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January 2001

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

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

## **Abstract**

ILO's 2001 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, programme, promoting, questions, report, rights, standards, strikes, trade, unions, university, work, workers, workplace

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

Contents

	<i>Page</i>
Freedom of association and the effective recognition of the right to collective bargaining	
Bahamas –	
Government .....	7
Bahrain –	
Government .....	8
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	9
Government observations on ICFTU’s comments .....	11
Brazil –	
Government .....	16
Observations by the National Confederation of Commerce (CNC) .....	18
Government observations on the CNC’s comments .....	19
Observations by the National Confederation of Transport (CNT) .....	19
Observations by the Social Democracy Union (SDS) .....	19
Canada –	
Government .....	19
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	23
Government observations on ICFTU’s comments .....	25
China –	
Government .....	26
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	26
Democratic Republic of the Congo –	
Government .....	28
El Salvador –	
Government .....	30
Observations by the Autonomous Central Organization of Salvadorian Workers (CATS) .....	31
Government observations on CAT’s comments .....	33
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	35
Government observations on ICFTU’s comments .....	35
Equatorial Guinea –	
Note from the Office .....	39
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	40
Fiji –	
Note from the Office .....	40
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	40
India –	
Government .....	41
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	41
Iran, Islamic Republic of –	
Government .....	42
Iraq –	
Government .....	44
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	45
Jordan –	
Government .....	46
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	46
Government observations on ICFTU’s comments .....	46
Kenya –	
Government .....	47
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	48
Government observations on ICFTU’s comments .....	49

	<i>Page</i>
Korea, Republic of –	
Government .....	49
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	55
Kuwait –	
Government .....	55
Lao People’s Democratic Republic	
Note from the Office.....	56
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	57
Lebanon –	
Government .....	57
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	59
Government observations on ICFTU’s comments.....	60
Malaysia –	
Government .....	63
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	63
Government observations on ICFTU’s comments.....	66
Mauritania –	
Government .....	76
Mauritius –	
Government .....	77
Observations by the Mauritius Employers’ Federation (MEF).....	80
Observations by the Fédération des syndicats des corps constitués (FSCC).....	81
Mexico –	
Government .....	82
Morocco –	
Government .....	84
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	90
Government observations on ICFTU’s comments.....	90
Myanmar –	
Note from the Office.....	91
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	91
Nepal –	
Government .....	92
New Zealand –	
Government .....	93
Additional information submitted to the Office by the Government.....	97
Observations by the New Zealand Employers’ Federation (NZEF) .....	97
Government observations on the NZEF’s comments.....	98
Observations by the New Zealand Council of Trade Unions (NZCTU).....	99
Oman –	
Government .....	99
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	102
Qatar –	
Government .....	102
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	103
Government observations on ICFTU’s comments.....	103
Saudi Arabia –	
Government .....	105
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	106
Government observations on ICFTU’s comments.....	106
Singapore –	
Government .....	107

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	<i>Page</i>
Sudan –	
Government .....	107
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	109
Thailand –	
Government .....	110
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	121
Government observations on ICFTU's comments .....	122
Uganda –	
Government .....	124
United Arab Emirates –	
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	126
Government observations on ICFTU's comments .....	127
United States –	
Government .....	130
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	130
Viet Nam –	
Government .....	133
Observations by the International Confederation of Free Trade Unions (ICFTU) .....	134
Zimbabwe –	
Government .....	135

## Bahamas

### ***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 the Bahamas.

The principle is recognized in the Constitution. The principles contained in ILO Convention No. 98 (1949), which has been ratified by the Bahamas, are included in legislation.

No category of employers or workers is denied the right to organize except the police and the defence force.

It is not necessary to request prior authorization to establish employers' or workers' organizations.

The Government cannot intervene in the functioning of an employers' or workers' organization.

No category of employers or workers is excluded from any system/procedures that might exist to ensure the effective recognition of the right to collective bargaining.

The legislation does not provide for the authorization of collective agreements by the Government.

### ***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 contained in the Industrial Relations Act 1969 and its Amendment 1996.

With respect to the means deployed to promote the principles and rights, the Government establishes the procedure to organize and claim for recognition in the legislation and a dispute procedure to address problems arising from the process.

In addition, unions closely monitor and report disputes to ensure compliance by employers.

Furthermore, the Industrial Tribunal too has an important role in this process.

The objective of the Government of the Bahamas is the ratification of ILO Convention No. 87 (1948). To reflect and support the principles contained in this Convention, the Government has amended the legislation.

At this time, there is nothing specific the Bahamas might require to effect the ratification of the aforementioned Convention.

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

Bahamas Employers' Federation (BECON)

National Congress of Trade Unions (NCTUS)

Commonwealth of the Bahamas Trade Union Congress (CBTUC)

***Observations received from employers' and workers' organizations***

In consultations during the preparation of the draft legislation, inputs were received.

**Bahrain*****Means of assessing the situation*****Assessment of the institutional context**

The principle is recognized in the form, and within the limits provided for, in the legal system of Bahrain.

The principle is recognized in the Constitution, in the labour laws and the executive decrees.

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

The requirements for establishing employers' or workers' organizations are set out in the framework of regulations established by the Government, not by prior authorization.

As regards employers' and workers' organizations, cooperation exists to ensure the fulfilment of common interests.

The exclusion of categories of groups from the application of the principle is a matter that is determined by the rules in force, as stated earlier.

The means of implementing the principle are administrative and legislative as stated earlier.

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

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 labour 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 Government endeavours to support the labour organization and increase its role, activities and contributions to realize workers' interests, including involving the labour organization in the formulation of labour policies and legislation. The Government also provides material support to the Workers' General Committee.

The Workers' 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 role in many labour activities, in the creation of a centre for workers' education, and supporting it materially with books, reference material and publications, as well as in developing and modernizing labour legislation.

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

The Government's objectives are to enhance workers' productivity, promote their interests and improve their socio-economic conditions.

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

Copies of the report were sent to the General Committee of Bahrain Workers and the Chamber of Commerce and Industry.

***Observations received from employers'  
and workers' organizations***

No observations were received.

**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 1981 Ministerial Orders do not mention this right and only prescribe the establishment of joint committees.

The 1957 Trade Union Act has been suspended. The 1976 Labour Code stipulates that joint committees of workers' and employers' representatives can be formed to "cooperate in the settlement of disputes, secure improvements in workers' social standards,

organize social services, fix wages, increase productivity and any other matters of mutual interest". The committees are composed of four workers' and four employers' representatives.

Joint Labour-Management Consultative Councils (JCCs) can be established with the Government's permission. There are JCCs in 19 large joint venture and private sector companies.

Although the workers' representatives on the JCCs are elected, management organizes the elections. The Ministry of Labour can use its discretion to exclude worker candidates from standing for election to the JCCs.

The JCCs represent workers' interests in discussions with management, but can only act as advisers and have no real power to negotiate or bargain.

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 is controlled by the Government and cannot recruit members or collect membership fees.

The Ministry of Labour must approve the internal rules of the GCBW. It cannot invest funds or acquire assets without permission from the Ministry. Nor can it engage in political activities.

The Government requires that a ministerial representative attends and supervises the GCBW's general meetings.

During the past few years the GCBW has asked the Government to change the law to allow trade unions but has not received a positive response. The authorities monitor the GCBW's activities, and some officials of the JCCs and the GCBW have been harassed, arrested and detained for several months without charge or trial, or had their passports taken away.

[ ... Comment of a complaint-like nature concerning the JCCs and GCBW.]

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

The Bahrain Workers' Union exists outside the country. [ ... Comments of a complaint-like nature are made with respect to individual trade union representatives and their families.]

Bahrain depends heavily on labour from other countries ... 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.

### **Government observations on the ICFTU's comments**

The Labour Law relating to the private sector No. 23 of 1976 and the amendments thereto, guarantee workers' rights and freedoms, as provided for, under sections 142, 143 and 144 of the Law and by two Ministerial Decrees Nos. 9 and 10 of 1981. It also provides a framework for the establishment of a workers' organization, namely the General Committee for Bahrain Workers. The following provisions of the Law should be noted:

- (a) This Organization has the components and constituents required for the establishment of workers' organizations. The General Committee for Bahrain Workers enjoys a legal and independent personality, based on the free choice of its members. It also represents workers of Bahrain internally, and in all Arab, international conferences and events abroad.
- (b) The legislator aims through this organization to defend workers' rights, take care of their mutual interests, improve their terms and conditions of employment as well as economic, social and cultural standards. This is provided for explicitly in sections 142 and 143 of the Labour Law and Ministerial Decrees Nos. 9 and 10 of 1981.
- (c) This Organization is in conformity with the economic and social conditions and situation in the country, where foreign labour accounts for more than 60 per cent of the total workforce in Bahrain.
- (d) This workers' organization, in the form, and within the framework determined by the Labour Law, is in conformity with international labour standards, and particularly the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In addition to compliance with the provisions of these Conventions, these Conventions have not required a specific designation for workers' or employers' organizations, be it a trade union or a committee or otherwise. Both Conventions emphasize that the exercise of the rights contained therein should be in the framework of economic and social conditions of each member State.
- (f) The objective of a workers' organization, whatever the designation is, is to seek the organization of workers, to protect their interests, to establish genuine labour practices in the framework of the regulations in force and established values in society, but not in isolation of labour or social realities. It must not fail to carry out its main functions and tasks in raising workers' productivity, protecting their interests, improving their material and social conditions, and enhancing the fundamentals of sound practices among its members.
- (g) The workers' organization enjoys rights and freedoms which ensure the exercise of the activities and tasks entrusted to it. First and foremost, its members have the right to choose freely their representatives, a task which is entrusted to a committee composed of workers, without interference from any party or company, in order to ensure the soundness of the election process.
- (h) The workers' committees enjoy the right to be involved in social dialogue and cooperation, in the following ways:
  - (i) to participate in joint conciliation and arbitration committees to settle collective labour disputes in conformity with sections 133 to 139 of the Labour Law for the private sector;

- (ii) to be represented on the Higher Council for Vocational Training, together with Government and employers' representatives, in accordance with Decree No. 20 of 1975 as amended by Decree No. 1 of 1978;
  - (iii) to be represented on specific councils for vocational training in accordance with Decree No. 12 of 1979 (for example, the Banking Council, the Hotel Sector Council). These councils are branches of the Higher Council for Vocational Training;
  - (iv) to be represented on the Governing Body of the Social Insurance Organization, together with Government and employers' representatives, pursuant to section 8 of Decree-Law No. 24 of 1976 concerning social insurance;
  - (v) to be represented on the Higher Council for Labour Services pursuant to section 98 of the Labour Law and Decree No. 11 of 1976, as amended by Decree No. 13 of 1984;
  - (vi) to be represented on the Higher Advisory Labour Council pursuant to section 145 of the Labour Law;
  - (vii) to be represented on other advisory councils as provided for in section 146 of the Labour Law.
- (h) As regards domestic workers who are not covered by the Labour Law, section 155bis of the Labour Law, as amended by Decree No. 14 of 1993, states that domestic workers are entitled to bring their labour disputes to the attention of the Ministry of Labour to be resolved amicably. In cases where resolution becomes impracticable, they are referred to the judiciary for examination.
- (i) The by-laws of workers' committees are monitored in order to ensure that they are not contrary to public order and the national laws in force, in accordance with international standards.

In addition to the above, it is worth mentioning that the State of Bahrain is in the process of amending the Labour Law for the private sector, in the light of social and economic changes, at both the national and international levels, inspired by Arab and international labour standards, and taking into account the observations of the ILO Committee on Freedom of Association.

The Government wishes to stress that, in addressing the issue of trade union activity in Bahrain, it is critical to consider the context in which union activity takes place. We believe this to be of fundamental importance and would like therefore to provide the ILO again with information about the local context.

From an international perspective, the tendency towards the formation of economic and trading blocks has continued. In our region this has led to the development and consolidation of the Gulf Co-operation Council (GCC), of which Bahrain is a member.

Bahrain continues to face a number of critical economic issues not faced by other GCC countries. The decline in oil reserves in particular has meant that the country is forced to take active measures for the diversification of industry and to attract new businesses to the country in order to provide work for its citizens.

The country prides itself on being a leader among GCC members as regards worker-employer relations and in facilitating trade union activity. The Government remains committed to a process of tripartite consultation in the areas of policy development and provision of services.

Focusing on the situation in the country, Bahrain has an atypical labour market, in global terms. Official estimates of the workforce at the end of 1998 show that 62.8 per cent were expatriates and 37.2 per cent, Bahrainis. Available statistics relating to the private sector indicate that, at best, 35 per cent of workers are Bahrainis. It is difficult therefore, and could be argued to be unreasonable in this context, to apply standard trade union models that have been developed to meet different circumstances and cultural conditions.

We noted in our comments for the annual review 2000, that many industrialized countries, from which the union model was developed, are having difficulties in complying with it. Notwithstanding this, Bahrain remains committed to improving the environment in which workers' organizations operate, thus safeguarding the rights of workers.

The Government recognizes that its citizens should have every opportunity to join in the economic benefits of the country by maximizing their participation in the workforce. The policy introduced, whereby companies must increase their proportion of Bahrainis by 5 per cent annually to 50 per cent, continues to be implemented and modified to meet current needs and conditions.

The commitment of the Government to the existence and functioning of trade unions is amply demonstrated by the provisions of the National Constitution. The General Committee for Bahrain Workers (GCBW), the national trade union body, is actively consulted on a range of issues. The GCBW is permanently represented on the Shura Council, the High Council for Vocational Training, other specific councils for training, the Board of the General Organization for Social Insurance (GOSI) and similar organs. The Government's commitment is to include the GCBW in consultative processes embodied in Section 5, Ministerial Order No.10 of the Labour Law 1981, which commits the Government to tripartite consultations.

However, observations that trade unions as such do not exist are correct. There are reasons for this.

Details about the characteristics of the workforce have been provided earlier in our reply. When the Labour Law was formulated the workforce was even more atypical, with approximately 90 per cent being expatriates. The reasoning outlined above, therefore, is even more relevant. The application of a standard trade union model to such an atypical situation was not seen as practical at the time. Indeed it is worth considering whether there is any country where the domestic situation has provided an environment where trade union in their "pure" form have evolved. Certainly, ICFTU reports cover a multitude of countries, making this doubtful.

It is also noteworthy that such clauses were not included in the Labour Law when it was first introduced in 1957 under the rule of the United Kingdom.

As was correctly observed, Joint Consultative Committees (JCC) have been operating in 19 companies, with three having been added over the past 24 months. This is a clear demonstration of the commitment of the Government and the private sector to an ongoing process of consultation through the JCCs.

The report states that “the government organizes the elections” of the JCCs. We would like to stress that the Government does not organize elections. It only monitors the procedures and provides whatever support is necessary to assist with the elections. The objective is to ensure that the elections are fair and represent the wish of the workers involved. We will continue to do this.

Referring to the comment that the Government can exclude worker candidates, the laws and regulations again do not give the Ministry the authority to do so. However, the Labour Law does state that candidates should demonstrate good conduct and behaviour. It is in the implementation of the Law, if a candidate is not compliant with conditions laid down, that the Ministry has the responsibility to state its objection. This acknowledges the important nature of the JCCs in the consultative process, and ensures that they are effective. It would be wrong to assume that the article is actively invoked and is most certainly not arbitrarily applied. It is important to note that, even though Bahrain was experiencing a problematic domestic situation in 1995, this section of the Labour Law was not used once.

The report indicates that “... JCCs ... can only act as advisers and have no real power to negotiate”. However, paragraph 2 of the report states that JCCs “cooperate in the settlement of disputes, secure improvements in workers’ social standards, organize social services, fix wages, increase productivity and any other matters of mutual interest”. These statements are inconsistent. To undertake these activities they can, and do, engage in a negotiation process.

The JCCs discuss a variety of issues during their deliberations. These issues range from companies’ contributions to savings schemes, development of housing schemes, company-supported medical assistance, car park facilities and many other items of interest to the two parties. Inevitably there are differences of opinion on these issues from time to time, which require negotiation, sometimes protracted. Mostly, these disputes result in agreement between the two parties. This process of raising issues and following up with negotiation, through to resolution, is part of their ongoing function. Therefore, we are somewhat mystified by the statement that workers’ representatives have no power to negotiate or bargain.

We are mystified also by the comment that the GCBW is controlled by the Government. If such control does exist, how does the situation arise whereby GCBW representatives have the views that they express? Further, how do they feel free enough to openly express these views? Surely the answer is that this is clear evidence that the alleged control is illusory.

No Government representative attends general meetings of the GCBW. Indeed, the laws and regulations do not give the Government the authority to do so. The Government representative is present only at the first meeting when the board members are elected, and then only to ensure that the elections are fair and represent the wish of the workers.

We are most surprised to note that a comment is again made that the Government is monitoring the GCBW and JCCs. Once again, this is mystifying.

Allegations of harassment, arrest, detention without charge or trial and the confiscation of passports are totally rejected. If any specific instances of any of these allegations can be cited, we would request that the evidence be provided. Every assurance is given that they will be rigorously investigated.

Whilst it is true that foreign workers are not widely represented on the JCCs, they are free to nominate. Similarly, all workers, Bahrainis and foreigners are entitled to vote. The choice of representatives is therefore the result of a democratic process, with which the Government would not wish to interfere.

A comment has been made about the Government's policy designed to assist Bahraini citizens to participate in the workforce. This is understood to be a fundamental responsibility of the Government, a responsibility widely practised throughout the world. At the same time, the Government remains committed to ensuring that the rights of foreign and Bahraini workers are protected and that there is a complaint mechanism available to all workers. Experience indicates that this policy is working, with the proportion of cases from foreign workers approximately equal to, or greater than, their proportion in the workforce. The comment that the political climate makes the representation of foreign workers difficult is therefore rejected.

## Summary

It is clear that there are a number of inaccuracies and distortions contained in the ICFTU reports.

The Government of Bahrain is committed to an active trade union presence in the country, the national body of which is the GCBW. However, the local context needs to be taken into account, in particular, the following:

- One needs to consider Bahrain's place in the GCC and the country's need to operate within this regional economic and cultural framework. Care must be taken to ensure that measures undertaken by Bahrain, often widely recognized as a leader in the region in industrial relations issues, is given recognition. If the efforts attract little but criticism, others will view it as a disincentive for reform.
- Bahrain needs to expand economic activity, by retaining existing private sector businesses and attracting even more. Already Bahrain is facing critical economic issues that are not affecting its neighbours. If Bahrain's industrial relations processes vary too much from those of its neighbours, it is likely that businesses will be attracted elsewhere. The reality of this is that business could decline, resulting in a decrease in jobs, causing workers in the country to suffer.
- The Bahraini labour force is atypical and this has had a significant impact on the way the trade union movement was dealt with in the Labour Law and how its practices have evolved. The Government is committed, through its policies and activities, to ensuring that citizens gain from the economic life of the country by maximizing their participation in the workforce. Union activity will be able to become more like the mainstream movement as this process evolves.
- Trade unions are covered by the Constitution and the GCBW is represented on all major governmental bodies, which are committed to tripartite consultation.
- The Government of Bahrain, through the Ministry of Labour and Social Affairs, is committed to ensuring that the Labour Law is upheld and that workers' rights are maintained, regardless of gender, nationality or the type of work undertaken.

The ICFTU report, whilst having some criticisms of Bahrain, acknowledges the democratic and consultative nature of industrial processes existing in the country. The

criticisms made are either unfounded or may be attributed to contextual issues outlined above.

Nevertheless, the Government acknowledges that industrial relations is an area that needs constant attention so that the rights of all workers, nationals and expatriates, will be safeguarded. To this end, we are currently conducting a comprehensive review of the Labour Law to ensure that it complies fully with international standards and that the abovementioned objectives are being met.

The Government gives its assurance that it remains fully committed to the ongoing review, as well as to progress, and the improvement of the Labour Law.

## Brazil

### *Means of assessing the situation*

#### Assessment of the institutional context

The Brazilian Government repeats the information communicated in its first report. However, we stress that, contrary to the indications in paragraph 79 of document GB.277/3/1 (examination of annual reports under the follow up to the ILO Declaration on fundamental principles and rights at work), Brazil in fact ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), on 18 November 1952.

#### Assessment of the factual situation

The statistics available to the Secretariat for Industrial Relations (SRT) show a considerable increase in the number of collective agreements and conventions signed in Brazil over recent years, itself a reflection of the increased degree of trade union freedom and autonomy, the development of a bargaining culture and the refining of the labour legislation. According to data from the Statistical System for Collective Agreements (SENC), organized and administered by the Secretariat for Industrial Relations, the number of collective agreement instruments deposited at the Ministry for Labour and Employment has grown from 9,826 in 1997 to 15,456 in 1998 and to 16,713 in 1999. Moreover, public mediation was applied 8,258, 10,213 and 9,700 times respectively in 1997, 1998 and 1999 within the framework of regional labour delegations, with a view to promoting the conciliation of employers' and workers' interests.

The contents of the collective agreements have not been analysed systematically, however it is possible to observe that negotiation now covers new fields, with the progressive incorporation of clauses dealing with current problems – security of employment, participation in profit-sharing schemes, productivity, vocational training and flexibility. Where bargaining had before been exclusively consecrated to questions of wages and social benefits, today's agenda demonstrates the increased maturity of the social partners in respect of bargaining and an adaptation to the current constraints in the world of work. The reduction of the number of strikes over the last few years bears witness to this progress. While it is true that this reduction reflects the restrictions imposed on the worker's movement by an unfavourable period, the slowing down of economic growth and the rise of unemployment, the more open attitude towards dialogue and bargaining displayed by the parties is nonetheless partly responsible.



