disputed in any way. If they are disputed they are examined by the Ministry of Labour with the collaboration of all of the parties concerned with a view to reaching a settlement which is in the interests of the union.
- The labour inspectors (of the Ministry of Labour) can inspect the union's registers following a complaint lodged by a member of the union council.
- The union council presents a copy of the final statement of accounts of the union to the Unions Department of the Ministry of Labour no later than three months after the end of the fiscal year. The labour inspectors may take note of that statement.
- The union council may be dissolved by the Government in the event that it fails to fulfil its obligations or exceeds the limits of its authority. A new union council must be elected within three months following the dissolution. When the said facts are attributed to a member of the council the Government can require that that person be replaced and can prosecute him where necessary.
- In the event that the union council is dissolved, the head of the Unions Department of the Ministry of Labour is responsible for the dispatching of the purely administrative affairs falling within the field of competence of the president of the union council until a new council has been elected. He is also in charge of the election activities carried out by the board of administration.

The Collective Agreements, Conciliation and Arbitration Act governs all categories of employers and workers subject to the Labour Code. This being so, these categories of employers and workers can negotiate collective agreements. The negotiations are conducted by two parties: one representing one or several unions, or one or several union federations, the other representing one or several employers or one or several employer associations or federations.

In order for the collective bargaining to be valid, the workers' representatives must represent at least 60 per cent of the Lebanese workers concerned. The collective agreement must be approved by a two-thirds majority of the general assembly of the trade unions or employers' associations party to the agreement. Employers who are not represented by an association or federation sign the agreement in their own name.

The role of the Government in collective agreements is as follows:

- It ensures that the workers' representatives participating in the collective bargaining represent 60 per cent of the Lebanese workers concerned, that the collective agreement is approved by two-thirds of the general assembly of the trade unions and/or employers' associations which are party to it, and that it also bears the signature of employers who sign in their own name whenever they are not represented by an employers' association or federation.
- A copy of the collective agreement is presented to the Ministry of Labour.
- The collective agreement only becomes binding once it has been published in the *Official Gazette* by the Ministry of Labour or after one month has elapsed as of the date on which it was presented to the Ministry.
- The Ministry of Labour can request the parties to revise their collective agreement before it is published, whenever it contains provisions which are prejudicial to public order or are against the laws in force. The agreement does not enter into effect until it has been published or until one month has elapsed as of the date on which it was presented to the Ministry of Labour.
- Both parties or one of the parties must notify the Ministry of Labour of any renewal, revocation or amendment of the collective agreement. Any request for accession to the collective agreement by a trade union, employers' association or employer who is not party to the agreement must be submitted in writing to the Ministry of Labour.
- The Ministry of Labour can extend the provisions of collective agreements which have been in force for at least one year to all employers and workers in one and the same sector, to a category of workers or employers or to persons working in a specific region, whether they belong to a trade union or employers' association or not; the Ministry can carry out this extension ex officio or at the request of a trade union or employers' association, and the extension can apply to all or part of the provisions of the agreement.

  It is the Minister of Labour who takes the decision concerning any such extension.
- Any decision by the Minister of Labour providing the amendment, renewal or extension of a collective agreement must be based on a favourable and reasoned opinion of the High Commission on Collective Agreements, which is composed of representatives of the Ministry of Labour, the Ministry of Economics and Trade, employers and workers.
- The Labour Inspectorate Department of the Ministry of Labour is responsible for the application of collective agreements on which an extension decision has been taken. Offenders are liable to penalties.

The application of the principle of freedom of association and the right to bargain collectively is carried out at two levels:

— the administrative level: the Ministry of Labour, through the Inspection, Prevention and Health Department, which is by law the competent authority;

— the judicial level: the competent courts, which exercise their authority to monitor and take decisions on any disputes and which impose penalties on offenders where necessary.

Assessment of the factual situation

Legally, article 3 of Act No. 17326 of 2 September 1964 concerning collective agreements, conciliation and arbitration, which requires that the workers' representatives represent at

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least 60 per cent of all Lebanese workers in order for the collective negotiations to be valid, could be amended in order to reduce the percentage required and thus to promote wider circulation of bargaining and collective agreements.

In actual practice, if they wish, the trade unions and employers' organizations can conduct collective bargaining with a view to concluding collective agreements governing their industrial relations on a sound basis.

The national legislation encourages initiatives of that nature. It is a right which the Constitution grants unions expressly and which is exercised within the framework of the legislation in force. This being so, no pressure whatever is exerted by any party with the intention of impeding such negotiations.

As to the right to organize, the general trend is to revise the provisions of the Labour Code pertaining to unions in order to take account of the social realities in our country and of labour principles and standards at the international level and in the Arab world.

As regards public servants, it is still prohibited by law for one category of public servants to join a union and thus to bargain collectively. However, persons working for departments under state supervision and the employees of undertakings responsible for running public services on behalf of the State or in their own name have their own trade unions, which are governed by the Labour Code, and they can conduct collective negotiations just as the other workers governed by the Labour Code can.

As we have already mentioned, certain categories of teachers also have their occupational associations, which are recognized. The teachers in question bargain collectively with a view to safeguarding and improving their rights at all levels.

It must be mentioned furthermore that the graduates of the National Management and Development Institute and those attending courses there have an association which is recognized by law and which approaches the official authorities on their behalf with a view to improving their occupational situation. The Confédération générale du travail, for its part, makes every effort to claim the rights of civil servants in the public sector as regards both pay and social benefits.

Below are some statistics on the number of trade unions and employers' organizations in Lebanon, broken down by region *(Mouhafazates)* and by economic activity:

- workers' federations (Lebanon): 39, most of which belong to the Confédération générale du travail;
- trade unions (North): 45;
- employers' organizations (North): 17;
- trade unions (South): 55;
- employers' organizations (South): 7;
- trade unions (Békaa): 38;
- employers' organizations (Békaa): 6;
- employers' organizations (Beirut and Mount Lebanon): 100;
- trade unions (Beirut and Mount Lebanon): 187.

To give an example, the trade unions unite workers in the following sectors: aviation, overland and maritime transport, commerce, construction, woodworking and petroleum industry, publishing and advertising, hotel trade, catering and leisure industry, health and education, banking, liberal professions, public and private establishments, chemical industry, free trade unions, paper industry, the iron and steel, mechanical engineering and plastics industries, sports industry, public services, modern technologies, and agriculture.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

As regards the efforts made to promote the principles and rights relating to trade union organization and collective bargaining, we refer to what was stated in this respect with regard to the Government's will to update the social legislation in question.

When examining the updating of the statutes, and in particular those relating to union organization and collective bargaining, the Government could contemplate requesting technical assistance from the ILO with a view to examining the possibility of taking the principles of Convention No. 87 as a basis and stepping up the application of the provisions of Convention No. 98.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of the present report has been sent to the following organizations:

- Association of Lebanese Manufacturers.
- Federation of Lebanese Chambers of Commerce, Industry and Agriculture.
- General Confederation of Labour.

Observations received from employers' and workers' organizations

We have received no comments from the abovementioned organizations as to the follow-up measures taken or to be taken with regard to trade union organization and the effective recognition of the right to bargain collectively.

Annex (not reproduced)

Executive Order No. 7993 on trade union organization of 23 April 1952.

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Lebanon

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

Lebanon's Labour Code dates from 1946. It bans around 150,000 government employees from forming or joining trade unions. Although teachers and other government workers have formed unofficial unions. The Minister of Labour has wide powers under the law and must give prior authorization before a union can be formed. He must approve the results of all trade union elections. In 1996, the Government issued a decree amending an earlier decree, which empowered the Minister of Labour to set the date of union elections and determine procedures.

The law permits the administrative dissolution of trade unions. Unions are prohibited from engaging in political activities.

Sixty per cent of workers must agree before a union can negotiate, and a collective agreement must be approved by two-thirds of union members at a general assembly.

The law does not adequately protect workers against anti-union discrimination. The right to strike is restricted.

Lebanon

Government observations on ICFTU's comments

I. Non-ratification of Convention No. 87

The ILO Declaration requires member States to respect the principles concerning the fundamental rights which are the subject of certain Conventions, but does not make it an automatic requirement that they ratify the fundamental Conventions referred to in the Declaration, which include Convention No. 87. This is because the Declaration takes into account the circumstances of individual States and the principle of state sovereignty recognized by the ILO Constitution and the Declaration itself. According to this, a State has the right to decide for itself its position with regard to ratification of ILO Conventions, including the core Conventions.

We would emphasize that the principle of trade union organization has long been recognized in Lebanon and was recognized even before Convention No. 87 was adopted. The principle is put into practice effectively and applied in the different production sectors.

The Lebanese Labour Code enacted in 1946 recognizes the principle allowing the formation of trade unions. The Code has allowed the establishment of a number of trade union organizations in the commercial and industrial sectors, as well as in the agriculture and maritime sectors.

Such organizations also exist in the state-controlled sectors and in institutions responsible for managing public services, whether they are directly employed by the State or independent contractors.

In the public sector, there are associations at all levels of education (primary, secondary and tertiary). They conduct negotiations with administrations in order to safeguard their rights and protect the rights of their members.

Graduates and trainees of the National Institute of Management and Development are also covered by an officially recognized association which represents them in talks with official bodies aimed at improving working conditions.

The Government of Lebanon has undertaken to modernize its social legislation. It plans to deliberate on the principles embodied in Convention No. 87 in the light of national circumstances.

As a result of the process of social and political change under way in Lebanon, the provisions of the Convention will be incorporated in our legislation.

II. Restrictions under the Labour Code in respect of fundamental trade union rights

I. Prohibition on public servants establishing or joining trade unions

The Labour Code of 1946 is not applicable to public sector employees, whose conditions of employment are covered by Legislative Decree No. 112/59. This Decree prohibits officials from joining an organization or union, the aim of this being to prevent disorder or any breakdown in public services which might result from trade union action and any repercussions on the stability of public services, especially essential services

There are trade union organizations in the state-controlled sectors and in institutions responsible for managing public services, whether directly employed by the State or independent. These organizations are officially recognized, as are the associations in the public education sector which conduct collective talks to defend their rights and interests at all levels. There is also an association for graduates and trainees of the National Institute of Management and Development which represents its members in talks on conditions of employment.

2. Requirement to obtain authorization to establish a trade union; official verification of results of trade union elections; setting dates for elections, etc.

The Labour Code includes provisions concerning the establishment of trade unions. They allow considerable latitude to the unions and impose no obstacles in this regard. The competence of the Ministry of Labour with regard to trade union activities is limited to functions relating to public order and the public interest and ensuring that the laws and regulations governing trade union activities are valid and properly applied.

As regards the 1996 amendment to section 3 of Decree No. 7993/1952, which allows the Minister of Labour to set the dates of trade union elections, this provision was adopted in the interests of the trade union movement itself. In view of Lebanon's recent history and the many years that had passed since previous union elections, some trade unions did not want to organize new elections. As a result, union officers ceased to be very representative and union activity stagnated. This prompted the Lebanese legislature to draft the following provision to resolve the problem within a clear and defined framework, without curbing healthy trade union activity:

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> The officers of the trade union shall set a date for elections and inform the head of the Trade Unions Department at least fifteen days before the set date. Candidatures for union office shall be submitted to the union not later than three days before the elections are due to take place. A copy of a candidate's judicial record shall be attached to his or her candidature. Any candidature presented after the closing date shall be deemed to be legally invalid.

If the union officers fail to set a date for holding such elections or other elections required under section 100 of the Labour Code or under the relevant trade union regulations to elect new members, the Ministry of Labour is responsible for setting an election date and the competent department of the Ministry takes the measures needed to carry this out, after first notifying the officers through the union's president or president's representative, *in a written letter and after setting a time limit of one month* from the date of notification for fulfilling their statutory obligations in this regard.

3. *Prohibition of trade union involvement in politics*

The purpose of any trade union is to defend the interests of an occupation or profession and to further those interests at every level — economic, industrial and commercial.

In fact, trade union members, like all other citizens, exercise their right to participate in political activities. They vote in various elections (parliamentary, municipal, local, etc.). They can stand as candidates in those elections, as individuals or in their capacity as representatives. Trade unionists stood for election without any difficulty in the most recent parliamentary and municipal elections.

Trade unionists are fully entitled to express their political views, based on the principle that politics and economics are inextricably linked.

4. *Requirement for approval by 60 per cent of employees' representatives as a condition for talks on a collective labour agreement*

Discussions are taking place on a draft amendment to section 3 of the *Code respecting collective labour contracts, mediation and arbitration* (Decree No. 17386 of 2 September 1964), and this is one element in the modernization of our social legislation. The amendment would reduce the percentage currently required as a condition for holding talks on a collective labour agreement.

As regards the requirement that two-thirds of the participants at a trade union's general meeting must approve a collective labour agreement, we believe that this percentage is acceptable, given that more than half the members must be present at such general meetings for a quorum to be established and two-thirds of the quorum is essential to ensure that approval for a given collective labour agreement is genuine.

5. *Protection of workers from anti-union discrimination*

The draft amendments to certain provisions of the Labour Code include an explicit provision on this, Lebanon having ratified Convention No. 98 which contains similar provisions.

As regards the claim concerning restrictions on the right to strike, we would like to know what the ICFTU means by "restrictions", given that our labour legislation includes clear provisions concerning the right to strike. In our view, the fact that rules are established

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with the aim of preventing any abuse of that right and any use of it for purposes not connected with trade union matters should not be regarded as implying restrictions on the right to strike.

Libyan Arab Jamahiriya

The Office received no report from the Government.

Libyan Arab Jamahiriya

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The national trade union centre is controlled by the Government. and administered by the Libyan system of "People's Committees".

Independent trade unions are banned. The Government says they are "intermediaries between the revolution and the working forces".

Foreign workers are not allowed to join unions.

There are no strikes in Libya. Public servants can be imprisoned or sentenced to forced labour for striking. Libya's President has said that workers can go on strike, but they do not because they control their enterprises.

Malaysia

Means of assessing the situation

Assessment of the institutional context

The Federal Constitution of Malaysia gives the right to all citizens to form associations. However, the legislature is empowered to impose necessary restrictions in the interest of national security or public order or morality. These restrictions do also apply to the freedom of association of labour. Under the Trade Unions Act, 1959, unions are registered based on any particular establishment, trade, occupation or industry or within any similar trades, occupations or industries. The formation of unions is solely the right of the workers themselves. This right includes the right to form national or in-house unions and is protected by the labour laws of the country.

The Government received observations from the Malaysian Employers' Federation (MEF) and Malaysian Trades Union Congress (MTUC)

The MEF concurred with the comments of the Government. However, the Malaysian Trades Union Congress has once again raised the issue of national union for workers in the electronics industry. In this regard, the Government is of the opinion that the issue has

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been put to rest by the Langkawi Charter which rendered support for the formation of in-house unions in this sector.

Under the provisions of section 27 of the Act and the Trade Unions (Exemption of Public Officers) Notification, 1981, the following groups of public officers are not permitted to form or join trade unions. They are:

(i) members of the Royal Malaysian Police;

(ii) members of the armed forces

(iii) members of any prison service

(iv) public officers engaged in a confidential or security capacity;

(v) public officers holding any post in the managerial or professional group; and

(vi) officers prohibited by any other law from joining a trade union.

However, the Chief Secretary to the Government is empowered to exclude officers in the Managerial and Professional Group from the prohibition by means of a directive in writing issued by him. He is also empowered to decide on matters to determine as to whether an officer is engaged in the confidential or security capacity.

Similar prohibitions and restrictions are also now imposed upon employees of statutory authorities.

Assessment of the factual situation

Please see Appendix A (tables on number of trade unions and membership by category) and Appendix B (number of trade unions and membership by sector, 1994-98) (not reproduced).

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The registration of a trade union is provided for under the Trade Unions Act, 1959. In order to function legally and to enjoy the rights, privileges and immunities granted by law, a trade union must apply to the Director-General of Trade Unions for registration. This is to ensure an orderly development of trade unions in this country. Under the Trade Unions Act, 1959:

Every application for registration of any association, combination or society as a trade union shall be made to the Director-General in the prescribed form, and shall be signed by at least seven members of the union, any of whom may be officers thereof.

Once a trade union has been registered, it must conduct its affairs in accordance with the provisions of the Act, the Regulations made thereunder, and the union's own rules. Otherwise it is obliged to provide valid explanations for their actions which are considered to be counter to the provisions of the Act.

The national Director-General is empowered to cancel the certificate of registration of a trade union if he is satisfied, among other things, that:

(i) the constitution of the trade union or its execution is unlawful;

(ii) the trade union has contravened any of the provisions of the Act or Regulations made there under, or any of its rules;

(iii) its funds are or have been expended in an unlawful manner or on matters not authorized by its Constitution; or

(iv) the trade union has been or is being or is likely to be used for any unlawful purpose.

If the Director-General decides to cancel the registration of a union, he will serve on the union not less than 30 days' notice during which the union can show cause why its certificate should not be cancelled.

Restrictions on collective bargaining in the public sector are not uncommon in countries where the government legislatively facilitates the recognition of unions and the resolution of disputes through conciliation, arbitration and judicial decisions. However, in Malaysia, a machinery appropriate to national conditions has been established in the public sector for purposes of discussing and to some extent negotiating terms and conditions of employment. It has to be appreciated that collective bargaining in the public sector is very much affected by certain constraints and factors peculiar to the public sector which is vast and which includes the diffusion of employee decision-making authority with the Government, budgeting, etc. Certain aspects of conditions of employment in the public sector depend upon legislative actions and the applicability of overall government policy which has national security implications.

Public sector employees, through their unions have been holding regular consultations in respect of their terms and conditions of employment, including remuneration. The Congress of Unions of Employees in the Public and Civil Services (CUEPACS), the officers of the National Joint Councils and the Public Services Department hold meetings on a regular basis, to discuss issues affecting employees in the public sector including the statutory bodies and local authorities. It should be pointed out that these meetings are directly handled by the top most civil servant, the Chief Secretary to the Government and by the Head of the Malaysian Government, the Hon. Prime Minister.

Representative employers' and workers' organizations to which copies of the report have been sent

Malaysian Employers Federation (MEF) and Malaysian Trades Union Congress (MTUC) have been notified of these comments.

Observations received from employers' and workers' organizations

The Government has received observations from both organizations.

Annexes (not reproduced)

Table: Number of trade unions and membership by category, 1994-98.

Table: Number of trade unions and membership by sector, 1994-98.

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Malaysia

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The Trade Unions Act of 1959 and Industrial Relations Act of 1967, and subsequent amendments restrict the rights to organize and bargain collectively. The Trade Union Act closely regulates almost all aspects of trade union activity.

Under the Trade Unions Act, a union can only represent workers "within any particular trade, occupation, or industry, or within any similar trades occupations, or industries or within a single enterprise or establishment". Thus general unions are prohibited.

The Director-General of Trade Unions has invoked these provisions to direct industrial unions to remove several thousand members from their membership, denying them recognition and the right to collective bargaining.

[Reference is made to specific companies when workers were disqualified from union membership.]

Workers removed from union membership under the circumstances described above are not permitted to join any other existing unions. They have to establish separate in-house unions which is often very risky and time-consuming. This aspect of the law remains a serious obstacle to the organizing activities of trade unions.

The Act gives the Director-General of Trade Unions, a government official, the right to supervise, direct and control the trade unions. Every union is obliged to register within a period of one month (or other extended period specified by the Director-General) from the date on which the union was established. Any trade union which has not sought registration within this stipulated period will be deemed illegal.

The Director-General can refuse to register a union if he is satisfied that a similar one already exists.

Under this legislation, 160,000 mainly women workers employed by multinational electronics companies, have been denied the right to organize a national union in the electronics industry since the early 1970s. They can only form in-house unions.

Workers forming in-house unions in the sector usually face management hostility, including threats of dismissal.

In general, the Government and employers encourage the formation of in-house unions. Amendments to the Trade Unions Act in 1989 allowed for the formation of unions in the enterprise regardless of whether a registered union already existed.

Unions report that they continue to encounter difficulties in organizing. Many employers, including some multinational corporations, go to extreme lengths to deny union recognition and evade collective bargaining. They often challenge government directives to accord union recognition, and refuse to comply with Industrial Court awards to reinstate wrongfully dismissed workers.

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In the public service, unions can organize by ministry, department, occupation or trade. These unions can join federations. Employees of statutory bodies can only join in-house unions, although these can simultaneously affiliate to the public service federation as well as to the national trade union centre.

The law places restrictions on who can stand as candidates to union office. The Minister of Human Resources has said that foreign workers are not allowed to join trade unions, although the law merely says that only Malaysian nationals can hold union office. One of the conditions stipulated in work permits issued to foreign workers by the authorities is that they are not allowed to join "associations".

The Minister of Human Resources can order the suspension, for a period not exceeding six months, of any trade union which, in his opinion, "is, or is being used for purposes, prejudicial to or incompatible with, the interests of, the security of, or public order in, Malaysia, or any part thereof".

Unions cannot use their funds for political purposes. The law includes a comprehensive list of matters which can be termed as "political objects". The Minister of Human Resources can add to this list.

The Director-General must give his approval before a trade union can affiliate internationally.

Legal restrictions make it virtually impossible to organize a legal strike. Two-thirds of the membership must vote in favour of a strike in a secret ballot. The ballot must contain a resolution which states "the nature of the acts which are to be done or omitted to be done in the course of such a strike". It has been reported that even where a union has conducted a secret ballot and received a mandate for a strike, the Director-General of Trade Unions has disallowed the result on the basis of his dissatisfaction with the resolution. Unions cannot strike over disputes relating to union recognition and wrongful dismissal. The Minister of Human Resources can compel the parties involved in a dispute to submit to arbitration. Strike procedures are lengthy. Essential services are very broadly defined and trade unions face additional restrictions on going on strike in these industries including by giving at least 21 days' strike notice.