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

As regards proposed Constitutional Amendment no. 623/98, referred to in the last report, according to the latest information obtained from the legislative authorities, this has been annexed to Proposal no. 346/96, altering the organization of the labour courts and it is under examination by the special committees of the Chamber of Deputies.

Among the measures taken with a view to promoting the right and principles concerned, mention should be made of the promulgation of Act No. 9958 of 12 January 2000, amending the Consolidation of Labour Laws (CLT) by authorizing undertakings and trade unions to create Prior Conciliation Commissions, joint bodies made up of representatives from enterprises and workers and responsible for promoting conciliation in individual industrial disputes. The instrument provides that the establishment and functioning of the Commission created within trade unions will be governed by convention or collective agreement, and that the employment security of the workers' representatives of which it is composed, will be guaranteed. In its own premises, the Committee will examine grievances prior to the legal procedure, when the request to do so comes from a worker. The conciliation agreement is executory, without the need for a legal decision, and may thus become effective where such decision is lacking.

The interest of this instrument for collective bargaining is above all that it promotes the amicable settlement of disputes involving employers and workers. Moreover, it allows enterprises to avoid the indirect costs arising from legal procedures, it facilitates the rapid handling of workers' demands and it diminishes the law courts' work in respect of cases arising from the financial clauses in employment contracts.

It should also be stressed that the Ministry for Labour and Employment, acting particularly through the Secretariat for Industrial Relations, has sought to promote seminars, training, conferences and other activities aimed at advancing debate on model collective agreements adapted to Brazil's particular social, economic and cultural conditions, to train public servants and the representatives of employers and workers in the practice of bargaining, and encourage recourse to dialogue as a means of resolving industrial disputes. The ILO has contributed actively in this effort through its experts, financial resources and methodologies as well as its wealth of experience.

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

In conformity with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), a copy of the present report has been communicated to the following employers' and workers' organizations for consultation and comment:

- National Confederation of Agriculture (CNA);
- National Confederation of Commerce (CNC);
- National Confederation of Industry (CNI);
- National Confederation of Financial Institutions (CNF);

- 
- National Confederation of Transport (CNT);
  - Single Central Organization of Workers (CUT);
  - General Confederation of Workers (CGT);
  - Força Sindical (FS);
  - Social Democracy Union (SDS).

### **Observations received from employers’ and workers’ organizations**

To date, no observations have been received from these organizations, who will receive a copy of the present report.

*Annexes (not reproduced)*

*Declaração sociolaboral do Mercosul.*

*Lei no. 9958, de 12 de Janeiro de 2000, “Titulo VI-A, Das Comissoes de Conciliação Prévia”.*

**Brazil**

### **Observations submitted to the Office by the National Confederation of Commerce (CNC)**

[Reference is made to reports by the Government of Brazil updating information contained in the reports submitted to the ILO for the first annual review under the follow-up to the Declaration. One of the two reports deals with the principle of freedom of association and effective recognition of the right to collective bargaining.]

[The] Confederation considers that a number of rectifications are called for, in the interest of correctly reflecting the current strategy with regard to the aforementioned principle and rights.

The Government’s report states:

“The instrument provides that the establishment and functioning of the Commission created within trade unions will be governed by convention or collective agreement, and that the employment security of the workers’ representatives of which it is composed, will be guaranteed”.

This wording suggests that the jobs of all workers’ representatives on the Prior Conciliation Commissions are guaranteed, while section 625-B(1) of Act 9.958 (12 January 2000), prohibits only the dismissal of workers’ representatives belonging to a Commission that is established within an enterprise.

Thus, the CNC proposed the following wording [to the Government]:

“The instrument provides that the establishment and functioning of the Commission created within trade unions will be governed by convention or collective agreement, and guarantees the employment security of the workers’ representatives in the Commissions established within enterprises”.

### ***Government observations on comments by the National Confederation of Commerce (CNC)***

The Government of Brazil wishes to state that the Office of the International Advisor to the Minister of Labour and Employment received the observations by the National Confederation of Commerce (the representative employers for the trade sector), on 11 September, after the deadline for submitting reports to the International Labour Office. It is for this reason that those observations were not reflected in the Government’s final report.

As regards the Government’s report on the principle of freedom of association and the effective recognition of the right to collective bargaining, the Government agrees with the wording proposed by the CNC concerning the scope of Act No. 9.958 of 12 January 2000, amending the Consolidation of Labour Laws (CLT). This concerns the provision whereby enterprises and trade unions are authorized to set up joint Prior Conciliation Commissions, comprising employer and employee representatives, for the purpose of seeking solutions to individual labour disputes through conciliation.

### ***Observations submitted to the Office by the National Confederation of Transport (CNT)***

We are in full agreement with the information provided by the Brazilian Government in the report on the principle of freedom of association.

## **Brazil**

### ***Observations submitted to the Office by the Social Democracy Union (SDS)***

By way of an update, the Government’s report describes the measures being taken by the Government of Brazil as regards its commitment to the effective abolition of child labour and to the principle of freedom of association.

## **Canada**

### ***Means of assessing the situation***

#### **Assessment of the institutional context**

The Government of Ontario has indicated that the following minor corrections should be made to the information regarding the Province of Ontario in Canada’s initial report submitted for the annual review of 2000.

Under the legislation listed for Ontario:

- delete the following reference. “*School Boards and Teachers Collective Negotiations Act, 1993*”;
- add the following reference: “*Education Act*” (refers back to *Labour Relations Act, 1995*); and
- add the date 1993 to the reference to the “*Crown Employees’ Collective Bargaining Act*”.

#### Assessment of the factual situation

##### *New developments in statistics, Canada’s Labour Force Survey (LFS)*

The Labour Force Survey (referenced in Canada’s initial report for the annual review of 2000 together with statistical tables and charts included) has undergone extensive revisions to reflect two important changes to the way in which labour market data are produced.

- All Labour Force Survey (LFS) historical estimates have been revised to reflect population counts based on the 1996 census.
- A new method of estimation has been implemented, which results in more efficient estimates of month-to-month changes and improves the quality of monthly estimates, especially for the “industry and class of worker series” at the provincial level. All Labour Force Survey historical estimates, have been revised back to 1976.

##### *1999 labour force highlights*

On an annual average basis, employment rose 2.8 per cent in 1999, much faster than the 1.8 per cent forecasted in 1998 by the Organization for Economic Cooperation and Development. (OECD).

The average level of employment in 1999 was 391,000 higher than the annual average for 1998. This pushed the average unemployment rate down 0.7 points to 7.6. The average level of people working full time increased by 382,000 or 3.3 per cent higher in 1999 than it was in 1998.

The strong job market attracted more people to the labour force in 1999. As a result, the participation rate rose 0.5 percentage points to 65.6 per cent. The self-employed now account for over 16.9 per cent of all workers, up from 13.9 per cent ten years ago. The number of employees in the public sector increased by 147,000 in 1999 compared to 207,000 in the private sector.

##### *Freedom of association*

A survey of union membership conducted by Human Resources Development Canada (HRDC) indicated that in 2000 there were 1,008 unions in Canada (224 national unions, 47 international unions, and 737 others)<sup>1</sup> covering 4,058 million employees. Over the last 30

<sup>1</sup> Includes directly chartered unions and independent local organizations.

years, there has been a major shift away from international unions. Their representation dropped from 24.3 per cent of unions and 72 per cent of members in 1962 to 4.7 per cent of unions, representing 29.5 per cent of members in 2000. On the other hand, national unions went from 11.5 per cent of unions and 23.5 per cent of members in 1962 to 22.2 per cent of unions and 65.3 per cent of members in 2000 (see table 5, not reproduced).

The same annual HRDC survey reveals that membership has increased from 3.8 million in 1988 to 4.06 in 2000 but this change has been slower than employment growth in general. As a result, union membership as a percentage of non-agricultural paid workers has fallen slightly from 35 per cent in 1988 to 31.9 per cent in 2000 (see table 4, not reproduced). In addition, Statistics Canada reports that in 1999, approximately one in 13 (7.4 per cent of) employees covered by a union-negotiated agreement was not a union member (Statistics Canada No. 75-001-XPE 2000 Labour Day release). Statistics Canada also reports that in the public sector, approximately 75 per cent of employees were covered by a collective agreement in 1999 as opposed to 20 per cent in the private sector.

*Work stoppages (see Canada's initial report for the annual review of 2000)*

The number of work stoppages in Canada, as well as the number of days lost and number of workers involved, are summarized in table 7 and figure 3 which have been updated to include the year 1999 (not reproduced).

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

The following revisions (both editorial and by way of update) regard the activities of the Workplace Information Directorate (WID) of the Labour Program of Human Resources Development Canada (HRDC). The revisions (to Canada's initial report for the annual review 2000) refer to:

- footnote 2 (information under the federal jurisdiction); and
- a paragraph with information under the federal jurisdiction in section "Efforts made or envisaged to ensure respect, promotion and realization of these principles and rights".

By way of update, the paragraph should be revised to read:

In an effort to better address evolving client needs and interests, the Workplace Information Directorate *has launched two* initiatives related to its analysis of major collective agreement provisions. The first undertaking *which involves* the review of the content and procedures related to the database of major collective agreements in Canada *updates* 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 *has also implemented* a stratified sample of collective agreements to include bargaining units of 100 or more employees. These initiatives, which 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, *should be available in 2000.*

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

A copy of this report is being provided to the following representative employers' and workers' organizations:

- Canadian Employers Council (CEC);
- Canadian Labour Congress (CLC); and
- Confédération des syndicats nationaux (CSN).

### ***Observations received from employers' and workers' organizations***

The Canadian Employers' Council advised that it does not plan to provide supplementary comments at this time since the Government's initial report is, in their view, comprehensive and factual. No comments have been received from the Canadian Labour Congress or the Confédération des syndicats nationaux.

### ***Annexes (not reproduced)***

By way of an update to the Government's initial report for the annual review of 2000, please see the following statistical tables and charts, provided in this report:

Table 1	General labour force statistics ('000s);
Table 1a	General labour force statistics;
Table 2	Labour force participation rates, by age and sex;
Figure 1	General labour force trends, 1980-99;
Table 3	Employment, by class of workers ('000s and %);
Table 4	Union membership in Canada, 1988-2000;
Figure 2	Union membership in Canada, 1988-2000;
Table 5	National/international composition of unions, selected years;
Table 7	Work stoppages, 1982-99; and
Figure 3	Work stoppages, 1982-99.

Please note that table 6 annexed to the Government's initial report for the annual review of 2000, and entitled "Bargaining agent certifications (selected jurisdictions, selected years)" has *not* been updated for the purpose of this update report. However, in any reference to the original table 6, its title should, more accurately, read "Bargaining agent *certification applications* (selected jurisdictions, selected years)".

## Canada

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

The Federal Government of Canada and the various provincial governments do not fully accept the trade union rights of public employees and regularly use legislation to restrict them.

#### ***Federal Government***

The federal Government regularly passed back-to-work legislation to end strikes. In March [2000], legislation forced striking employees back to work at the federal treasury, and at the Canadian Grain Commission in Vancouver.

Throughout the period under review, the 1997 Postal Services Constitution Act interfered with collective bargaining in the postal sector.

The federal Government has recently amended the federal Labour Code to define activities to be maintained during strikes. Although the change does not expressly prohibit employers from using replacement workers during strikes, it only bans them where the aim is to undermine a union's representational capacity.

#### ***Alberta***

Alberta restricts strikes by public hospital employees, including kitchen staff, porters and gardeners. While arbitration is provided to settle labour disputes for public employees, the following are excluded from what can be arbitrated: work organization, the assignment of duties, the determination of the number of employees, job evaluations, job selection, appointment, promotion, training, transfers and pensions. The law provides lengthy and strict limits and guidelines which arbitrators are bound to follow in deciding awards.

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.

In November, after failing to reach a first collective agreement in over one year of negotiations, trade unions representing workers employed at the *Calgary Herald* newspaper went on strike.

Section 88 of the Code presumes the use of strike-breakers by the employer and provides that strikers only be given "preference" over strike-breakers in getting their jobs back after a dispute. The strikers must apply in writing with restrictive time limits. The authorities also use injunctions against strikes and strikers, and make excessive use of the police during strikes. Alberta does not allow workers in agriculture and horticulture to organize nor to bargain collectively.

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***New Brunswick***

New Brunswick is another province that does not allow agricultural and horticultural workers to organize nor to bargain collectively.

***Manitoba***

The Manitoba Public Schools Amendment Act of 1997 restricts the powers of interest arbiters in disputes.

***Newfoundland***

In Newfoundland, many public sector workers cannot join the union of their choice and the right to strike is restricted in the public service because the employer has broad powers to designate essential services. The provincial Government has reported to the ILO that it was establishing an effective procedure for defining essential services.

***Ontario***

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 protection of the Ontario Labour Relations Act and from other statutes regulating collective bargaining for employees in specific sectors.

The existing organising 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.

The Savings and Restructuring Act 1996, the Public Sector Transition Stability Act 1997, the Public Sector Dispute Resolution Act, 1997, and the Social Contract Act, 1993 deal with compulsory interest arbitration in specific areas of the public sector. They allow the authorities to interfere in the establishment of labour tribunals and arbitration boards.

The Education Quality Improvement Act of 1997 interfered in the collective bargaining of teachers.

The 1998 Back to School Act brought strikes and lockouts to an end in secondary schools in eight school board jurisdictions.

In 1999, Ontario adopted the Act to Prevent Unionization with respect to Community Participation under the Ontario Works Act, 1997. This amended the 1997 Ontario Works Act so as to prohibit people taking part in community participation (work-fare – compulsory work as a condition of receiving benefits) from joining unions, bargaining collectively or striking.



## **Saskatchewan**

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.

### **Government observations on ICFTU's comments**

The Office has advised us that the Government's initial reports will not be reproduced in the forthcoming 2001 compilation but that the recent update, along with the ICFTU communication and any comments we may wish to make on it, will be included. To assist the Office in ensuring that the essential messages in our initial report are directly available in the 2001 compilation, we are providing a summary of the main points, which address a number of the issues raised by the ICFTU in its communication:

- The principles of freedom of association and the effective recognition of the right to collective bargaining are respected and promoted in Canada.
- Generally, industrial relations legislation in Canada, both federal and provincial/territorial, guarantees 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 workers' and employers' organizations against interference by the other party, and prohibit unfair labour practices. There are mechanisms at the federal and provincial levels to ensure that these protective measures are enforced and complied with.
- Each province has adopted labour legislation regulating collective bargaining in its jurisdiction and has an independent labour relations board, with equal workers' and employers' representation, to administer the legislation (except for Quebec which has equivalent administrative mechanisms and a labour court). The legislation generally promotes free collective bargaining and recognizes the right to strike or lockout.
- Measures built into the legislation set conditions for the exercise of strike and lockout rights and at the same time encourage the parties to engage in meaningful bargaining to achieve an effective collective agreement which will meet their respective socio-economic needs. The importance of conciliation and mediation as a means of helping the parties to come to an agreement voluntarily is recognized across Canada.
- 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.
- 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 in some jurisdictions, but are nevertheless entitled to negotiate with their employers on a voluntary basis.

- 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.
- 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 negotiation collective agreements is thus guaranteed in all jurisdictions.

With respect to the specifics of the ICFTU communication, we note that almost all of the items have already been the subject of detailed examination by the ILO Committee on Freedom of Association, or comments by the Committee of Experts and discussion in the Conference Committee on the Application of Standards. In line with our understanding that the Declaration follow-up procedure is not meant to duplicate existing ILO supervisory mechanisms, the extensive information already provided to those bodies will not be resubmitted in this context.

## China

### ***Means of assessing the situation***

#### Assessment of the factual situation

According to the latest information supplied by the All-China Federation of Trade Unions, there are now 130 million trade union members in China. By the end of 1999 there were 52,160 foreign-owned enterprises and 117,469 private enterprises with trade unions.

According to statistics from the Labour and Wage Department of the Ministry of Labour and Social Security, by the end of 1999 there were 220,000 collective agreements signed and reported to the labour and social security authorities. These agreements cover 57 million workers and staff members.

## China

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

The 1992 Trade Union Law prevents the establishment of trade unions that are independent of the public authorities and ruling party. 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 states that only one union is allowed at any level of organization. The establishment of unions at any level must be submitted to the ACFTU for approval, and all unions must be under its leadership

It 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. If a dispute occurs, unions are to act as intermediaries between workers and management.

The ACFTU 1993 constitution defines trade unions as “the link and bridge between the Chinese Communist Party (CCP) and the working masses, and the representative of the interests of union members and non-union members”.

Key ACFTU officials are appointed by the party especially at the provincial and national levels. They are obliged, according to the ACFTU, to “resolutely uphold the unity leadership of the CCP. Unions at all levels should maintain a high degree of unanimity with the Party: politically, in ideas and in action”.

[Reference is made to the role and policies of the ACFTU.]

In recent years, the authorities directed the ACFTU to set up unions in the private sector – in foreign-owned enterprises or joint venture companies, and in rural enterprises.

These 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.

In 1995 China’s first 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. However, enforcement continues to be minimal and enterprise managers are able to ignore it.

[Details of the ICFTU’s characterization of the Labour Code can be found in GB.277/3/2, p. 36.]

The Labour Code restricts free collective bargaining by requiring that the local labour authorities approve a collective consultative contract within 15 days. The monopoly position of the ACFTU also undermines this right.

The right to strike 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 law provides for dispute settlement, involving mediation, arbitration and a labour court appeal. The procedure does not allow for the possibility of strike action. Binding arbitration can be imposed unilaterally to end a dispute.

The Labour Disputes and Arbitration Committee gives preferential treatment to employers during mediation of labour disputes, as often there is an overlap between enterprise management, local party and government personnel.

Labour disputes have increased continuously since 1992, growing annually at around 50 per cent. In the first six months of 1999 the Labour Disputes and Arbitration Committees dealt with a 58 per cent increase in cases.

Strikes are usually spontaneous and frequently repressed. Employers and local authorities often call in the ACFTU to get strikers back to work. The ACFTU does not organize or support strikes.

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.

Strikers and organizers can be detained or sent to forced labour camps.

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.

In early 1997, after the CCP central committee had noted an increase in organized demonstrations, riots and petitions against local authorities, the PSB issued guidelines on keeping social order for trade unions. This 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.

The National Security Law and the Regulations on Re-education 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.

[References of a complaint-like nature are made with respect to specific government action, including the alleged arrest and detention of trade unionists, prior to and during 1999.]

## Democratic Republic of the Congo

### *Means of assessing the situation*

#### Assessment of the institutional context

There have been no changes in law and practice since submission of the first report.

#### Assessment of the factual situation

The Ministry does not have at its disposal the statistical tools needed to provide statistics on the situation.

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

(a) The texts to be ratified have been submitted for approval to the Office of the President of the Republic but are still not available.

(b) The means deployed or envisaged are:

(1) By the Government

Preparations are under way to hold the 29th Session of the National Labour Council with a view to fixing the guaranteed minimum wage (SMIG).

(2) By the Organization

Since submission of the first report under the follow-up to the Declaration there have been no ILO missions to the country.

(c) The necessary conditions are:

The training in trade union affairs for members of public service unions could not be organized owing to insufficient funds. The planned impact assessment was not carried out either, for the same reasons.

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

##### Employers

- Enterprise Federation of Congo (FEC);
- National Association of Investment Enterprises (ANEP);
- National Association of Congolese Small and Medium-sized Enterprises (COPEMECO).

##### Workers

- National Union of Workers of Congo (UNTC);
- Trade Union Confederation of Congo (CSC);
- Democratic Confederation of Labour of Congo (CDT);
- Confederation of Workers and Executive Staff of Congo (SOLIDARITE);

- Organization of Unified Workers of Congo (OTUC);
- Cooperation of Unions in Public and Private Enterprises in Congo (COOSEPP).

***Observations received from employers' and workers' organizations***

No observations were received from the employers' and workers' organizations.

**El Salvador**

***Means of assessing the situation***

Assessment of the institutional context

The Government wishes to inform the ILO that since it submitted its report for the first annual review, there have been no substantive changes in the national law and practice of El Salvador with regard to 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***

*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
- Salvadorian Institute for Vocational Training

*Employers*

- National Association for Private Enterprise (ANEP)
- Salvadorian Association of Industrialists (ASI)
- Chamber of Commerce and Industry of El Salvador

- Salvadorian 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)
- 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***

Up to the time of writing, none of the organizations mentioned had submitted comments on the report.

### **El Salvador**

#### ***Observations submitted to the Office by the Autonomous Central Organization of Salvadorian Workers (CATS)***

El Salvador has not ratified the Freedom of Association Convention, 1948 (No. 87), nor has it ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The national Constitution contains provisions that relate to the principle of freedom of association and the effective recognition of the right to collective bargaining.

According to article 7 all inhabitants of El Salvador have the right to freedom of association and to assemble peacefully for any reason that is not illegal.

Article 37 states that work is a social function enjoying protection by the State, and that labour is not to be considered a tradable item. The State is obliged to provide employment using all the resources at its disposal.

Article 38 states that work will be regulated by a Code to harmonize employer-worker relations and provide for equal remuneration for work of equal value, regardless of sex, race, creed or nationality.

Under article 39 the law is to regulate conditions under which contracts of employment and collective agreements are to be concluded.

Article 42 states that women workers have the right to maternity leave with pay (before and after having given birth), and the right to maintain their jobs.

According to article 144, ratified international treaties are to be considered national laws, and under article 145, El Salvador cannot, except in exceptional cases, ratify international treaties in which there are provisions that are not in conformity with the Constitution.

Article 146 states that the State shall not ratify treaties that undermine the rights of individuals under the Constitution.

Several provisions of the Labour Code deal with collective bargaining: these are, sections 12, 17-28, 204-207, 208-247, 268-301 and 369-377.

In reality, state and municipal workers cannot form trade unions, only associations. A good number of private enterprises do not allow the establishment of unions and this is particularly striking in the export processing plants and free zones.

The Government's policy in the telecommunication sector has adversely affected the formation of unions and there is an "undeclared war" being waged by the Government and employers to weaken the trade union movement.

The National Association of Private Enterprises (ANEP), which is the representative employers' organization, is organized into chambers (e.g. Chamber of Industry and Commerce and Chamber of Construction).

Recently, representatives of the Autonomous Central Organization of Salvadorian Workers (CATS) had a meeting with senior officials of the Ministry of Labour to discuss its participation in labour-related activities at the national and international levels. Among the issues that need to be addressed are: the problems concerning the National Association of Workers in the Ministry of Agriculture and Livestock (ANTAG), the informal sector (the National Association of Vendors, Small Traders and Similar Workers (ANTRAVEPECOS)), possibilities for training at the Salvadorian Institute for Vocational Training (INSAFORP) and access to the labour exchange (*la Bolsa Laboral*). Up to now, no action has been taken.



**Government observations on comments  
from the Autonomous Confederation  
of Salvadorian Workers (CATS)**

Following examination of the observations presented by the Autonomous Confederation of Salvadorian Workers (CATS) wherein it was stated that El Salvador has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Government hereby sends the following comments and information.

ILO Conventions Nos. 87 and 98, if ratified, would affect the Constitutional Order of the Republic of El Salvador; therefore, ratification is entirely unacceptable.

1. As regards the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it has been established that:

Article 2 of this Convention recognizes that workers and employers, without distinction whatsoever, shall have the right to join organizations of their own choosing, i.e. all workers in the public and in the private sector, without discrimination as to nationality, sex, race, creed or political opinions. However, in accordance with article 47 of the Constitution of the Republic of El Salvador and section 204 of the Labour Code, workers in the public sector do not have the right to set up trade union organizations.

The Convention also provides that national laws or regulations shall determine the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police.

The Constitution of the Republic, the military laws of the country and the organic law of the National Police do not recognize the right of their members to set up and join trade unions for protection of their personal interests, and this is an area where even the International Covenant on Civil and Political Rights authorizes legal restrictions on the exercise of this right by workers in these sectors.

It should be added that even though El Salvador has not ratified this Convention, it is, as a nation, under the obligation not to formulate legislative measures that undermine the guarantees laid down in the text and, on the contrary, to facilitate the creation of trade union organizations, in accordance with the law concerning organization and activities in the labour sector and social security (articles 8 and 22). Under this law it is a duty of the General Labour Office (Dirección General de Trabajo) to facilitate the setting up of trade union organizations and to carry out the activities specified by the Labour Code and other laws as regards their regulation and registration. In accordance with the constitutional order of El Salvador, the only workers who have the right to associate freely to defend their interests and to set up professional associations or trade unions are employers and workers in the private sector and workers in independent official institutions.

This right, therefore, is not recognized for public sector workers even though the Convention makes no distinction whatsoever, regardless of the type of activity undertaken, for workers and employers to establish and to join organizations. For this reason, ratification by El Salvador of the Convention would *seriously affect the constitutional order of the country*.

The Constitution does not recognize this right for the Salvadorian Armed Forces or for the National Police as there is no explicit or implicit mention of this privilege in articles 211 and 213.

Neither is this right mentioned in the organic statutes of the aforementioned institutions.

Consequently, national legislation cannot determine to what point the guarantees provided in the present Convention are applicable to these institutions.

2. Similar considerations affect the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Moreover, the Labour Code lays down the negotiation procedures applicable to workers' trade unions; therefore, it would not be appropriate to create procedures that differ from those already prescribed. Article 246 of the Constitution also sets out principles, rights and obligations that cannot be changed by the laws that regulate its use; this provides even more justification to conclude that the provisions of the Constitution should be applied in preference to those of international treaties. (Principles of Supremacy of the Constitution of the Republic of El Salvador.)

Therefore, the possibility of creating new procedures for voluntary negotiation would necessarily imply reform of the Labour Code, which is not appropriate to the interests of the country at this time.

Turning to other topics, the Ministry of Labour and Social Security, through the Salvadorian Institute of Vocational Training (INSAFORP), is assessing vocational training possibilities for workers.

- (a) Training support through INSAFORP to carry out three training courses:

1. Hair cutting.
2. Preparation of sweetened bread and French bread.
3. Fish production.

The courses could take place at suitable hours during the morning and the afternoon. This training will probably start early next year.

- (b) Employment Funding and submission of curricula:

The Minister of Labour received five curricula to be included in the labour exchange and the databank of the General Social Security and Employment Office (Dirección General de Previsión Social y Gestión de Empleo), and for subsequent submission to the Department of Employment for processing.

Those interested should send the remaining curricula to the Department of Employment for processing.

- (c) The magazine "*Perspectiva*" and the Superior Council of Labour:

As regards the claim that the Ministry of Labour is looking into the financing of the publication, "*Perspectiva*", we are legally prevented from doing so as the specific contractual obligations of this State Department do not include this type of financial

support, in accordance with article 8 of the law on organization and activities in the labour sector and social security. This, of course, does not prevent the representatives of CATS from seeking support from other sources to finance its publication, e.g. NGOs and even the labour sector of the country, represented by labour federations and confederations.

(d) The Superior Council of Labour:

It has been confirmed that the Autonomous Confederation of Salvadorian Workers (CATS) is not registered as a trade union in the relevant registry. Consequently, legal recognition will be forthcoming when they obtain legal status, in accordance with the procedure laid down in sections 219 et seq. of the Labour Code.

As regards support for the development of some cooperatives, we suggest that the Autonomous Confederation of Salvadorian Workers appoint representatives to present this proposal to the Salvadorian Institute of Cooperative Development (INSAFOCOOP), which is exclusively authorized to initiate, promote, coordinate and supervise the organization and functioning of cooperative associations and federations as well as confederations, and to provide them with the advice and assistance they require. (Article 2(b) of the law establishing the Salvadorian Institute of Cooperative Development.)

The actions required to fulfil these requests are:

1. The submission of a request for training to INSAFORP. Replies will be sent to the applicants.
2. The holding of discussions with the person responsible for the setting up of the cooperatives requested by the CATS.

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

El Salvador's Labour Code bans unions in the public sector and bans strikes in nine autonomous government agencies. Disputes are settled by mandatory arbitration. Public sector workers are able to form associations, which in practice, bargain collectively and go on strike. The Code prevents party political activities by trade unions, and also imposes excessive formalities for union recognition.

In El Salvador's export processing zones (EPZs), there are still very few functioning trade unions. 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 the purpose of collective bargaining.

***Government observations on  
the ICFTU's comments***

Article 47 of the Constitution of the Republic of El Salvador guarantees employers and workers in the private sector, regardless of their nationality, sex, race, creed, political opinions, type of activity or the nature of the work in which they are engaged, 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.

This standard establishes the right to freedom of association for private sector employers and workers, without any distinction whatsoever, regardless of their type of activity or the nature of the work in which they are engaged. This right includes:

- (1) the right to obtain legal personality;
- (2) the authority of union leaders to represent legally the trade union and its members;
- (3) the right to establish their own statutes and internal rules, without interference from the employer or state officials;
- (4) the right to elect union leaders in free internal elections;
- (5) the right freely to decide their strategies and practices according to the legal framework set forth in the Labour Code;
- (6) the right not to be dissolved, except on legal grounds set out in the Labour Code;
- (7) the right to meet, unarmed, for peaceful and lawful purposes in designated places, in accordance with their statutes;
- (8) the right of petition;
- (9) the right to join federations or confederations, as appropriate, in accordance with the legal framework established in labour standards.

The foregoing includes the right to join these organizations, with the sole condition that their statutes must be observed.

Freedom of association includes the right to form, and join, organizations. It can also encompass the right to join international trade union organizations.

Such organizations are entitled to legal personality and to be duly protected in the exercise of their functions.

It should not be forgotten that the provisions of our Labour Code regulate:

- (1) industrial relations between private sector employers and workers;
- (2) industrial relations between the State, municipalities, autonomous and semi-autonomous official institutions and their employees (section 2 of the Labour Code).

Consequently, public sector employees are not entitled to form trade unions; the same prohibition extends to the armed forces and to the auxiliary bodies for the administration of justice subject to military discipline, and for which the regulatory statutes also do not authorize the formation of associations of a trade union nature.

Administrative employees of both entities are authorized to establish staff associations, but not trade unions.

Workers in autonomous official institutions are entitled to associate freely in order to defend their interests, form occupational associations or trade unions, and conclude collective agreements, in accordance with the provisions of the Labour Code.

Consequently, these workers, freely organized as a trade union, can take collective industrial action (strike) as long as it is in accordance with the law, and is aimed at achieving a specific objective:

- (a) the concluding or revision of a collective labour contract;
- (b) the concluding or revision of a collective agreement; and
- (c) the defence of the workers' common occupational interests.

It is therefore not true that our labour legislation prohibits strikes in autonomous government agencies.

In the labour sphere collective disputes of an economic nature and those relating to conflicts of interest are conducted in accordance with the following conditions:

- (a) direct labour-management negotiations;
- (b) conciliation;
- (c) arbitration;
- (d) strike or work stoppage.

Furthermore, strikes, as a collective suspension of work, are subject to a procedure established under the Labour Code, and must be restricted to the peaceful suspension of work and the abandonment of the place of work. Any act of violence or coercion against individuals, as well as the use of force during a collective labour dispute is prohibited. This serves to prevent any disturbances or offences being committed that might exceed the legal purposes of the strike.

In addition, the legality or illegality of a strike must be assessed; this is done by the judges of the Labour Court and the judges of first instance with jurisdiction in labour matters, respectively.

Strikes shall be declared illegal:

- (a) in the case of an essential service;
- (b) if their objectives differ from those indicated in section 528 of the Labour Code;
- (c) when the provisions of that Code relating to the stages of direct labour-management negotiations and conciliation have not been respected;
- (d) when it starts before or after the deadline indicated in section 530 of the Labour Code;
- (e) when it is not limited to the peaceful suspension of work;

- (f) when it has not been called by the absolute majority of workers and if an inspection requested by one of the interested parties shows that the strikers are not respecting the freedom to work of those individuals who have not joined the strike; and
- (g) if it appears from the abovementioned inspection that the striking workers do not represent 51 per cent of the staff of the enterprise or establishment (section 553 of the Labour Code).

The other conditions under which strikes are considered illegal are:

- (a) when the General Director of Labour states that the procedures have not been observed;
- (b) when the procedures show that the provisions relating to the stages of direct labour-management negotiations and conciliation have not been complied with;
- (c) when the procedures show that the strike began before or after the deadline indicated in section 530; or
- (d) when the document containing the strike agreement is not presented within the period indicated in section 549.

When a strike called by a trade union or the autonomous official institution in question (also constituted by a majority of workers) is declared to be illegal, the strikers are informed that within the period of time indicated by the court, which cannot exceed five days, they must return to work.

Once the deadline has passed, workers who, without just cause, have not returned to work, may be dismissed without employer responsibility.

It is easy to see, therefore, that no strikes are declared illegal in El Salvador until their legality has been assessed by a competent judge with jurisdiction in labour matters. Under section 551 of the Labour Code one of the parties must set this process in motion.

Consequently, it is not true that strikes are banned in autonomous government agencies, but instead that there is strict compliance with the provisions of the Constitution of the Republic and of the Labour Code, in this regard.

With respect to the fact that labour disputes are settled by compulsory arbitration, it should be indicated that dispute settlement consists of two stages:

- (1) voluntary arbitration; and
- (2) compulsory arbitration.

Arbitration occurs in the following cases:

- (1) when the parties voluntarily agree to submit to arbitration as a means of settling an economic dispute or a conflict of interests;
- (2) when arbitration has been stipulated in the contract or collective labour agreements;
- (3) always in the case of an essential service for the community.

It is only in the last case that arbitration is compulsory.

It is therefore not true to state that in our country all labour disputes are only settled by this latter category of arbitration.

The justification for compulsory arbitration in collective disputes of an economic nature that affect essential services for the community lies in the fact that the interruption of such services endangers or threatens to endanger the life, safety, health and the usual conditions of existence of all or a part of the population.

With regard to the ICFTU's assertion that the Labour Code does not allow trade unions to engage in party political activities, the fact is that the objective of any trade union is to defend the economic, social and occupational interests of its members.

For this fundamental reason, the Labour Code considers it appropriate for trade unions to maintain their independence vis-à-vis political parties and to promote good labour-management relations on the basis of justice, mutual respect and observance of the law, and also to collaborate in improving methods of work and contributing to the national economic growth.

With respect to the ICFTU's statement that in El Salvador's export processing zones there are very few trade unions, at present within the *maquila* (cross-border assembly plant) sector there are 19 active trade unions with legal personality, and in the *maquila* textile subsector there are 15 active trade unions with legal personality and 94 trade union sections, which totals 34 trade unions operating normally within the export processing zones involved.

There have been no formal complaints concerning the allegation that employers illegally harass and sack workers, or seek to prevent trade unions from recruiting the 50 per cent of the workforce needed to be recognized for the purpose of collective bargaining.

Nevertheless, staff of the General Labour Inspection Office and the General Social Security Office have been appointed to ensure compliance with the labour legislation and basic occupational and safety standards, as a means of preventing labour disputes and ensuring safety in the workplace.

## Equatorial Guinea

No report was received by the Office from the Government for the annual review of 2000 or 2001.

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

The regime has refused to register the Trade Union Organization of Workers of Equatorial Guinea (*La Union Sindical de Trabajadores de Guinea Ecuatorial* (UST)), founded in 1990. Consequently it is forced to carry out its activities clandestinely.

Awareness-raising activities carried out by the UST in the public sector led to the creation of the *Sindicato Independiente de Servicios* (SIS), which first applied for registration in early 1995. Although the application met all the requirements contained in 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 1996 were also rejected.

In 1998 it was reported that a teachers’ trade union had been formed. The union said that it would apply for recognition.

Trade unionists said that immediately after they submitted applications for union registration, security officials visited their homes and intimidated them.

There continue to be reports that workers must be members of the ruling party to get jobs.

[Reference is made to the recruitment and wage practices of enterprises 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.

**Fiji**

No report was received by the Office from the Government for the annual review of 2000 or 2001.

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

The non-racial 1997 Constitution, which included a comprehensive Bill of Rights enshrining Freedom of Association and the Right to Bargain Collectively, was illegally abrogated. The abrogation of the 1997 Constitution has meant that the racist 1990 Constitution which ensured the political dominance of ethnic Fijians, is again in force.

Race was deliberately made a predominant factor in the Fijian public service after the 1987 military coups, when the Government used an “affirmative action” policy to advance



ethnic Fijians. This resulted in discrimination against Indo-Fijians. Their promotion possibilities were greatly reduced and Indo-Fijians only held 10 per cent of the positions at the highest levels of the civil service.

Since Fiji had returned to full democracy under the 1997 Constitution, the public service had rebuilt its integrity. However, in June 2000, the Secretary of the Public Service Commission again began to take action to organize the public service along racial lines, by unilaterally reversing appointments to Fiji's missions overseas that had already been processed by the independent Public Service Commission.

## India

### ***Means of assessing the situation***

#### Assessment of the institutional context

Detailed information was provided in the report sent in December 1999 for the annual review of 2000. There have been no changes.

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

Copies of this report are being sent to the following All India Organizations of employers and workers:

Employers' organizations: Council of Indian Employers; the Employers' Federation of India; All India Organisation of Employers; the Standing Conference of Public Enterprises; the All India Manufacturers' Organisation; Lagdhu Udyog Bharati.

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

### ***Observations received from employers' and workers' organizations***

None of the organizations mentioned has made any observations.

## India

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

The Government of India has itself told the ILO that the law draws a broad distinction between public servants and other workers, severely restricting the trade union rights of the

former. While in theory, trade unions can organize in the export processing zones, in practice, organizing workers in the zones is obstructed by employers.

## 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 Constitution of the Islamic Republic of Iran and in the Labour Code.

The relevant articles in the Constitution are articles 26, 104 and 106, and those in the Labour Code are sections 131, 140-146 and 178.

All workers and employers are free to establish their own organizations without any restriction. Military and the police are excluded.

Workers and employers do not need authorization to form associations. However, with the assistance of the Ministry of Labour and Social Affairs, and once the relevant elections within the association have been held, the documents of the association will be registered at the Ministry of Labour and Social Affairs.

The Government does not interfere in the functioning of workers' and employers' organizations. The organizations themselves are responsible for making decisions with respect to their establishment and functioning. Decisions will be made on the basis of a majority vote. If the members of an organization bring to the Ministry of Labour and Social Affairs a grievance against their board or representatives, stating that the representatives of the organization are not abiding by the laws and regulations that govern the organization, the Ministry of Labour and Social Affairs shall only provide guidance to members with grievances and ensure that the matter is dealt with in accordance with the appropriate legal procedures.

With regard to the right to collective bargaining, the Labour Code of the Islamic Republic of Iran does not exclude any group of workers or employers. Equal rights are guaranteed to everyone.

The current national legislation does not allow the Government to interfere with arrangements regarding collective agreements. However, in order to protect the legal rights of workers and employers, the Ministry of Labour and Social Affairs can provide observations on the compatibility of the agreement with national laws and regulations. These observations should be made available to both parties to the agreement within 30 days. If the Ministry of Labour and Social Affairs fails to do so within the stated period, the agreement will remain in force.

The principle of freedom of association and the right to collective bargaining are implemented in the following ways:

- Each organization shall prepare its own constitution and have it adopted by its membership. It shall also elect its own representatives and a governing council. Thereafter, the documents and credentials of the organization will be registered at the Ministry of Labour and Social Affairs.

- Article 26 of the Constitution and section 131 of the Labour Code ensure the right to organize.
- Upon the election of the governing council of an organization, workers and employers can announce the establishment of the organization through announcements in the newspapers.

**Assessment of the factual situation**

Statistics on workers' and employers' organizations as well as collective agreements.

Islamic Labour Councils	2 727
Provincial Centrals of Islamic Labour Councils	27
National Central of Islamic Labour Councils	1
Elected Workers' representatives	1 503
Workers' and employers' unions	463
National Employers' Confederation	1
Provincial Federation of Employers	3
Provincial Federation of Workers' Trade Unions	3
Organizations of retired workers and managers	40
Number of collective agreements on compensation and productivity	400
Number of collective agreements on increased general wage level	Over 100

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

The measures mentioned earlier in the report guarantee freedom of association and the right to engage in collective bargaining.

The following means are deployed by the Government and the social partners to strengthen freedom of association and the right to collective bargaining:

- Government: Provision of training and supervision.
- Organizations: Workers' and employers' organizations through the collective agreements.
- Other authorities: In keeping with section 78 of the Labour Code, the competent courts ensure that freedom of association is respected.

The goals of the Islamic Republic of Iran are development and expansion of workers' and employers' organizations with a view to promoting and realizing these principles and rights and the provision of a legal framework to facilitate dialogue between the organizations.

Employment conditions, both at the level of the enterprise or at the level of any trade or industry, can be determined through collective bargaining and collective agreements between workers' and employers' organizations. Any work-related conflict can also be the subject of collective negotiations. This further strengthens the legal rights of workers and employers, and facilitates the application of the Labour Code.

National Central of Islamic Labour Councils, National  
Confederation of Employers, Construction Industry Employers'  
Federation

Workers' and employers' organizations, according to their own constitutions, can submit to the Ministry of Labour and Social Affairs, observations and suggestions on legal issues and on the implementation of regulations. Their suggestions and observations, after being thoroughly examined by the relevant committee, are presented to the Islamic Consultative Assembly or the Council of Ministers. Thus, for example, the subparagraph of article 2 of the regulations regarding the organization of workers' and employers' unions was approved in the Council of Ministers on the basis of the proposal submitted by the employers' associations.

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

In accordance with article 23(2) of the ILO Constitution, a copy of the report has been sent to the representative workers' and employers' organizations.

**Iraq**

***Means of assessing the situation***

**Assessment of the institutional context**

Iraq is pleased to inform the ILO that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) is still under consideration by the competent authorities.

With reference to the means of assessing the situation relating to the principle of freedom of association and the effective recognition of the right to collective bargaining, Iraq is pleased to state the following.

Freedom of association and the right to establish workers' and employers' organizations are ensured under the following Acts:

- Act No. 52 on Trade Union Organizations, 1989;
- Act No. 43 on the Federation of Chambers of Commerce, 1989;

- Act No. 44 on the Union of Iraqi Industries, 1989.

These Acts include provisions on the way in which freedom of association is exercised. There is no provision in these Acts which may deprive any category of workers or employers of the right to organize.

Section 6 of Act No. 71 of 1989, which is in force, provides that “Trade union organizations shall play an effective role in the organizations of labour relations, in the protection of workers’ rights and in the development of their personalities and talents”.

Section 116 (1) provides that “Workers’ and employers’ organizations are represented on labour inspection committees entrusted with the proper implementation of the labour legislation”.

Section 128 provides that “A worker may be penalized only after an inquiry has been carried out and once he or she has been heard in the presence of a representative of the competent trade union organization”.

Section 147 of the Labour Code provides that “workers have the right to be represented in collective labour agreements concluded between workers in trades and industries represented by these trade unions and employers concerned”.

As regards the right to freedom of association, Part VIII contains a chapter on labour disputes (collective labour disputes) and mechanisms of resolving such disputes (sections 130 to 196).

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

Copies of the report were forwarded to the Federation of Trade Unions and to the Union of Iraqi Industries.

**Iraq**

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

A 1987 law established 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.

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**Jordan*****Means of assessing the situation***

## Assessment of the institutional context

Since the Government submitted its first report on this category of principles and rights under the follow-up to the Declaration, there have been no changes or amendments to our national legislation relating to these principles and rights or to instruments that have a bearing on their fulfilment.