Legislation such as the 1961 Internal Security Act, which allows detention without trial, the Official Secrets Act, the Printing Press and Publications Act, and the Sedition Act can be, and has been, invoked to restrict the exercise of trade union rights. The Malaysian Penal Code requires police permission for public meetings of more than five people.

Malaysia

Government observations on ICFTU's comments

The Malaysian Government wishes to reiterate its position that the Malaysian Labour Laws have provided a conducive environment for an orderly development of trade unions except in certain essential services. The "perceived restrictions" as stated in the ICFTU report have not hindered worker representation at the enterprise level to ensure their rights at the workplace.

The detailed comments are as follows:

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3.1. Difficulties in organizing

3.1.1. … to deny union recognition and evade collective bargaining.

… challenge government directives to accord recognition.

… refuse to comply with Industrial Court awards to reinstate wrongfully dismissed workers.

The procedure relating to union recognition has been laid clearly in the law. If the union claiming recognition is found competent and/or represents the majority of the workers concerned, the Minister is empowered to order recognition to be granted by the employer, be it a multinational corporation or otherwise.

The legal process in any democracy does not prohibit any party from invoking its rights to challenge a ministerial decision via judicial review. Such challenges are not confined to employers solely but also from unions.

Awards of the Industrial Court are legally binding on the parties. Any complaints of non-compliance of such awards can be lodged with the Industrial Court by any person bound by the award for enforcement. Further refusal can lead to prosecution against the offender.

3.1.2. Legal restrictions on the right to strike

3.1.2.1.Unions cannot strike over disputes relating to union recognition and wrongful dismissal.

The Minister … can compel the parties involved … to submit to arbitration.

Essential services are broadly defined … Additional restrictions in these industries … by giving at least 21 days' strike notice.

There are adequate provisions in the Industrial Relations Act to deal with disputes relating to union recognition and wrongful dismissals. Recognition disputes are ultimately determined by the Minister should they fail to be voluntarily resolved. Disputes over wrongful dismissals, if not resolved amicably through conciliation, may have recourse to the Industrial Court where adjudication results in appropriate decisions.

Reference of trade disputes to the Industrial Court are made provided that the Minister is satisfied that it is expedient to do so. Generally, in cases of disputes resulting in industrial conflicts, the national interest has to be taken into consideration.

Essential services have already been identified specifically in the schedule to the Industrial Relations Act. Some appear to be broadly defined as it is quite impractical to provide for precise definitions. The notice requirement is as applicable to employers in the case of lockouts as to unions in strike situations.

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Mauritania

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining are indeed effectively recognized in Mauritania in the Constitution of 20 July 1991 and in the provisions of Act No. 93.038 establishing trade union pluralism. All categories of employers and workers are allowed to organize except for those in the military and paramilitary categories. No prior authorization is required for the establishment of any workers' or employers' organization. However, in order to conform to the regulations, every workers' or employers' organization must register and have its fundamental statutes checked by the public prosecutor for conformity with the legislation in force (see article 9, Book 3, of the Labour Code). The Government never intervenes in the operation of the workers' or employers' organizations. No category of employers or workers is excluded from any existing systems or procedures for ensuring effective recognition of the right to bargain collectively. Collective and/or sectoral agreements are concluded between the social partners under the patronage of the Government. However, the State has more the role of acting as guarantor of any agreement the partners might reach and guaranteeing that there is no violation of the social legislation in force in the conclusion of these agreements.

Implementation of the principle of freedom of association and the effective recognition of the right to bargain collectively is assured through administrative and financial means, and in particular through subsidies granted to the various workers' organizations. It is also ensured by legal means through constant improvement of legislation. Employers' organizations are also granted advantages such as tax relief, recognition as priority enterprises under the law on investments, etc.

Assessment of the factual situation

Possible available indicators are: the fact that there are three trade union confederations (UTM, CGTM, CLTM) plus a large number of non-affiliated trade unions.

There are also three employers' organizations.

All of these organizations carry out their activities freely and attend subregional, regional and international forums on labour and social security at the expense of the State. They are also consulted by the highest authorities in the country on issues pertaining to major reforms in the field of education or concerning the development of the country.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Since 1991, the State has been making every possible effort to promote freedom of association and the effective recognition of the right to bargain collectively. In the legal field, these efforts have taken the form of the guarantee of these rights in the Constitution of the country and the passing of laws, and in the financial field they have taken the form of the granting of subsidies and a variety of facilities.

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Our Government's objectives with a view to promoting freedom of association and the effective recognition of the right to bargain collectively are to activate tripartite dialogue structures, and in particular the National Labour Council, and to strengthen and develop workers' education structures. In the context of cooperation with the ILO we thus request support for these efforts to achieve a new dynamic through the PRODIAF Programme (project to promote social dialogue in French-speaking Africa) or any other structure which can intervene in this field.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of the present report has been forwarded to the most representative organizations: the Union of Workers of Mauritania (UTM) and the General Confederation of Employers of Mauritania (CGEM).

Observations received from employers' and workers' organizations

We have received no comments.

Mauritius

Means of assessing the situation

Assessment of the institutional context

The Government recognizes the principle of freedom of association and the effective recognition of the right to collective bargaining. As Mauritius has not ratified Convention No. 87, a national tripartite seminar was held in September-October 1996 with the assistance of the ILO in order to identify the obstacles to the ratification of the above Convention by Mauritius. The recommendations made by the ILO thereafter in the light of the seminar are being taken into consideration under a Labour Law Reform Project which will cover the Industrial Relations Act and hence pave the way for a possible ratification of Convention No. 87.

Protection of fundamental rights and freedom of the individual are enshrined in the Constitution of Mauritius. Sections 3 and 13 of the Constitution guarantee to every individual the enjoyment of freedom of conscience, of expression, of assembly and association and his right to assemble freely and associate with other persons and, in particular to form or belong to trade unions or other associations for the protection of his interests.

The Industrial Relations Act recognizes independent trade unions as essential social institutions. Parts II to VII of the Act — dealing in detail respectively with registration of trade unions, constitution and administration of trade unions, protection of individual rights, promotion of industrial relations and industrial disputes as well as institutions dealing with them — provide the basic protection for freedom of association and the right to organize with a view to facilitating the improvement of working conditions and labour relations at workplaces.

The members of the forces of law and order are excluded from the application of the Industrial Relations Act. The police force, fire service personnel and prison staff are by definition in the Constitution of Mauritius considered as "forces of law and order" and as such do not enjoy, for reasons of public safety and public order, the right to establish or join organizations catering for their occupational interests.

Section 5 of the Industrial Relations Act requires every trade union to apply to the Registrar of Associations for registration purposes within three months after the date of its formation. The application for registration shall be made in the prescribed form and shall be accompanied by:

(a) the prescribed fee;

(b) two copies of the rules of the trade union; and

(c) a statement of particulars in the prescribed form.

The Registrar then publishes in the Government Gazette and in two daily newspapers a notice of the application which has not been refused by him. Any registered trade union may, not later than 21 days of the publication of the notice in the Gazette, lodge a written objection to the application with the Registrar. These formalities, designed to render the establishment of a trade union public, serve to ensure that its objectives are clearly defined and to safeguard the occupational interests of the workers.

Under the Industrial Relations Act, the Registrar of Associations has the power to inspect or audit the books and accounts of a trade union. Such inspections or audits are carried out as a routine or when there are complaints from the members of a trade union.

Members of the forces of law and order are excluded from the application of the Industrial Relations Act.

Employers and workers are free to enter into collective agreements without prior authorization from the Government.

Mauritius has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Industrial Relations Act ensures freedom of association and collective bargaining.

Assessment of the factual situation

According to the latest comparison table compiled by the Registrar of Associations, it is found that whereas in some sectors trade union membership has declined, in others it has increased during the period (1987-93).

Education and training programmes on the administration functions of trade unions as well as on collective bargaining are organized by trade unions and by the Workers' Education Branch of the Ministry of Labour and Industrial Relations.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Labour Act and the Industrial Relations Act are the subject of review under the abovementioned Labour Law Reform Project. It is expected that the new laws replacing

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these pieces of legislation will further promote freedom of association and the effective recognition of the right to collective bargaining.

The Government gives due recognition to the trade union movement. To enhance its development, the Government set up a Trade Union Trust Fund in 1997.

The Organization helps Mauritius through overseas and local courses for officials of the Ministry of Labour and Industrial Relations, for trade union leaders and for employers' representatives and by visits of ILO experts. The latest ILO contribution was the Dakar Workshop on the Declaration and its follow-up.

The Government intends to amend the law where necessary to promote the observance, promotion or realization of these principles and rights.

The technical cooperation of the ILO would be appreciated for the promotion of the principle in practice.

Representative employers' and workers' organizations to which copies of the report have been sent

The following employers' and workers organizations have been sent a copy of the report:

— Mauritius Employers' Federation;

— Mauritius Confederation of Workers;

— *Fédération des syndicats des corps constitués*;

— Federation of United Workers;

— Federation of Civil Service Unions;

— Federation of Progressive Unions;

— General Workers' Federation;

— Mauritius Labour Congress;

— Mauritius Labour Federation;

— State Employees' Federation;

— Free Democratic Union Federation;

— National Trade Union Confederation;

— National Trade Union Congress.

Observations received from employers' and workers' organizations

Observations were received from the Mauritius Employers' Federation, the *Federation des syndicats des corps constitués* and the Mauritius Labour Congress. A copy of their reply is enclosed.

Annexes (not reproduced)

Extracts from the Constitution of Mauritius (arts. 3 and 13).

Extracts of Annual Reports of the Ministry of Labour (1987-93).

Industrial Relations Act.

Trade Union Trust Fund Act, 1997 (No. 1 of 1997).

Mauritius

Observations submitted to the Office by the Mauritius Employers' Federation (MEF)

The principle of freedom of association and right to collective bargaining is enshrined in the Constitution of Mauritius.

No category of employers or workers is denied the right to freedom of association.

Mauritius is currently in the process of reviewing its labour legislation. The question relating to these principles may be considered in this context. Moreover, the MEF is of the opinion that the training of social partners in collective bargaining and negotiation techniques is a prerequisite for the ratification of this Convention.

Mauritius

Observations submitted to the Office by the Mauritius Labour Congress (MLC)

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and effective recognition of the right to collective bargaining can be said to be recognized in principle. However, this principle is not recognized for the police and the fire service.

It is recognized in the laws, regulations and by virtue of Convention No. 98.

The police and the fire service are denied the right.

We have to conform to the Industrial Relations Act (IRA) to establish a workers' organization.

The IRA, for example, allows the Government to exercise excessive control on disposal of assets.

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No category of employers or workers is excluded from existing procedures for censuring the recognition of the effective right to collective bargaining.

The legislation provides for the authorization of collective agreements.

The means for implementing the principle are the Remuneration Orders or awards of the National Remuneration Board.

Assessment of the factual situation

The Central Statistical Office releases information relating to freedom of association and collective bargaining.

Statistics and data are also published by employers' organizations.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Consultations have taken place among the social partners.

The Government has appointed commissions or committees to promote freedom of association.

The ILO has provided technical advice by sending consultants.

The objective of the Government is to promote social justice.

The Government has to amend the Industrial Relations Act, the Public Gathering Act and the Labour Law. The right to strike must be recognized. It has to benefit from the ILO's technical support in this connection.

Representative employers' and workers' organizations to which copies of the report have been sent

We are not aware which employers' organizations have been sent this report. However, we have been informed that all workers' federations have been sent this report.

Observations submitted to the Office by the *Fédération des syndicats de corps constitués* (FSCC)

The FSCC observes that Mauritius is supposed to be a democratic country and some of the freedom and liberty of associations are enshrined in the Constitution of Mauritius, but it is regrettable that up to now the Government has not ratified Convention No. 87 despite the fact that many countries in the world have done so.

During the Southern African Development Community (SADC) Employment and Labour Sector Committee of Ministers and Social Partners in Mauritius in April 1998, the representative of the Ministry of Labour and Industrial Relations had announced that test

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Conventions will be more or less integrated in the new revised Labour Draft Bill Legislation which the Government intended to amend very soon.

Unfortunately, the Government has not made such amendment up to now.

The FSCC earnestly wishes that the Government should comply with the procedures of the ILO by ratifying Convention No. 87, as the trade union knew that they are not much protected in relation to the right to organize where the Industrial Relations Act (IRA) is like a sword of Damocles over their heads. At the same time, the Registrar of Associations is empowered to interfere strongly in matters related to trade unions.

Mexico

Means of assessing the situation

Assessment of the institutional context

Mexican legislation recognizes and fully guarantees the principle of freedom of association and the right to collective bargaining.

Article 9 of the Political Constitution of the United States of Mexico provides specifically that the right to associate or to meet peacefully for any lawful purpose may not be restricted. Article 123, paragraph A, section XVI provides that both workers and employers have the right to associate to defend their respective interests, establishing trade unions, occupational associations, etc. Likewise, paragraph B, section X, provides that workers have the right to associate in defence of their common interests.

Moreover, Title Seven of the Federal Labour Law (LFT) on “Collective Labour Relations”, contains provisions regarding the Collective Labour Contract and the Contract-Law, laid down in Chapters III and IV.

Specifically, under articles 441, 356, 357, 359 and 381 of the Federal Labour Law (LFT) workers’ trade unions are permanent coalitions. Trade unions are associations of workers or employers established for the purposes of examining, improving and defending their respective interests. Workers and employers have the right to establish trade unions, without prior authorization. Trade unions have the right to draft their statutes and rules of procedure, freely elect their representatives, organize their administration and activities and formulate their programme of action. Trade unions may form federations and confederations which will be governed by the provisions of Title VII, Chapter II, where applicable.

The Federal Law for Workers Serving the State (LFTSE), Title Four, lays downs provisions regarding collective organization of workers and conditions of work. Article 67 provides that trade unions are associations of workers who are engaged in the same branch, established for the purposes of studying, improving and defending their shared interests.

In the light of the nature of the service provided by public servants such as members of the armed forces, the police, members of the Mexican Foreign Service (who should be considered to hold positions of trust), and who are not bound by an employment relationship (civilian contracts or recipients of fees), and given that these bodies are governed by their own laws and rules of procedure, the principles of trade unionism and

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collective bargaining are not applicable. Such public servants do not however thereby cease to enjoy employment-associated benefits or social security entitlements for themselves and their families.

The trade union register is a guarantee which provides organizations with legal security. It is a non-jurisdictional administrative act which is refused only when applicants fail to comply with the basic requirements for their establishment as trade unions. In the extreme event that registration were to be denied without grounds, those involved might seek the protection of the federal justice system, through *amparo* proceedings. In regard to authorization for the establishment of employers' or workers' organizations, the LFT, article 365, provides that trade unions must register with the Department of Labour and Social Security in cases of federal competence and with the Boards of Conciliation and Arbitration where local competence prevails. In regard to workers serving the State, the LFTSE, article 72, provides that trade unions will be registered by the Federal Conciliation and Arbitration Court.

No provision exists to permit the Government to intervene in the functioning of employers' and workers' organizations.

Collective bargaining is conducted in one of three forms, depending on the practice and agreement between organizations of workers and employers or their organizations.

The first modality takes the form of voluntary bargaining between the parties who, after prior bargaining, agree only to deposit the collective agreement with the competent authority.

The second modality, that is administrative bargaining, means that one or both parties apply to the labour authority for conciliation, after calling a strike if an agreement is not reached between the organizations. In such cases, the labour authority gives guidance to both parties or, in some other cases, participates only as a witness in concluding agreements which take the form of collective agreements which should then be deposited with the competent authority.

Under the third modality, trade unions opt directly for the jurisdictional course before the competent Boards of Conciliation and Arbitration (federal or local) to reach agreement between the parties during the conciliation period of the procedure.

Assessment of the factual situation

The following tables are appended (not reproduced):

Collective contracts and agreements under federal jurisdiction

Law contracts:

IV.1.1. Revised on account of the conflict, by industrial branch.

IV.1.2. Individual collective contracts and resolved agreements relating to workers involved by reason of the conflict, by industrial branch.

IV.1.3. Individual collective contracts and resolved agreements relating to workers involved by level of conflict, by industrial branch.

IV.1.4. Individual collective contracts and resolved agreements by industrial branch.

IV.1.5. Individual collective contracts and resolved agreements relating to workers involved by industrial branch.

IV.1.6. Individual collective contracts and resolved agreements relating to workers involved by worker confederation.

Collective labour contracts:

IV.2.1. Collective labour contracts deposited by branch of economic activity.

IV.2.2. Collective labour contracts deposited by federative entity.

IV.2.3. Collective labour contracts deposited by worker confederation

Collective agreements:

IV.3.1. Collective agreements by type of cause.

IV.3.2. Collective agreements by branch of economic activity.

IV.3.3. Collective agreements by federative entity.

IV.3.4. Collective agreements by worker confederation.

V.1.1. Collective bargaining under federal jurisdiction.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

In Mexico, freedom of association and the right to collective bargaining are fully recognized. Currently, national legislation and practice meet the genuine needs for agreement inherent in the social development process and the positions of workers and employers expressed through their organizations.

The Supreme Court of Justice, in May 1999, issued Jurisprudential Thesis No. 43/1999, entitled “Single Trade Unionism — The related laws or statutes violate freedom of association as embodied in article 123, Paragraph B, Section X of the Constitution”. This Jurisprudential Thesis authorizes the existence of more than one trade union in a single Branch of the Executive, allows workers to leave a trade union to which they belong and allows unions, in turn, to leave the Federation of Trade Unions of Workers at the Service of the State (FSTSE).

Representative employers’ and workers’ organizations to which copies of the report have been sent

In compliance with the provisions of the ILO Constitution, article 23, paragraph 2, copies of this report have been sent to the Mexican Confederation of Chambers of Industry (CONCAMIN) and to the Confederation of Mexican Workers (CTM).

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Observations received from employers' and workers' organizations

The Mexican Confederation of Chambers of Industry (CONCAMIN) has commented that the principle of freedom of association is recognized, in a full and effective manner, and does not therefore need to be promoted.

Meanwhile, the Confederation of Mexican Workers (CTM) has stated that freedom of association and the right to collective bargaining are embodied in the Federal Labour Law.

Morocco

Means of assessing the situation

Assessment of the institutional context

The institutional context for the exercise of freedom of association and right to bargain collectively is defined by the following statutes:

— the amended version of the Constitution of the Kingdom of Morocco;

— Royal Decree *(dahir)* of 18 *hija* 1367 (16 July 1957) on trade unions;

— Decree of 15 *rejeb* 1377 (5 February 1958) on the exercise of the right to organize by public servants;

— Royal Decree *(dahir)* of 10 *Joumada* II 1380 (29 November 1960) providing for the establishment of a High Council on Collective Agreements;

— Royal Decree of 24 November 1994 providing the creation of the Advisory Council responsible for monitoring the social dialogue;

— Royal Decree of 24 February 1958 providing the Civil Service Act and regulations.

The principle of freedom of association is recognized by the Constitution, article 9 of which provides the following:

The Constitution shall guarantee all citizens:

— freedom of opinion, freedom of expression in all of its forms and freedom of assembly;

— freedom of association and the freedom to join any union of their choice.

As regards collective bargaining, article 3 of the Constitution stipulates that "trade union organisations and employers' federations contribute to the organisation and representation of citizens".

The Constitution stipulates furthermore that no restriction may be imposed on the exercise of the abovementioned freedoms other than by law.

As regards the effective application of the relevant principles laid down in the Constitution, article 2 of the Royal Decree of 16 July 1957 referred to above provides for the right of persons practising the same occupation, similar trades or related occupations

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working towards the establishment of specific products and/or persons exercising the same profession, to form the organizations of their choice.

The exercise of freedom of association by public servants is recognized by article 14 of the Royal Decree of 24 February 1958, which grants them the right to organize under conditions provided for in the legislation in force. The same article stipulates that membership or non-membership in a trade union must be of no consequence whatsoever with regard to recruitment, promotion, appointments or the situation of public servants in general.

The effective recognition of the right to bargain collectively ensues from the application of the provisions of articles 1 and 2 of the Royal Decree of 17 April 1957 on collective labour agreements, which stipulates explicitly that collective labour agreements pertaining to employment and working conditions may be concluded between the representatives of one or several trade unions, on the one hand, and one of several employers or employers' associations, on the other.

The exercise of the right to organize and to bargain collectively is also recognized by virtue of the international instruments which Morocco has ratified, namely:

— Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

— the international pact on economic and social rights; and

— the ILO Right of Association (Agriculture) Convention, 1921 (No. 11).

For workers and employers in the private sector there is no exclusion or restriction whatsoever concerning the right to form and to join trade unions and associations or of the right to bargain collectively. The same applies to civil servants and public or semi-public sector employees. Although the latter are not covered by the 1957 Royal Decree on collective bargaining, they nevertheless effectively exercise the right to negotiate their working conditions within the framework of the machinery provided by the joint declaration of 1 August 1996, a copy of which has already been forwarded to the ILO.

The only exclusions for which provision is made in the field of the exercise of the right to organize concern the following categories of persons:

- public servants and persons holding an office which confers the right to use a weapon;
- persons covered by the special rules governing the administrators of the Ministry of the Interior;
- magistrates.