All the information on this subject is contained in the first report and we have nothing to add.

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

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 exist, making trade union pluralism impossible. 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.

***Government observations on ICFTU's comments***

As regards the remarks sent to the International Labour Office by the ICFTU, the Government of Jordan wishes to make the following statement.

1. Public workers whether civilian or military, are subject to special laws and systems that regulate their working relationship with the State. Accordingly, they are among those categories of workers who are exempted from the application of the labour law. Trade unions and employers' organizations cover the private sector or those persons in governmental institutions that are subject to the labour law.

2. Agricultural workers, household workers, cooks and gardeners are not covered by the labour law. It is difficult to organize workers in the agriculture sector due to the seasonal nature of the work. Household workers are also excluded from the scope of the labour law not only because of the nature of their jobs, but also because of the particularity of the relationship with the employer, which makes it difficult to subject them to the application of the labour law.
3. The labour law stipulates that requests for setting up workers' and employers' organizations must be signed and submitted to the registrar of associations in the Ministry. The registrar makes a decision within a period not exceeding 30 days from the date of submission of the application. If he agrees to the request, he issues a certificate to register the association, and notice of the registration is published in the *Official Gazette*. If he refuses the request, the applicants may appeal in the Supreme Court of Justice within 30 days from the date they were informed of the decision. The fact that the legal system makes it possible to appeal through the Supreme Court of Justice (which is the supreme administrative court), with a view to having the registrar's decision annulled, is a guarantee of the right of workers and employers to organize their own associations. The rulings of this court are final. They cannot be contested in any way and must be executed in full. If the court ruling annuls the administrative decision, all procedures, as well as related legal and administrative decisions, are considered cancelled from the date that the decision was issued.
4. The Government does not intervene in the work or activities of workers' and employers' organizations.
5. There is no need to obtain approval from the authorities to go on strike. However, workers must give direct notification to the employer of the date of the strike in order to allow the employer to make the necessary arrangements with respect to his work. Penalties may be imposed on workers only in specific cases stipulated by the law: during the time that the dispute is being dealt with by the dispute settlement officer, the council, or the labour court; and during the period in which a dispute settlement decision is in effect and the strike relates to issues covered by the decision.
6. It is worth pointing out that there has been no case of a worker being penalized for going on strike.

## Kenya

### ***Means of assessing the situation***

#### Assessment of the institutional context

The national law on freedom of association will be reviewed in the framework of the comprehensive labour law revision project to start soon in consultation with the social partners and stakeholders, and with the technical assistance of the ILO. This labour law reform will consider necessary amendments and repeals in accordance with the principle of freedom of association which is enshrined in the relevant international labour Conventions.

#### Assessment of the factual situation

There is need for a thorough revision of national law and practice with respect to freedom of association. In this respect, the issue of establishing a civil servants' union is

being dealt with, and a memorandum by the Minister of Labour and Human Resource Development has been prepared in favour of founding such a union. Primary- and secondary-school teachers are now unionized, and once the civil service union is registered it will cover all public service employees, including nurses and doctors.

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

Kenya ratified in 1964, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Government is considering ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in consultation with the social partners. However, it wishes first and foremost to review existing contradictions between labour laws and practice and the principles of freedom of association, before contemplating ratification. The abovementioned ILO technical assistance in labour law review will certainly strengthen ratification prospects for the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Government is planning to participate in a Subregional Tripartite Seminar on Freedom of Association for East African Countries to be organized in 2001 by the ILO.

***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 Kenya Employers (FKE); and
- the Central Organization of Trade Unions (COTU) (K).

***Observations received from employers' and workers' organizations***

Contributions to this report were made by employers' and workers' representatives during the September 2000 tripartite meeting on reporting issues organized by the ILO. [...] The Government will communicate to the ILO any comments received from the social partners.

**Kenya**

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

Kenya's law is not compatible with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Trade Union Registrar has the power to refuse registration to or to de-register a trade union, and this has been used to deny trade union rights to public employees in national government, university academic staff,



doctors and dentists, who are not permitted to form or join trade unions. They can only belong to associations that cannot bargain collectively on their terms and conditions of employment.

The Kenya Civil Servants' Union was de-registered in 1980. The authorities have refused to register the University Academic Staff Union and the Kenya Medical Practitioners' and Dentists' Union, nor have they responded to the application for registration made in 1997 by the All Cadre Nurses' Union of Kenya.

There are restrictions on the right to strike.

### ***Government observations on ICFTU's comments***

In reply to the comments submitted by the ICFTU, the Government wishes to make the following statement.

It is true that Kenya has not ratified Convention No. 87 because there are certain provisions in the Trade Unions Act CAP 233 that are not in conformity with various Articles of the Convention. This is precisely the reason for which the Convention has not been ratified.

The Government will soon embark on a review of all the labour laws. Once this task is completed, we will be in a position to consider ratification. Despite not having ratified the Convention, Kenya has not infringed any of the provisions of the core ILO Conventions and it upholds the principles therein. For instance, section 80 of the Constitution of Kenya, the Trade Unions Act, CAP 233, the Trade Disputes Act, CAP 234 and the Industrial Relations Charter of 1962 (revised in 1984) provide for the exercise of freedom of association and the right to bargain collectively.

In this regard, please refer to the annual report for 2001 under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.

Finally, as regards the restriction on the right to strike, the Government wishes to state that sections 26 and 30 of the Trade Disputes Act empower the Minister for Labour to declare a strike unlawful, if the machinery put in place has not been complied with. There is, however, room for appeals against such ministerial orders.

## **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 33, paragraph 1).
- Trade Union and Labour Relations Adjustment Act:
  - Workers are free to establish or join a trade union, except for public servants or teachers who are subject to other legislation (section 5);
  - The representative of a trade union has the authority to bargain with employers or employers' association, and to conclude collective agreements for the trade union and union members (section 29, paragraph 1);
  - A trade union and an employer or employers' association shall bargain, in good faith and sincerity, with each other and conclude a collective agreement, and shall not abuse their authority (section 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”. Section 66 of the State Public Officials Act and section 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 elementary jobs in the Ministry of Information and Communications, the National Railroad Administration and the National Medical Centre (section 28 of the Regulation on Duties of the State Public Officials).<sup>2</sup>

The Act concerning Establishment, Operation, etc. of the Workplace Association of Public Officials (February 24, 1998) allows public officials of grade 6 or lower (teachers, police officers and firefighters excluded), to organize a workplace association in each administrative agency and to negotiate the improvement of their working conditions and working methods and effective resolution of their grievances. Not until 31 December 2001 will workers be allowed to organize another union whose members are the same as those of the existing union at the business or workplace.

\* When the Trade Union and Labour Relations Adjustment Act was revised in March 1997, the principle of multi-unionism was recognized but union pluralism at the enterprise level was postponed for the next five years with a view to averting any possible confusion in conducting collective bargaining. In the interim, the Minister of Labour shall introduce methods, procedures or other necessary measures for collective bargaining, in order to establish a single bargaining channel, (section 5, paragraphs 1 and 3, Addenda of the TULRAA).

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 (section 5, paragraphs 1 and 3, of the TULRAA).

<sup>2</sup> All text following the (\*) is supplied by the Government for clarification of the text that immediately follows.

According to article 21 of the Constitution which guarantees all citizens the right to organize, workers and employers can set up their organizations without prior authorization. However, according to section 10 of the Trade Union and Labour Relations Adjustment Act (TULRAA) such an organization should notify the competent authority of its establishment.

Since trade unions shall be organized and operated independently by workers, the Government cannot intervene in the functioning of trade unions. However, in practice, 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 (section 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 (section 18, paragraph 4, of the TULRAA).
- When the by-laws of a trade union violate the labour laws and regulations, the competent authority may, after the decision of the Labour Relations Commission, order the trade union concerned to remedy defects of the union's by-laws (section 21, paragraph 1, of the TULRAA).
- When resolutions or measures of a trade union violate labour laws, regulations or by-laws of the trade union, the competent authority may, after the decision of the Labour Relations Commission, order the trade union concerned to correct the problems (section 21, paragraph 2, of the TULRAA).

\* The order to remedy problems in the trade union by-laws shall be issued only when the interested party lodges an appeal with the competent authority.

Upon request by the administrative authorities, trade unions shall report the outcome of their financial closing and the status of their operations (section 27 of the TULRAA).

In addition, section 71, paragraph 2, of the TULRAA defines essential public services as railroad and city bus services, water/electricity/gas supply, oil refinery and supply, hospitals, banking services, and communications. These public services are subject to compulsory arbitration with a set of procedures.

\* In 2001, banking services (except for the Bank of Korea) and the city bus service will be omitted from the list of essential public services.

However, this does not mean that any industrial action in the essential public services will automatically be referred to compulsory arbitration which limits the right to strike or to undertake other industrial action.

Only after the Special Mediation Committee of the Labour Relations Commission decides that a labour dispute in the essential public services is unlikely to be settled through mediation, the Committee may recommend the Commission to refer the case to compulsory arbitration (section 74 of the TULRAA).

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

According to section 40, paragraph 1, of the TULRAA, in the event of collective bargaining or other industrial action, a trade union or an employer may seek support from:

- a sectoral or national organization of which the trade union is a member;
- an employers' association of which the employer is a member; and
- a third party who is entitled to provide support under other relevant laws and regulations.

Furthermore, any individual or organization may provide assistance to any of the parties, if the competent authority has been notified three days in advance.

Only those trade unions that are recognized in accordance with the provisions of the TULRAA enjoy the right to collective bargaining. Therefore, the category of workers which is denied the right to organize (see earlier in this report) is also not entitled to the right to collective bargaining.

Trade unions and employers are free to conclude collective agreements as long as the valid term of the agreements does not exceed two years. There are no laws and regulations which provide for the Government's authorization of collective agreements.

Section 81 of the TULRAA provides that any act of employers' which infringes on the three most important workers' rights, shall constitute an unfair labour practice. The law contains provisions for penalties against employers who commit such unfair labour practices and fail to fulfil the order issued by the Labour Relations Commission to remedy the wrong practices. Thus the three basic workers' rights are effectively protected.

\* Section 81 (unfair labour practices) of the TULRAA.

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, the 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 against the worker because he was expelled from the trade union;

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 workers' union and wage payment for full-time officials of a trade union, or financial support for the operation of a trade union. However, employers may allow 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 evidence to administrative authorities.

#### Assessment of the factual situation

The 1999 review on trade unions indicates the following:

- numbers of trade unions: total of 5,592, including 45 federations;
- number of union members: 1,480,660;
- number of workers eligible for union membership: 12,455,000;
- unionization rate: 11.9 per cent.

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

The principle of multiple unionism was adopted during the revision of the TULRAA, in March 1997. However, until 31 December 2001 a business or workplace which already has a trade union is not allowed to organize another union for which the membership is the same as that of the existing union.

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 (teachers, police officers and firefighters excluded) are allowed to organize a workplace association at the level of an individual administrative agency and to negotiate ways in which working conditions and working methods can be improved 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, gives teachers the right to organize and bargain collectively.

The Labour Policy Bureau of 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. Furthermore, within the framework of the Tripartite Commission, the establishment of a legally recognized body in accordance with the Act on

the Establishment, Operation, etc. of the Tripartite Commission, is under way. It will promote dialogue between the social partners to improve the legislation on industrial relations. The Commission's tripartite agreements are positively reflected in national policy and legislation allowing the Government and the Commission to interact with, and complement each other.

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

Thus, a tripartite agreement was reached by the first Tripartite Commission (launched on 6 February 1998) on introducing in two phases, the right of public officials to organize:

- First phase: Legalization of the right to organize a workplace association of public officials (the predecessor of a trade union).
- Second phase: Authorization of the right to organize a trade union, once public opinion has been surveyed, and the relevant laws and regulations have been revised.

The Government is making efforts to ensure the effective establishment and operation of the workplace associations of public officials which are currently in place. They should, at a later stage, smoothly evolve into trade unions.

### ***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 the Korea Employers' Federation (KEF).

### ***Observations received from employers' and workers' organizations***

The Federation of Korean Trade Unions (FKTU) notes that:

- the unemployed do not have the right to establish trade unions;
- the budgeting guidelines of the Planning and Budget Agency is curbing the right to collective bargaining of entities funded by the Government. Certain clauses of the collective agreement of the KUTE (Korean Union of Teaching and Educational Workers) are not reflected in the Government's budget.

## Korea, Republic of

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

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.

Teachers can now form and join trade unions and engage in collective bargaining. However, the organization of unions at school level is not permitted, neither are political activities. Matters regulated by laws, ordinances and budgets are excluded from collective bargaining, and strikes are banned on the grounds of protecting students' right to learn.

The list of essential services continues to be broadly defined.

The authorities continue to detain trade unionists engaged in trade union activities and police brutality is commonly used against strikers.

## Kuwait

### ***Means of assessing the situation***

#### Assessment of the institutional context

The State of Kuwait has ratified six of the fundamental ILO Conventions that deal with basic human rights – Conventions Nos. 29, 87, 105, 111, 138 and 182. Only two have not been ratified by the State of Kuwait, namely Conventions Nos. 98 and 100. The reasons for non-ratification are as follows:

The State of Kuwait provides adequate protection for workers against all acts of anti-union discrimination in employment, in accordance with Labour Act No. 38 (1964) on employment in the private sector, and the amendments thereto. The provisions of Convention No. 98 are designed to protect union activities, as is stipulated in Article 1:

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

Cooperation with employers' and workers' organizations takes place through the representation of such organizations on committees for developing and implementing

legislative decrees issued by the competent government authorities. These organizations engage in continuous dialogue with the authorities on proposals and recommendations relating to labour standards and international labour Conventions (e.g. with respect to Decree No. 41 (1995) for the establishment of a higher consultative committee for this purpose).

With respect to the authority or authorities entrusted with the application of legislation and administrative provisions, the Ministry of Social Affairs and Labour oversees the application of Labour Act No. 38 (1964), and the amendments thereto. It is also responsible for the implementation of decisions regarding labour relations between the two parties, including issues relating to remuneration. Implementation is monitored through labour inspection by the competent Ministry officials.

As regards freedom of association, section 78 of Act No. 38 (1964) on employment in the private sector: "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 penalties provided for in section 97 of the Kuwait Labour Act."

It is to be noted that the Labour Act addresses the same provisions when a labour relationship is established, but not prior to it, as stipulated by Article 1, subparagraph (b), of ILO Convention No. 100. Such a provision would require amending the law to provide for protection of the worker prior to his or her employment in order to bring the national legislation into line with the text of the Convention.

There is adequate protection for employers' and workers' organizations against any acts of interference by each other. The 1964 Labour Act No. 38, in sections 69 to 87, provides for procedures for the establishment of employers' and workers' organizations and the administration of such organizations. The provisions protect workers' organizations from domination or interference by employers' organizations. Under section 90 of the same Act, employers and workers may form joint committees for the settlement of disputes, the promotion of social protection for workers, the organization of social services for workers, the setting of rates of remuneration, raising productivity and any other issues of mutual interest. Section 92 of the same Act provides for the establishment of a higher level labour consultative committee composed of representatives from the Ministry of Social Affairs and Labour, other ministries and employers and workers to advise on labour legislation or amendments thereto. However, opinions expressed by the committee shall be of a purely advisory nature.

## Lao People's Democratic Republic

No report was received by the Office from the Government for the annual review of 2000 or 2001.



## Lao People's Democratic Republic

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

In the Lao People's Democratic Republic only one national trade union centre, the Lao Federation of Trade Unions (LFTU), exists. It is linked to, and supported by the Government. The LFTU is obliged to submit an annual activity report to the Office of the Prime Minister and the Ministry of Foreign Affairs.

There are signs of change as the country itself is in the process of transition from a centrally planned economy to a market economy. Many institutions and practices are being transformed, including industrial relations and the LFTU.

The labour law, which came into force in 1994, recognizes the right to organize and prescribes a number of minimum employment standards.

It does not specifically provide for collective bargaining and collective agreements, although it provides rights and obligations with respect to employment contracts. There are very few collective agreements because of the absence of trade unions in many enterprises, as well as the refusal of employers to negotiate. The labour inspection service is inadequate.

## Lebanon

### ***Means of assessing the situation***

#### Assessment of the institutional context

##### *Convention No. 98*

Convention No. 98 has been ratified by Lebanon, by legislative Decree No. 70, of 25 June 1977.

Our national legislation recognizes the right to bargain collectively by virtue of the Law on Collective Employment Contracts, Mediation and Arbitration, implemented through Decree No. 17386 of 2 September 1964.

##### *Convention No. 87*

With regard to freedom of association, the subject of Convention No. 87, we have already indicated the following in the report submitted for the annual review of 2000.

The principle is recognized in Lebanon by:

- the Lebanese Constitution of 1926, which guarantees freedom of association and the formation of associations within the law;
- the Lebanese Labour Code of 1946 dealing in Part IV with the question of trade unions (Articles 83-106);

- the Decree organizing trade unions No. 7993 of 3 April 1952, for the implementation of Part IV of the Labour Code;
- International instruments ratified or acceded to by Lebanon, such as:
  - the Universal Declaration on Human Rights;
  - the International Covenant on Civil and Political Rights;
  - the International Covenant on Economic, Social and Cultural Rights.

With respect to the right to organize, the report submitted for the annual review of 2000, included legal texts, relating to this question, as well as information regarding professional teachers' associations, and graduates of the National Institute for Management and Development.

### Assessment of the factual situation

With regard to the assessment of the current situation, we refer to the following statistics on the number of workers' and employers' organizations in Lebanon classified by geographical areas (governorates) and economic activity.

### Number of employers' and workers' federations and associations in each governorate

1.	Governorate of Beirut and Mount Lebanon	
	Workers' associations	188
	Employers' associations	103
	Employers' federations	6
	Workers' federations	34
2.	Governorate of Northern Lebanon	
	Workers' associations	45
	Employers' associations	17
	Workers' federations	2
3.	Governorate of Southern Lebanon	
	Workers' associations	52
	Employers' associations	6
	Workers' federations	3
4.	Al Nabtyah Governorate	
	Workers' associations	3
	Employers' associations	1
	Workers' federations	1
5.	Al Bekah Governorate	
	Workers' associations	38
	Employers' associations	6
	Workers' federations	2

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

The Legislative Committee is in the process of considering, in the Lebanese Parliament, a draft amendment to the Lebanese Labour Code, which includes texts on trade

unions. It will examine all included provisions. We will report any new developments in this regard.

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

Copies of the present report have been forwarded to the following organizations:

- Association of Lebanese Industrial Employers;
- Lebanese Federation of Chambers of Commerce, Industry and Agriculture;
- General Confederation of Labour.

Attention is drawn to the fact that the content of this and the previous report reflects the views of the Ministry on the issues and questions raised.

***Observations received from employers' and workers' organizations***

So far, the Ministry has not received any comments or observations from the aforementioned organizations on follow-up action taken, or to be taken with respect to freedom of association and the effective recognition of the right to collective bargaining.

**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 state school and university teachers have formed unofficial unions that cannot bargain collectively.

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 engage in collective bargaining, and a collective agreement must be approved by two-thirds of union members at a general assembly.

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The law does not adequately protect workers against anti-union discrimination, nor against acts of interference. The right to strike is restricted.

## Lebanon

### ***Government observations on ICFTU's comments***

With reference to the comments submitted by the ICFTU concerning freedom of association and the effective recognition of the right to collective bargaining in Lebanon, the Government wishes to make the following observations on the issues raised by the Confederation.

#### I. The Labour Code of Lebanon

A bill amending provisions of the Lebanese Labour Code of 1946 is currently under consideration by the Committee on Legislative Modernization in the Lebanese Parliament. Parliament is expected to decide on the bill, which will be referred to the Committee. Since 1946 several amendments have been made to the Labour Code, dealing with important issues such as arbitrary dismissal, minimum age for employment, maternity leave and the employment of young persons.

II. As pointed out in the observations submitted on this same subject for the annual review of 2000 (GB.277/3/2), the Government wishes to reiterate that the Lebanese Labour Code does not apply to public sector employees. The legislation regulating the work of this category of employees is Legislative Decree No. 112/59 (Staff Regulations), which prohibits public sector employees from joining workers' organizations or unions. The aim is to avoid shortcomings or disruption in the provision of services to the public, as well as the potentially adverse consequences of union activities on the stability required to provide such services and, in particular, essential services.

However, as we have already indicated for the first annual review, there are associations in government departments and in institutions entrusted with the administration of public facilities and utilities, either on behalf of the State or on their own behalf. The associations in question are recognized officially. Unions and associations in the public education sector, at all levels (primary, secondary and university), are also recognized, and they exercise their right to bargain collectively in order to ameliorate the situation of their members. This is contrary to the ICFTU's allegations that these associations are unable to bargain collectively.

We also wish to point out that there is an association of alumni and students of the National Institute for Management and Development. This association has been legally recognized since its inception, and it represents its members in government departments with a view to improving their conditions of employment.

#### III. Prior permission to exercise freedom of association, approval of union election results and the date of such elections

The Lebanese Labour Code of 1946 provides for the exercise of freedom of association, and accords a considerable measure of freedom with regard to union activities. Its provisions have never hampered such activities. The mandate of the Ministry of Labour with respect to union activities is restricted to maintaining public order, protecting the

public interest and assuring the sound and appropriate application of rules and regulations governing union activities.

The questions raised by the ICFTU emanate from the concept of freedom of association and protection of the right to organize. Lebanon has not yet ratified the ILO Convention embodying this principle and right, for reasons that are related to national unity and the possibility of allowing the proliferation of trade unions.

With regard to the amendment in 1996 to article 3 of Legislative Decree 7993/1952, which authorizes the Minister of Labour to set the date for union elections, the provisions of the Decree are, in fact, in the interest of the trade union movement. Some unions, especially after the events in Lebanon, did not want to hold new elections, even though many years had elapsed since they last elected their executive committees. It meant that members of such committees were deprived of their representative capacity, leading to the paralysis of union activity. The Lebanese legislator therefore had to introduce provisions to rectify this situation, by taking firm and rapid measures without prejudice to the proper conduct of union activity. A careful reading of the following new text reveals the true situation:

The union committee shall set the date of elections and notify the Chairman of the Trade Union Department thereof, at least fifteen days before the date specified. Candidatures shall be submitted and the deadline for the submission of nominations is three days before the date of elections. All applications shall be accompanied by the candidate's criminal record. Any objection that is raised after the deadline for the submission of nominations shall be deemed illegal.

In cases where the union committee is reluctant to set a date for such elections or any other elections as stipulated in section 10 of the Labour Code, or the rules of procedure of the union concerning the election of alternative members to replace outgoing colleagues whose term of office has terminated, the Minister of Labour shall set a date for such elections or any other elections, in accordance with section 10 of the Labour Code, or the rules of procedure of the union concerned. The Minister of Labour shall set a date for the elections, and the competent department in the Ministry shall take the necessary steps to this end, provided the Committee has been notified in writing, through its chairman or his/her representative, allowing the latter one month from the date of notification to perform his legal duties in this regard.

#### IV. Dissolving trade unions by administrative decision

Section 105 of the Lebanese Labour Code gives the Government the right to dissolve the union committee if the latter is in breach of the responsibilities assigned to it or acts in a manner that is not within its competence. A new committee shall be elected within three months of the date of dissolving the committee; if a member of the committee is in breach of the duties, or acts outside the limits of his mandate, the Government may request that he be replaced or initiate proceedings against him, as appropriate.

Recourse to such action is taken in cases of a specific breach of the regulations, and a new Committee is elected within a period designated by the law.

#### V. Prohibition of political activity by trade unions

The basic objective of a trade union is to defend the professional interests of its members and assure progress in the economic, industrial and commercial spheres.

In fact, members of a trade union, like all other citizens, do exercise their right to participate in political activity and to vote in all elections (parliamentary, municipal and mayoral). They also enjoy the right to run for election in their personal or representative capacity. Trade unionists were in fact candidates in recent parliamentary elections, without any constraints.

Trade unionists are perfectly free to express their political views and opinions on the basis that politics and the economy are inseparable.

VI. Approval of 60 per cent of employees' representatives to negotiate a collective work contract, and the approval of two-thirds of union members in a plenary meeting

At present, there is willingness to amend article 3 of the Law on Collective Agreements, Mediation and Arbitration (Decree No. 17386 of 2 March 1964). This is being addressed through the workshop on the modernization of our social legislation in order to reduce the percentage of votes required for the negotiation of a collective agreement.

With respect to the approval of a collective agreement by a two-thirds majority of members of the general congress of trade unions or occupational associations, our view is that such a majority is reasonable. In order to have a quorum at general congresses the presence of more than half the members is required. Therefore two-thirds of such a quorum is required for the proper and adequate approval of a collective contract.

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) provides for the taking of measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and employers' organizations and workers' organizations, with a view to regulating the terms and conditions of employment, appropriate to national conditions. There is no obligation in this respect, as this is left to the discretion of the parties concerned.

VII. Protection of workers against anti-union discrimination

The laws that are in force in Lebanon protect workers against anti-union discrimination. Under section 50 of the Labour Code dismissal is considered unfair and a violation of the worker's right when such dismissal is based on the following:

- membership or non-membership of a trade union or participating in union activities in keeping with the established laws or a collective or private work contract;
- standing for union elections by an employee, being elected to a union committee, or representing workers in the establishment, as long as the worker in question is performing such functions (section 50, paragraph (d), 2 and 3).

The dismissal of members of a duly elected union committee, and during their mandate, is subject to review by the relevant arbitration board. In cases where the board does not approve the dismissal, the employer is obliged to reinstate the person concerned or face a penalty of paying a legally prescribed extra indemnity, over and above the legal compensation due to the worker (section 50, paragraph (e)). There are no acts of interference by employers' and workers' organizations, in each other's affairs.

Lebanon has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) which protects workers against any act of anti-union discrimination in

employment, and interference by either employers' or workers' organizations in each other's affairs. Ratified Conventions become part of the domestic legislation and they take precedence over the latter in cases of conflict between them. The Lebanese judiciary applies Convention No. 98 in cases of disputes related to anti-union discrimination and interference, in keeping with Article 1 of the Convention (98), when such disputes are referred to it, and even if the Labour Code contains no provision in this regard.

Amendments proposed to some sections of the Labour Code provide for non-discrimination in the employment of workers on the basis of membership or non-membership of a trade union, as part of the Government's interest in integrating this principle fully in the national labour law, in keeping with its commitment to implement the ILO Convention that embodies the principle.

With respect to alleged constraints on the exercise of the right to strike, the Government would like to know what the International Confederation of Free Trade Unions means by "constraints". The Labour Code of Lebanon provides for the right to strike in no ambiguous terms; and the Government does not believe that regulating the exercise of this right to avoid abuse and exploitation thereof for purposes unrelated to union activities, could be considered a constraint on the right to strike.

The right to strike is accorded to trade unions in all sectors.

## Malaysia

### *Means of assessing the situation*

#### Assessment of the institutional context

The Government of Malaysia has no changes to report with regard to the constitutional provisions and laws that relate to the principle of freedom of association and the effective recognition of the right to collective bargaining in the country.

## Malaysia

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

There continue to be many obstacles to establishing trade unions. These include legislative obstacles to organizing workers in a company, dismissals of union organizers, the slow and cumbersome recognition process, and legal obstacles to using industrial action to obtain recognition.

Many employers, including some multinational corporations, go to extreme lengths to deny union recognition and evade collective bargaining. Some even challenge government directives to accord union recognition, and refuse to comply with Industrial Court awards to reinstate wrongfully dismissed workers.

[Reference is made to the difficulties faced by union officials trying to organize workers and negotiate collective agreements in a specific enterprise.]

The Trade Unions Act of 1959 and the Industrial Relations Act of 1967, and subsequent amendments place extensive restrictions on basic trade union rights. The Trade Unions Act strictly 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, and union mergers are almost impossible.

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.

In 1974 the EIWU Electrical Industry Workers’ Union tried to organize in electronics factories. The Director-General of Trade Unions banned the union from organizing in the industry on the basis that it represented a different category of workers. When the MTUC tried to form a national union of electronics workers it was refused registration.

As a result, some 160,000 mainly women workers employed by multinational electronics companies have been denied the right to form and join a national union in the electronics industry. They can only form in-house unions.

The Government relaxed this policy in 1988, but vigorous protests from employers soon reversed the decision.

[... Reference is made to the difficulties in trying to organize workers in specific enterprises and the disqualification of workers from union membership.]

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

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.

The law gives the Director-General of Trade Unions and the Minister of Human Resources, both government officials, far-reaching powers to regulate trade union affairs.

The Director-General of Trade Unions has 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 it was established. Any trade union, which does not apply for registration within this period, is illegal.

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

In September 1999, the MTUC complained about delays in processing union’s recognition claims – often amounting to several years. It called for the Industrial Relations Act to be amended to allow automatic union recognition, where unions represent a majority of the workers.



In the public service, unions can organize by ministry, department, occupation or trades. 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 prohibits industrial unions from organizing employees in managerial and executive positions, confidential or security capacities. Employers often abuse this provision of the law to prevent as many people as possible from joining a union.
- The law places restrictions on who can stand as candidates to union office.
- Public statements made by the Government and restrictions imposed on work permits have effectively prohibited foreign workers from joining unions.
- 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 that 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.

The MTUC also said that conciliation machinery needed urgent and serious attention because it was ineffective. There was also a heavy backlog of cases in the industrial court.

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 have 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.

In 1999, the Minister of Human Resources refused to accept the nomination of the MTUC Secretary General to two tripartite bodies, the Social Security Board (SOCSO) and the National Labour Advisory Council (NLAC).

### **Government observations on the ICFTU's comments**

#### 1. Anti-union environment

##### *Observation:*

1.1. There continues to be many obstacles to establishing trade unions. These include legislative obstacles to organizing workers in a company, dismissals of union organizers, the slow and cumbersome recognition process, and the legal obstacles to using industrial action to obtain recognition.

##### *Response:*

1.1.1. The International Confederation of Free Trade Unions' (ICFTU) contention that there continues to be many obstacles to establishing trade unions in Malaysia such as legislative obstacles to organizing workers in a company and the slow and cumbersome recognition process is ill-conceived. Workers in this country are accorded the right to form or join a trade union. This right is provided under the Federal Constitution as well as in the various labour laws, namely the Employment Act, 1955, the Trade Unions Act, 1959, and the Industrial Relations Act, 1967.

(a) Article 10(1)(c) of the Federal Constitution states:

“All citizens have the right to form associations.”

(b) Section 8 of the Employment Act, 1955, states:

Nothing in any contract of service shall in any manner restrict the rights of any employee who is a party to such contract:

- (i) to join a registered trade union;
- (ii) to participate in the activities of a registered trade union, whether as an officer of such trade union or otherwise; or
- (iii) to associate with any other persons for the purpose of organizing a trade union in accordance with the Trade Unions Act, 1959.

(c) Section 8(1) of the Trade Unions Act, 1959, states that:

Every trade union established after the commencement of this Act shall apply to be registered under this Act within a period of one month reckoned from the date on which it is so established;

(d) Section 5(1) of the Industrial Relations Act, 1967, states that:

No employer or trade union of employers, and no person acting on behalf of an employer or such trade union shall:

- (i) impose any condition in a contract of employment seeking to restrain the right of a person who is a party to the contract to join a trade union, or to continue his membership in a trade union;
- (ii) refuse to employ any person on the ground that he is or is not a member or an officer of a trade union;
- (iii) discriminate against any person in regard to employment, promotion, any condition of employment or working conditions on the ground that he is or is not a member or officer of a trade union;
- (iv) dismiss or threaten to dismiss a workman, injure or threaten to injure him in his employment or alter or threaten to alter his position to his prejudice by reason that the workman:
  - is or proposes to become or seeks to persuade any other person to become, a member or officer of a trade union; or
  - participates in the promotion, formation or activities of a trade union; or
- (v) induce a person to refrain from becoming or to cease to be a member or officer of a trade union by conferring or offering to confer any advantage on or by procuring or offering to procure any advantage for any person.

1.1.2. The Trade Unions Act, 1959, requires that every trade union must be registered under the Act. This requirement is meant to accord a trade union certain rights, immunities and liabilities as a legal entity. Otherwise, it will not be able to sue or be sued.

1.1.3. The role of this Department as regards the recognition issue is to determine the competence of a trade union to represent workers employed by an employer and/or to carry out a membership check in order to ascertain the percentage of workers who are members of a trade union. This role ensues upon a request made by the Director-General of Industrial Relations under section 9(4B)(b) of the Industrial Relations Act, 1967, in respect of competence issues and under Regulation 4(1)(c) of the Industrial Relations Regulations, 1980, in respect of membership check. In general, this Department takes less than three months to determine the competence issue or to carry out the membership check and to inform the Director-General of Industrial Relations of its findings. Hence, the ICFTU's opinion that the recognition process is cumbersome is misconstrued.

[Comment in reply to a situation concerning difficulties faced by union officials trying to organize workers in a specific company, also edited out of the ICFTU's observations because of its complaint-like nature.]

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## 2. Organizing and bargaining rights restricted by law

### *Observation:*

- 2.1. The Trade Unions Act of 1959 and the Industrial Relations Act of 1967, and subsequent amendments, place extensive restrictions on basic trade union rights. The Trade Unions Act strictly regulates almost all aspects of trade union activity.

### *Response:*

- 2.1.1. The Malaysian Government considers the imposition of certain restrictions on basic trade union rights as necessary in order to ensure that in the exercise of trade union rights the interests of the country and the people at large are not sacrificed for the benefit of a few individuals.
- 2.1.2. Certain aspects of trade union activities need to be regulated. This is to ensure that trade unions operate in a healthy, democratic and responsible manner, that their affairs such as administration, management and finance are run smoothly and properly, and that the rights and interest of their members are protected.

### *Observation:*

- 2.2. 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, and union mergers are almost impossible.

### *Response:*

- 2.2.1. Workers in Malaysia are allowed to form or join a trade union, that is, a trade union based on a particular establishment, trade, occupation or industry or a trade union based on similar trades, occupations, or industries. They are, however, not allowed to form or join a general or non-homogeneous trade union. The Malaysian Government is of the view that should workers in this country be allowed to form or join general unions, there will be inter-trade union rivalry as trade unions compete amongst each other to recruit members from the same establishments, trades, occupations or industries. The existence of inter-trade union rivalry is not conducive to the promotion and maintenance of harmonious industrial relations.
- 2.2.2. The ICFTU’s view that union mergers are almost impossible is ill-founded. The Trade Unions Act of 1959 allows two or more trade unions whose members are employed within similar trades, occupations or industries to become amalgamated as one trade union.

### *Observation:*

- 2.3. 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.

*Response:*

2.3.1. The Director-General of Trade Unions is empowered to order a trade union to remove from its membership those members who are not employed in the industry in respect of which it was registered. This has been decided by the Federal Court, which is the highest court of law in Malaysia, in Civil Appeal No: 01-8-98(w) between the National Union of Newspaper Workers and the Director-General of Trade Unions. The decision was made by the judiciary, not by an administrative authority. Hence, the ICFTU should not make it an issue that the Director-General of Trade Unions has invoked these provisions to direct industrial unions to remove several thousand members from their membership. Similarly, the ICFTU should not make an issue out of the fact that the Electrical Industry Workers' Union (EIWU) is not allowed to represent workers employed by electronic companies. [... Reference to the situation of workers in specific enterprises has been omitted as it was in the case of the ICFTU's observations.]

*Observation:*

2.4. As a result, some 160,000, mainly women, workers employed by multinational electronics companies have been denied the right to form and join a national union in the electronics industry. They can only form in-house unions.

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

*Response:*

2.4.1. As admitted by the ICFTU itself, workers employed by multinational electronic companies are allowed to form or join an in-house union. The ICFTU should realize that the right of workers to form or join a trade union of their own choosing includes their right to form or join an in-house union.

2.4.2. An in-house union is a free and independent trade union. It enjoys the same rights and protection as those conferred by the Trade Unions Act of 1959 on a trade union based on trade, occupation or industry. These rights include, inter alia, the right to collective bargaining, the right to strike, and the right to affiliate with local consultative bodies like the Malaysia Trades Union Congress (MTUC) or international consultative bodies like the ICFTU. An in-house union can be a successful and effective trade union in promoting the welfare and protecting the interest of its members in particular, and of workers in general.

2.4.3. It is not understood what the ICFTU alludes to when stating that it is often very risky to establish in-house unions. However, if what is alluded to is what is provided for under sections 5 and 7 of the Industrial Relations Act, 1967, the person or persons concerned have the right to lodge a complaint in writing to the Director-General for Industrial Relations for necessary action under section 8 of the Act.

2.4.4. The ICFTU's perception that it is time consuming to establish in-house unions is baseless. In general, on receipt from a trade union of a duly completed application for registration, this Department takes less than three months to register it. A trade union has to apply to be registered within one month from the date of its establishment.

### 3. In-house unions

#### *Observation:*

- 3.1. 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.

#### *Response:*

- 3.1.1. As stated in paragraph 2.4.1 above, the ICFTU should accept the fact that the right of workers to form or join a trade union of their own choosing includes their right to form or join an in-house union.
- 3.1.2. The Trade Unions Act, 1959, does not prohibit the registration of more than one trade union within any particular establishment, trade, occupation or industry. In this connection, workers may be given more opportunities to exercise their right of forming or joining a trade union of their own choosing. However, in practice, the Director-General of Trade Unions may not register any other trade union, if, and when, a registered union already exists within any particular establishment, trade, occupation or industry. In fact, under the said Act, the Director-General of Trade Unions can refuse to register a union if he is satisfied that a similar one already exists. The Director-General of Trade Unions' exercise of this power is meant to prevent inter-trade union rivalry which can arise should trade unions compete amongst each other to recruit members from the same establishments, trades, occupations or industries. The existence of inter-trade union rivalry is not conducive to the promotion and maintenance of harmonious industrial relations.

### 4. Government officials can "direct and control trade unions"

#### *Observation:*

- 4.1. The law gives the Director-General of Trade Unions and Minister of Human Resources, both government officials, far-reaching powers to regulate trade union affairs.

#### *Response:*

- 4.1.1. The powers to regulate trade union affairs which the Trade Unions Act, 1959, gives the Director-General of Trade Unions and the Minister of Human Resources are meant to enable them to make rules and regulations to ensure that trade unions operate in a healthy, democratic and responsible manner, that their affairs such as administration, management and finance are run smoothly and properly, and that the rights and interest of their members are protected. The powers have been exercised solely for the purpose of ensuring that the interests of the country, the people at large and the members of the trade unions

themselves are protected and have never been used arbitrarily. The decision of the Minister of Human Resources and that of the Director-General of Trade Unions when exercising these powers is not absolute. It is subject to judicial review should any aggrieved party apply to the High Court for certiorari to quash it.

*Observation:*

- 4.2. The Director-General of Trade Unions has the right “to supervise, direct and control the trade unions”. Every trade 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 it was established. Any trade union which does not apply for registration within this period is illegal.

*Response:*

- 4.2.1. The power to supervise, direct and control trade unions which the Trade Unions Act, 1959, gives the Director-General of Trade Unions is meant to enable him to ensure, and has always been exercised solely for the purpose of ensuring, that trade unions operate in a healthy, democratic and responsible manner, that their affairs such as administration, management and finance are run smoothly and properly, and that the rights and interests of their members are protected. The decision of the Director-General of Trade Unions when exercising this power is not absolute. It is subject to judicial review should any aggrieved party apply to the High Court for certiorari to quash it.
- 4.2.2. It is true that every trade union is obliged to register under the Trade Unions Act, 1959. As stated in paragraph 1.1.2 above, this requirement is meant to give it certain rights, immunities and liabilities as a legal entity. Otherwise, it will not be able to sue or be sued.

*Observation:*

- 4.3. The Director-General can refuse to register a union if he is satisfied that a similar one already exists. In September 1999, the MTUC complained about delays in processing union’s recognition claims – often amounting to several years. It called for the Industrial Relations Act to be amended to allow automatic union recognition, where unions represent a majority of the workers.

*Response:*

- 4.3.1. The Director-General of Trade Unions is empowered under section 12(2) of the Trade Unions Act, 1959, to refuse to register a trade union if a similar one already exists in a particular establishment, trade, occupation or industry. The Director-General of Trade Unions’ exercise of this power is meant to prevent proliferation of multiple trade unions within a particular establishment, trade, occupation or industry. Should multiple trade unions be allowed to exist within a particular establishment, trade, occupation or industry, inter-trade union rivalry may arise as trade unions compete amongst each other to recruit members from the same establishments, trades, occupations or industries. The existence of inter-trade union rivalry is not conducive to the promotion and maintenance of harmonious industrial relations. The decision of the Director-General of Trade Unions when exercising this power is not absolute.

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It is subject to judicial review should any aggrieved party apply to the High Court for certiorari to quash it.

4.3.2. As stated in paragraph 1.1.3 above, the role of this Department as regards the recognition issue is to determine the competence of a trade union to represent workers employed by an employer and/or to carry out a membership check in order to ascertain the percentage of workers who are members of a trade union. This role ensues upon a request made by the Director-General for Industrial Relations under section 9(4B)(b) of the Industrial Relations Act, 1967, in respect of competence issues and under Regulation 4(1)(c) of the Industrial Relations Regulations, 1980, in respect of membership check. In general, this Department takes less than three months to determine the competence issue or to carry out the membership check and to inform the Director-General of Industrial Relations of its finding.

## 5. Public sector and statutory bodies

### *Observation:*

- 5.1. In the public service, unions can be organized by ministry, occupation or trades. 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 and to the national trade union centre.

### *Response:*

5.1.1. Trade unions based on occupation, department or ministry in the public services and in-house unions for employees of statutory bodies are free and independent trade unions. They enjoy the same rights and protection under the Trade Unions Act, 1959, as those enjoyed by any other trade union, such as the right to affiliate with local consultative bodies like the MTUC and the right to affiliate with international consultative bodies like the ICFTU. An in-house union can be a successful and effective trade union in promoting the welfare and protecting the interest of its members in particular and of workers in general.

### *Observation:*

- 5.2. The law prohibits industrial unions from organizing employees in managerial and executive positions, confidential or security capacities. Employers often abuse this provision of the law to prevent as many people as possible from joining a union.

### *Response:*

5.2.1. The Trade Unions Act, 1959, does not prohibit employees in the managerial, executive, confidential or security capacities from forming or joining a trade union. However, in order to avoid conflict of interest as well as to be in line with the provisions of section 9(1) of the Industrial Relations Act, 1967, they should form or join a trade union which represents their particular category of employees only.



*Observation:*

- 5.3. The law places restrictions on who can stand as candidates to union office.

*Response:*

- 5.3.1. The restrictions imposed by the Trade Unions Act, 1959, on who can stand as candidates to union office are meant to ensure that members of the executive of a trade union are responsible people who can protect not only the interest of the members of their trade union but also the interest of the country and people at large and who will not use such office for their personal interest.

*Observation:*

- 5.4. Public statements made by the Government and restrictions imposed on work permits have effectively prohibited foreign workers from joining unions. [Reference to a statement by the Minister of Human Resources has been omitted as it was in the case of the ICFTU's observations.]