With regard to the conditions for setting up employers' and workers' organizations, no prior authorization is required by the national legislation currently in force. The only formal condition is that the following documents be handed in to the competent authority or sent to that authority by registered mail with acknowledgement of receipt:

— the statutes of the trade union;

— a full list of the persons holding any office in the administrative or governing bodies of the union. The list should include the surnames, first names, affiliation, date and place of birth, nationality, occupation and domicile of the persons concerned, who must be of Moroccan nationality and must enjoy civil and political rights.

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The public authorities cannot under any circumstances intervene in the functioning of an employers' or workers' organization. The latter organizations enjoy the absolute right to draw up their statutes and run their activities freely. Article 19 of the Royal Decree of 16 July 1957 specifies that "workers' and employers' unions can consult one another with a view to examining and defending their common interests". They also have the right to acquire free of charge or to purchase movables or property. Furthermore, they have the right to go to court and cannot under any circumstances be dissolved or suspended other than by legal channels or through a decision in conformity with their statutes.

As stated above, no category of workers' or employers' organizations is excluded from the systems and procedures which have been established to ensure the effective application of the right to bargain collectively. Moroccan legislation does not make any provision for prior authorization for the conclusion of collective agreements. However, those agreements must be presented, free of charge and by the promptest means, to the registry of the competent court and to the ministry responsible for labour affairs. They can only be applied on expiry of the third day following the day on which they were presented to the Ministry of Labour.

The means of implementing the principle of freedom of association and the effective recognition of the right to bargain collectively consist of:

— the establishment of an appropriate institutional framework promoting the exercise of the right to organize;

— action to give the High Council on Collective Bargaining new impetus;

— the organization of tripartite seminars at the national level with the assistance of the ILO on the right to organize and collective bargaining;

— the creation of an advisory body responsible for monitoring the social dialogue;

— the establishment of two administrative departments within the Labour Directorate in charge of promoting collective bargaining and facilitating social dialogue in the various branches of economic activity;

— action to monitor labour relations and settlement of collective labour disputes within the context of regular meetings of the national and regional committees of inquiry and conciliation;

— the providing of technical support by the labour inspectorate for the conclusion of collective agreements.

Assessment of the factual situation

As the result of the facilities granted to both workers and employers with regard to the right to organize, no less than 17 confederations have been set up, three of which are more representative than the others. They are established in all branches of economic activity and take an active part in the meetings of the committees of inquiry and in the deliberations of the advisory body responsible for monitoring the social dialogue, the National Council for Youth and the Future, the Advisory Council on Human Rights and the National Committee on Social Dialogue.

It must be pointed out, however, that no accurate statistics are available at the present time on trade union density or on union trends.

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Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The measures which are planned for this purpose focus on action to pursue the following objectives:

— to ensure that there is absolute harmony between national legislation and the international standards regarding freedom of association and the right to organize and to bargain collectively;

— to encourage collective bargaining as an instrument for developing labour relations.

Several of the provisions contained in the draft Labour Code and in the legislative Bill for amending the Royal Decree of 16 July 1957 are intended to give full effect to Convention No. 98. These provisions are mainly as follows:

- those aiming to prohibit all forms of discrimination based on workers' trade union activities;
- those aiming to proscribe inter-union interference;
- those aiming to guarantee freedom of association by imposing appropriate penalties in the event of hindrance of exercise of the right to organize.

It must be stressed that the abovementioned legislative Bill is currently being debated in Parliament.

In addition to the initiatives already mentioned in the present report, other measures are planned with a view to promoting collective bargaining. These can be summarized as follows.

— the establishment of an appropriate institutional framework for settling collective labour disputes;

— action to launch awareness-raising campaigns by organizing seminars, colloquiums and roundtable conferences on collective bargaining;

— measures to strengthen the protection of workers' representatives by ratifying the relevant ILO Conventions;

— the establishment of two tripartite technical committees following the last meeting of the High Council of Collective Bargaining. The mission of these two committees, which have been meeting regularly since May 1999, is to examine the texts of the legislation and regulations in force with a view to possible amendment and to propose concrete measures which will promote and popularize collective bargaining;

— distribution of a circular to the Provincial and Prefectorial Labour Delegates within the near future to urge them to bring about tripartite meetings at the local level with a view to identifying the undertakings and branches of activity in which industrial relations can be regulated through collective agreements.

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Representative employers' and workers' organizations to which copies of the report have been sent

A copy of the present report will be sent to the following most representative employers' and workers' organizations:

— General Confederation of Moroccan Enterprises;

— Federation of Chambers of Commerce, Industry and Services in Morocco;

— Democratic Confederation of Labour;

— Moroccan Labour Union;

— General Union of Workers of Morocco.

Observations received from employers' and workers' organizations

No comments were received.

Morocco

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

Morocco has not ratified ILO Convention No. 87 and does not appear to be in a position to ratify it in the near future.

In the private sector it is not unusual for trade unionists to be sacked, arrested, fined and imprisoned for belonging to unions, carrying out union activities, and in particular for going on strike. Employers increasingly provoke workers into taking industrial action. They also collude with the police, who often use violence against striking workers. Criminal charges can be, and frequently are, brought against strikers for "obstructing the freedom to work" *(entrave à la liberté du travail)*, under article 288 of the Moroccan Penal Code, while the Government rarely acts against employers who do not implement the labour law, close factories illegally, or victimize trade unionists. Even the election of a trade union leadership in an enterprise can result in the management calling the police.

Since early September 1999, at least 30 trade unionists have been arrested and sentenced to prison terms and fines, while several others have been sacked for going on strike.

[Reference of a complaint-like nature is made to specific instances of police action and the arrest and detention of trade union officials and members.]

Myanmar

The Office received no report from the Government.

Myanmar

Observations submitted to the Office by the International Federation of Free Trade Unions (ICFTU)

[Reference is made to the supervision of ratified Convention No. 87.]

The denial of the right to organize in Myanmar means that all other trade union freedoms fall by default. There is no legal framework to protect collective bargaining nor to protect workers against acts of anti-union discrimination. The authorities do not promote collective bargaining and there is no evidence that it takes place.

Nepal

Means of assessing the situation

Assessment of the institutional context

Article 12 of the Constitution of the Kingdom of Nepal guarantees to all the citizens the right to freedom to assemble peacefully and without arms and to form unions and associations. The Labour Act, 1992, and the Trade Union Act, 1993, also have provisions giving workers the right to unionize for collective bargaining purposes. Based on those provisions, Nepal has already ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Regarding the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Nepal is in the process of adopting it and making minor amendments in both the Police Act and the Military Act.

Assessment of the factual situation

There are no statistics and indicators on this topic.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Convention No. 98 (1949) has already been adopted by Nepal. Regarding Convention No. 87 (1948), the Ministry of Labour (MOL) recently set up the Technical Committee under the chairmanship of the Permanent Secretary, MOL, with representatives from the relevant government ministry and departments, trade unions, employers' organizations and related non-governmental organizations. With the consultation of the Technical Committee, the Plan of Action has already been formulated to initiate the process of adopting Conventions Nos. 29, 105, 87 and 182 which are to be implemented with technical support from the ILO.

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Representative employers' and workers' organizations to which copies of the report have been sent

This report has been transmitted to the trade unions and employers' organization.

Observations received from employers' and workers' organizations

No comments were received.

New Zealand

Means of assessing the situation

Assessment of the institutional context

Freedom of association and the effective recognition of the right to collective bargaining are recognized in New Zealand through legislation as described below.

The Employment Contracts Act 1991 recognizes the rights of employees to freedom of association and the right to collective bargaining in New Zealand. Other relevant enactments are:

— State Sector Act 1988;

— Human Rights Act 1993;

— New Zealand Bill of Rights Act 1990;

— Trade Unions Act 1908.

Also relevant are:

— Commerce Act 1986;

— Incorporated Societies Act 1908;

— Defence Act 1990;

— Police Act 1958;

— Privacy Act 1993.

The functions of these pieces of legislation are described in Part II of the Government's 1998 (and previous) article 19 reports on Conventions Nos. 87 and 98.

All employers and employees (other than the armed forces) have the right to establish and join employers' and employees' organizations under the Employment Contracts Act.

The Employment Contracts Act defines an employees' organization as: "... any group, society, association, or other collection of employees, however described and whether

incorporated or not, which exists in whole or in part to further the employment interests of the employees belonging to it". [5]

Special rules for sworn police officers are detailed below.

No prior authorization is necessary to establish employers' and workers' organizations. Employers' and employees' organizations may choose to register under the Trade Unions Act and if they do so, they are required to have rules. However, under the Trade Unions Act no criteria for assessing any such rules are applied and the Act does not provide for supervision of the activities of organizations registered under it.

The protection provided by the Act apply whether or not an organization has registered under it.

The Employment Contracts Act prescribes no conditions to govern the right of workers' and employers' organizations to draw up their constitution and rules, to elect their representatives, organize their administration and activities or to formulate their programmes. There are no provisions for authorities to interfere in any of these matters. Employers' and employees' organizations may be constituted in any way their members see fit. If employers' and employees' organizations choose to become incorporated societies, they are subject to the Incorporated Societies Act, the provisions of which will apply to them in the same way as for any other incorporated society.

Employers' and employees' organizations must comply with the general laws of New Zealand such as the Human Rights Act and the Privacy Act. Members of such organizations can take action through the appropriate authorities if they believe an organization has acted unlawfully.

The armed forces are not subject to the Employment Contracts Act. Under section 45 of the Defence Act 1990, the Chief of the New Zealand Defence Force has a statutory responsibility to determine conditions of employment of the armed forces, in consultation with the State Services Commission.

The police are covered under the Employment Contracts Act, with certain separate arrangements that apply to sworn police officers under the Police Act 1958. Bargaining rights are given to the police unions (the Police Association and the Police Managers Guild) as representative organizations of the police. Senior staff may be employed on individual employment contracts. There are some restrictions on what may be negotiated as of right, and the police have no right to strike but have a right to "final offer" arbitration.

The law does not provide for the authorization of collective agreements by the Government. Employers are, however, obliged to lodge any collective employment contract binding 20 or more employees with the secretary of the Department of Labour. Once lodged the information in these contracts may only be used for statistical and analytical purposes. A collective employment contract not lodged with the secretary of the Department of Labour does not become invalid.

For detailed descriptions of relevant New Zealand legislation and the applicable case law please refer to the Government's previous article 19 reports on Conventions Nos. 87 and 98, the Government's response to the NZCTU's November 1993 complaint regarding

[5] Section 2, Interpretation.

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New Zealand's compliance with ILO Conventions Nos. 87 and 98, Case No. 1698, and the Government's updates to the Freedom of Association Committee.

Employment Contracts Act 1991

The Employment Contracts Act provides for freedom of association for employees. Part I of the Act states that employees have the freedom to choose whether or not they will associate with other employees for the purpose of advancing collective employment interests. Employees may choose whether or not to join an employees' organization, and if so which organization they will join. No person may apply undue influence in respect of any person's association or lack of association with employees. Any person who exerts direct or indirect undue influence is liable to a penalty under the Act. Part I of the Act also provides for prohibition on preference in employment by reason of membership or non-membership of an employees' association.

Part II of the Act provides for the right to bargain collectively. The Act provides for freedom of choice of representation for both employees and employers and reasonable rights of entry to workplaces for authorized representatives.

Part III of the Act sets out the grounds for personal grievance actions. These grounds include: duress in employment in relation to an employee's membership or non-membership of an employees' organization; and discrimination by reason of an employee's involvement in the activities of an employees' organization.

An employee is discriminated against if, as a result of participating in the activities of an employees' organization, their employer fails to make available to or bestow on them the same conditions of work or fringe benefits as are made available to other employees in similar circumstances. Discrimination also occurs if an employer applies any disadvantage to an employee as a result of the employee's participation in the activities of an employees' organization. In a recent case, the Court of Appeal confirmed that striking constitutes an activity of an employees' organization and therefore that employers cannot discriminate against employees who take lawful strike action. [6]

Included in Part IV of the Act is the provision for the Employment Court to award compensation and to set aside all or part of an employment contract where:

- an employment contract is procured by harsh and oppressive behaviour or by undue influence or duress; or
- that contract, or part of it, was harsh or oppressive when it was entered into.

Trade Unions Act 1908

The Trade Union Act provides clear recognition of the role of trade unions. The Act defines trade unions widely to include workers, employers and trade organizations. Unions are free to represent employees or employers whether or not they register under the Act. The Act states that the purpose of trade unions cannot be deemed unlawful merely because they are in restraint of trade. This has the effect of protecting the members of the organization from criminal prosecution in situations involving lawful action in industrial

[6] *Tranz Rail Limited v Rail and Maritime Transport Union (inc.) and Kelly, CA 149/97*, a detailed report on this case will be included in the Government's next report to the Freedom of Association Committee.

disputes. These protections apply to all organizations that fall within the definition provided in the Act, regardless of whether or not they have chosen to register under it.

New Zealand Bill of Rights Act 1990

Section 17 provides a general right to freedom of association.

Human Rights Act 1993

The Human Rights Act prohibits discrimination on the various grounds included in that Act. These grounds are gender, marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.

The Act's prohibition of discrimination on the grounds of political opinion has, in application, included union activities. [7]

Commerce Act 1986

The Commerce Act also provides fundamental protection for trade unions. It protects the right to bargain collectively by exempting contracts and arrangements about terms and conditions of employment from its general provisions, that prohibit anti-competitive practices.

Assessment of the factual situation

Union membership was already declining prior to the introduction of the Employment Contracts Act. Following the introduction of voluntary union membership this trend has continued (see table below). This is consistent with international experiences.

The Industrial Relations Centre at Victoria University continues to survey trade unions annually. The survey provides estimates of the number and membership of unions at 31 December of each year.

[7] O v Y, unreported C225/94.

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Year	Unions	Membership	Union density In percentage
December 1991	66	514 325	35.4
December 1992	58	428 160	28.8
December 1993	67	409 110	26.8
December 1994	82	375 906	23.4
December 1995	82	362 200	21.7
December 1996	83	338 967	19.9
December 1997	80	327 800	18.8
December 1998	83	306 687	17.7

Source: "Table 1: Unions, Membership, Density 1985-97" from Crawford, Aaron; Harbridge, Raymond; and Walsh, Pat: "Unions and Union Membership in New Zealand: Annual Review for 1998" (1999), Unpublished paper, Industrial Relations Centre, Victoria University of Wellington. In reporting density, Crawford et al. measured the surveyed level of union membership as a proportion of the unadjusted total employed workforce (HLFS).

Other data suggest that union representation remains stronger in larger collective contracts. The Department of Labour's analysis of collective employment contracts, in its database, covering 20 or more employees, shows that in July 1999, 87 per cent of employees covered by these contracts were represented by a union.[8] The Survey of Labour Market Adjustment under the Employment Contracts Act, conducted for the Department of Labour in 1996/97, showed that 50 per cent of employees negotiating collective employment contracts in 1996 were represented by trade unions.[9]

Provision for voluntary unionism and freedom of association under the Employment Contracts Act has allowed the establishment of a number of new employees' organizations. The figures in the table above show that, though falling after the introduction of the Act, the number of employee organizations subsequently increased to a number equivalent to that at the introduction of voluntary unionism.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

For detailed descriptions of relevant New Zealand legislation and the applicable case law, please refer to the Government's article 19 reports on Conventions Nos. 87 and 98, the Government's response to the NZCTU's November 1993 complaint regarding New Zealand's compliance with ILO Conventions Nos. 87 and 98, Case No. 1698, and the Government's updates to the Freedom of Association Committee.

The right of freedom of association is provided for by Part I of the Employment Contracts Act. Any individual who feels that their rights under this part of the Act have been breached can apply to the Employment Court. Any person who unduly influences an

[8] The Department of Labour's database includes 1,450 collective employment contracts that cover 20 or more employees, covering 346,624 employees (approximately 19.9 per cent of those in employment).

[9] The Survey of Labour Market Adjustment, completed by Colmar Brunton Research, sampled 1,781 enterprises and 2,009 employees.

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individual's choice of association with an employees' organization is liable for a penalty under the Act.

Section 28 of the Act prohibits discrimination against an employee on a number of grounds including involvement in the activities of an employees' organization. An individual who believes they have been discriminated against may take a personal grievance to the Employment Tribunal.

Collective bargaining is confirmed as a right of all employees by Part II of the Employment Contracts Act. Employees and employers are given the right to negotiate about whether to have a collective employment contract or individual employment contract. The parties have the right to freely choose whether they wish to be represented by a bargaining agent, and, if so, if they wish their representative to be an employees' or employers' organization. Alternatively, both parties have the right to choose to represent themselves. A person, group or organization seeking to represent employees may be given access to the workplace with the agreement of the employer. Under section 14, authorized bargaining representatives have a right of access to enter the workplace for the purposes of discussing matters relating to the negotiation of an employment contract.

The Employment Contracts Act ensures the effectiveness of collective agreements by specifying minimum requirements for collective bargaining, including that there must be a ratification procedure, that collective contracts be in writing and that collective contracts include a date of expiry.

The Government believes that New Zealand's industrial relations framework ensures freedom of association and the right to collectively bargain. Under the Employment Contracts Act employers and employees are free to choose to negotiate collectively. Collective contracts are binding, once agreed upon, and are enforceable through the Employment Tribunal. The Act also provides employees and employers with the freedom to choose their representation. It is recognized that this environment may sometimes lead to situations where one party may feel that their wish to negotiate individually or collectively is not shared by the other party. However, the Act provides protection of the right to negotiate without interference, and the Employment Court has reinforced this protection on a number of occasions.

The Act sets out that it is lawful for employees to strike and for employers to lock out within the constraints set out in Part V of the Act. Employees and employers are provided with the right to undertake industrial action in support of negotiations for a collective employment contract, provided that there is no current collective employment contract in force. However, the ILO Committee on Freedom of Association has stated its opinion that employees and their organizations should be able to call for industrial action in support of multi-employer collective contracts. [10] The relevant provision in the ECA, section 63(e), is intended to protect the right of the employer, as well as that of employees, to choose the coverage of collective contracts. The Government believes that this provision is necessary to protect the freedom to choose the coverage of employment contracts, so that employers are not compelled to be bound into arrangements with other businesses, such as competitors, which may undermine their legitimate interests. Employees can, however,

[10] This determination was made as a result of the New Zealand Council of Trade Unions' complaint to the ILO about the Employment Contracts Act. See Final Report of International Labour Organization Committee on Freedom of Association: *Case No. 1698 — Complaint against the Government of New Zealand presented by the New Zealand Council of Trade Unions (NZCTU).*

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strike over the content of multi-employer collective contracts, if the structure is agreed to. There is no intention to change or remove the restriction on the right to strike over the issue of whether an employment contract will cover more than one employer.

The Department of Labour continues to provide published information on employment rights and obligations. Information services are provided to ensure that both employees and employers are able to fully exercise their rights. Please refer to the Government's 1999 article 22 report on Convention No. 81 and the 1998 article 19 reports on Conventions Nos. 87 and 98.

The Department of Labour also publishes "Contract" magazine, which is distributed free of charge to interested groups, including unions, and employers and provides information on the trends in collective bargaining arrangements within New Zealand.

The Government intends to maintain the protections provided to maintain freedom of association and the right to collectively bargain provided through the Employment Contracts Act and the other legislation detailed in this report.

It was the intention of the Government when passing the Employment Contracts Act into law to provide freedom of association and to protect the right of employees and employers to be able to choose which form of workplace agreements best suits their needs. These objectives are explicitly referred to in the long title of the Employment Contracts Act.

The Government intends to maintain the balance between employees' right to strike and employers' rights not to have to face strike action and incur losses due to the actions of other employers over which they have no control or to be unwillingly bound into arrangements with competing businesses. There are, therefore, no plans to amend section 63(e) of the Employment Contracts Act.

With regard to the Committee on Freedom of Association's conclusion on the NZCTU's November 1993 complaint, regarding New Zealand's compliance with ILO Conventions Nos. 87 and 98, Case No. 1698, issued in November 1994, the Government is committed to keeping the Committee on Freedom of Association informed of any further developments in case law both as they occur and at any other time requested.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been sent to:

— New Zealand Employers' Federation;

— New Zealand Council of Trade Unions.

Observations received from employers' and workers' organizations

Observations from both the New Zealand Council of Trade Unions and the New Zealand Employers' Federation are attached. The Government's response to comments made by the NZCTU is also attached.

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Comment received by the ILO on 21 January 2000

In late November 1999 a new government was elected in New Zealand. Therefore some of the views outlined in the New Zealand annual reports, submitted in late October 1999 as part of the follow-up to the Declaration on Fundamental Principles and Rights at Work, no longer apply.

The new Government is committed to repealing the Employment Contracts Act and replacing it with legislation that will address issues covered by Conventions Nos. 87 and 98. The Government is moving rapidly on the repeal of the Act, and intends to introduce draft legislation into the New Zealand Parliament within the next two months. The proposed new legislation will potentially have a significant impact regarding New Zealand's ability to comply with Conventions Nos. 87 and 98.

New Zealand

Observations submitted to the Office by the New Zealand Employers' Federation

The Federation agrees with what the Government has said in its report and would simply add that New Zealand legislation applicable to the area of industrial relations strikes a sensible balance between employee and employer rights. All employees are free to join the union of their choice and that more do not choose to do so is probably an indication that the approach taken by many unions is often at variance with the views of potential members. At the same time, the changing nature of work has undoubtedly given rise to a workforce more self-reliant than might once have been the case.

For the same kind of reasons, many employees no longer see any real merit in employment under a collective contract but opt instead for individual contracts which better reflect their particular situation.

In relation to efforts made or envisaged to ensure respect, promotion and the realization of the principles of freedom of association and collective bargaining (section II), the Federation would like to draw attention to its own efforts to ensure that individual employers are made aware of their obligations to employees. The Federation has prepared guidelines for employers clearly setting out all such obligations, while, at the same time, it has widely distributed a poster which offers employees a simple, general explanation of their employment rights.

New Zealand

Observations submitted to the Office by the New Zealand Council of Trade Unions (NZCTU)

The NZCTU does not consider that the rights of freedom of association are properly provided for in New Zealand. In particular, New Zealand's main industrial law, the Employment Contracts Act 1991 [… reference is made to this by the Committee on Freedom of Association in a specific case …].

The NZCTU believes there are two further categories of workers in New Zealand who are restricted from the fundamental rights to organize and bargain collectively and who are in our view subject to forced labour.

These are:

- People required to work in order to continue receiving the "community wage" or unemployment benefit under the Social Security (Work Test) Amendment Act 1998. The CTU considers that these persons are employees but the relevant Act deems them not to be and they have no statutory employment rights.
- Prisoners working for private enterprises during the course of their imprisonment.

We note that these two groups of workers are the subject of complaints by the Trade Union Federation that these schemes breach the relevant Conventions and the principles of freedom of association and the promotion of collective bargaining.

The NZCTU considers that the ECA provides insufficient protections for freedom of association and the right to collective bargaining. This Act takes a neutral and contractualist approach to industrial relations which gives no support to collective organization.

In particular:

- The Act enables employer-dominated bargaining. The recent case of *Tucker Wool Processors Limited v. Harrison & Ors*, unreported, CA 260/98, 12 August 1998, Court of Appeal illustrates an employer-driven bargaining process under the Act. [A copy of this case was attached to the comment but not reproduced here.]
- The Act is neutral and does not promote collective bargaining.
- The cause of action for harsh and oppressive behaviour has not provided adequate protection for workers' rights.

Decline in union membership

We note that the Government has referred to the decline in union membership as a trend that was occurring prior to the enactment of the Employment Contracts Act but fails to quote any figures on the rate of decline or the relative rates of unionization. The rate of decline in unionization has been greatly accelerated since this legislation came into force.

The CTU considers that the level of decline in union membership and density in New Zealand is directly attributable to the enactment and continuing effects of the Employment Contracts Act 1991. [The CTU cites an article entitled *Unions and union membership in New Zealand: Annual Review for 1998* (which was attached to its comment but not reproduced here).]

The data highlight that while the decline in union membership is a long-term trend, pre-dating the Employment Contract Act, the magnitude of this decline has been greater since the Act's passage. This is especially true of the first 19 months of the Act's operation during which union membership fell by nearly 30 per cent.

[Table on decline in union membership and union density 1985-98 not reproduced.]

Non-union "collective employment contracts"

We also note that in the Department of Labour database 10 per cent of collective employment contracts do not involve a union. The alternative database of contracts maintained by the Victoria University Industrial Relations Centre shows 14 per cent of collective employment contracts are negotiated directly. The CTU considers there is an ongoing increase in the numbers of non-union collective employment contracts that are being formed. The NZCTU believes that much of this bargaining is "take it or leave it" as in the *Tucker* case (supra).

The CTU continues to be very concerned that the Government has clearly indicated in this report that it has no intention to change aspects of the law which were found clearly to be in breach of the fundamental Conventions.

New Zealand

Government observations on NZCTU's comments

Means of assessing the situation

Assessment of the institutional context

The NZCTU raises a number of issues that have been addressed in the main report and in recent article 19 reports on Conventions Nos. 87 and 98. Please refer to these documents and to the regular updates on relevant court decisions supplied to the ILO Freedom of Association Committee (Case No. 1698 refers).

Groups alleged to be restricted from the fundamental rights to organize and bargain collectively

The Government will be responding in full to these allegations as part of the separate complaints processes, as previously advised.

Assessment of the factual situation

Decline in union membership

Data on union membership has been regularly supplied to the ILO through article 19 reports and other material prior to and following the introduction of the Employment Contracts Act 1991.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Means of implementing the principle

Please refer to the main report and to the most recent update to the Freedom of Association Committee. Please also not that a copy of the decision cited *Tucker Wool Processors Ltd.*

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v. Harrison & Ors, 12 August 1998 has previously been supplied to the Freedom of Association Committee. This decision set out guidelines for determining whether a term of a contract was harsh and oppressive, within the meaning of s. 57(1)(b) of the Employment Contracts Act. The Court of Appeal has sent the proceedings back to the Employment Court for reconsideration in light of the guidelines now provided.

In this decision, the Court of Appeal also confirmed that Parts I (concerning freedom of association) and II (concerning bargaining) of the Employment Contracts Act cover both prospective and actual employers and employees. Finally, the Court of Appeal reiterated earlier statements that the Employment Contracts Act does not require the parties to follow any particular process in negotiations, rather the parties are themselves free to determine the process to be followed.

The Freedom of Association Committee continues to be regularly kept up to date with relevant court cases.

New Zealand

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

New Zealand has not ratified either of ILO Conventions Nos. 87 and 98, and there do not appear to be any prospects of it doing so in the near future.

Unfortunately, the Government of New Zealand has not [… reference is made to the recommendations of the ILO Committee on Freedom of Association in a specific case …] amended the Employment Contracts Act to make it consistent with the promotion and encouragement of collective bargaining, as well as to allow trade unions to go on strike in support of multi-employer collective agreements.

New Zealand

Government's reply to ICFTU's comments

[The Government sent a request for advice directly to the Office concerning the procedural basis for the decision to include the ICFTU comment. This request has been brought to the attention of the ILO Declaration Expert-Advisers and the general issue has been taken into account in their introduction.]

The New Zealand Government has further advised that it has no comment to make on the substance of the ICFTU's comments. The report is a thorough one, and addresses those issues raised by the ICFTU.

Oman

The Office received no report from the Government.

Oman

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

After joining the ILO in 1994 the Government said that it was drawing up a new Labour Code. A new code was drafted in 1994, and was expected to make some improvements. The appointed Consultative Council recommended changes in 1996. The code has still not been issued.

Working conditions for most Omani and foreign workers, who each make up around half of the workforce, are defined by law or by individual contracts within government guidelines.

The labour law covers domestic servants.

In enterprises which employ more than 50 workers the law requires joint consultative committees of labour and management representatives to be set up. They cannot discuss wages, working conditions or working hours.

Workplaces employing more than 50 workers must also establish grievance procedures. The Labour Welfare Board mediates in cases where these procedures fail to resolve the individual grievances of Omani or foreign workers. If this fails, a report is sent to the Director of the Labour Department who imposes binding arbitration.

Collective disputes are very rarely referred to the Labour Welfare Board. If mediation by the Board fails, another mediator can be appointed, or the dispute can be sent to an arbitration panel. This comprises a representative of the Sultan, the employer and the workers, and votes to take a binding decision.

A 1973 Decree issued by the Sultan states that “it is absolutely forbidden to provoke a strike for any reason”. Workers can be fired for striking or inciting other workers to strike, and strikes rarely, if ever, take place.

[… comment concerning general labour and employment situation of the migrant workforce not directly relevant to freedom of association or collective bargaining.]

Qatar

Means of assessing the situation

Assessment of the institutional context

The right to organize as a principle is enforced at more than one level and in more than one area in the State. There are, for example, the cooperatives which may be formed freely in accordance with the provisions of a special law on cooperatives. There is also the Law on Societies which regulates the establishment and functioning of charitable public benefit societies and professional associations.

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Employers have their own organizations, namely, the Qatar Chamber of Commerce and Industry. Membership in the Chamber is open to national and legal persons engaged in commercial or industrial activities. Structurally, the Chamber has a General Assembly and a Board of Directors elected by the Assembly.

For workers, articles 66 to 68 of the Labour Law (Chapter XI) provide for the establishment of joint consultative committees composed of employer representatives and worker representatives with the aim of developing cooperation between employers and workers. Such committees may submit suggestions concerning questions related to the raising of the standard work and workers in the enterprise. The organization of work and productivity, employment conditions, worker training, safety measures and their implementation and means of improving the general cultural background of workers. Such committees may be formed subject to approval by the Minister of Civil Service Affairs and Housing or anyone acting for him at the request of any worker or employer. The Law requires the employer to report to the Ministry any change in the composition of such committees and empowers the Ministry to delegate any of its officials to attend meetings of these committees as observers (article 66 of the Labour Code).

With regard to collective bargaining, article 68 of the Labour Code regulates the settlement of collective disputes between the employer and some or all of his workers. It prescribes the steps to be followed by both parties to the dispute. These steps are the employer, the directors, and the Conciliation Board. Under article 68, the Conciliation Board is to consist of a chairman, to be designated by decree issued by the Ruler, one worker designated by the employers and another designated by the workers. The Board is mandated to rule on any disputes between employers and workers referred to it under article 68 of this Law.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The labour market and the labour force composition in Qatar have their own special features. The national labour force concentrates in the government sector whereas the majority of workers in the mixed and private sectors are of differing nationalities. National labour does not account for more than a fraction of the total labour force. In the mixed sector, the number of nationals does not exceed 800 employees, in the private sector the number of nationals is even smaller.

The Government is currently making concerted efforts to encourage nationals to work in the private, mixed and banking sectors. Financial incentives and training programmes are being used for that purpose.

Therefore, the joint committees referred to above consisting of worker (all workers) representatives and employer representatives, are considered, for the time being and under the prevailing conditions and work and labour force circumstances, an adequate regulatory arrangement that fulfils, through its terms of reference outlined above, the objectives of promoting work and workers' conditions. Furthermore, such aims and terms of reference themselves may be viewed as collective bargaining for realizing the objectives they seek.

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Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been communicated to:

- the Qatar Chamber of Commerce and Industry (employers);
- the Workers' Committee at the Qatar General Establishment for Oil.

Observations received from employers' and workers' organizations

No comments have been received from either.

Annexes (not reproduced)

— Labour Law No. 3 of 1962 and amendments thereto.

— The Penal Law of Qatar.

— Law No. 11 of 1990 establishing the Qatar Chamber of Commerce and Industry.

Qatar

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The law provides for joint consultative committees of workers' and employers' representatives — but they do not discuss wages which are generally set unilaterally by employers. Collective bargaining is banned.

Most private sector workers have the right to strike after a conciliation board has ruled on a dispute. An employer can close down a workplace or sack employees after a case has been heard by the board.

Local courts can handle disputes between individual workers and employers.

[… comment concerning general labour and employment situation of domestic and migrant workers not directly relevant to freedom of association or collective bargaining.]

Qatar

Government observations on ICFTU's comments

Concerning the information submitted by a workers' organization on the State of Qatar, within the framework of the follow-up of the Declaration, we inform you of the following:

1. *As regards trade unions and collective bargaining, in general*

We have already set forth in our report submitted on this subject within the framework of the follow-up of the Declaration the reality of the labour force in the country as well as the legal provisions and practical measures, which show that the objectives pursued by Conventions Nos. 87 and 98 are practically achieved. We point out in particular to the organization of the joint committees in the institutions and enterprises the legal provisions and the Reconciliation Committee responsible for the settlement of collective conflicts between workers and employers.

2. *As regards the information submitted by the International Confederation of Free Trade Unions*

(a) *Wages*

Wages are determined by an agreement between the employer and the worker. No worker can be employed without an individual employment contract concluded between the worker concerned and the employer. The contract determines, inter alia, the wage agreed upon.

The employment contracts of foreign workers are subjected to the approval of the Ministry of Civil Service Affairs and Housing (Labour Department), and the approval of the Embassy of the State to which the worker concerned belongs, where there is a labour agreement between both countries. The State of Qatar is bound by bilateral agreement with most of the labour-sending States to the State of Qatar. These agreements regulate the employment conditions, the rights and obligations of the worker as well as the employer, and the role of the competent authorities in both countries.

(b) *Possibility for the employer to close down the workplace and to terminate a worker's contract, after the Reconciliation Committee having had examined the conflict*

This is a wrong conclusion drawn from article 69 of the Labour Law, that prohibits the closing down by the employer of the workplace or his refusal to maintain a worker in this employment because of a conflict, before the examination of this conflict by the Reconciliation Committee. Article 70 of the Labour Law stipulates that the striking workers are not allowed to enter workplaces unless they were aiming at resuming work. This clearly means that the workplace is not closed despite the workers' strike, and that closure might not take place before the examination of the conflict by the Reconciliation Committee (article 69 mentioned above).

On the other hand, the Labour Law deals with the subject of arbitrary lay-off in its article 20 that stipulates that if it becomes clear to the court that the lay-off of a worker or the termination of his contract is arbitrary or contrary to the provisions of the Labour Law, the court might decide either to reinstate the worker in his work or to impose on the employer the payment of an appropriate compensation to the worker, in addition to other rights acquired by the worker according to the law. The court has a discretionary authority to determine the arbitrary nature of this lay-off, and to assess its extent.

[… comment in reply to general labour and employment situation of domestic and migrant workers also edited out of ICFTU comment.]

Saudi Arabia

Means of assessing the situation

Assessment of the institutional context

The issue is not that of the recognition of the principles of freedom of association and collective bargaining, as much as it is an issue of responding to the effective needs of the Kingdom of Saudi Arabia in the light of labour market conditions, taking into consideration the following:

— The Constitution of the ILO and the Philadelphia Declaration that gave the States the possibility to deal with their labour market in this respect, with due regard to their economic and social circumstances, their economic and social development and their traditions.

— The Constitution of the Kingdom of Saudi Arabia, represented by the Sharia (Islamic rules) that pursue the same objectives as those of freedom of association and collective bargaining.

— The Saudi Labour Law that guarantees equality among all categories of labour, including Saudi workers.

— Related international Conventions concerning fundamental rights, ratified by the Kingdom of Saudi Arabia that complies with all their provisions.

— Although the Kingdom of Saudi Arabia did not ratify all international labour Conventions, it will make every possible effort to apply the spirit of these Conventions and follow the guidance of the Recommendations.

— The composition of the labour market in the Kingdom of Saudi Arabia.

As regards the employers' organizations, they are independent bodies that play their role in the achievement of their interests as well as those of the public interest, without being subjected to provisions that limit their competence in relation with their activities.

As regards collective bargaining, it is a means that is in practice in the Kingdom of Saudi Arabia, particularly in the case of a conflict between an employer and a worker on a specific subject. The Labour Inspector plays the role of an intermediary providing advice and guidance and trying to bring about an amicable settlement of the dispute. The settlement is therefore consolidated and the Labour Inspector supervises its application.

Assessment of the factual situation

As soon as data and statistics on the factual situation are available, we will convey them to you.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The Kingdom of Saudi Arabia, guided by its concern for the fundamental principles and rights at work, has ratified already a number of international labour Conventions, including four of the seven fundamental Conventions. It is currently examining the possibility of

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ratifying the remaining Conventions. Furthermore, a balance has been achieved in labour relations within the Kingdom in which millions of nationals and foreigners work.

Representative employers' and workers' organizations to which copies of the report have been sent

We provided the Council of Chambers of Commerce and Industry in Saudi Arabia with a copy of this report, in order to convey it to Mr. Abd Allah Sadek Dahlan, the Employers' representative; another copy of this report has been submitted to Mr. Mohammad Al-Hajiry in Aramco Company, as the Workers' representative.

Observations received from employers' and workers' organizations

The Ministry did not receive any comments.

Saudi Arabia

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

Trade unions and strikes are banned by royal decree. Collective bargaining is forbidden. Anyone trying to form a union can be sacked, jailed, or in the case of migrant workers, thrown out of the country.

Over half of the workforce are migrant workers who fill most of the jobs in the private sector. [… comment concerning general situation of migrant workers relevant to aspects of labour law other than freedom of association or collective bargaining …]

Except for domestic servants, who are not covered by labour law, migrant workers can use Saudi labour courts.

[Comment concerning general situation of migrant workers and domestic workers not directly relevant to freedom of association or collective bargaining.]

Saudi Arabia

Government observations on ICFTU's comments

We would like to give some clarification about the information concerned, as follows:

1. There is no applicable Royal Decree that prohibits the establishment of trade unions in the Kingdom of Saudi Arabia.

2. The absence of workers' organizations in Saudi Arabia is due to the special and unique situation that makes the Kingdom of Saudi Arabia different from all other States

worldwide, i.e. that the Islamic Sharia (Islamic Rule) serves as its Constitution and that trade unions are not an objective in themselves but a means to achieve specific goals such as protecting the workers, caring for them and guaranteeing their rights. In the Kingdom, we found that the Islamic Sharia (the Constitution of the Kingdom) guarantees the achievement of objectives that go beyond those pursued by trade unions; in fact, the Islamic Sharia preserves human dignity, aims at administering justice and equality between all people without any distinction or discrimination based on grounds of race or sex or colour or religion; it prompts fraternity between employers and workers, requires the employer to be fair and charitable in his conduct with his employees and guides the workers towards performing their work as perfectly as possible.

[Comment in reply to situation of migrant workers also edited out of the ICFTU comment as it deals with aspects of labour law other than freedom of association or collective bargaining.]

3. As regards the allegation that migrant workers rarely resort to Saudi labour courts in fear of repatriation, it is a strange allegation, as recourse to courts is an absolute human right that suffers no limitation ... In the Kingdom of Saudi Arabia, in addition to this right, the Statute of Governance built on the Sharia's requirements guarantees this right. Consequently, this allegation is unfounded, and the State does not oblige a person that has a right to use that right if this person is not willing to do so. As concerns repatriation, laws do not allow the repatriation of any worker who has lodged a complaint before any competent authority.

[… comment in reply to situation of domestic workers also edited out of the ICFTU comment as it deals with aspects of labour law other than freedom of association or collective bargaining …]

In conclusion, we appreciate the International Confederation of Free Trade Unions' concern for the workers' interests. I have no doubt that it is our common concern, and I assure the International Confederation that the Government of the Kingdom of Saudi Arabia makes every effort to safeguard the workers' rights and dignity and to administer justice and equality to all those who live on its territory. We reiterate our willingness to collaborate and consult in the general interest of workers, regardless of the mechanism, as our aim is to achieve objectives that serve eventually the worker, provide him not only with his rights but go beyond them to provide him with advantages that give him a positive image of our society and reflect genuinely our Constitution that applies to all.

Singapore

Means of assessing the situation

Assessment of the institutional context

Trade union laws

Union activities are regulated by the Registry of Trade Unions through the administration of the following legislation:

- Trade Union Act and its Regulations which provide for the registration of trade unions and the regulation of their activities, including prudent management of union funds and the free and fair election of union officers;
- Trade Disputes Act which lays down the rules by which industrial action (e.g. strikes and lockouts) may be taken; and
- Part III of the Criminal Law (Temporary Provisions) Act which lays down the rules by which industrial action may be taken by workmen engaged in essential services.

The trade union laws have been instrumental in fostering the fundamental shift in Singapore's industrial relations climate, that is, from a confrontational and adversarial situation in the 1950s and 1960s to a cooperative climate from the 1970s to date. The trade union laws also serve to protect the interest of the workers by ensuring that unions are led by responsible union leaders and that union funds are prudently managed. Moreover, the trade union laws have helped to maintain industrial harmony thereby creating a progressive and productive environment for the attraction of foreign investments which in turn generated economic growth and social progress of our workers.

Freedom of association and the right to collective bargaining is recognized and practised in Singapore. Unions are free to organize and negotiate on behalf of workers, with no intervention from the Government on the way they are organized or administered.

The Industrial Relations Act

Labour-management relations in Singapore are regulated under the Industrial Relations Act and its Regulations. The Act, which replaced the former Industrial Relations Ordinance, came into operation on 15 September 1960. It aims to achieve industrial peace with justice by:

- encouraging trade unions and employers to use the machinery for collective bargaining as a means to resolve industrial disputes;
- strengthening the conciliation machinery of the Ministry of Manpower; and
- resolving industrial disputes through arbitration by the Industrial Arbitration Court (IAC).

The Act also stipulates that collective agreements cannot contain terms and conditions of service that are more favourable than those contained in Part IV of the Employment Act during the first five years of commencement of the employers' business on or after 1 January 1968 unless the Minister so approves. However, in recent years, market forces have raised the norm far beyond the standards provided in the Employment Act; hence making the provisions redundant and irrelevant. The Government of Singapore is, therefore, currently looking into the need to retain this provision in the law.

Assessment of the factual situation

There were 80 employee trade unions as at 31 December 1998 with a total membership of 272,769.

Over the years, the National Trades Union Congress (NTUC) and its affiliates have played a key role in promoting tripartite cooperation and industrial harmony They have also participated in the formulation and implementation of wage policies and wage guidelines, review of labour laws and promotion of good employment practices. Unions have worked

closely with employers and the Government to encourage workers to improve productivity and enhance their capabilities through training and skills upgrading.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Collective bargaining under the Industrial Relations Act

A trade union must be accorded recognition by an employer before it can act as a collective bargaining body for its employees. It may seek recognition only in respect of those classes of employees which it is permitted to enrol as members under its rules and constitution. If an employer objects to a trade union representing certain employees or a class of employees, the parties can jointly refer the dispute to the Industrial Arbitration Court for determination under section 16 of the Industrial Relations Act.

A recognized trade union may invite the employer to negotiate a collective agreement on any industrial matter. The employer may do likewise. The following matters are however not negotiable under section 17 of the Industrial Relations Act:

(a) promotion of an employee to a higher grade;

(b) transfer of an employee within the employer's organization provided that such transfer does not adversely affect his term of employment;

(c) appointment of new employees;

(d) termination of services by reason of redundancy or reorganization;

(e) dismissal and reinstatement.