*Response:*

- 5.4.1. The Malaysian Government does not encourage foreign workers to join trade unions as their duration of work is only for a limited period as stipulated in the contract. Moreover, the welfare and interest of these groups of workers are well protected under Malaysian labour laws. They are working in this country on a temporary basis, for a short period of two to six years only.

*Observation:*

- 5.5. The Minister of Human Resources can order the suspension, for a period not exceeding six months, of any trade union which, in his opinion, "has been 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".

*Response:*

- 5.5.1. Section 18(1) of the Trade Unions Act, 1959, empowers the Minister of Human Resources, with the concurrence of the Minister of Home Affairs, to order the suspension of any trade union for a period not exceeding six months. This power is meant to enable the Minister to suspend any trade union which has been 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. The decision of the Minister when exercising this power is not absolute. It is subject to judicial review should any aggrieved party apply to the High Court for certiorari to quash it. *To-date, the Minister has never exercised this power.*

*Observation:*

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

*Response:*

- 5.6.1. Section 52(1) of the Trade Unions Act, 1959, prohibits trade unions from using their funds for political purposes. This prohibition is meant to ensure that the funds of a trade union are expended for its lawful objects as stipulated by the said Act and for the welfare and interest of its members only. The Minister of Human Resources has never exercised his power under section 52(2)(f) of the said Act to specify any matter as a political object.

*Observation:*

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

*Response:*

- 5.7.1. Section 76A(1) of the Trade Unions Act, 1959, requires that a trade union must obtain prior permission in writing from the Director-General of Trade Unions before it can affiliate with any consultative body or similar body established outside Malaysia. This requirement is consistent with section 3 of the said Act which provides that the Director-General of Trade Unions has the general supervision, direction and control of all matters relating to trade unions throughout Malaysia. It is meant to enable the Director-General to ensure that trade unions in this country affiliate only with international consultative bodies or similar bodies which are lawful and responsible, and protect the welfare and interest of workers.

**6. Strike restrictions***Observation:*

- 6.1. 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 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.

*Response:*

- 6.1.1. Section 25A(1) of the Trade Unions Act, 1959, requires that a trade union must first obtain the consent by secret ballot of at least two-thirds of its total members who are entitled to vote and in respect of whom a strike is to be called before it can launch a strike. This requirement is meant to ensure that a strike is supported by an absolute majority of the members and not decided upon by a few leaders or members of a trade union only.
- 6.1.2. Section 40(2) of the same Act requires that a secret ballot relating to a strike must contain a resolution which sets out clearly the issues leading to the proposed strike and describes clearly the nature of the acts which are to be done or omitted to be done in the course of the proposed strike. This

requirement is meant to ensure that the members are aware of, and understand, the issues leading to the proposed strike as well as the nature of the acts which are to be done or omitted to be done in the course of the proposed strike before they are asked to vote on it.

6.1.3. Section 40(9) of the same Act empowers the Director-General of Trade Unions to declare a secret ballot taken by a trade union to be invalid where the trade union concerned has contravened any provision of the Act, or any regulation made under the Act or any provision of its constitution in carrying out the secret ballot. Hence, the Director-General of Trade Unions can declare a secret ballot as invalid for any of the above reasons even though the majority of the members may have voted in favour thereof.

7. The Government of Malaysia appreciates the ICFTU's observations. We believe that the Trade Unions Act, 1959, has paved the way for a healthy development of the trade union movement in our country. The Government recognizes the important role of trade unionism and has supported its growth in a regularized manner. We are equally concerned for the welfare and interest of the workers in Malaysia, who have contributed to the steady growth of our economy. The Government has not at any time compromised with any party to the detriment of the working community. Furthermore, our labour laws are constantly being reviewed to address the latest developments in the labour scene.

### **Comments on backlog of cases in the industrial court**

1. Recently the number of cases not settled or the backlog of cases in the Industrial Court has increased. The main reason for the backlog was the economic crisis prevailing in Malaysia since late 1997. As a result of the economic crisis, the number of cases referred to the Industrial Court had increased tremendously in 1998 and 1999. In 1999, the number of cases referred surged to 1,027 cases, i.e. a 48 per cent increase from year 1997. As of June 2000, the number of cases not settled amounted to 1,448 (see table).

#### **Number of cases referred and settled – Industrial Court (1995-June 2000)**

<b>Subject</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>June 2000</b>
Number of cases brought forward from previous year	731	717	655	731	972	1 292
Number of cases referred	535	548	692	905	1 027	482
Number of awards handed down	549	610	616	664	707	326
Number of cases not settled	717	655	731	972	1 292	1 448

2. The most important step taken by the Government to solve the issue of backlog of cases in the Industrial Court was the approval of an additional 6 court chairmen (judges). With the additional six court chairmen, it is our hope that the backlog will be reduced within the shortest time possible.
3. Subsequently a task force was set up by the Human Resources Ministry in August 2000 to look into the issue of the backlog of cases. The chairman of the task force is the Secretary-General of the Human Resources Ministry and the other members are the President of the Industrial Court, The Registrar of the Industrial Court, the

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Director-General of Labour, the Director-General of Industrial Relations, the Director-General of Trade Union Affairs and senior officers of the Human Resources Ministry.

4. The task force had its first meeting on 26 August 2000 and the measures taken to resolve the issue of the backlog of cases are as follows:
  - 4.1. Each chairman is required to hand down an award as soon as possible after completing the hearing of a case. The President has to submit a performance report of each chairman to the Honourable Minister of Human Resources.
  - 4.2. Tighten further the application process on postponement of hearing from lawyers.
  - 4.3. Oral judgment is to be given. Written judgement is to be given only when the judgement is being challenged. This measure requires amendments to the existing law which is being pursued.
  - 4.4. Disputing parties are to file written affidavits and cross examination based on the affidavits submitted.
  - 4.5. Make available to the industrial relations officers the conciliation reports for the use of the Industrial Court.
  - 4.6. The Registrar and its officers are to conciliate in trade dispute cases prior to the hearing of the case.

## 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 is recognized by the Mauritanian Constitution of 20 July 1991, sections 10 and 17 (Volume III) of the Labour Code and Act No. 93.038 of 20 July 1993 establishing trade union pluralism. All categories of employers and workers, apart from those in military and paramilitary corps, may organize freely. No prior authorization is required for establishing any kind of workers' or employers' organization. However, every workers' and employers' organization must have its fundamental texts (statutes, etc.) checked by the public prosecutor to ensure their conformity with the legislation in force. The Government never intervenes in the functioning of employers' and workers' organizations. No category of employers or workers is excluded from any existing systems or procedures for ensuring the effective recognition of the right to collective bargaining. General collective or sectoral agreements are concluded freely between social partners. Nonetheless, these negotiations take place under the patronage of the State in order to provide support for these agreements and ensure their conformity with the legislation in force.

The implementation of the principle of freedom of association and the effective recognition of the right to collective bargaining is assured through administrative and financial means. In fact, the State contributes financially through subsidies granted to

workers' organizations, and adjustments to the laws on investments and taxes, to the benefit of employers' organizations. In addition, the State is working towards constant improvement in the relevant legal framework.

***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 collective bargaining. These efforts have taken the form of the adoption of the ILO's Right to Organise and Collective Bargaining Convention, 1949 (No. 98), by the Government with a view to its future ratification (October 2000) before Parliament.

The ratification of this fundamental Convention will undoubtedly enhance the national legal framework currently in the process of being revised through the Labour Code. In addition, with the collaboration of the project on the promoting of social dialogue in French-speaking Africa (PRODI AF), the State envisages the relaunch of the National Labour Council with a view to making it a permanent framework for tripartite consultations.

We take this opportunity to request the ILO's support in order to organize a series of workshops and initiation seminars on the techniques of collective bargaining.

***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 most representative workers' and employers' organizations: UTM (Union of Mauritanian Workers) and CGEM (General Confederation of Mauritanian Employers).

***Observations received from employers'  
and workers' organizations***

No comments have been received to date.

**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 abovementioned 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 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 disciplined force 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 “disciplined force” 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 disciplined force are excluded from the effective recognition of the right to collective bargaining.

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 comparative 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 administrative functions of trade unions, as well as on collective bargaining, are organized by trade unions and by the Education and Training 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 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, Government set up a Trade Union Trust Fund in 1997. The Government Budget 2000/2001 has made provisions for an increase of 50 per cent, to 3 million rupees, to the Fund. This will enable the Fund to finance training and education programmes organized by trade union federations and to employ an economist and a statistician. Additionally, a capital grant of 1 million rupees has been earmarked for the Fund to enable the construction of a workers' centre for education and training programmes and meetings of trade union federations.

On the other hand, the Ministry of Women, Child Development and Family Welfare is attempting to strengthen women's participation and roles in trade unions. Through a UNDP-funded project, the Ministry of Women will be conducting leadership courses and communication skills training with women in various sectors, including trade unions. Moreover, during the formulation of the National Gender Action Plan, the Ministry of Women held consultations with the women representatives of trade unions in order to incorporate their views and needs into the document.

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.

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:

(i) *Employers' organization*

Mauritius Employers' Federation

(ii) *Workers' organizations*

Confédération mauricienne des Travailleurs

Fédération des Syndicats des Corps constitués

Fédération des Travailleurs unis

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***

The Mauritius Employers' Federation and the Fédération des Syndicats des Corps constitués have replied. A copy of their reply is enclosed.

**Mauritius*****Observations submitted to the Office by the Mauritius  
Employers' Federation (MEF)***

In the employers' opinion, the Declaration on Fundamental Principles and Rights at Work needs to be promoted at all levels. The ILO should not limit itself to ratification of Conventions but should also promote the spirit of the Declaration.

We, as employers, do create awareness of the importance of the principles of the Declaration. In order to be able to implement them, there is a need for greater technical cooperation, more information from the ILO and proper marketing of the Declaration.

Our legislation is also conducive to the observance of the principles of the Declaration.



With respect to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87):

- 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.

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

Mauritius is currently reviewing its labour legislation. Moreover, the MEF is of the opinion that training of the 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 Fédération des syndicats des corps constitués (FSCC)***

The FSCC strongly suggests that the Government seize this opportunity to ratify ILO core Convention No. 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948).

Referring to Convention No. 87, the Government recognizes the principles of freedom of association and freedom of the individual, which are enshrined in the Constitution of Mauritius. It is to be pointed out that since 1996, no labour law reform project has been undertaken by the Government in order to cover the Industrial Relations Act.

The Industrial Relations Act (IRA) has become an obstacle to the freedom of the trade union movement in Mauritius. Trade unions are not free to organize themselves, as there are some clauses in the IRA that forbid the movement to act freely.

The very essential tool of a trade union is strike action. After undergoing all sorts of disputes and mediation, trade union organizations are deprived of this tool, through the IRA (sections 92 and 93). Under the Industrial Relations Act, the Registrar of Associations has the power to inspect and audit the books of trade unions as a matter of routine and not only upon complaints from the members of a trade union.

In various sections of the IRA there are provisions that empower the Registrar of Associations to limit the freedom of trade unions. Trade unions or associations are not free to dispose of their assets as they deem fit.

Article 3 of Convention No. 87 stipulates:

- (1) Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full

freedom, to organise their administration and activities and to formulate their programmes.

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

Therefore, this Article is not respected by the Government, given that Mauritius has not ratified Convention No. 87.

Despite the fact that the Government has set up a Trade Union Trust Fund in 1997 to enhance the development of trade unions, the trade unions believe that the IRA needs to be changed. There seems to be a good sign in this regard, as the Government is considering the possibility of ratifying this Convention.

## Mexico

### *Means of assessing the situation*

#### Assessment of the institutional context

There has been no change in the information provided in the report that was submitted for the annual review 2000, as regards the institutional context.

Collective labour contracts are not subject to government authorization, the authorities only act as a depository for the registration of such contracts.

#### Assessment of the factual situation

The Government of Mexico reports that, at the federal level, there are 5,539 registered organizations, of which 1,365 currently have legal representation. Among them are seven employers' organizations.

From December 1994 to July 2000, the Ministry of Labour and Social Security registered 191 organizations, of which 36 concerned federations and 155 concerned trade unions. As regards the latter, 78 were independent unions and 77 were associations affiliated to the main confederations in the country. Of the 1,365 organizations considered to be legally representative organizations, 1,173 are trade unions and 192 are federations and confederations.

Of the 1,173 trade unions, the sector of activity which has the most organizations is the textile industry (Annex I, not reproduced, shows the other sectors). Of the total number of organizations mentioned in this paragraph, the Federal District has the largest number of trade unions operating within its jurisdiction, followed by the State of Puebla (Annex II, not reproduced). Of the 1,365 legally representative organizations, 1,311 have male secretaries-general and 54 have female secretaries-general.

As regards data and trends, the following can be observed:

- Of the total registered trade unions at the federal level, only 25 per cent currently have executive committees (Annex III, not reproduced).

- Of the total number of currently registered organizations, 99 per cent represent workers and 1 per cent represent employers (Annex IV, not reproduced).
- For the period December 1994 to July 2000, 50 per cent of the total number of trade union registrations (not including federations and confederations) were affiliated to the main central trade union organizations and the other 50 per cent were independent unions (Annex V, not reproduced).
- Of the total number of currently registered organizations, 86 per cent are trade unions and 14 per cent are federations and confederations (Annex VI, not reproduced).
- Of the organizations currently registered, 96 per cent are represented by men and 4 per cent by women (Annex VII, not reproduced).

With respect to the indicators and statistics presented in the first report, there is a clear tendency towards an increase in independent trade unions. There is a notable increase in requests for registration of trade unions.

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

As regards the efforts made or envisaged to ensure respect, promotion and realization of these principles and rights, the administrative authorities have publicized, through various means, the rights and obligations of workers and employers. Through the Internet, the Mexican Government increases public awareness of current trade union organizations at the federal level, as well as their representatives.

Some states of the Republic of Mexico have welcomed this transparent way of providing information, and they are introducing it at the local level.

For their part, some trade union organizations disseminate, among their membership, information on trade union rights and they give courses on trade union organization, as well as the applicable labour legislation.

The Government of Mexico has encouraged and promoted, by all means at its disposal, the dissemination of information for workers and employers, about the principles and rights of freedom of association, the right to organize and collective bargaining, and the labour situation.

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

In compliance with article 23(2) of the ILO Constitution, copies of this report have been sent to the Mexican Confederation of Chambers of Industry (CONCAMIN), to the Mexican Employers' Confederation (COPARMEX), and to the Confederation of Mexican Workers (CTM).

**Observations received from employers'  
and workers' organizations**

The Mexican Employers' Confederation has expressed the view that Mexican legislation recognizes the right of workers and employers to associate in order to defend their respective interests, as well as the right to collective bargaining. In this regard, the Confederation cited the Mexican Constitution, article 123, paragraph A, section XVI, and the provisions of Title Seven, Chapter III, of the Federal Labour Law.

Neither the Mexican Confederation of Chambers of Industry (CONCAMIN) nor the Confederation of Mexican Workers (CTM) has submitted observations concerning the implementation of the Convention, either directly or with reference to the report.

**Annexes (not reproduced)**

Distribution of currently registered trade unions by branch of industrial activity.

Distribution of currently registered trade unions by federal entity.

Total of registered trade unions with current executive committees (out of a total of 5,539).

Distribution of current workers' and employers' organizations.

Breakdown of trade unions registered during the period December 1994-July 2000.

General distribution of currently registered organizations, by type.

Breakdown, by gender, of leadership in the currently registered organizations.

**Morocco****Means of assessing the situation****Assessment of the institutional context**

Moroccan legislation fully recognizes and guarantees the principle of freedom of association and of the right to collective bargaining, a principle that has been put into practice effectively and on a large scale and applied to different sectors of the population.

This principle is recognized by virtue of the following instruments, which Morocco has enacted or which it has ratified:

- the Constitution of the Kingdom, as amended;
- Dahir (Royal Decree) of 16 July 1957 on occupational unions, as amended and supplemented by Dahir No. 1-00-01 of 15 February 2000;
- Dahir of 29 November 1960 concerning the institution of a Higher Council on Collective Agreements;
- Dahir of 24 February 1958 concerning general regulations on the civil service;

- Decree of 5 February 1958 relating to the exercise of freedom of association by civil servants;
- Dahir of 17 April 1957 relating to collective labour agreements;
- the Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- the International Covenant on Economic, Social and Cultural Rights; and
- the Right of Association (Agriculture) Convention, 1921 (No. 11).

Freedom of association is guaranteed by article 9 of the Constitution, by virtue of which all citizens are entitled to:

- freedom of opinion, freedom of expression in all its forms and freedom of assembly;
- freedom of association and the freedom to join a trade union organization of their own choosing.

The Constitution states moreover that no limit shall be imposed on the exercise of the aforementioned freedoms other than by the law.

In order that the principles set forth in the Constitution shall be put into effect, section 2 of the Dahir of 16 July 1957, as amended and supplemented, provides that the occupational unions of persons in the same profession, similar trades or related professions (producing specific goods) or persons in the same liberal profession, shall be free to form organizations of their own choosing.

By virtue of the entitlements that this article grants both to workers and employers, several groups of affiliated trade unions have been legally established nationwide.

They are now established at local and regional levels in every sector of economic activity, and participate in the work of the advisory bodies.

Occupational trade unions play an active role in the consultations held by the authorities on the formulation and implementation of economic and social policy.

The exercise of freedom of association by civil servants is recognized by the Dahir of 24 February 1958 relating to the general regulations on the civil service. This right is exercised under the conditions stipulated by the Decree of 5 February 1958.

The only exceptions envisaged by national legislation currently in force concern the following categories of persons:

- Persons subject to the special regulations on administrators of the Interior Ministry:

Section 15 of the Dahir of 1 March 1963 concerning the special regulations on administrators of the Ministry of the Interior states that “administrators and deputy administrators may neither form nor belong to a trade union. However, such civil servants may form an association in order to safeguard their moral and material interests.

- The magistracy:

Pursuant to section 14 of the Dahir promulgating an Act to make regulations on the magistracy (11 November 1974), magistrates shall neither form professional trade unions, nor shall they be members of them.

- Civil servants and officers whose duties involve the right to use a weapon:

Section 4 of the Decree of 5 February 1958 concerning the exercise of freedom of association by civil servants excludes from its scope persons entrusted with a mandate and who as such are engaged in the service of the State, state administration, the municipal authorities, state establishments or a service in the public interest and to whom the right to carry a weapon in the course of duty has been granted.

Prior authorization is not needed to form a trade union.

The trade union shall simply notify the competent authority of its establishment. All persons wishing to establish an occupational trade union shall lodge with the offices of the competent local authority, or send to the said authority, by recorded delivery, a letter with an acknowledgement of receipt:

- (a) the by-laws of the planned trade union;
- (b) the list of persons holding any office whatsoever in its administration or its management. This list shall indicate the surnames, first names, affiliation, date and place of birth, nationality, occupation and domicile of the persons concerned. Such persons must be of Moroccan nationality and be in possession of their civil and political rights.

The aforementioned documents are exempt from stamp duty. They must be lodged with or sent in quadruplicate to the offices of the local authority, which shall give one of the copies to the public prosecutor's office. This copy, furthermore, shall be given or sent with an acknowledgement of receipt.

In accordance with sections 10 and 17 of the aforementioned Dahir, occupational unions shall also enjoy the right:

- to appear in court;
- to set up among their members special mutual assistance funds;
- to earmark part of their resources for building inexpensive accommodation for their members' own use, and for the purchase of land for workers' gardens, for physical education and hygiene;
- to create, administer or subsidize occupational enterprises such as occupational provident societies, laboratories, experimental fields and publications concerning the profession. The buildings and items required for the meetings of occupational unions, for their libraries and their professional training courses may not be seized;
- to enter into contracts or agreements with any other union, company or enterprise;
- to subsidize production or consumer cooperatives.

In order that employers' and workers' organizations can be guaranteed adequate protection from interfering with one another, Act No. 11-98 amending and supplementing the Dahir of 16 July 1957 relating to occupational unions includes in its section 2A, the following provisions:

- Prohibition on occupational organizations of employers and workers from interfering, directly or indirectly, in one another's affairs and engaging in any action of this sort, in particular by handing over money without legal justification;
- Prohibition on impairing the independence of these organizations where their management or administration is concerned;
- Prohibition on any physical or moral person from impeding the exercise of freedom of association.

The effective recognition of the right to collective bargaining ensues from application of the provisions of sections 1 and 2 of the Dahir of 17 April 1957 relating to collective labour agreements, which state explicitly that collective labour agreements on conditions of employment and work may be concluded between the representatives of one or more occupational workers' unions, on the one hand, and one or more employers or their occupational organizations, on the other.

No category of workers' organizations and no category of employers' organizations are excluded from the mechanisms and procedures set up in order to ensure the effective application of the right to collective bargaining.

National legislation does not stipulate that prior authorization is needed for the conclusion of collective agreements; however, such agreements shall be lodged, free of charge, by the most diligent party with the clerk of the competent court and with the ministry responsible for labour affairs.

Such agreements may only be applied from the end of the third day following the day on which the submission was made to the ministry responsible for labour.

Application of the principle of freedom of organization and the right to collective bargaining is guaranteed by:

- the follow-up of industrial relations and settlement of collective labour disputes, as pursued within the framework of the regular meetings of the national and regional committees of inquiry and conciliation;
- the dissemination of the principles of freedom of association and the culture of social dialogue and consultation through the organization of tripartite seminars on social dialogue;
- technical support and assistance from the labour inspectorate in the signing of collective agreements.

### **Assessment of the factual situation**

There are approximately 20 groups of affiliated trade unions – three of which are the more representative: the Democratic Labour Confederation (CDT), the Moroccan Labour Union (UMT) and the General Union of Workers of Morocco (UGTM). They are

established in all sectors of economic activity and participate in formulating economic and social policy alongside the Government and employers' organizations, two of which are more representative, the Federation of Chambers of Commerce and Industry (FCCI), and the General Confederation of Moroccan Enterprises (CGEM).