However, notwithstanding the exclusion of these issues from collective bargaining under section 17(2) of the Industrial Relations Act, the right to collective bargaining on terms and conditions has not been compromised for the following reasons:

(i) On the issue of transfer, section 17 (2)(b) of the Industrial Relations Act allows management to transfer an employee within a company only where the transfer will not be detrimental to the terms of his employment. If the employee or his union considers the transfer to be detrimental, the union can make representation on behalf of the employee. The main purpose of this section is to provide flexibility to employers so that management efficiency will not be undermined while at the same time ensure that in situations where a transfer is deemed to be detrimental to his employment terms, his trade union can protect the interest of the worker and pursue it as a dispute under the Act.

(ii) On the issue of termination and dismissal (sections 17(2)b) and 17(2)(e)), while employers are given the right to terminate the service of an employee or dismiss him from employment, they are expected to adhere to the principles of fair employment practices. In the case of termination, the employer is expected to exercise the contractual right of terminating the employment contract on valid grounds such as poor performance, poor work attitude or indiscipline, etc. If there is any evidence to suggest that the employer concerned has abused his right and has no valid reasons to exercise his contractual right to terminate the employee's service, the employee can make an appeal to the Minister for Manpower through his trade union under section 35(2) of the Industrial Relations Act to seek reinstatement.

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The Minister, after an inquiry has been conducted by the Commissioner for Labour, will decide on whether the termination is with or without just cause or excuse. If the employer is found to have terminated the employee's service without just cause, the Minister may order reinstatement. If reinstatement is considered to be undesirable and could affect labour relations at the workplace, the Minister may award compensation to the affected worker.

In the case of a dismissal, the aggrieved employee can also make an appeal to the Minister through his trade union under the same procedure if he considers his dismissal to be wrongful or without valid reasons. The Minister may order the employer to reinstate him in his previous employment or award compensation if the dismissal is found to be without just cause or excuse.

In situations where the termination of service or dismissal involves possible victimization of union members or union officials, the union can also lodge an appeal under section 35(1) of the Act with the view to referring the case to the Industrial Arbitration Court and to seek reinstatement on the basis that the employee concerned was dismissed in circumstances arising out of a contravention of section 82(1) of the Act. This section seeks to protect employees who could be victimized by their employers due to their involvement as union members or leaders in pursuance of better terms and conditions of employment on behalf of the union members. If the employer concerned is found to have violated the section, he may also be liable on conviction to a fine or to imprisonment.

While employers are given the right to terminate the services of their employees or dismiss them from employment, they can only do so with valid reasons or just cause. To check against possible abuse, an avenue for the affected employee and his trade union to seek redress is provided under section 35(2) of the Industrial Relations Act. The provision in section 17(2) of the Industrial Relations Act giving employers the right to terminate the services of an employee enables employers to maintain a productive and disciplined workforce without eroding the collective bargaining role of the trade union. A productive and disciplined workforce will help the companies to better achieve their corporate objectives and enhance the job security and welfare of workers.

Section 17(2) has worked well in that it has helped to foster a favourable workplace environment. When this section of the law was introduced in 1968, there were apprehensions expressed by trade unions. However, their concerns turned out to be unfounded. Labour-management relations climate from an adversarial to a harmonious one in the last three decades. Abuses of the management prerogatives granted under section 17(2), if any, are minimal. This is because employers usually consult the unions before exercising their rights on matters affecting workers' interests. In the case of dismissal, the avenue provided for the dismissed worker and his trade union to seek remedy from the Minister for Manpower for reinstatement imposes an obligation on the employers to substantiate their grounds for dismissing a worker from employment.

Section 25 of the Industrial Relations Act

Section 25 of the Industrial Relations Act provides that no collective agreements should contain certain employment terms, such as annual leave and sick leave, to be more favourable than that stipulated in Part IV of the Employment Act. The provision was introduced in 1968 when the Singapore economy was facing a bleak future, particularly after the withdrawal of the British forces in Singapore in the mid-1960s which aggravated the unemployment situation. To ensure that Singapore survived as a newly independent

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country, this section of the law was introduced to help attract foreign investments so as to create more jobs for the unemployed and school leavers.

Essentially, section 25 of the Industrial Relations Act subjects employers and trade unions to seek approval from the Minister to enter into collective agreement to grant annual leave and sick leave benefits that are more favourable than the entitlements stated in Part IV of the Employment Act. In practice, the Minister has not rejected any application to grant better leave benefits. The economic progress achieved over the years has enabled employers to offer annual and sick leave benefits beyond the minimum standards provided under Part IV of the Employment Act. The Singapore Government is therefore reviewing the continued relevance of section 25 of the Industrial Relations Act under the present economic circumstances.

The ILO will be informed in the event a decision is taken to remove the restriction in section 25.

Conclusion

Many of the restrictive provisions in the Industrial Relations Act were introduced at a time when the industrial relations climate was chaotic. Trade unions were bent on achieving objectives which did not enhance the interest and welfare of the workers. The prerogatives given to management under section 17(2) and the restrictions in the granting of excess annual and sick leave under section 25 of the Industrial Relations Act have contributed to the economic development of Singapore and a higher standard of living for our workers. Able and responsible leadership has also emerged in the trade union movement in an environment of industrial peace and harmony. The Industrial Relations Act continues to be an important instrument in promoting good labour-management relations which will attract high valued added foreign investments and create better paid jobs for our workers.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of the report were sent to the Singapore National Employers' Federation and the National Trades Union Congress.

Sudan

The Office received no report from the Government.

Sudan

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

Democratic trade unions were abolished in 1989 when the fundamentalist military regime took power in a coup d'état. Only the government-controlled Sudan Workers' Trade Union Federation (SWTUF), named in the law, can function.

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Most union leaders were sacked or detained when trade unions and professional associations were dissolved after the coup. Trade union affairs were managed by steering committees controlled by the regime until 1992 when the regime brought in a Trade Union Act.

The 1992 Trade Union Act imposed a single trade union system. The Act:

- allowed the Minister of Justice to define the sectors, industries and enterprises in which unions can exist;
- denied union rights to certain public servants;
- interfered extensively in internal union affairs and elections;
- gave the authorities the power to suspend or dissolve trade union organizations;
- did not protect workers against acts of anti-union discrimination.

Union leaders from the pre-coup SWTUF went into exile in 1992 and established the Legitimate Sudan Workers Trade Union Federation (SW(L)TUF) which also works underground in Sudan.

After rigging union elections towards the end of 1992, and merging the existing 107 sectoral or company unions into 26 unions, the regime sponsored a trade union congress in 1993 to establish the SWTUF as the national trade union centre. The SWTUF's objectives are to "mobilize the masses for production and to defend the authenticity of the Islamic state". In 1996, a further merger took place reducing the number of unions to 13.

Most wages are set by a body controlled and appointed by the regime. There is very little collective bargaining. The Minister of Labour has wide powers to refer a dispute to compulsory arbitration. Strikes are banned.

The treatment of Sudanese seafarers worsened significantly after 1989. The regime controls the Sudanese shipping industry through its ownership of the Sudan Shipping Line. Seafarers are forced to work on its ships which sail in war zones and in areas of health epidemics where no other ship will go. Those who contact the International Transport Workers' Federation to complain about wages and working conditions face arrest and torture upon return to Sudan. Former members of the pre-coup shipping union are victimized.

Strikes and protests took place in 1998 over utilities and corporations causing massive job losses. Teachers, textile and other workers went on strike over non-payment of salaries up to 13 months

The SW(L)TUF said that the new National Constitution adopted by the regime appeared to allow a small margin of freedom.

[Reference of a complaint-like nature is made to specific instances of arrest and detention of trade union officials and members.]

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Tanzania, United Republic of

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and effective recognition of the right to collective bargaining is recognized in Tanzania.

It is recognized by:

(i) the Constitution of the United Republic of Tanzania, article 20;

(ii) the Security of Employment Act of 1964 sections 5(1) and 7;

(iii) the Industrial Court Act, No. 41 of 1967;

(iv) the Trade Union Act, No. 10 of 1998;

(v) the ratification of the Right to Organise and Collective Bargaining Convention, 1948 (No. 98), which was ratified in 1962.

The following groups of employees cannot form a trade union: military forces, police force and the prison service.

This is provided for under section 82 of the Trade Union Act, No. 10 of 1998.

No prior authorization is necessary to establish employers' or workers' organizations.

The Government can only intervene where a trade union or an employers' organization has refused or failed to comply with their own constitutions or have refused or failed to comply with regulations pertaining to financial accountability and holding of elections as required by law.

There is no legislation which provides for the authorization of collective agreements by the Government.

Freedom of association is enforceable by courts of law as provided by the Constitution and the Trade Unions Act, No. 10 of 1998, section 16.

The collective bargaining agreements (CBA) registered by the Industrial Court are enforceable by the same court or the High Court.

Assessment of the factual situation

Data on appeals to the High Court pertaining to freedom of association are not available because the Trade Unions Act, No. 10 of 1998, has not yet come into effect. It is expected to come into effect soon.

According to data on collective agreements registered by the Industrial Court for the period 1998-99, 51 collective agreements have been registered out of 57 which were received and the remaining six were still being processed.

The trend shows that the principles of freedom of association, the right to organize and collective bargaining are respected.

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Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Tripartite consultation has been ongoing especially in the Labour Advisory Board.

A joint seminar of employers, trade unions and Members of Parliament has been held and similar seminars will continue to be held, to promote the principle of freedom of association, the right to organize and collective bargaining.

An awareness-raising seminar for labour officers from all the field offices was held from 7 to 10 September 1999, with the objective, amongst others, to apprise them of their role in promoting the principle.

ILO has conducted a number of training courses on international labour standards and the Declaration, namely:

— Subregional Tripartite Seminar for East African Countries on Convention No. 87, held on 20-24 October 1997 at White Sand Hotel, Dar es Salaam, Tanzania;

— Follow-up on Subregional Tripartite Seminar for East African Countries on Convention No. 87, held on 7-9 September 1998, Nairobi, Kenya.;

— East Africa Multidisciplinary Advisory Team Support on International Labour Standards update programme held on 27-29 August 1997, aimed to support obligations under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which is widely ratified in the East African subregion;

— different courses, seminars, workshops have been held for employers and trade unions to promote the principle;

— international labour standards course held in May 1997 at the Turin Centre, attended by an officer of the local ministry;

— Workshop on Promoting the ILO Declaration and its Follow-up in Africa held on 6-8 October 1999, Dakar, Senegal.

The objective of the Government is to enhance human rights, democracy and good governance.

- The ILO should follow up with a national seminar which will involve the relevant government ministries, employers and trade unions;
- a national seminar for employers, trade unions and Members of Parliament on the principle; and
- capacity-building activities for the technical staff responsible for preparation of reports on ILO standards and the Declaration in particular.

Representative employers' and workers' organizations to which copies of the report have been sent

Copies of this report have been sent to:

(i) the Association of Tanzania Employers (ATE);

(ii) the Organization of Tanzania Trade Unions (OTTU).

Thailand

The Office received no report from the Government.

Thailand

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The State Enterprise Labour Relations Act (SELRA) of 15 April 1991 has been neither amended nor repealed. This law was adopted by a legislative assembly appointed by the illegitimate military National Peacekeeping Council.

The SELRA dissolved trade unions in state-owned enterprises and barred them from collective bargaining and striking, only allowing them to form "employees' associations" which have a limited advisory role. This denied union membership to over 200,000 (now 330,000) workers and cut total union membership in half. Trade union assets were transferred to the associations.

The associations cannot form national federations or join existing trade union centers of private sector unions. However, they set up a liaison body, the State Enterprise Workers' Relations Confederation, although it cannot perform trade union functions. A high minimum number of workers is required to form an association. Only one association can exist in each sector.

[Reference is made to the recommendations of the Committee on Freedom of Association and to the long parliamentary history of the reform bill which has already been considered and is being pursued by the CFA within the context of the complaint.]

In view of the foregoing, we believe that there is no political will on the part of the successive Thai Governments, including the present one, to reform the law, particularly at a time when privatization is going ahead for Thailand's state enterprises. Many technicalities have prevented the law from being amended over the last few years while hundreds of others have been passed. It very much appears that the Government is hiding behind excuses of parliamentary process and constitutional intervention — it knew full well that it would make the draft bill unconstitutional in October 1998 — as well as relying on the Senate to amend the bill. The State Enterprise Workers Relations Confederation (SERC) has stated that "It was a tactic of the Government to sabotage the bill and to try to find an excuse in advance by blaming it on the Parliament".

[Reference of a complaint-like nature is made in respect of an individual trade unionist.]

Finally, we would like to draw attention to other aspects of the law.

In Thailand's private sector, while the law protects workers against acts of anti-union discrimination, it does not protect workers organizing new unions which have not yet been

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officially registered. In practice, trade unionists in private enterprises can be discriminated against and fired. Employers can employ new workers to replace strikers.

Decree No. 54, which was also brought in by the military Government in 1991, obliges private sector unions to register their advisers with the State. It says a union can have two advisers who must be licensed by the Government every two years. The Government can refuse a licence, and anyone who performs advisory duties without a licence could face a year's imprisonment.

The Decree also required a majority vote by secret ballot of all union members in a bargaining unit in order to call a legal strike.

"Essential services" are broadly defined. Striking illegally is a penal offence punishable by a fine or imprisonment.

Excessive conditions exist for the establishment of a federation or confederation.

Under the 1975 Labour Relations Act, every union official must be a full-time employee at the factory where he or she has been elected, which means unions cannot employ full-time elected officials. The Act bans civil servants from joining unions.

Only Thai nationals enjoy freedom of association.

Uganda

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Uganda. The principle is embodied in the National Constitution and national legislation governing the trade unions and industrial relations system in the country, namely:

- the National Constitution, in articles 29(1)(e) and 40(3), provides for freedom of association and the right to organize of workers and employers which includes freedom to form or join associations or unions and other civic organizations;
- the Trade Union Decree No. 20 of 1976 provides for formation of trade unions as amended by the Trade Unions (Miscellaneous Amendment) Statute 1993;
- the Trade Disputes Act 1964 as amended by Amendment Decree No. 18 of 1974 regulates collective bargaining between the employers and workers or their representative organizations. The Act encourages promotion and utilization of voluntary negotiation between employers' and workers' organizations as terms and conditions of employment.

Unionization is now a constitutional and legal right. However members of the armed forces, members of the police and prisons service are denied the right to organize because they are not covered by the legislation.

Under section 19(c) of the Trade Union Decree, an employer is bound to recognize a registered trade union to which at least 51 per cent of the employees have freely subscribed

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their membership and in respect of which the Registrar has issued a certificate under his hand certifying the same to be a negotiating body with which the employer is to deal in all matters affecting the relationship between the employer and those of his employees who fall within the scope of membership of the registered trade union. Further still, the power to order an employer to recognize a trade union at the moment lies with the minister responsible for labour under section 19(3) of the Trade Union Decree. Therefore the question of prior authorization depends on fulfilment of the 51 per cent.

The Government can intervene in the functioning of an employers' or workers' organization, under the following circumstances:

- if there is a violation of the provision of the Trade Union Decree, the Government comes in as a third party to conciliate, mediate and arbitrate the parties;
- the Government intervenes to ensure the trade union operations do not contravene the laws of the land;
- if the Government suspects mismanagement of funds, then the minister for labour appoints the auditor to inspect the accounts of the organization. Sections 62-66 of the Trade Union Decree provides for investigations by the minister. Section 62(1) provides "the Minister may, whenever he considers it necessary in the public interest so to do, call on the National Organisation of Trade Unions or a registered trade union to produce for his inspection or for the inspection of any other person authorised in that behalf in the order, all or any of the books or documents of the National Organisation of Trade Unions on the trade union".

Until recently, collective bargaining was limited to the private sector. However the passing of the Trade Unions Laws (Miscellaneous Amendments) Statute 1993 extended the right to collective bargaining to cover employees in the public service, teaching service and the Bank of Uganda employees. However there are still some categories of employers excluded within the public service, teaching service and the Bank of Uganda.

Collective agreements are based on the principle of voluntarism. The Trade Disputes (Arbitration and Settlement) Act 1964 amended by Decree No. 18 of 1974 regulates collective bargaining between employers and workers or their representative organizations, the trade unions.

The Act provides for free collective bargaining as the normal means of settling disputes or any differences between the employers and workers in an industry through negotiation and joint consultation. Collective bargaining procedures are left entirely to the initiative of the industrial parties to determine for themselves what to include in their collective agreements. There is therefore no direct government involvement in this process unless requested by the parties.

A large number of unionized workplaces are covered by collective agreements which regulate the terms and conditions of employment of the employees as well as relations between employers and employees in industries. The Government has through the Trade Disputes Act provided a machinery to which the parties can resort to settle the grievances or disputes which the parties cannot solve within their voluntary procedures.

The means of implementing the principle is both administrative and legal.

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Assessment of the factual situation

There are 17 registered trade unions in Uganda and there is a difficulty in providing factual assessment due to lack of data and statistical information. According to the information available, only 2 per cent of the labour force is unionized when the labour force is about 8 million. This excluded the informal sector which forms the majority of the labour force and the agricultural sector except in the plantations.

As a result of enterprise restructuring many employers are under pressure to become more competitive and cut on labour costs. The resulting effect has been trimming on the numbers of workers. The reduced number of workers has affected the enjoyment of freedom of association and right to bargain collectively. Since retrenchment is a very intimidating exercise, freedom of expression by the workers is likely to be affected.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Further dialogue and sensitization on the principle have been undertaken for employers and workers. This has been done through meetings, workshops and seminars and through the media.

The message is also being conveyed through the three workers' representatives in the Parliament.

The ILO has assisted in both financial and technically organizing workshops and seminars on the principle. For instance, a Tripartite Workshop on Collective Bargaining in the Public Service was organized in November 1995, and a Subregional Seminar on Convention No. 87 in 1997 was followed up in 1998. Moreover, presentations on international labour standards and the 1998 ILO Declaration were made to labour officers, employers and workers by the ILO EAMAT Specialist on International Labour Standards. In addition, a national tripartite delegation participated in the First African Regional Workshop on Promoting the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up organized in Dakar in October 1999. Lastly, the ILO has supported the Government of Uganda in organizing the First National Workshop on Promoting the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up held in Kampala in October 1999.

The employers' and workers' organizations have taken the initiative to organize their own sensitization programmes.

The objectives of the Government are to encourage the observance, promotion or realization of these principles and rights are good governance, democracy and equitable social development.

The lack of timely quality and disaggregated data poses a problem which calls for assistance to establish a database.

On the legal aspect, the relevant legal provisions governing the trade unions and the industrial relations system in the country — namely, the Trade Unions Decree No. 20 of 1976 as amended by the Trade Unions (Miscellaneous Amendment) Statute 1993, and the Trade Disputes (Arbitration and Settlement) Act 1964 as amended by Amendment Decree

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No. 18 of 1974 — have been revised to bring them into conformity with the principle. However, the proposed amendments are still in the form of drafts yet to be placed before the Cabinet for consideration. The process has generally been too slow. Technical and financial assistance to speed up this process has been sought from the ILO and the request has been granted under the Support for Policy and Programme Development (SPPD) Project.

In order to bring about greater respect, promotion and realization of these principles, the following assistance will be required:

(i) research in the area of freedom of association to assess and understand issues involved and formulate recommendations to be discussed by a tripartite forum to develop comprehensive interventions to address the promotion of the above principle. In particular greater awareness raising and involvement of all partners in the process are needed;

(ii) strengthening of the monitoring system, since the Labour Inspectorate is very critical;

(iii) strengthening capacity of the social partners to gain more knowledge on the principles in the Declaration;

(iv) NGOs need to be encouraged to participate actively in promoting the fundamental principles and rights at work in collaboration with employers' and workers' organizations; and

(v) the strengthening of tripartite structures such as the Labour Advisory Board and the Industrial Court, is required.

Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to the Federation of Uganda Employers (FUE) and the National Organisation of Trade Unions (NOTU).

Observations received from employers' and workers' organizations

Comments by these organizations will be forwarded to the ILO upon receipt.

Annexes (not reproduced)

Text of trade union laws.

United Arab Emirates

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

Trade unions are illegal in the United Arab Emirates.

The law does not recognize the right to organize, the right to collective bargaining or the right to strike. Pay is set by individual contracts which are reviewed by the Ministry of Labour, or in the case of domestic workers, by the Ministry of Immigration.

Labour laws do not apply to government employees, agricultural workers and domestic servants.

Workers' individual grievances can be addressed through conciliation committees run by the Ministry of Labour, or by special labour courts. [… Comment concerning general situation of domestic workers not directly relevant to freedom of association or collective bargaining …]

Migrant workers make up around 85-90 per cent of the workforce. They would risk deportation for trying to organize unions or going on strike.

[… Comment concerning general situation of migrant workers not directly relevant to freedom of association or collective bargaining.]

United Arab Emirates

Government observations on ICFTU's comments

Having examined the letter of the "Executive Director" of the ILO, dated 13 January 1999, which contained the comments of a workers' organization regarding the situation in the United Arab Emirates in connection with the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, the following comments are being made.

First: Trade union rights

The report states that the law does not recognize the right to organize, to collective bargaining, or to strike. We would like to point out that this blank statement does not reflect the situation in the United Arab Emirates. Article 33 of the Constitution of the United Arab Emirates states that "The freedom to meet and establish associations is guaranteed within the limits of the law."

It is therefore obvious that it is not a question of denying the right to organize but rather the type of gathering and the type and nature of those social entities that are set up under the law.

The United Arab Emirates is a young nation which gained its independence in 1971 and the country's first Constitution was adopted in 1971. The United Arab Emirates is a Federation and has no previous experience with the setting up of trade unions or labour federations prior to that.

Following the creation of the Federation of the United Arab Emirates, enterprises were established and various laws organizing the working of a modern State were enacted. These included legislation organizing the activities of employers and professional associations. Professional organizations were established which were different in form to traditional worker organizations even if in essence their activities were similar to trade unions and labour federations. In this context we would like to point out the following:

Federal Law No. 6 of 1947 was amended by Federal Law No. 20 of 1981. It organized public benefit associations. Ministerial Decree No. 297 of 1994 regarding the creation of a coordinating body for the professional associations operating in the country.

Federal Law No. 6 of 1974, amended by Federal Law No. 20 of 1981, grants professional categories the right to establish their own professional associations. Associations of teachers, sociologists, legal, engineering, medical, economic and financial professions were created. They hold periodic elections to set up their governing bodies according to their rules and regulations without any interference from the authorities.

Among these categories are the wage-earners and the self-employed. Internal rules approved by the competent authorities govern the right of these associations to draw up their own constitutions and internal rules and to elect their representatives according to those regulations established on the basis of Federal Law No. 6 of 1974 and its amendments.

Ministerial Decree No. 297 of 1994, establishing the Coordinating Association of Professional Associations operating in the country, organized the work of these associations and set the following goals:

(a) to coordinate activities between the professional associations operating in the country and to unify their efforts to guarantee the fulfilment of the purposes for which they were established and to work to protect the material and moral interests of the members of these professional associations;

(b) to help professional associations to improve their professional standards and strengthen their role in society through training seminars, colloquia and scientific lectures;

(c) to identify problems encountered by professional associations and propose solutions and measures to solve them;

(d) to strengthen cooperation with government and private entities which have activities that are connected to those of the professional associations;

(e) to represent the professional associations at international and local conferences and meetings that are related to their subject-matter.

The Decree also defines the purview of the association, the rules governing the establishment of its governing body and its meetings, the meetings and mandate of the general assembly, the associations' resources and internal rules and the rules governing the dissolution of the assembly as well as other matters related to the activities of the association. The association has exercised its activities in the light of this framework in a positive and effective manner since 1994.

Second: Collective bargaining and settlement of disputes

The right to collective bargaining in the United Arab Emirates is guaranteed by Federal Law No. 8 of 1980 concerning labour relations.

This law has established a mechanism to settle labour disputes through specific structures supervised by the labour administration in the following manner:

(i) If a dispute arises between an employer and his workers, both parties shall seek to settle it directly and amicably, and shall attempt to reach a negotiated settlement.

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(ii) Should both parties fail to reach an amicable settlement, they shall submit the dispute to the competent labour department to mediate in an amicable settlement.

(iii) Should the labour department concerned fail to settle the collective dispute, it shall refer the matter to a conciliation committee for solution. If both parties accept the decision of the conciliation committee, this shall be recorded in writing. If they fail to reach an agreement, then any party to the dispute may refer the matter within a given period of time to the Supreme Arbitration Committee whose award shall be binding on both parties and final.

(iv) The Law has defined those higher structures that shall strive to settle collective labour disputes, e.g. article 160 which provides for the establishment of a Supreme Arbitration Committee chaired by the Minister of Labour and Social Affairs, who shall in case of absence, be represented by the Deputy Minister or the Director-General. The Committee shall be composed of a judge from the Supreme Court appointed by the Minister of Justice and a third member with experience in the field of labour affairs who is appointed by the Minister of Labour and Social Affairs.

The Council of Minister's Decree No. 11 of 1982 was issued to set down arbitration procedures and other rules required for the proper functioning of the conciliation committees and the Supreme Arbitration Committee for the settlement of collective labour disputes.

(v) As for the establishment of the conciliation committee, the Law has mandated the Minister of Labour and Social Affairs under article 157 to set them up in the labour departments. Under Ministerial Decree No. 48/1 of 1980, conciliation committees are established in the labour departments of each member of the Federation. Each committee is composed of the director of labour relations or director of the labour office concerned as chairman, the employer or his representative, and a representative of the designated workers as members.

(vi) Both parties to the dispute may resort to the courts if the Ministry of Labour does not proceed to do so on its own initiative, or following a request by one of the parties to the dispute to solve the collective agreement. Both parties to the dispute may also turn to the courts if the Ministry of Labour's mediation does not lead to a solution, and if both parties did not submit the dispute to the Supreme Arbitration Committee.

These are the general rules and framework set by the Law in Chapter 10. Articles 154 to 165, which set out the steps to be followed to solve collective labour disputes between employers and workers and through which the Law seeks to restore industrial peace and stability in labour relations in the country.

Three: Scope of labour law

The provisions of the labour law do not apply to civil servants, agricultural workers or domestic workers. This does not mean that these categories are not covered by legislation but rather that there are other rules and regulations that govern the employment of these categories of workers such as the Civil Service Law and the regulations issued by the Council of Ministers and the Civil Relations Law.

Fourth: Procedures for the examination of worker grievances and protection available

In paragraph 7 above, we have outlined the procedure for collective bargaining and the settlement of worker grievances. We would like to reaffirm that domestic workers may freely submit their complaints to the courts. The Law exempts from court fees at all phases

of litigation and execution of cases presented by workers or their beneficiaries. These are examined by a summary procedure so that the workers do not have to assume any financial or moral burdens. The Law also gives workers' dues a special status over all other funds in the employers' assets, financial or real estate, and these are paid immediately after covering court costs.

As for the statement that fear of revenge or expulsion prevents workers from presenting the complaints to courts, this is greatly exaggerated and does not coincide with the situation in the country. As litigators, workers receive all due care and legal protection. The Government's official policy excludes the departure of any worker abroad if he has a court case pending.

[Response concerning a specific allegation of a complaint-like nature has been edited out, as the allegation itself is in the ICFTU communication.]

United States

Means of assessing the situation

Assessment of the institutional context

The United States recognizes, and is committed to, the fundamental principle of freedom of association and the effective recognition of the right to collective bargaining. This principle is assured by the First, Fifth, and Fourteenth Amendments of the United States Constitution, supplemented by legislation including the Railway Labor Act (1926), the Norris-LaGuardia Act (1932), the National Labor Relations Act (1935), the Labor-Management Relations Act (1947), the Labor-Management Reporting and Disclosure Act (1959), the Postal Reorganization Act (1970), the Civil Service Reform Act (1978), the Congressional Accountability Act (1995), and the Presidential and Executive Office Accountability Act (1996), together with state constitutions, state legislation, state and federal administrative regulations, and private agreements.

Relevant federal constitutional provisions, legislation, regulations, and related materials are listed in the appendix to this report. Copies of these materials were provided to the ILO in 1998 as supplements to the reports of the Government of the United States on the position of national law and practice for the period ending 31 December 1997 for ILO Conventions 87 and 98.

Freedom of association

Freedom of association is protected against interference by the Government by operation of the First, Fifth and Fourteenth Amendments of the United States Constitution. The First Amendment to the United States Constitution, adopted in 1791, provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances". The Fifth Amendment provides that no person can be "deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation". Finally, the Fourteenth Amendment prohibits the states of the United States from making or enforcing "any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

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property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

Taken together, these constitutional provisions guarantee that workers and employers are entitled to establish and join organizations of their own choosing, without previous authorization by or interference from either the federal Government or the state governments.

The policy of the United States affirming freedom of association is also supported by legislation. The National Labor Relations Act (NLRA) (29 U.S.C. §§ 151-187), governs the relationship between most private employers and their non-supervisory employees. The declaration of policy in the NLRA states:

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

29 U.S.C. § 151.

Section 7 of the NLRA guarantees that "employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection ..." (29 U.S.C. § 157). Examples of rights protected by section 7 are: forming or attempting to form a union among the employees of a company; joining a union whether the union is recognized by the employer or not; assisting a union to organize the employees of an employer; and refraining from activity on behalf of a union. Interference with the exercise of these rights is an unfair labor practice (29 U.S.C. § 158(a)(1)).

The NLRA expressly protects covered employees against acts of anti-union discrimination. Section 8(a)(3) of the NLRA (29 U.S.C. § 158(a)(3)), makes it an unfair labor practice for an employer to "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization ...". Section 8(a)(4) of the NLRA (29 U.S.C. § 158(a)(4)), makes it an unfair labor practice for an employer to "discharge or otherwise discriminate against an employee because he has filed charges or given testimony under [the NLRA]".

The NLRA also protects workers' and employers' organizations from interference by each other. Section 8(a)(1) of the NLRA (29 U.S.C. § 158(a)(2)), provides that it is an unfair labor practice for an employer to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed" by the NLRA. It is also an unfair labor practice for an employer to "dominate or interfere with the formation or administration of any labor organization or contribute financial support to it ..." (29 U.S.C. § 158(a)(2)). Similarly, the NLRA makes it an unfair labor practice for a labor organization to restrain or coerce an employer in the selection of its representatives for purposes of collective bargaining (29 U.S.C. § 158(b)(1)(B)).

The NLRA also protects labor organizations from employer interference by generally prohibiting the payment of anything of value by an employer to any representative of the employer's employees, to any labor organization, or to any labor organization officer or

agent. In addition, no payments may be made to a group of employees in excess of their normal wages and compensation, for the purpose of causing the group to influence other employees in the exercise of their right to bargain collectively through representatives of their own choosing.

Railway and airline employees are covered by the Railway Labor Act (RLA) (45 U.S.C. §§ 151-188), and are provided protections similar to those contained in the NLRA. The RLA expressly recognizes that employees "have the right to organize and bargain collectively through representatives of their own choosing," prohibits a carrier from denying "the right of its employees to join, organize, or assist in organizing the labor organization of their choice," and makes it unlawful for an employer to "interfere in any way with the organization of its employees ... or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization ..." (45 U.S.C. § 152).

The right of employees of the United States Government to organize is governed by the Civil Service Reform Act of 1978 (CSRA) (5 U.S.C. §§ 7101-7135). The CSRA applies to almost all federal civilian employees, and provides that "[e]ach employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right" (5 U.S.C. § 7102). Protections of the CSRA were extended to certain employees of the legislative branch of the federal Government by the Congressional Accountability Act of 1995 (2 U.S.C. §§ 1301-1438), and to certain employees of the Executive Office of the President by the Presidential and Executive Office Accountability Act of 1996 (3 U.S.C. §§ 401-471). Postal workers are protected under the NLRA and provisions of the Postal Reorganization Act of 1970, as amended (39 U.S.C. §§ 1201-1209).

State and local government employees are excluded from coverage of the NLRA, but they too are entitled to the protections of the United States Constitution described above. In addition, the state and local governments have a diverse variety of legislation covering freedom of association and collective bargaining by state and local employees: however, those laws cannot be inconsistent with fundamental constitutional guarantees of freedom of association.

Private sector employees who are not covered by the RLA or the NLRA (primarily agricultural, domestic, and supervisory employees who are excluded from NLRA coverage under 29 U.S.C. § 152(3)), are nonetheless protected by the First, Fifth and Fourteenth Amendments of the United States Constitution which, taken together, guarantee that workers are entitled to establish and join organizations of their own choosing, without previous authorization by or interference from either the federal Government or the state governments. The exclusion of these categories of employees from coverage means that they do not have access to the specific provisions of the NLRA or RLA for enforcing their rights to organize and bargain collectively.

In addition to the NLRA and RLA, the Norris-LaGuardia Act protects employees in the exercise of their right to organize and bargain collectively, by limiting federal court jurisdiction to grant injunctive relief in labor disputes. The policy of the Act expressly recognizes that it is necessary for an employee to "have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of

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collective bargaining or other mutual aid or protection ...” (29 U.S.C. § 102). Employees such as agricultural and supervisory workers who are not covered by the NLRA are nonetheless covered by the Norris-LaGuardia Act.

In addition to federal legislation, most states have constitutional provisions or legislation that expressly guarantee freedom of association and collective bargaining. These state laws frequently provide coverage for employees who are not within the jurisdiction of the NLRA, and in most cases are patterned on the NLRA or the Norris-LaGuardia Act, or provide other similar provisions.

Right to bargain collectively

It is the policy of the United States to encourage collective bargaining between labor and management to settle differences and reach collective agreements. As articulated in the NLRA, this policy includes the concept that “sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the process of conference and collective bargaining between employers and the representatives of their employees” (29 U.S.C. § 171(a)).

This policy of voluntary collective bargaining is advanced in several ways. The NLRA makes it an unfair labor practice for an employer to refuse to bargain collectively with representatives of its employees (29 U.S.C. § 158(a)(5)). Similarly, it is an unfair labor practice for a labor organization that is the representative of employees to refuse to bargain collectively with the employer (29 U.S.C. § 158(b)).

Under the NLRA, collective bargaining expressly encompasses the mutual obligation of the employer and the union to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, and the execution of a written contract incorporating any agreement reached, if requested by either party. The duty to bargain does not include a duty to make concessions, nor does it compel either party to agree to a proposal made by the other party (29 U.S.C. § 158(d)). In addition, the Government cannot compel the parties to agree.

Under the NLRA, if either party is not satisfied with the other’s bargaining position it may exert economic pressures, including the right to strike and lock-out in support of their respective bargaining positions, as discussed below. The obligation to bargain is not suspended by such economic action. Mediation, arbitration, and other procedures available to assist in the resolution of disputes that arise during the negotiation of collective bargaining agreements are discussed below.

The NLRA also provides that employee representatives that have been “designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purpose, shall be the exclusive representatives of all the employees in such unit for purposes of collective bargaining” (29 U.S.C. § 159(a)). The NLRA provides machinery for determining both the appropriate unit for purposes of collective bargaining, and for determining which labor organization, if any, has been selected by a majority of the employees as their exclusive representative. The most common method by which employees can select a bargaining representative is by secret ballot representation election, conducted by the Board (29 U.S.C. § 159). Whether voluntarily recognized or certified by election, a labor organization is required to represent all of the employees in the bargaining unit (29 U.S.C. § 158(d)).

The NLRA recognizes that "the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes" (29 U.S.C. § 171(b)).

Disputes that cannot be resolved by the parties themselves are generally resolved through the use of mediation, conciliation, and arbitration. Use of these procedures is usually voluntary. The Federal Mediation and Conciliation Service (FMCS) has the responsibility of assisting parties to labor disputes to settle such disputes through conciliation and mediation (29 U.S.C. § 173).

FMCS has no enforcement authority. It may offer its services in a labor dispute, either on its own motion or at the request of one or more of the parties. However, there is no requirement that the parties use the services of FMCS to assist in the resolution of their disputes, with the limited exception of the health care industry, where special notice, mediation procedures, and "Boards of Inquiry" are used to help resolve disputes, and the even more limited category of certain national emergency disputes (29 U.S.C. §§ 179, 183).

When the FMCS does assist parties to resolve their labor-management disputes, it does so by providing a mediator. The mediators provided by FMCS are neutral third parties, employed by FMCS, who have been selected by FMCS based on their depth of practical experience in the area of labor-management relations.

FMCS mediators have no enforcement authority. They serve as impartial, confidential advisers to the parties. They do not take sides, nor can they force the parties to take any action or reach any agreement. They have no authority or responsibility to impose a government solution or recommendation. Their role is to use their experience and training to assist the parties to find peaceful solutions to their differences.

In addition to availability of services of the FMCS, private arbitration is frequently used to resolve disputes. Almost every private sector collective bargaining agreement has a grievance procedure that the parties can use to resolve differences that they may have regarding their understanding of the agreement. These grievance procedures frequently provide for arbitration of disputes. The FMCS maintains a Division of Arbitration Services that submits panels of arbitrators to employers and unions, if requested by the parties. The arbitrators are not employees of FMCS, and the expenses of arbitration are paid by the parties. The parties may select arbitrators using other means, including private associations. Unlike mediators, arbitrators make decisions that are legally binding on the employer and the union.

Under the NLRA, it is recognized that employees have the right to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection" (29 U.S.C. § 157). This includes the right to strike. While employees have the right to strike, the employer has a corresponding right to continue operations during the strike.

There are some limitations on the right to strike. A strike may be lawful or unlawful, depending on the purpose of the strike, its timing, or the conduct of the strikers. An

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example of an unlawful strike would be a strike in violation of a no-strike clause in a collective bargaining agreement. There are other limits on the right to strike, such as notice and waiting periods established by statute in certain industries. Partial or intermittent strikes are also not protected.

The NLRA also makes a basic distinction between "unfair labor practice (ULP) strikes" and "economic strikes". A strike is classified as a ULP strike if the strike was caused or prolonged by a ULP (for example, refusal to bargain) by the employer. Otherwise, the strike is considered to be an economic strike.

The employer may hire replacement workers in an attempt to continue operations during the strike. If the strike is considered a ULP strike, the employer is required to rehire the returning strikers even if that means displacing the replacement workers. On the other hand, if the strike is considered an economic strike, the employer is not required to displace the replacement workers in order to re-employ the returning strikers, but the strikers must be placed on a preferential rehire list, and when future vacancies occur, the employer must give the former strikers "first-in-line" reinstatement rights before hiring other persons. Because an employer can advertise for permanent replacement workers during an economic strike, but not during a ULP strike, the distinction between a ULP strike and an economic strike is significant prior to the conclusion of a strike.

The RLA promotes the use of collective bargaining in the railway and airline industries in a manner similar to the NLRA (45 U.S.C. §§ 154-155). The RLA sets forth specific procedures, including mandatory mediation, that must be followed before a strike or lock-out can take place in those industries.

As noted above, the rights of employees of the United States Government are governed by the CSRA. With the exception of limitations on the subject matter of collective bargaining, the rights of federal public servants to freedom of association and collective bargaining are similar to those provided to most private sector employees under the NLRA. For example, the CSRA makes it an unfair labor practice for an agency to engage in anti-union discrimination and interference with workers' organizations (5 U.S.C. § 7116(a)). Similarly, the CSRA imposes a duty to bargain in good faith, to the extent not inconsistent with federal law (5 U.S.C. §§ 7116-7117). However, federal employees generally do not have the right to strike. Strikes by federal government employees are considered to be against the public interest, and any employee who engages in a strike is subject to termination of employment and possible criminal penalties (5 U.S.C. § 7311; 18 U.S.C. § 1918).

The Federal Labor Relations Authority (FLRA) performs functions for federal employee labor organizations similar to those performed by the NLRB for private sector employees, including resolution of complaints of unfair labor practices and disputes over the scope of collective bargaining negotiations (5 U.S.C. §§ 7104-7105). In addition, the FMCS has authority to help resolve bargaining disputes between federal agencies and labor organizations. If the dispute cannot be resolved voluntarily, either party may request the Federal Service Impasses Panel (FSIP) to consider the matter. The FSIP has authority to take whatever action is necessary to resolve the impasse, including direct assistance or binding arbitration (5 U.S.C. § 7119). Special procedures also apply to postal service employees, including mandatory mediation, fact finding, and arbitration (39 U.S.C. § 1207).

The state and local governments have a diverse variety of legislation covering collective bargaining by state and local employees, including mediation, arbitration, or other method

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of dispute resolution: however, those laws cannot be inconsistent with fundamental constitutional guarantees of freedom of association. The right of state and local government employees to strike is governed by state law. While these laws vary from state to state, most states preclude strikes by state employees.

Enforcement

Enforcement of most provisions of the NLRA is by the National Labor Relations Board (NLRB), an independent General Counsel, and the judicial system, as described below. The NLRB is an independent federal agency that administers, interprets, and enforces the NLRA. The NLRB consists of five board members (the Board) appointed by the President with the approval of the Senate for five-year staggered terms; the General Counsel, an independent officer appointed by the President with the approval of the Senate for a four-year term; and the regional offices.

An unfair labor practice case is initiated by an individual, union, or employer by filing a charge with an NLRB regional office alleging a violation of the NLRA by an employer or labor organization. The charge is investigated by the regional office on behalf of the General Counsel to determine whether there is reasonable cause to believe that the NLRA has been violated. If the regional director concludes that the charge has merit, the regional director will seek to remedy the apparent violation by encouraging a voluntary settlement by the parties. Most cases are settled voluntarily.

If a case is not settled, a formal complaint is issued and a hearing is held before an Administrative Law Judge (ALJ). At the hearing, the parties are entitled to appear, to call, subpoena, examine and cross-examine witnesses, and to introduce evidence. The case is prosecuted by an attorney from the regional office on behalf of the General Counsel. After the hearing and the parties have briefed the issues, the ALJ issues a decision containing proposed findings of fact and a recommended order.

Any party may appeal the ALJ's decision to the Board, which may adopt, modify or reject the findings and recommendations of the ALJ. If no exceptions are filed to the ALJ's decision, that decision and recommended order automatically become the decision and order of the Board.

If a party fails to comply with the Board's order voluntarily, the office of the General Counsel files an enforcement petition in the United States Court of Appeals. Similarly, any "person aggrieved" (which includes both the respondent and the charging party) by a final order of the Board may seek to have the order reviewed and set aside by filing a petition with the United States Court of Appeals.

Section 10(c) of the NLRA states that if the Board finds that an employer or union has engaged in or is engaging in an unfair labor practice, then the "Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of the Act ..." (29 U.S.C. § 160(c)). Both the Board and the courts have broadly interpreted the Board's power to fashion appropriate remedial orders.