It should be made clear that at present we do not have any precise statistical data that would allow us to evaluate the rate of union membership and union trends.

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

Efforts made to respect, promote and realize these principles are as follows:

- the recent adoption of Dahir No. 1-00-01 of 15 February 2000 promulgating Act No. 11-98 amending and supplementing Dahir No. 1-57-119 of 16 July 1957 on occupational unions, which contains the following provisions:
  - prohibition on occupational organizations of employers and of workers from interfering in each other's affairs, directly or indirectly,
  - prohibition on impairing the independence of these organizations, where their establishment, management or administration is concerned,
  - prohibition on all acts of discrimination between workers based on membership of a union or union activity, in particular where recruitment, execution and distribution of work, vocational training, promotion, entitlement to social benefits, dismissal and disciplinary measures are concerned;
  - the application of appropriate sanctions in cases where the exercise of freedom of association has been impaired.

These new provisions give full effect to Convention No. 98.

Other provisions are also planned in the draft Labour Code under discussion in Parliament which aim to harmonize national legislation with international labour standards concerning freedom of association and the right to organize and to collective bargaining.

This year has also been marked by a series of meetings and consultations between the Government and the socio-economic partners within the framework of social dialogue.

These meetings have culminated in the signing of the 19 Moharrem 1421 Agreement, of which the main provisions are as follows:

- strict application of the legal provisions relating to freedom of association;
- the establishment of new labour dispute resolution mechanisms;
- improvement of material conditions for workers and civil servants;
- understanding and compromise on the draft Labour Code
- reform and democratization of social institutions;



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- addressing the job and unemployment crisis;
  - implementation of low-rent housing programmes;
  - speeding up delivery of verdicts favouring workers;
  - promoting the conclusion of collective labour agreements;
  - setting up of a national tripartite commission tasked with monitoring the application of the provisions of the Agreement and of technical tripartite commissions to monitor particular areas of the Agreement.

As well as the signing of the 19 Moharrem Agreement, the resumption of the meetings of two very important tripartite institutions is worthy of note, after a long period during which their work was in abeyance. The institutions concerned are the following:

- the Higher Council on Collective Agreements which resumed work on 6 May 1999;
- the Board of Directors of the National Social Security Fund which convened on 19 May 2000.

Besides the initiatives already outlined in this report, other measures are envisaged to promote collective bargaining. They may be summed up as follows:

- the launching of awareness campaigns through the organization of seminars, symposia and round tables on collective bargaining;
- the setting up of two tripartite technical committees, a spin-off from the last meeting of the Higher Council on Collective Agreements. These two committees, which have been meeting regularly since May 1999, aim to promote the conclusion of collective agreements.

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

A copy of this report will be given to the following most representative employers' and workers' organizations:

- the General Confederation of Moroccan Enterprises;
- the Federation of Chambers of Commerce, Industry and Services of Morocco;
- the Democratic Labour Confederation;
- the Moroccan Labour Union;
- the General Union of Workers of Morocco.

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

In Morocco's 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 provoke workers into taking industrial action, and 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 section 288 of the Penal Code of Morocco, 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.

**Government observations on ICFTU's comments**

After having examined the comments made by a workers' organization concerning the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, we have the honour of providing the ILO with the following comments and information.

It should be noted that the Constitution of the Kingdom of Morocco, as amended, guarantees the exercise of the right to organize and recognizes the right to strike.

At the same time, Moroccan legislation fully recognizes and guarantees the principle of the right of association and the right to collective bargaining. This principle is effectively practised on a large scale and is applied to different sectors, in particular the private sector.

The Moroccan Government acts within the framework of national legislation and does not impose any restrictions on the free exercise of trade union rights and the promotion of social dialogue between social partners.

As part of the efforts made by Morocco to protect trade unions, resolve conflicts and promote social dialogue, relevant measures have been taken.

They are, in particular, the following:

- the enactment of Act No. 11-98 of 15 February 2000 amending the Royal Decree (Dahir) of 16 July 1957 on trade unions;
- the conclusion of the agreement of 19 *moharem* 1421 (21 April 2000) between the Government and the social partners;
- the creation and meetings of several conciliation boards and their meetings convened to amicably resolve labour conflicts;
- the organization of several national meetings with the participation of the ILO for the protection of workers' rights, in particular, the national tripartite seminar on freedom of association, in February 1999;

- consultation with workers' and employers' organizations by the public authorities within the framework of drafting and implementing economic and social policies;
- the participation of workers' and employers' organizations in discussions on the draft Labour Code and its harmonization with the principles of international conventions for the protection of workers' rights;
- the strengthening of labour inspectors' capacities to ensure the appropriate monitoring of labour legislation.

These efforts made by the Moroccan Government to promote social dialogue and protect workers' fundamental rights are concrete examples that dismiss the line of argument put forward by this workers' organization.

Moreover, the Kingdom of Morocco is one of the main countries that has supported the ILO Declaration on Fundamental Principles and Rights at Work.

Trade union pluralism and the freedom to carry out related activities are, inter alia, proof of the democratic developments that have occurred in Morocco.

For these reasons, we believe that the allegations made by the workers' organization in question concerning the exercise of trade union rights and the free exercise of the right to strike are not founded.

## **Myanmar**

No report was received by the Office from the Government for the annual review of 2000 or 2001.

## **Myanmar**

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

[Reference of a complaint-like nature is made to specific instances of military action in response to trade union activity.]

There is no operational trade union law or any legal structure, to protect freedom of association, collective bargaining or 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.

Former trade union leaders and members who were fired from their jobs and persecuted by the military regime for their trade union activities founded the Federation of Trade Unions of Burma (FTUB) in 1991.

A 1988 decree issued by the regime on the formation of associations and organizations ... requires permission to be obtained from the Ministry of Home and Religious Affairs before they can be established. It says that they will be dissolved if they

attempt to incite, encourage or assist in undermining law and order, local peace and security and the smooth and secure operations of transport and communications.

[Comments of a complaint-like nature are made with reference to the arrest and detention of trade unionists and, in specific cases, of their relatives.]

## Nepal

### ***Means of assessing the situation***

#### Assessment of the institutional context

Article 12 of the Constitution of Nepal guarantees all citizens the right to freedom to assemble peacefully and without arms, and to form unions and associations. The Labour Act, 1992 and the Trade Unions Act, 1993 also have provisions giving workers the right to organize for collective bargaining purposes. Based on these 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), the Government of Nepal, which is also a large employer, has noted that there are constraints, as some provisions of the Civil Service Act are not in conformity with the spirit and letter of Convention No. 87. However, Nepal is in the process of amending minor clauses in the Police Act and the Military Act to introduce certain reservations for these sectors for the purpose of the ratification of Convention No. 87.

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

Nepal has already ratified Convention No. 98 (1949) and has submitted the required report. Regarding the ratification of Convention No. 87 (1948), the Ministry of Labour and Transport Management (MOLT) has recently formed a technical committee under the chairmanship of the secretary of MOLT and with representatives from the relevant government ministries and departments, trade unions, employers' associations and related non-governmental organizations. In consultation with this technical committee, a plan of action has already been formulated to initiate the process of ratifying ILO core Conventions No. 29 (1930), No. 105 (1957), No. 87 (1948) and No. 182 (1999). The MOLT and the ILO in Kathmandu jointly organized a one-day workshop on 25 November 1999. The sole objective of this workshop was to sensitize all stakeholders at the national level on the liabilities the ratification of the ILO core Conventions would bring and to inform about the existing legal parameters to ensure that they would not contradict the provisions of the aforementioned Conventions.

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

The most representative workers' and employers' organizations are the Federation of Nepalese Chamber of Commerce and Industry and, on the workers' side, the Nepalese Trade Union Congress (NTUC), the General Federation of Nepalese Trade Unions (GEFONT) and the Democratic Confederation of Nepalese Trade Unions (DECONT).

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Copies of this report have been sent to these organizations for their comments and observations in accordance with article 23, paragraph 2, of the ILO Constitution.

### ***Observations received from employers' and workers' organizations***

Both the employers' and workers' organizations have sent their positive response to the ratification of Convention No. 87 (1948) and the introduction of necessary reservations in Nepal's national legislation. Nepal is hopeful that the Government will be able to ratify the Convention in the near future.

## **New Zealand**

### ***Means of assessing the situation***

#### Assessment of the institutional context

This report is completed in relation to 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).

Freedom of association and the effective recognition of the right to collective bargaining are recognized in New Zealand, through legislation as described in the Government's 1999 follow-up report.

The main relevant piece of legislation during that reporting period was the Employment Contracts Act, 1991. The Employment Relations Act, 2000, which came into force on 2 October 2000, replaces the Employment Contracts Act. This report signals the direction of intended changes to the legislative framework, as contained in the Employment Relations Act. More detailed information on the provisions of the Employment Relations Act will be provided in subsequent reports.

It is possible to indicate, however, that the Government's intention (as signalled in section 3(b) of the Act) is to "promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively."

The Government intends that the Employment Relations Act will promote collective bargaining, taking into account the recommendations of the Committee on Freedom of Association's decision in Case No. 1698, in relation to the Employment Contracts Act (complaint against the Government of New Zealand presented by the New Zealand Council of Trade Unions (NZCTU)).

In particular, the Act promotes collective bargaining and provides clear guidance with respect to the collective bargaining process. The Act also provides that workers and their organizations are able to take industrial action in support of multi-employer collective agreements.

Freedom of association and the effective recognition of the right to collective bargaining are recognized in New Zealand through legislation as described in the

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Government's 1999 follow-up report and Part II of the Government's 1998 (and previous) article 19 reports on Conventions Nos. 87 and 98.

As noted above, the Employment Relations Act will replace the Employment Contracts Act, one of the pieces of legislation under which these matters are recognized.

The Employment Relations Act provides specific legal recognition of unions as representatives of employees' interests. By contrast, under the existing legislation, provision is made for employees to be represented by an "employees' organization". The Act contains provisions relating to the lawful operation of unions, including a requirement that unions must be registered to operate under the Act. It is not considered that these provisions will deny any category of employers or workers the right to organize.

The Employment Relations Act does not require prior authorization for the establishment of employers' or workers' organizations. The Act does, however, provide that unions must register under the Act to participate in collective bargaining and to fulfil other roles specified in the Act. Registration involves satisfying the Registrar of Unions that the union is a democratic organization of employees that is accountable to its members, independent of employers, and has appropriate rules (that are not unreasonable, undemocratic, unfairly discriminatory or unfairly prejudicial, or contrary to law).

The Registrar of Unions (as well as members of a union, other unions and affected employers) is able to take action through the appropriate authorities if they believe a union has acted contrary to the provisions of the Act or unlawfully in some other manner, or contrary to their own rules.

The Employment Relations Act will not result in any change to the position of categories of employers and employees, i.e. the armed forces and the police, who are not covered, or who are covered in part, by the general employment legislation.

The legislation does not provide for the authorization of collective agreements by the Government.

For detailed descriptions of relevant New Zealand legislation and the applicable case law, please refer to the Government's 1999 follow-up report, 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 New Zealand's compliance with ILO Conventions Nos. 87 and 98, Case No. 1698, and the Government's updates to the Committee on Freedom of Association.

The Employment Relations Act retains similar provisions regarding the right of freedom of association for employees as those contained in the Employment Contracts Act, 1991.

The Act also contains procedural requirements to enable the orderly conduct of collective bargaining on both a single and a multi-party basis. Only employers and registered unions will be able to negotiate and be parties to collective agreements. The Act contains specific good faith bargaining obligations that the parties to collective bargaining must meet. The Act will provide unions with extended statutory rights of access to workplaces for bargaining, representation and union business purposes, including recruitment.

The Act also contains new provisions regarding the burden of proof in discrimination cases, including situations where the discrimination is alleged to have occurred by reason of an employee's involvement in the activities of a union. The Act provides that where an employee establishes that their employer took any action or omitted any action, which was to the disadvantage of the employee compared to non-union members, then there is a rebuttable presumption that the employer has discriminated against the employee on the grounds of the employee's participation in union activities.

The Act also modifies the test for intervention by the employment institutions in relation to awarding compensation, or cancelling or varying an individual employment agreement, where that agreement was arrived at through unfair bargaining, including oppressive means, undue influence or duress. This compares to the existing (higher) test under the Employment Contracts Act, which requires that a contract be procured by harsh and oppressive behaviour, or be harsh and oppressive when entered into.

#### Assessment of the factual situation

Recent data suggest that union representation continues to be predominant in larger collective contracts. The Department of Labour's analysis of collective employment contracts, in its database of contracts covering 20 or more employees, shows that in September 2000, 79 per cent of employees covered by these contracts were represented by a union.<sup>3</sup>

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

For detailed descriptions of the relevant New Zealand legislation and the applicable case law, please refer to the Government's 1999 follow-up report, the Government's 1998 (and previous) 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 Committee on Freedom of Association.

Changes to the relevant legislative provisions have been discussed earlier. In addition, the Department of Labour is currently undertaking an extensive information campaign, utilizing a number of forums, relating to the new statutory regime. This information campaign includes material relating to the promotion of freedom of association and the right to collective bargaining.

The Employment Relations Act provides additional guidance in regard to the process of collective bargaining, as earlier discussed, which reinforces the rights of employers and employees to choose to negotiate collectively. Collective employment agreements, under the Act, are binding, once agreed upon, and enforceable through the employment institutions.

<sup>3</sup> The Department of Labour's database, as at 27 September 2000, includes 1,575 active collective employment contracts (i.e. those which cover 20 or more employees), encompassing 352,905 employees (approximately 20.11 per cent of persons employed in the labour force and 18.88 per cent of the total labour force). Of these contracts, 67 per cent (1,057 contracts) were negotiated with trade unions as the employees' representatives. These contracts cover 79 per cent of employees (280,304).

The Act also modifies existing provisions relating to the rights to strike and lockout, including a change to provide that workers and their organizations are able to take industrial action in support of multi-employer collective agreements, as noted above. This change reflects the recommendations of the Committee on Freedom of Association's decision in above cited Case No. 1698. The Act generally retains existing rights to strike and lockout, although there is a requirement that the first 40 days of negotiations for a collective agreement be strike and lockout free, in recognition of the obligations of the parties to negotiations to act in good faith during those negotiations. The Act also provides that employees who are not parties to collective bargaining cannot be locked out, and recognizes their freedom to choose not to be involved in collective bargaining – although non-striking employees may be suspended where a strike means that their employer is not able to offer them their normal work. The Act provides guidance as to whether an employer can replace striking employees and, if so, in what circumstances.

As noted above, the Department of Labour is currently undertaking an extensive information campaign, utilizing a number of forums, relating to the new statutory regime.

Changes to the relevant legislative provisions were discussed earlier. As noted, one of the Government's intentions in introducing the Employment Relations Act (signalled in section 3(b) of the Act – Object of this Act) is to “promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively.”

The Government intends that the Act will maintain the measures of protection provided in relation to ensuring freedom of association and that the Act will promote collective bargaining, taking into account the recommendations of the Committee on Freedom of Association's decision in Case No. 1698, in relation to the Employment Contracts Act (complaint against the Government of New Zealand presented by the New Zealand Council of Trade Unions (NZCTU)).

In this context, as recommended by the Committee on Freedom of Association, the Act removes the prohibition on strike action in pursuit of multi-employer collective agreements, contained in section 63(e) of the Employment Contracts Act.

The Government is committed to engaging in dialogue with the International Labour Office with regard to the compatibility of the Employment Relations Act with ILO Conventions Nos. 87 and 98. The Government has provided a copy of the Act to facilitate this dialogue.

***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.



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***Observations received from employers'  
and workers' organizations***

Comments have been received from both employers' and workers' organizations, and these are attached.

*Annexes (not reproduced)*

Employment Relations Act, 2000.

***Additional information submitted to the Office  
by the Government of New Zealand***

In relation to both 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 recently enacted Employment Relations Act specifically states that one of its aims is to promote in New Zealand the observance of the principles underlying these Conventions. The Government has sought assistance from the International Labour Office to assess the compatibility of the recently enacted Employment Relations Act with the specific provisions of both Conventions. The Office has indicated that it will be able to provide an analysis of the new legislation early next year.

[Reference is made to matters relating to the Worst Forms of Child Labour Convention, 1999 (No. 182), which will be covered only by the annual review starting in 2002.]

With the current focus on issues relating to Conventions Nos. 87, 98 and 182, the Government has not yet been able to consider ratification of the Minimum Age Convention, 1973 (No. 138). This Convention addresses key issues of relevance to questions that the Government is to address within the context of New Zealand's obligations under the United Nations Conventions on the Rights of the Child. The work that is planned in relation to these obligations will help in determining whether New Zealand will be able to ratify Convention No. 138. The Government will keep the ILO informed of all relevant developments.

**New Zealand**

***Observations submitted to the Office by the New  
Zealand Employers' Federation (NZEf)***

The Government's response does not record that before employees can form a union of their own choosing they need to have 15 potential members. They are also required to register as an incorporated society – observing the rules that relate to the establishment of incorporated societies – before they can obtain registration as a union. Consequently, the administrative requirements involved in union formation, together with the minimum number requirement and the fact that only registered unions are able, in terms of the Act, to negotiate collective agreements, are of themselves, factors that impose considerable limitations on employees' freedom of association.

The situation is further compounded by the new legislative requirement for any new employee, who is not a member of a union, to work in terms of an existing collective

agreement applicable to the work that he or she performs. Any additional terms and conditions must not, at that point, be inconsistent with those of the existing collective agreement (Employment Relations Act 2000, section 63). In this context, it is interesting to note the words of Thomas J [*sic*] in a Court of Appeal decision made under the superseded Employment Contracts Act but effectively referring to a very similar situation:

*“Yet, an employer may choose to enter into a collective employment contract with two employees only. That contract will then be a collective employment contract for the purposes of the Act. Section 21 is likely to apply so that the contract can be subsequently extended to other workers. This may, of course, as already indicated, be done on a “take it or leave it” basis. In such circumstances there has been no “bargaining” as such and the contract is “collective” in form only ... If it is correct, as was asserted ... that the same course could have been adopted by employers negotiating and entering into a collective employment contract with two employees, the deficiency in the Act is patent. The employers could then require the remaining workers in the work force to enter into a contract “negotiated” by only two employees. Neither the bargaining nor the collective bargaining would be protected in any acceptable sense of those terms.” (Fletcher Construction New Zealand Ltd v New Zealand Engineering Printing and Manufacturing Union Inc CA 183/99, 9 September 1999, unreported).*

Under the Employment Relations Act, a union can enter into collective bargaining with an employer on behalf of only one employee who is a member of that union (the statute specifies no lower limit on the number of employees to be covered, as compared with the limit of two employees, in the Employment Contracts Act). The collective agreement negotiated (intended, of course, to apply in a multi-employer bargaining situation) would then apply automatically to anyone else employed by one of those employers to do relevant work, for at least the first 30 days of employment. (As would also be the case where greater numbers of employees are involved.) This is a clear breach of freedom of association in that, at the point of accepting employment, employees are denied the right to engage in their own negotiations with their new employer or to have the representative of their choice negotiate for them. Effectively, their right to choose their representative is non-existent as is their right to bargain collectively.

### **Government observations on comments by the NZEF**

#### Formation of unions and administrative requirements

The Government notes the NZEF’s comment that “before employees can form a union of their own choosing they need to have 15 potential members”. There are a number of administrative requirements under the Employment Relations Act, 2000, relating to the formation and registration of a union, including the requirement that a union must have 15 members to be registered.

The Government disagrees with the NZEF’s comment that these are “factors that impose considerable limitations on employees’ freedom of association”. The Government notes that the jurisprudence from the ILO’s Committee on Freedom of Association indicates that a minimum union membership requirement is not inconsistent with the

principles of freedom of association. The Government considers that the 15-member minimum and the other administrative requirements relating to the formation of unions are both minimal and reasonable requirements.

### **Right to choose representative and bargain collectively**

The Government notes the NZEF's comments regarding employees' right to choose their own representative and their right to bargain collectively. The Government also notes the NZEF's comments regarding the requirement that new employees be employed on terms and conditions based on those contained in any applicable collective employment agreement for the first 30 days of their employment.

Under the Act a new employee is employed on terms and conditions based on an applicable collective agreement to which their employer is a party, which covers the work done by the employee. This provision ensures that new employees are provided with the measures of protection of any existing collective agreements in their workplace.

The new employee is required to have his/her terms and conditions based on the collective agreement for the first 30 days of employment only. This requirement does not, however, have an impact on the new employee's ability to choose his/her own representative. This right is specifically retained by Part 3 of the Act (freedom of association) and section 236 (representation). The new employee can bargain with their employer, including through a representative, over his/her terms and conditions of employment at any time, including when the new employee is first employed. However, for the first 30 days of employment, or if the new employee joins the union that is a party to the collective agreement, the terms and conditions agreed to, cannot be inconsistent with the collective agreement on which their terms and conditions are based.

## **New Zealand**

### ***Observations submitted to the Office by the New Zealand Council of Trade Unions (NZCTU)***

The NZCTU believes that, although there may be some technical issues which would arise in respect of a ratified convention, the new Employment Relations Act substantially complies with the requirements of the Declaration on Fundamental Principles and Rights at Work relating to freedom of association and collective bargaining, and we therefore endorse the report.

## **Oman**

### ***Means of assessing the situation***

#### **Assessment of the institutional context**

The Sultanate of Oman reaffirms that the principles and aims upon which the Declaration on Fundamental Principles and Rights at Work is based, are respected by the Sultanate, in accordance with the Constitution of the International Labour Organization and the Declaration of Philadelphia, without prejudice to ensuing values established in the society and rooted in the Islamic Sharia (Law of Islam).