The most common NLRB remedial order is an order which directs whomever commits an unfair labor practice to discontinue the unlawful conduct, and will usually require that an employer or union that commits an unfair labor practice to post in a conspicuous location a signed notice which sets forth the terms and conditions of the order. The Board also has

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authority to order the payment of monies to compensate an individual for earnings lost as a result of employment discrimination by the employer or union, and under some circumstances, the Board has authority to order the reinstatement of employees who have been unlawfully discharged. For example, if an employer discharges an employee, reinstatement is usually ordered if the discharge interferes with, restrains or coerces the employees in the exercise of their rights under the NLRA or is intended to encourage or discourage membership in the union.

The RLA establishes the National Mediation Board which performs for the railway and airline industries functions similar to those performed for other industries by the National Labor Relations Board and the Federal Mediation and Conciliation Service. However, the RLA's provisions relating to anti-union discrimination and non-interference are enforced by civil suit, and are subject to criminal penalties for willful failure or refusal of a carrier to comply (45 U.S.C. § 152).

State laws vary, with some states providing administrative procedures similar to the NLRA, and other states relying on enforcement by private actions in the judicial system.

The First, Fifth, and Fourteenth Amendments of the United States Constitution apply to all categories of persons. Accordingly, there are no categories of persons who do not enjoy the right to establish and join organizations of their own choosing. However, as noted above, legislation relating to labor relations does vary for different categories of persons, but all such legislation must be consistent with the protections assured by the First, Fifth, and Fourteenth Amendments.

The NLRA covers most civilian employees, but does not cover agricultural employees, domestic service employees, independent contractors, supervisors, and employees covered by the RLA. The RLA covers railway and airline employees. The CSRA covers almost all Federal civilian employees, but not members of the armed forces. State and local employees are not covered by federal legislation regarding freedom of association and the right to bargain collectively, but some are covered by a wide variety of state and local legislation that in some instances provides protections comparable to the CSRA or the NLRA. In addition, some of the civilian employees that are excluded from coverage of the NLRA are covered by state or local legislation.

There is no requirement that a union be registered in order to be recognized under United States law, nor are there any general conditions that must be fulfilled by workers' and employers' organizations when they are being established. Most such organizations are unincorporated, voluntary, associations. See Office of Labor-Management Standards, US Department of Labor, Register of Reporting Labor Organizations (1997). These organizations have the right to draft and to be governed by a constitution, by-laws, and such other rules as they may choose. As a general rule, the constitution and by-laws of such unincorporated associations create contractual obligations between the organization and its members. In the event a workers' or employers' organization chooses to incorporate, it would have to comply with the law of the state in which it incorporated, and would have to comply with the general requirements applicable to corporations in that state.

The long-standing policy of the United States has been to avoid intrusion into internal union affairs. However, the Labor-Management Reporting and Disclosure Act (LMRDA) (29 U.S.C. §§ 401-531) does establish a number of requirements relating to the functioning of labor organizations.

The LMRDA requires every private sector labor organization to adopt a constitution and by-laws and file a copy with the Department of Labor. The LMRDA also requires that each union file annual financial reports with the Department of Labor. There are civil and criminal penalties for failure to file the required reports, but deficiencies in the reports do not affect collective bargaining rights, the right to strike, or other rights protected by the NLRA or RLA (29 U.S.C. §§ 431-40). The United States Department of Labor publishes a list of all labor organizations filing reports. Office of Labor-Management Standards, US Department of Labor, Register of Reporting Labor Organizations (1997).

The LMRDA also establishes certain rights for union members. Thus, the LMRDA provides a "Bill of Rights" for members of unions to assure certain basic rights to all union members. All union members have equal rights in nominating candidates for union office, voting in union elections, and attending and participating in membership meetings. Each member has the right to meet and assemble freely with other members and express his or her views. Rights are established regarding dues, initiation fees, assessments, and the right to sue. These rights may be enforced by individual members by bringing a civil action in Federal District Court (29 U.S.C. §§ 411-414).

The LMRDA also requires that unions conduct periodic elections of union officers, and establishes democratic standards for conducting those elections. The provisions include the use of secret ballots in elections, the reasonable opportunity for members to nominate candidates, the right of all members to run for and hold office subject to reasonable qualifications uniformly imposed by the labor organization, the right to vote and support candidates, the right to a 15-day mailed notice of election, the right of candidates to have observers, the right of candidates to distribute campaign literature with the union's assistance at the candidates' own expense, equal access by candidates to membership lists, prohibition against use of union or employer funds to support candidates in union elections, and adequate safeguards to ensure a fair election. These provisions can only be enforced by a civil action in Federal District Court, brought by the United States Secretary of Labor, at the request of a union member who has first sought relief directly from the labor organization (29 U.S.C. §§ 481-483).

Title V of the LMRDA provides fiduciary responsibility standards for officers and other representatives of labor organizations who occupy positions of trust "taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder ..." (29 U.S.C. § 501(a)). Title V also generally prohibits persons who have been convicted of certain serious crimes, as listed in that section, from serving as an officer or other representative of the labor organization for up to 13 years (29 U.S.C. § 504). Title V provides for civil enforcement by members of the organization in Federal District Court, criminal enforcement for certain willful violations, bonding requirements for representatives who handle the organization's funds or other property, and prohibitions on certain loans to officers and employees of the organization (29 U.S.C. §§ 501-504). In addition, Title III of the LMRDA limits the purposes for which a trusteeship may be imposed by a labor organization on a subordinate labor organization, and requires the filing of reports regarding trusteeships that have been imposed (29 U.S.C. §§ 461-466).

The CSRA provides that labor organizations composed of federal employees covered by the CSRA shall conform generally to principles that apply to private sector labor organizations (29 U.S.C. § 7120). The United States Department of Labor has delineated

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the standards of conduct for these public sector labor organizations in regulations, a copy of which is attached (29 C.F.R. §§ 457.1-459.5).

State laws may also govern these issues for state and local employee organizations, and for private sector employees to the extent not inconsistent with federal law.

As noted in the previous section, the NLRA covers most civilian employees, but does not cover agricultural employees, domestic service employees, independent contractors, supervisors, and employees covered by the RLA. The CSRA covers almost all federal civilian employees, but not members of the armed forces. State and local employees are not covered by federal legislation regarding freedom of association and the right to bargain collectively, but some are covered by a wide variety of state and local legislation that in some instances provides protections comparable to the CSRA or the NLRA. In addition, some of the civilian employees that are excluded from coverage of the NLRA are covered by state or local legislation.

There is no general requirement for authorization of collective agreements by the Government. However, the NLRA does contain provisions concerning strikes or lock-outs which threaten the national health and safety. These provisions, which are rarely used, provide that the President of the United States may petition to a Federal District Court for an injunction. The court may only grant the request for an injunction if it finds that the strike or lock-out threatens an entire industry or substantial part, and will imperil the national health and safety. During the injunction period, the parties must try to settle the dispute. Within 60 to 75 days after imposition of the injunction, if the dispute is not settled, a secret ballot referendum must be held among the employees to determine if they will accept the employer's last offer of settlement. The results of that election must be certified within five days, at which time the injunction must be discharged (29 U.S.C. §§ 176-80). The Railway Labor Act also includes special provisions, including mandatory mediation, that must be followed before a strike or lock-out can occur in the railway or airline industries (45 U.S.C. §§ 154-155).

The means of implementing the principle are discussed above in the context of the manner in which the principle is recognized.

Assessment of the factual situation

The United States has an elaborate system of substantive labor law and procedures to assure the enforcement of that law, described briefly above, and is committed to the fundamental principle of freedom of association and the effective recognition of the right to collective bargaining. Nonetheless, the United States acknowledges that there are aspects of this system that fail to fully protect the rights to organize and bargain collectively of all employees in all circumstances. The United States is concerned about these limitations and acknowledges that to ensure respect, promotion and realization of the right to organize and bargain collectively, it is important to re-examine any system of labor laws from time to time to assure that the system continues to protect these fundamental rights.

A serious and thorough review of United States labor law was made by the Commission on the Future of Worker-Management Relations (known as the "Dunlop Commission" after its Chair, former Secretary of Labor John T. Dunlop) at the request of the United States Secretary of Labor and Secretary of Commerce in 1993, and published in the Commission's Report and Recommendations of December, 1994. In addition to the Dunlop Commission's review of the law, the NLRB has recently re-examined its

operations and taken actions, described in Part II(a) and (b)(i) below, to improve its enforcement of the NLRA administratively.

The Dunlop Report and Recommendations were based on testimony taken from a total of 411 witnesses at 21 public hearings, together with numerous written submissions. The Commission issued a Fact-Finding Report in May 1994, before issuing its final Report and Recommendations. One of the questions that the Commission was asked to answer was what (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay.

The Dunlop Commission observed that "not all aspects of collective bargaining are in need of repair," noting that its Fact-Finding Report "concluded that 'In most workplaces with collective bargaining, the system of labor-management negotiations works well' (p. 64)" (Report and Recommendation, p. 16). However, the Commission's reports document that while US law seeks to protect the rights of workers to organize and bargain collectively, some workers face significant barriers to the exercise of these rights. Based on a lengthy period of fact finding, the Dunlop Commission reached the following findings with respect to new collective bargaining relationships in the United States as follows:

(1) American society — management, labor, and the general public — supports the principle that workers have the right to join a union and to engage in collective bargaining if a majority of workers so desire.

(2) Representation elections as currently constituted are highly conflictual for workers, unions, and firms. This means that many new collective bargaining relationships start off in an environment that is highly adversarial.

(3) The probability that a worker will be discharged or otherwise unfairly discriminated against for exercising legal rights under the NLRA has increased over time. Unions as well as firms have engaged in unfair labor practices under the NLRA. The bulk of meritorious charges are for employer unfair practices.

(4) Consistent with other surveys reported earlier, the Worker Representation and Participation Survey found that 32 per cent of unorganized workers would vote to join a union if an election were held at their workplace. Eighty-two per cent of those favoring unionization (and 33 per cent of all non-union workers) believe a majority of their fellow employees would vote to unionize.

(5) Roughly a third of workplaces that vote to be represented by a union do not obtain a collective bargaining contract with their employer.

Report and Recommendation, pp. 17-18.

The report examined problems in the process by which workers decide whether or not to be represented at the workplace and engage in collective bargaining, and recommended for consideration several possible changes to United States law. For example, the Commission observed that on average it takes seven weeks for workers to obtain a vote in representation elections, and recommended changes to reduce that time to as little as two weeks. In its Fact-Finding Report, the Commission found that the injunctive relief currently available for illegal terminations that occur during an organizing campaign is "pursued infrequently ... and is usually too late ... to undo the damage done" (Fact-Finding Report, p. 72). The Commission noted that unlike a wide range of subsequently enacted

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anti-discrimination statutes, the NLRA does not provide for compensatory or punitive damages for illegal terminations (Fact-Finding Report, pp. 72-73).

The Commission noted that remedies available to the NLRB may not provide a strong enough incentive to deter unfair labor practices by some employers during representation elections and first contract campaigns. To deter violations that may defeat an organizational effort or prevent the adoption of a first contract, the Commission recommended strengthening the injunctive relief available to employees who are subject to employer discriminatory actions from the beginning of an organizing effort to the signing of a first contract.

The Commission also noted that a substantial number of newly certified labor organizations failed to reach a first contract. To address this, the Commission recommended that newly certified labor organizations should be assisted in achieving first contracts by a substantially upgraded dispute resolution program.

The Commission observed that union representatives often have little access to employees at work, particularly when compared to employers' access, and suggested that consideration be given to expanding access, at least in publicly used areas (Report, pp. 18-24). Another issue identified by the Dunlop Commission is the rise of non-traditional work arrangements, which presents new questions about coverage under US labor law. The US Department of Labor, in a report entitled "Futurework: Trends and Challenges for Work in the 21st Century", discussed this issue.

The Dunlop Commission's Report did not result in any changes to United States substantive law. However, the Commission's work did serve to focus attention on possible ways that the right to organize and bargain collectively might be improved in the United States. Separately, legislation was passed in 1995 and 1996 that extended portions of the CSRA to certain employees of the legislative branch and of the Executive Office of the President, and to organizations representing those employees.

Other issues in US law, not addressed by the Dunlop Commission, include the lack of NLRA coverage of agriculture employees, domestic service employees, independent contractors, and supervisors. Additionally, there are varying degrees of protection for public sector workers with regard to collective bargaining and the right to strike.

In addition to the 1994 review of United States law by the Commission, the United States re-examined its law relating to the use of permanent replacement workers during the period from 1993 through 1995. As noted above, under United States labor law an employer may hire replacement workers in an attempt to continue operations during a strike. If the strike is an unfair labor practice strike, the employer is required to rehire the returning strikers. However, if the strike is an economic strike the employer is not required to displace the replacement workers in order to re-employ the returning strikers.

This provision of United States labor law has been criticized as detrimental to the exercise of fundamental rights to freedom of association and to meaningful collective bargaining. This issue was also the subject of CFA Case No. 1543, in which the Committee invited the United States to "take into account that, if a strike is legal, recourse to the use of labour drawn from outside the undertaking to replace the strikers for an indeterminate period entails a risk of derogation from the right to strike which may affect the free exercise of trade union rights".

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Although there has been no recent change in United States labor law with respect to the use of permanent replacement workers during economic strikes, the United States Government has taken steps intended to address the concerns identified by the CFA. Legislation that was supported by President Clinton was introduced in the United States House of Representatives (H.R. 5) and in the United States Senate (S. 55) in 1993 that would have made the hiring of permanent replacement employees an unfair labor practice under the NLRA and illegal under the RLA. This proposed legislation passed the House but did not pass the Senate and, accordingly, did not become law. In addition, an Executive Order (E.O. 12954) was signed by President Clinton in 1995 that established that it was "the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of federal government contracts, contracting agencies shall not contract with employers that permanently replace lawfully striking employees". However, the Executive Order was invalidated by the Judicial Branch of the United States Government in *Chamber of Commerce of US v. Reich*, 74 F.3d 1322 (D.C. Cir. 1996).

In addition to the examination and evaluation of United States law outlined above, the United States government agencies discussed in Part I(1) above publish a wide variety of information regarding their operations, including statistics and trends relating to their areas of responsibility. This material includes weekly, periodic and annual reports; summaries of cases; information on representation and unfair labor practice cases; information on mediation, arbitration and other alternative dispute resolution methods used to resolve labor-management issues; general information on United States labor law and enforcement of that law; and national labor force statistics, including collective bargaining agreements, major work stoppages, and union membership statistics. Most of this material is available on the official United States Government Internet sites for these agencies, and can be found at the following URLs:

— National Labor Relations Board

  www.nlrb.gov

— Federal Labor Relations Authority

  www.flra.gov

— Federal Mediation and Conciliation Service

  www.fmcs.gov

— National Mediation Board

  www.nmb.gov

— Department of Labor

  www.dol.gov

— Bureau of Labor Statistics

  www.bls.gov

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Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The United States government agencies engage in many activities that promote and otherwise support these principles and rights. For example, the FMCS has outreach programs that include promotion of a wider understanding, acceptance and proper use of the collective bargaining process and third-party assistance in the prevention and constructive resolution of labor-management and other disputes. The mission of FMCS also includes promoting the development of sound and stable labor-management relations and fostering the establishment and maintenance of constructive joint processes to improve labor-management relationships, employment security and organizational effectiveness. As part of this effort, the FMCS Grants Program provides funding to encourage innovative approaches to collaborative management-labor relations and problem solving, including grants to labor organizations and private businesses applying jointly for such funding. Extensive information about these activities, and many other programs undertaken by United States government agencies with responsibilities relating to labor matters, is available on the Internet at the locations described above.

In addition to programs that promote these principles and rights, administrative efforts not requiring legislative change have been made by the NLRB in at least two of the areas highlighted by the Dunlop Commission (discussed in Part I(2) above): the time period required to resolve representation elections, and the use of injunctions in certain unfair labor practice cases. These efforts are outlined in a recent NLRB General Counsel report: Change and Challenge at the National Labor Relations Board: A Report on Operational Initiatives by General Counsel Fred Feinstein 1994-1998 (27 April 1998), as updated by the NLRB General Counsel's Report on Organizational and Casehandling Developments, March 1994-November 1999 (19 November 1999). These reports are available at http://www.nlrb.gov/press/press.html. Regarding the processing of representation elections, the General Counsel observed that:

> There is no responsibility the NLRB undertakes that is more important than conducting elections in a fair and regular manner in order to determine whether or not employees wish to be represented by a union. A delay in the resolution of this question increases the likelihood of workplace disruptions. Delay also leads to increased costs, which can be minimized when this critical question is addressed in a prompt, conclusive and fair manner. The effectiveness of the statute is therefore grounded on our ability to swiftly and fairly resolve the fundamental workplace issue of representation.

These reports describe the administrative efforts taken by the General Counsel to improve the processing of representation cases, and the improvement in case processing times between 1994 and 1999.

The General Counsel also acknowledged that in certain cases the NLRB's normal remedies are insufficient, and that it was important to assure proper use of section 10(j) injunctions in appropriate cases. The reports describe administrative efforts made to promote uniform application of the NLRA injunction provisions, and that these efforts have helped assure greater compliance and enforcement of the act.

The time required to resolve some disputes under the NLRA can undermine the right to organize and meaningful collective bargaining. As described above, United States law provides for enforcement of most private sector labor-management disputes through the

NLRB, the independent General Counsel, and the judicial system. This enforcement system is intended to provide due process of law and to protect the rights of employers, employees, and employee representatives.

The NLRB and the General Counsel have recognized that it is important to reduce the existing case backlog and to process cases more quickly. The reports referenced above outline a number of administrative efforts made by the General Counsel of the NLRB to improve the processing of cases and, in particular, to use “Impact Analysis” to ensure that the most important cases receive the quickest attention. In statements made in connection with the Fiscal Year 2000 Budget Request, both the Chairman of the NLRB and the General Counsel observed that administrative efforts continue to be made to expedite case processing and to reduce case backlogs, and the NLRB reported that its administrative efforts have resulted in reducing the median time for issuance of ALJ decisions (56 days from submission to decision) to an all-time low. However, despite these administrative efforts, both the NLRB and the General Counsel have acknowledged that case backlogs remain unacceptably high and should be reduced. Both the NLRB Chairman and the General Counsel have sought additional funding for Fiscal Year 2000 to hire additional personnel to help reduce the case backlogs.

No modifications have been made to national legislation or practice expressly to give effect to Conventions Nos. 87 or 98. As discussed above, legislation relating to freedom of association and the right to bargain collectively is periodically reviewed and administrative efforts have been made to improve enforcement of existing law, but the substantive law has been relatively stable. At the present time, federal legislation appears to be in general conformance with Conventions Nos. 87 and 98, although no recent in-depth tripartite analysis has been performed regarding these Conventions.

As noted above, federal legislation appears to be in general conformance with Conventions Nos. 87 and 98, although no recent in-depth tripartite analysis has been performed regarding these Conventions. To the extent that the ILO might be able to recommend relevant forms of tripartite technical cooperation, the United States would be interested in any such proposals.

Representative employers’ and workers’ organizations to which copies of the report have been sent

Copies of this report have been mailed to the US Council for International Business as well as to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). In addition, the draft report was reviewed by members of the Tripartite Advisory Panel on International Labor Standards, a subgroup of the President's Committee on the ILO which includes representatives from the US Council for International Business and the AFL-CIO.

Observations received from employers’ and workers’ organizations

No observations have been received.

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Annexes (not reproduced)

The following federal constitutional provisions, legislation, regulations, and related materials were provided to the ILO in 1998 as supplements to the reports of the Government of the United States on the position of national law and practice for the period ending 31 December 1997 for ILO Conventions Nos. 87 and 98.

1. The Constitution of the United States of America.

2. The National Labor Relations Act, as amended, 29 U.S.C. §§ 151-169.

3. Railway Labor Act, 45 U.S.C. §§ 151-188.

4. Civil Service Reform Act of 1978, as amended, 5 U.S.C. §§ 7101-7135.

5. Chapter 12, Postal Reorganization Act of 1970, as amended, 39 U.S.C. §§ 1201-1209.

6. Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. §§ 401-531.

7. Congressional Accountability Act of 1995, 2 U.S.C. §§ 1301-143.

8. Presidential and Executive Office Accountability Act of 1996, 3 U.S.C. §§ 401-71.

9. 142 Cong. R. S12062-77 (daily ed. 1 Oct. 1996).

   [CAA].

10. 29 C.F.R. Parts 100-499

    [NLRA; LMRDA; CSRA].

11. 29 C.F.R. Parts 900-1898

    [RLA; FMCS].

12. Office of Labor-Management Standards, US Department of Labor, Register of Reporting Labor Organizations (1997).

13. Office of Labor-Management Standards, US Department of Labor, Reports Required Under the LMRDA and CSRA (1997).

14. Office of Labor-Management Standards, US Department of Labor, Completing Your LM-3 (1997).

15. Office of Labor-Management Standards, US Department of Labor, Electing Union Officers (1993).

16. Office of Labor-Management Standards, US Department of Labor, Conducting Local Officer Elections, A Guide for Election Officials (1995).

17. Committee on the Future of Worker-Management Relations, Report and Recommendations (1994).

18. NLRB, Basic Guide to the National Labor Relations Act (1997).

19. NLRB, 61st Annual Report of the National Labor Relations Board, for Fiscal Year 1996.

20. FMCS, Federal Mediation and Conciliation Service, 48th Annual Report for Fiscal Year 1995.

21. FLRA, A Guide to the Federal Service Labor-Management Relations Statute (1994).

22. FLRA, 18th Annual Report of the Federal Labor Relations Authority and the Federal Service Impasses Panel for Fiscal Year 1996.

Internet resources

The URLs (Uniform Resource Locators) for the official United States Government Internet sites for agencies referenced in this report are:

1. National Labor Relations Board

   www.nlrb.gov

2. Federal Labor Relations Authority

   www.flra.gov

3. Federal Mediation and Conciliation Authority

   www.fmcs.gov

4. National Mediation Board

   www.nmb.gov

5. Department of Labor

   www.dol.gov

6. Bureau of Labor Statistics

   www.bls.gov

United States

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

At least one in ten union supporters campaigning to form a union is illegally fired. For every 30 people who vote for a union in elections in any one year, one will be illegally fired. At least one worker will be illegally fired in 25 per cent of all union organizing campaigns. A poll conducted in 1994 found that 79 per cent of Americans believe workers

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are likely to get fired if they try to organize a union at their workplace. The NLRB is estimated to have a backlog of almost 25,000 cases involving unfair labour practices committed by employers opposing trade union activity.

United States labour legislation allows for double standards with respect to the rights of employers and of workers. In nine out of ten union representation elections employers use mandatory closed-door meetings conducted on their own property during work to campaign aggressively against collective bargaining and trade unions. Supervisors not eligible to be represented by the trade union may have to participate in a vicious and intimidating campaign against the union. Employees who support trade unions are identified and often isolated from other workers. Some employers engage consultants, detectives and security firms to assist in anti-union campaigns. Often their activities include surveillance of union activists in order to discredit them. In some cases court, medical and credit records of union activists are obtained and the family lives of activists are studied for possible weaknesses.

Except in rare circumstances, trade union representatives are denied access to the employer's property to meet employees during non-working time. During organizing campaigns, threats of arrest against union representatives and their expulsion from the employer's property deny workers any reasonable opportunity to consider freely the advantages of union membership. The government-conducted election used to determine if workers want union representation is usually held on the employer's premises — the place where most anti-union intimidation has occurred.

The procedures of the National Labor Relations Board (NLRB), the body which governs industrial relations in most of the private sector, do not provide workers with effective redress in the face of abuses by employers. Many workers, including those fired illegally, do not use available legal procedures because they take too long and fail to provide adequate compensation or redress the wrong done to them. It takes an average of 557 days for the NLRB to resolve a case. In 1998, 62 workers illegally fired during a union organizing campaign that took place 19 years earlier finally received a financial settlement arising from the illegal activity of their former employer. One study found that, where employees are ordered reinstated, only 40 per cent actually return to work and only 20 per cent remain employed for more than two years. The workers that do quit give unfair treatment as their main reason for leaving.

Should the NLRB determine that an employer has committed sufficient unfair labour practices so that a fair election to decide union representation was impossible, it may order a new election. The prospect of a new election rarely deters an employer from committing the same, or worse, illegal tactics.

[Reference of a complaint-like nature is made to a specific instance in respect of a representation election.]

Although it is illegal for employers to threaten to close or move their operations in response to union organizing activity, a study released in 1996 found that employers threaten to close their plants in over half of all organizing campaigns, and in industries such as manufacturing where this threat is most credible this violation occurs in over 60 per cent of all campaigns. Where collective agreements are negotiated for the first time 18 per cent of employers threaten to close their facilities and 12 per cent of the employers actually follow through with their threats.

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The National Labor Relations Act requires the NLRB to seek injunctions in a federal court against trade unions committing certain kinds of unfair labour practices. There is no corresponding obligation when the unfair labour practices are committed by employers. Unlawful acts by employers who deny trade union rights to their employees often accomplish their intended goal before any proceedings are concluded.

Because trade union organizing in the United States often involves excessive and costly litigation, the right to join trade unions and participate in collective bargaining is in practice denied to large segments of the American workforce.

[Reference of a complaint-like nature is made to a specific instance of intimidation.]

Employers regularly challenge the results when the union wins a representation vote, regardless of the margin of victory. The Government will spend months, and sometimes years, examining what are often minor or frivolous charges before ordering a company to bargain with the union. In the meantime, union supporters quit or are fired, and new workers are hired, often after the employer has screened out what it deems to be potential union supporters, sometimes by using psychological and other tests.

[Reference of a complaint-like nature is made to various specific instances of intimidation of union supporters.]

The options available to employers to discourage workers from exercising their trade union rights do not end if a union is certified. It is estimated that approximately one-third of employers engaged in bad faith or “surface” bargaining with newly certified unions. Forty per cent of negotiations for a first collective agreement fail. One study showed that in a quarter of the remaining cases where a first collective agreement was achieved, the union was unable to negotiate a subsequent agreement.

[Reference of a complaint-like nature is made to specific instances of bargaining.]

The law, and various administrative and judicial decisions, place a variety of restrictions on the ability of workers to engage in “concerted activity” including restrictions on intermittent strikes, secondary boycotts and other forms of mutual aid as well as on various kinds of “on-the-job” activity.

However, the law gives employers the “free play of economic forces”. If employers cannot get what they want through collective bargaining, they can unilaterally impose their terms, lock out their employees, and transfer work to another location, or even to another legal entity.

[Reference of a complaint-like nature to specific instances of intimidation and denial of collective bargaining rights.]

In the construction industry, it is a common and legal practice for employers to create separate non-union companies and thereby avoid negotiated commitments.

Recent surveys of employers with impending negotiations have found that upwards of 80 per cent are committed to, or contemplating, replacing workers if they cannot get a deal they like. Under the law, employers can hire replacement workers during an economic strike. Although the dismissal of strikers is banned, the use of permanent replacements is, in practice, virtually indistinguishable from dismissal.

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More and more employers have deliberately provoked strikes to get rid of trade unions. Unacceptable demands are made of workers and are often accompanied by arrangements for the recruiting and training of strike-breakers. Permanent replacement workers can vote in a decertification election to eliminate union recognition. Should the company and the union reach an agreement during a strike, striking workers do not automatically return to work. The law only gives strikers the right to return to work as jobs become available.

[Reference of a complaint-like nature is made to specific instances of refusal to rehire striking workers subsequent to the industrial action.]

These strikes were provoked by employers — whose enterprises were successful — demanding big cuts in existing wages, working conditions and benefits in contracts established through collective bargaining. The duration of these strikes, and the corresponding hardship for the striking workers, was caused by the legal use of strike-breakers by the employers. [… Specific reference to one enterprise.] These strikes, although among the longest, were only a few of the cases in which employers used replacement workers in violation of the right to strike.

Strike-breakers are not only used to destroy established collective bargaining relationships but also to prevent trade unions from achieving a first agreement.

[Reference of a complaint-like nature to specific instances of the use of replacement workers to avoid collective bargaining.]

[Comment concerning inadequate supervision and penalties in respect of labour standards generally with a reference of a complaint-like nature to certain territories.]

National labour legislation does not cover agricultural, domestic workers and certain kinds of supervisory workers. Moreover, the concept of “employee” as used in the law does not accord protection to “independent contractors” even where they have no separate economic identity independent of a particular employer.

[Reference of a complaint-like nature to attempts by migrant workers to obtain trade union recognition.]

The inadequacy of laws is not limited to the private sector. Approximately 40 per cent of all public sector workers, nearly 7 million people, are still denied basic collective bargaining rights. At the national level, only postal workers enjoy such rights and 94 per cent of the postal workers are represented by trade unions. Over 2 million employees of the federal Government are governed by the 1978 Federal Labor Relations Act which outlaws strikes, proscribes collective bargaining over hours, wages and economic benefits, and imposes an excessive definition of management rights which further limits the scope of collective bargaining rights.

While the situation varies from state to state, the absence of proper legal protection of trade union rights in the public sector is reflected in bans on strikes, bans on collective agreements, provisions for their invalidation, limitations on the scope of collective bargaining and discrimination against national trade union organizations. Thirteen states only allow collective bargaining for certain public employees and 14 states do not allow it at all. Nearly 7 million of the total of 14.9 million state and local government employees in the United States are denied the right to bargain collectively.

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Viet Nam

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized by the Government, as stated in Vietnamese legal instruments, in particular the following:

(i) Decree No. 102 of 20 May 1957 on Establishment of Associations.

(ii) Constitution of Viet Nam, 1992.

(iii) Law on Trade Unions of 30 June 1990.

(iv) Labour Code, 1994.

(v) Ordinance on labour dispute resolution of 20 April 1996.

(vi) Decree No. 8/1998 ND-CP defining regulations on association for foreign invested enterprises in Viet Nam.

(vii) Constitution of Viet Nam Trade Unions of 12 November 1993.

(viii) Circular No. 196/CP of 31 December 1992 giving guidelines on implementation of the Labour Code on collective bargaining.

(ix) Circular No. 133/HDBT of 20 April 1991 of the Government giving guidelines on implementation of Laws on Trade Unions.

All employers and workers have the right to establish their associations at various levels, in particular:

— for employers: national level, occupational sector level and enterprise level;

— for workers: international level, national level, occupational sector level and enterprise level.

In principle, the Government does not interfere in controlling those associations unless the associations' performance is wrong in its purposes and in violation of law.

Trade unions may be established in undertakings with more than ten workers.

For enterprises in other economic sectors, the Government allows collective bargaining.

Legislation: legal instruments are issued by the Government as stated above.

Administration: the organizations of workers were administrated by the governmental agencies through collective bargaining. The collective bargaining agreement must be registered at the provincial Department of Labour, Invalids and Social Affairs (DELISA). DELISAs and Management Board of provincial EPZs will give an introduction, observe the signing and supervise respect for the collective agreement.

Any offences in relation to collective bargaining will be imposed with penalties by the Labour Inspectorate.

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Assessment of the factual situation

There are 47,161 enterprises with trade unions (41,517 in state-owned enterprises (SOEs) and 5,644 non-state-owned enterprises). Collective agreements have been signed at 56 per cent of SOEs, at 36 per cent of enterprises with foreign investment and 20 per cent of non-SOEs.

Enterprises with collective bargaining bring workers advantages and rights, and stabilize production, business, dynamic management and harmonious industrial relations in enterprises.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

Measures taken to promote freedom of association and the effective recognition of the right to collective bargaining are information dissemination, propaganda and education on legislation and inspection.

The Government promotes and recognizes the principle through issuance of legal instruments and supervision of the implementation of those instruments at various levels.

The International Labour Organization adopts international labour Conventions and holds seminars, symposiums and surveys on related matters.

The objective of the Government is to encourage all enterprises, in the light of the application of the Labour Code, to undertake labour negotiations and conclude collective labour agreements.

The conditions deemed necessary to meet the objectives are that the principle should be:

— recognized in laws and legislation in Viet Nam;

— provided in education programmes on legislation.

Representative employers' and workers' organizations to which copies of the report have been sent

This report has been sent to the Viet Nam Confederation of Labour, the Viet Nam Chamber of Commerce and Industry and the Viet Nam Central Council of Cooperatives and Small and Medium Enterprises.

Observations received from employers' and workers' organizations

So far, no comments have been received from these organizations.

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Viet Nam

Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)

The relationship between the Vietnam General Confederation of Labour (VGCL) and the ruling party is reflected in the law and in the VGCL constitution.

All unions must belong to the VGCL. The local branch of the VGCL must approve any union formed by workers themselves. There are no independent trade unions.

The law requires a trade union to receive prior authorization from the authorities before it can be set up.

Viet Nam's 1995 Labour Code directed the regional branches of the VGCL to establish unions in all new enterprises and enterprises without unions within six months.

The Code provides for union recognition and collective bargaining, and bans anti-union discrimination. While some collective agreements have been signed they are limited in scope and content.

The Code gives workers restricted strike rights. Strikes had previously been forbidden, although the growth of the private sector in recent years led to the tolerance of peaceful strikes at foreign-owned factories. Strikes can take place but only after several stages of lengthy procedures. The VGCL does not initiate strikes, but often steps in to try and end them.

The majority, if not all strikes, are illegal. Non-enforcement of the Labour Code has been responsible for many wildcat strikes, notably in the textile and footwear sectors. Disputes also arise over late and unpaid wages, wage claims, breaking of contracts, poor working conditions, illegal dismissals, long hours or abuse and humiliation of workers by foreign supervisors. In 1998 increasing lay-offs because of the regional economic crisis led to strikes over compensation payments.

The Government blamed foreign firms for the labour unrest and said that research by the Labour Ministry had shown that tacit labour conflicts took place at small-scale enterprises owned or partly owned by companies from [… foreign countries named and specifically cited for a large percentage of strikes].

Strikes are banned in enterprises, which the Government defines as public utilities and in enterprises essential to the national economy or to security and defence. In 1996, strikes were banned in 54 "key" occupational sectors and businesses, sectors in which strikes cannot take place include water, electrical production, posts and telecommunications, public transport, air and sea transport, banking, public works, the oil and gas industry, and national defence and security.

The Prime Minister can suspend or end a strike considered to be a threat to the economy or public safety.

The Code applies in the six export processing zones, which employed over 260,000 workers. The investors are mainly Asian but there is also French investment and US.

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[Complaint-like comment concerning general treatment of seafarers not directly related to freedom of association or collective bargaining.]

Zimbabwe

Means of assessing the situation

Assessment of the institutional context

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Zimbabwe.

The principle is recognized by legislative provisions in the following: the Constitution of Zimbabwe (revised edition, 1996); Chapter III of the Declaration of Rights, SS 11-23; the Labour Relations Act (Chapter 28:01) (1996), sections 21 and 27; the Public Service Act (1996); Statutory Instrument 141 of the 1997 Public Service Act; Public Service Joint Negotiating Council Regulations, 1997, and also by virtue of the ratification of ILO Convention No. 98 which was ratified by Zimbabwe in August 1998.

Workers and employers in Zimbabwe can establish and join organizations of their choosing without distinction. However, there have been some difficulties with respect to the status of workers in the so-called export processing zones, as Act No. 23 of 1994 initially stated that the Labour Relations Act would not apply to employees of licensed investors in the zones. Employees in EPZs were to be governed exclusively by the Common Law. However, after some labour representations, it was decided that the provisions of the Labour Relations Act would apply in the zones after all.

The other category of workers who may be affected by this principle are “contract workers” and those working in the informal sectors of the economy. The debate on the dilemma of the informal sector continues to gather momentum as questions are raised about whether or not the Labour Regulations should be extended to this sector.

The rules for the formal conditions that must be fulfilled by workers and employers when forming their organizations are not cumbersome.

The Labour Relations Act (Chapter 28:01) establishes the rules and requires that such organizations be registered for recognition in order to ensure that they are not bogus organizations with the main aim of undertaking fraudulent activities under the guise of workers’ or employers’ organizations.

The Labour Relations Act (section 40(1) up to subsection 84) empowers the Registrar of Labour to approve or rescind the registration or certificate of trade unions or employers’ organizations, after considering any representations lodged in terms of subsection (93) of section 39 of the Labour Relations Act (Chapter 28:01 (1996)).

The Registrar can also suspend the authority of trade union or employers’ organizations from performing all or any of the functions of a registered or certified trade union or employers’ organization, as specified in the order of suspension.

However, it is important to note that the Government only intervenes in labour disputes if a complaint has been lodged by the aggrieved party. Where cases of fraudulent activities

have been reported against the organizations in question, the intervention is in the public interest and to protect the members of such organizations from being exploited or disadvantaged.

Another "grey area" is the current absence of free collective bargaining structures in the public service, i.e. civil servants in government ministries, teachers, nurses and other personnel specified in the Public Service Act (1995). Judges, police, prison, defence and national security personnel are not members of the public service proper. Salaries and wages of employees of public service have, on average, tended to lag behind those in both the parastatal and private sector where free collective bargaining is encouraged under the Economic Structural Adjustment Programme (ESAP) (1990-2000). As a result of this, according to a job evaluation exercise completed in 1995, public service employees were on average paid 84 per cent less than their counterparts in parastatal enterprises and significantly less than those in the private sector (1995 Job Evaluation Exercise).

The absence of collective bargaining structures in the public service may have an adverse impact on industrial relations in this sector. However, it is important to note that the Public Service Act allows public service employees to form recognized associations and organizations such as the Public Service Association (PSA), Government Workers' Association (GWA), Zimbabwe Nurses' Association (ZINA), Zimbabwe Teachers' Association (ZIMTA). These associations engage in consultations with the Public Service Commission on conditions of service rather than engage in negotiating for collective bargaining agreements. This accounts for the current efforts to harmonize labour laws.

The Labour Relations Act provides for the authorization of collective agreements by the Government, in that all collective agreements must be registered with the Registrar of Labour so that they can be enforced legally.

The Labour Relations Act empowers inspectors to make routine checks on wage books to ensure that collective agreements are being implemented. They also check as to whether such "collective agreements" meet the prescribed minimum standards. The Government may have the power of authorization in cases where it wants to ensure that wage stabilization policies are respected.

The principle is enforced through the routine labour inspection of enterprises.

The Labour Relations Tribunal and the High Court have jurisdiction to enforce the implementation of the principle.

Penalties and sanctions, such as deregistration, fines and imprisonment, are some of the measures that may be used to ensure compliance in implementing the principle.

The principle of "good will" is also important for implementing the principle.

Assessment of the factual situation

Zimbabwe, like most developing countries, suffers from a dearth of statistics.

The little data available suggest that there has been a great improvement since the adoption of ESAP in 1991. Most of the sectors are now registered under the National Employment Councils and operate on the basis of collective bargaining agreements.

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To date there are about 46 National Employment Councils with collective agreements that are registered and are being implemented. There are about 60 registered trade unions. Workshops and training seminars have been organized by trade unions, employers organizations and the Government to enhance the competence of the designated agents who work and facilitate the negotiation of collective agreements in specific industrial sectors as represented in their specific National Employment Councils.

The Government and the social partners (ZCTU and EMCOZ) have been working on the harmonization of Zimbabwe's labour laws with a view to extending collective bargaining to the public service as is the case in the private and parastatal sectors.

These efforts have resulted in the Harmonization Labour Amendment Bill, 1998, which is now being debated in Parliament.

In 1998 a Tripartite Negotiating Forum was established by the Government and the social partners to negotiate issues affecting both employers and workers and with a view to promoting industrial harmony through freedom of association and collective bargaining in the private sector and public service. Through this Forum, tripartite meetings are held from time to time. Seminars and workshops are organized to raise the awareness of workers and employers about these fundamental rights.

Collective bargaining agreements negotiated at plant level or industry level, are registered.

Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights

The efforts made with a view to promoting the principle include the following:

— registration of negotiated collective bargaining agreements by recognized employers' organizations and employee organizations such as trade unions for a specific industry or sector;

— attending meetings of the Governing Body of the ILO and participating in the various ILO committees;

— providing regular annual reports to the ILO on the Conventions and principles in question;

— financing the attendance of the social partners at tripartite meetings of the ILO, SADC and OAU Labour and Social Affairs Commission; and

— holding seminars and workshops, although resources are limited.

The ILO has promoted freedom of association and the effective recognition of the right to collective bargaining by setting standards and guidelines for member States to follow.

It contributes to promoting the principle by inviting tripartite delegations to meetings, capacity-building seminars and training workshops like the one held at Dakar, on the writing of reports on the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in Africa. The Government, trade unions and employers personnel benefited from such training.

The ILO has provided financial assistance for member States to carry out studies, specific projects and programmes as a way of promoting some of these fundamental principles and

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rights. For example, many member States are benefiting from the IPEC programme of the ILO for the progressive elimination of child labour in member States. Many countries in Africa now have data banks on child labour; for instance, South Africa, Namibia and Zimbabwe are in the process of finalizing details of the child labour survey project.

Other bodies such as UNDP and NGOs are in the forefront in giving financial assistance to member States, encouraging them to promote the principles of freedom of association and collective bargaining. For instance, the Fredric Ebert (FES) of Germany has been undertaking training programmes to strengthen both trade union and government employees or officials in promoting and respecting the principles of freedom of association and collective bargaining, through paralegal training programmes.

The objective of the Zimbabwean Government in observing and promoting the realization of these principles is to create and foster a democratic system in which human rights and the rights of workers and employers are respected. They will lead to the promoting of democracy, good government and accountability, to the benefit of the whole nation and the world. The aim is to promote good governance and the rule of law.

The conditions necessary for attaining these objectives include assistance in the training of government officials, trade unions and employers who handle the issues of promoting and implementing the principles in question. These officials need intensive training to acquire skills and develop promotional and implementation strategies.

For example, the tripartite Dakar Workshop on the Declaration on Fundamental Principles and Rights at Work (6-8 October) was an eye opener. Better reports are expected after the Dakar Workshop. Seminars and more intensive programmes should be put in place.

The Zimbabwean Government, of late, has been recruiting officers of high calibre with outstanding tertiary-level qualifications, to improve the system of labour administration.

The ILO should help by assisting these officers to acquire relevant skills for implementing and monitoring the application of the fundamental principles and rights, so that workers, employers and their organizations could enjoy these principles and rights.

The ILO should provide financial resources for tripartite delegates from developing countries to carry out study tours in the developing countries to gain experience from other countries in terms of the monitoring and implementation of the principles in question.

This should involve personnel responsible for promoting the monitoring and the implementation of those principles and those responsible for writing country reports.

The ILO should provide technical assistance for the development of relevant social indicators and data collection capabilities. Training workshops on statistics must be held.

As we enter the new millennium, computers are a welcome resource, so is asssistance in obtaining computer equipment so that our manual information systems can be computerized.

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Representative employers' and workers' organizations to which copies of the report have been sent

A copy of this report has been sent to the Zimbabwe Congress of Trade Unions (ZCTU) and the Employers' Confederation of Zimbabwe.

Observations received from employers' and workers' organizations

To date, we have not received any observations or comments from the two social partners. However, the social partners made an input in the drafting of the report which was prepared jointly at the Dakar follow-up workshop.

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