The Sultanate of Oman, in view of its respect for, and interest in, the Declaration on Fundamental Principles and Rights at Work, refers to international labour standards to develop its regulations and laws, making every endeavour to have its national laws conform to these standards.

With regard to the means of assessing the situation in the country as it relates to freedom of association and the effective recognition of the right to collective bargaining, the principle is recognized within the limits established by the Statute of the country as well as by the labour legislation.

It is recognized in the Statute on the establishment of associations, and the Omani Labour Law relating to the composition of committees for workers and owners of enterprises employing 50 workers or more.

This practice exists in big enterprises without the interference of the Ministry; but this practice does not exist in small enterprises and companies, due to the situation of the local market and the composition of the labour force, of which the majority are migrant workers who do not stay in their jobs for long periods. It is expected that the new Labour Law will contain clear procedures and measures to be followed in the future, to achieve collective bargaining between workers and employers.

The establishment of employers' or workers' organizations comes within the framework of the organization set up by the Government.

There is mutual cooperation between the Government and the parties concerned, for the promotion of common public interest.

The system in force ensures the recognition of this principle.

There are legal and administrative means for implementing the principle.

#### Assessment of the factual situation

The economic and social conditions in the Sultanate of Oman have led to a limited number of nationals in the labour force in the formal private sector. In view of the increase of temporary migrant workers of different nationalities, the Sultanate of Oman makes every effort to take all necessary measures to find a mechanism that ensures the development of the roles of the social partners (employers' organizations-workers' organizations). This is being done progressively in response to developments in the Omani labour market as well as to changes at the international level.

In addition, the Sultanate of Oman is always willing to enable workers' and employers' representatives to participate actively in Arab and international conferences according to the principle of tripartism. This is without prejudice to their total independence and close cooperation with relevant bodies and organizations, in order for them to broaden their experience and competence. The Sultanate endeavours to reinforce this principle either through employers' organizations or by giving the opportunity to workers' representatives in enterprises with a significant labour force, to play this role.

The Sultanate provides workers and employers with the means to participate in numerous bodies and institutions specialized in training, vocational development, labour rights as well as social benefits and social insurance. The representatives of the parties

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concerned participate in the decision-making process as well as in improving labour market conditions for the benefit of the social partners and the general public.

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

The Government strives to support workers' participation and to increase their role, activities and contribution to the realization of workers' interests, inter alia, by including them in the process of developing mechanisms for promoting vocational training.

The Government encourages the establishment of joint committees of employers and workers in enterprises with significant workforces. This is done in order to resolve problems, to set up mechanisms for improving work and for developing their role in many workers' activities. It is also designed to develop information programmes for the labour force at the country level.

The Sultanate seeks help from the Arab Labour Organization as well as from the International Labour Organization in carrying out studies that it deems necessary and that contribute to supporting the organization and development of the labour force in the country.

The Government's aims are to observe the fundamental principles and rights of workers and to translate them into practice, by putting emphasis on them in the Statute and labour laws. This is done in order to achieve efficiency, to take care of workers' interests and to improve their social conditions.

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

A copy of this report has been sent to the following representative employers' and workers' organizations:

- Chamber of Commerce and Industry of Oman
- Workers' representative

***Observations received from employers'  
and workers' organizations***

The Government has not received from these employers' and workers' organizations, any observation on the follow-up measures that have been taken or need to be taken on the Declaration with regard to freedom of association and the effective recognition of the right to collective bargaining.

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

Omani and foreign workers each make up around half of the workforce. Working conditions are generally defined by law or by individual contracts within government guidelines.

In enterprises that employ more than 50 workers, the law requires joint consultative committees of labour and management representatives to be set up, although the law is not always implemented. The committees cannot discuss wages, working conditions or working hours.

Workplaces employing more than 50 workers also have to 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.

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.

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 a tripartite arbitration panel that votes to take a binding decision.

When Oman joined 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. There has been no further news of the new Code.

[Comment concerning the 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**

Since we submitted our initial report there have been no changes nor is there any additional information in this regard.

If there are any changes, or new measures taken with respect to the Declaration, the relevant information will be provided to the ILO.

## Qatar

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

The law provides for joint worker and employer consultative committees to be set up. They discuss working conditions, but employers set wages.

Most private sector workers theoretically have the right to strike after a conciliation board has ruled on a dispute, but in practice strikes cannot take place. Correspondingly, an employer can close down a workplace or sack employees after the board has given a ruling.

Local courts can handle individual disputes between a worker and employer.

[Comment concerning the general labour and employment situation of migrant workers not directly relevant to freedom of association or collective bargaining.]

### **Government observations on ICFTU's comments**

I. As regards the observation that the law provides for the establishment of joint consultative committees comprising workers and employers, but wages shall be determined by employers, the Government is of the view that this allegation is totally unfounded and has no legal or practical basis. We wish to submit the following clarifications in this respect:

1. The Labour Code defines the "work contract" as any agreement between employer and employee, written or oral, of a limited or unlimited duration, wherein it is agreed that the worker perform, for a specified wage, a certain type of work for the employer ... etc. (article 2, paragraph 7).
2. Article 15 of the Labour Code stipulates that work contracts shall specify, in particular, the commencement of work, the type, location and conditions thereof, as well as the *amount of remuneration*.
3. Article 28 of the said Code prohibits any agreement between employer and employee regarding basic remuneration lower than the minimum wage determined by a decree issued by the Emir.
4. The State, on the other hand, applies stringent procedures in this field, such as the denial of a residence permit for the worker unless he being an immigrant in possession of a contract approved by the Labour Department.

The State has concluded with most labour-sending countries agreements regulating the employment of such labour. Among the provisions included in all these agreements is that employment be subject to a work contract concluded between employer and employee, and that such contract be approved by the competent government authority. Such contracts are naturally subject to careful scrutiny prior to approval. One of the basic terms of contracts is the determination of remuneration.

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It is clear therefore that the amount of remuneration is determined by agreement between employer and employee, and not by the employer alone.

II. With regard to strikes, and the practical impossibility thereof, and the possibility of dismissal by the employer following consideration of the dispute by the conciliation committee, the Government has the following observations:

This allegation is also baseless, and arises from a misinterpretation of the relevant provisions of the Labour Code.

Article 70 of the Code stipulates that workers on strike cannot enter the workplace except for the purpose of resuming work. The provision is sufficiently clear and requires no interpretative judgement to establish the fact that workers may in practice call a strike. It is a provision concerned with *workers on strike*.

Article 69 of the Labour Code prohibits the closure of workplaces by employers or the refusal to continue to employ a worker because of any *dispute* before examining the said dispute by the conciliation committee. It is perfectly clear and requires no further elaboration if read in a spirit of good will. It prohibits the dismissal by the employer of any worker during the examination of the dispute between the employer and some or all of his employees, even if there were differences between worker and employer unrelated to the reason of going on strike. The reading of this article, therefore, as permitting the dismissal of workers following consideration of the dispute, is biased and inaccurate.

Article 20 of the Labour Code on arbitrary dismissal should also be taken into account in relation to the present point. The last paragraph of the said article stipulates that if it appeared to the court that the dismissal of a worker or the termination of his employment was arbitrary, or in contravention of the provisions of the Labour Code, it may reinstate the worker or oblige the employer to pay him adequate compensation, and that, in addition to the protection of other rights acquired by the said worker in accordance with the law, the court may use its discretion in determining the arbitrariness of such act and the extent thereof.

III. It is clear that the party making the observations mentioned above has purposely misconstrued some provisions of the Qatari labour law with the intention of aspersing the State, which is regrettable. We shall not elaborate on the advantages provided by the State, its bodies and its law concerning migrant workers. The said party could have contacted the delegation of the State of Qatar to the International Labour Conference to inquire about these matters in a positive spirit, to find out the truth, had it been truly concerned about the workers and the improvement of their conditions, rather than take the liberty of pronouncing judgements aimed at vilifying a member State of the ILO, under the pretext of acting in the interest of the workers.

We hope that the above clarifications are adequate, and that the said party desist from making judgements and levelling accusations in such a rash and unjust manner.



## Saudi Arabia

### *Means of assessing the situation*

#### Assessment of the institutional context

The Government of the Kingdom of Saudi Arabia would like to stress the importance of issues relating to the principle of freedom of association and collective bargaining. Numerous meetings on this subject were held with the participation of the Minister of Labour and Social Affairs, Professor Ali bin Ibrahim Al-Namlah and the Director-General of the ILO as well as a number of ILO officials. The following issues were addressed: the relations between Saudi Arabia and the ILO; the Government's efforts with regard to the ILO's work and, in particular, the promotion of fundamental rights and principles at work following the adoption of the ILO Declaration on this subject.

The Shura Council (the Consultative Council) has recently approved a proposal on a mechanism for workers' organizations, which suits the conditions and particularities of the Kingdom of Saudi Arabia. It will take the Council of Ministers some time to decide on the proposed mechanism.

In addition, the Saudi Minister of Labour and Social Affairs and the Ministers of Labour of the Gulf Cooperation Council (GCC) met with the Executive Director of the ILO Standards and Fundamental Principles and Rights at Work Sector, during the 88th Session of the International Labour Conference (ILC) (June 2000). During that meeting they discussed, inter alia, the absence of workers' organizations in some of the GCC countries. They agreed on the importance of participation of the ILO in cooperation with these countries, to study the conditions and particularities that distinguish the GCC countries from countries in other parts of the world. Furthermore, the ILO should provide technical support to find the appropriate alternatives for the countries of this region.

Saudi Arabia reaffirms its readiness to participate in a constructive debate and discuss the matter within the framework of the ILO, in compliance with the ILO Constitution.

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

Copies of this report were sent to the representatives of employers and workers.

### *Observations received from employers' and workers' organizations*

No observations have been received.

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

Trade unions and strikes are banned. Collective bargaining is forbidden. Anyone trying to form a union can be fired, jailed, or in the case of migrant workers, thrown out of the country.

Half the workforce is made up of migrants who fill most of the jobs in the private sector. [Comment concerning the 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 the labour law, migrant workers can use Saudi labour courts.

[Comment concerning the general situation of migrant workers and domestic workers not directly relevant to freedom of association or collective bargaining.]

***Government's observations on the  
ICFTU's comments***

The Government would like to inform you that we have emphasized more than once that the absence of trade union organizations in the Kingdom of Saudi Arabia is due to the particular and special characteristics which are unique to the Kingdom, namely that the Sharia (Islamic rule) is considered to be its Constitution, and that trade unions are not an objective in themselves, but a means to achieve specific objectives such as protecting workers, providing care for them and guaranteeing their rights.

In the Kingdom, the Islamic Sharia, the Constitution of the Kingdom, guarantees the attainment of objectives which go beyond those pursued by trade unions. In fact, the Islamic Sharia preserves human dignity, aims at administering justice and equality, without distinction or discrimination based on race, sex, colour or religion. It promotes fraternity between employers and workers, requires the employer to be fair and charitable in his conduct with employees, and guides the workers to carry out their activities as perfectly as possible.

The stability of labour relations in the Kingdom of Saudi Arabia is a reality. Saudi Arabia is a host country to large numbers of workers of different nationalities, who work alongside nationals, without any discrimination. The uninterrupted inflow of foreign labour seeking work in the Kingdom of Saudi Arabia for many years, from all over the world, proves that the foreign workforce is receiving care and attention through regulations that provide adequate protection against exploitation and abuse on the part of employers. They guarantee workers' rights through formal channels, and through facilitating procedures, free of charge and without complications.

The Government trusts that its observations suffice to clarify the issues raised by the ICFTU.

## Singapore

### *Means of assessing the situation*

#### Assessment of the institutional context

There have been no significant developments.

The legislation and policies governing trade unions and collective bargaining have helped to bring about labour-management cooperation, tripartite partnership and industrial harmony. These favourable conditions have contributed to economic growth, job creation and the significant improvement of the social and economic well-being of our workers.

The Government recognizes trade unions and employers' organizations as important social partners and engages them on policy issues involving workers and industrial relations under the tripartite framework. In Singapore, all major employment and industrial relations issues are addressed with active tripartite participation. Tripartite participation and consultations have enabled issues to be explained from different perspectives, and decisions and measures to be implemented smoothly. In order to ensure that legislation on trade unions and collective bargaining continues to be relevant and contributes to labour management, cooperative tripartite partnership and industrial harmony for the benefit of the economy, as well as for employers and workers, regular reviews will be carried out.

## Sudan

### *Means of assessing the situation*

#### Assessment of the institutional context

Under article 26 of the Constitution of Sudan, 1998, citizens shall have the right of association and organization for cultural, social, economic, professional or trade union purposes without restriction, save in accordance with the law.

The Trade Union Act, 1992, is being revised in consultation with the social partners, so as to take into consideration the comments by the Committee on Freedom of Association (Governing Body, 254th Session, 1992).

The following are used for enforcing the principle: labour and other judicial courts, penal sanctions, labour inspection and complaints procedures (which are also available to employers' and workers' organizations). In addition, article 34 of the Constitution provides that every aggrieved person who has exhausted the means of submitting grievance and complaints to the executive and administrative organs, shall have the right of access to the Constitutional Court to protect their freedom, sanctities and rights. The Constitutional Court may, according to due process, exercise the power to annul any law or order that contravenes the Constitution, in order to restore the right to the aggrieved person or to compensate them for damage sustained.

In 1957, Sudan ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

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## Assessment of the factual situation

Despite the fact that Sudan has not yet ratified the Freedom of Association and the Right to Organise Convention, 1948 (No. 87), the principles enshrined in this standard are respected and applied, owing to the awareness of employers' and workers' organizations as well as their long experience in this regard.

These rights are freely exercised, without interference from the Government.

The Businessmen and Employers' Federation has about 1.2 million members, including 100 businesswomen. The Executive Board (17 members, including one woman) is headed by a president and 16 other members representing four specialized chambers (industry, commerce, transport/communication, crafts and small-scale enterprises).

The Sudanese Workers' Trade Union has about 2 million members, including many women in public and private sectors. In the Central Committee (111 members, including two women), 36 members are representing the 26 States. Education, agriculture, transport and communication, electricity, petrol and chemicals, finance and insurance are the main sectors of the union's activity.

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

Employers' and workers' organizations are independent. Their activities aim at meeting the interests of their members. Social partners participate on an equal footing in legislative reform to promote and apply the principle of freedom of association.

In this framework, the Trade Union Act, 1992, is being revised in consultation with social partners so as to incorporate comments by the Committee on Freedom of Association (Governing Body, 254th Session, 1992). The draft Act has been submitted to the Attorney-General for review. The Government will submit the draft Act to the ILO for comments so as to ensure compliance with the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Ratification of this complementary instrument to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), is being considered in consultation with the social partners.

However, social partners and policy-makers need to be further sensitized on the principle of freedom of association so as to better promote and apply it. This exercise would facilitate the ratification process and improve the application of Convention No. 87 in law and practice.

Although tripartite institutions are in place, they need to be strengthened and reactivated so as to play a key role in the social dialogue and the promotion of sound industrial relations. In this respect, the Government is also considering the ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

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

A copy of this report has been sent to:

- the Businessmen and Employers' Federation; and
- the Sudanese Workers' Trade Union.

***Observations received from employers'  
and workers' organizations***

Input has been received from employers' and workers' representatives during a tripartite meeting on the reporting exercise.

The Government will communicate to the ILO any further comments received from the social partners.

*Annexes (not reproduced)*

- Brochure of the Businessmen and Employers' Federation
- Newspaper of the Sudanese Workers' Trade Union

**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.

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 passed the Trade Union Act, which imposed a single trade union system. The Act:

- authorizes and establishes a trade union monopoly;
- allows the Minister of Justice to define the sectors, industries and enterprises in which unions can exist;
- denies union rights to certain public servants;
- interferes extensively in internal union affairs and elections;
- gives the authorities the power to suspend or dissolve trade union organizations;
- does not provide for the promotion of collective bargaining; and
- does 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, the SW(L)TUF.

There is very little collective bargaining. The Minister of Labour has wide powers to refer a dispute to compulsory arbitration. Strikes are banned.

[Comments are made about the general working conditions of seafarers.] Seafarers 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.

Collusion between the Government and [certain] enterprises keeps trade union organizing out of the oil extraction sector.

The regime uses its security laws against leaders, members of the former unions and political opponents. These allow for a three-month detention period, which can be renewed.

Privatization of the economy and mass dismissals of workers have continued. There were some strikes against deteriorating economic and living conditions.

[Reference of a complaint-like nature is made to specific alleged instances of arrest and detention of officials and members of the SW(L)TUF.]

## Thailand

### *Means of assessing the situation*

#### Assessment of the institutional context

[The report submitted by the Government of Thailand for the first annual review (2000) could not be included in the compilation of reports (GB.277/3/2). It is therefore considered as the country's first report and reproduced in full, in this year's compilation. The Government of Thailand has provided another report for the second annual review (2001), indicating that it covers the period 1 September 1999 to 1 September 2000. All new information contained in this report is incorporated in the relevant sections of the first report, under the subheading, "update".]

As a member State of the ILO and the United Nations, Thailand fully respects the principle of human rights. It adheres to the Universal Declaration on Human Rights and many relevant United Nations instruments.

Thailand recognizes the principle of freedom of association which is universally accepted as a basic human right. As a member State which adopted the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up during the International Labour Conference in June 1998, it is clearly shown that Thailand has committed itself to respect, to promote and to realize in good faith the principles concerning fundamental rights. In order to fulfil the obligations as a Member of the ILO, successive Thai Governments have made every effort to pursue the spirit of the Conventions adopted, which unquestionably reflect a determined political will on the part of Thailand to do its best. Even though the Government of Thailand has not yet ratified Conventions Nos. 87 and 98, it has continuously made efforts to implement the principle of freedom of

association. In general, workers and employers freely enjoy the right to organize and to bargain collectively in a manner compatible with international standards.

Prime Minister Chuan Leekpai of the present Government announced the policy to the Parliament on 20 November 1997, stating clearly that the Government will cooperate with, and enhance its roles in the international community, for the protection and promotion of democratic values and human rights. In regard to labour matters, the Government will improve labour laws, rules and regulations, and enforce them effectively to protect workers, especially women and children, so that they enjoy fair wages, safety and a good working environment. It will also promote bipartite and tripartite labour relations to enhance the atmosphere for investment and expand employment opportunities as a whole.

The principle is reflected in the principles laid down in the Constitution and national laws, including national practices, as follows:

1. *Constitution of the Kingdom of Thailand, B.E. 2540 (1997)*. Adopted in October 1997, it provides for the granting of greater rights to the people. It guarantees the right to freedom of association, providing the liberty to unite and form an association, a union, league, cooperative, farmers' group, private organization or any other group. The restriction on such liberty cannot be imposed except by virtue of a law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly (section 45).

Significantly, it provides for the greater guarantee of human rights which is in greater conformity with the international norms. The National Human Rights Commission is set up under the Constitution, acting as a human rights watchdog, to supervise, monitor and assure the implementation of the human rights principles. Details are mentioned in Chapter 8, sections 199 and 200.

2. *Labour Relations Act, B.E. 2518 (1975)*. This law regulates labour-management relations through the procedure of collective bargaining. It recognizes freedom of association. There are also provisions to promote a joint consultative body by supporting the establishment of an employees' committee in the undertaking. It is applicable to the private sector and therefore excludes government administration and state enterprises.

At present, the law is under review with a view to enhancing relations between employers and employees and making the legislation more consistent with international standards, taking into account national circumstances. The amendments to the Labour Relations Act of 1975 have been prepared by the Ministry of Labour and Social Welfare. As a result of concerns over some provisions of the existing law regarding the weakness of provisions for the protection of labour union organizers, there will be modifications to strengthen it. The termination of employment on grounds of setting up labour unions will be clearly defined as being contrary to the law. At this stage, the amendments are under consideration by the Council of State which is responsible for scrutinizing all Bills prepared by government agencies before they are submitted to Parliament.

3. *State Enterprise Labour Relations Act, B.E. 2534 (1991)*. In April 1991, the National Assembly passed the law on State Enterprise Labour Relations (SELRA) with a view to separating the industrial relations system for employees in public enterprises from that which applies to those in the private sector, due to the different nature of

employment. Nevertheless, employees in public enterprises enjoy the right to organize and to bargain under this Act. Employees in state enterprises have the right to organize their own organization called “state enterprise employees’ association”, for the purposes of promoting good relations between employees and management, and among themselves, for considering the granting of assistance to employees pursuant to their complaints concerning their rights and benefits, and for protecting the rights and benefits of employees. However, it is allowed to set up only one state enterprise employees’ association in each state enterprise.

In order to bring the legislation in closer conformity with the ILO standards and to reinstate certain workers’ rights, Thai Governments have made every effort to proceed with the reform of labour relations in state enterprises. Unfortunately, the frequent dissolution of Parliament in the past, interrupted the process of those revisions for years. The process of amending SELRA has, however, been undertaken carefully, while recognizing the situation in the globalized world. So far, certain provisions being revised have shown good prospects for enhancing the principle of freedom of association and the right to collective bargaining.

The Government of Thailand has reaffirmed its intention to give top priority to the passage of the SELRA Bill. After 31 January 2000, a very quick step was taken to push the House of Representatives to reconsider the Bill (the original one or the one discussed by the Joint Ad Hoc Committee). Finally, the House of Representatives voted to approve the SERLA Bill that was discussed in the House of Representatives. After the new Act is enforced in the near future, employees in state enterprises will be able to form a labour union and join a labour congress in the private sector.

4. *Establishment of the Labour Court and Labour Court Procedure Act, B.E. 2522 (1979)*. It establishes the labour court system and empowers the court to consider, decide and issue orders on disputes over rights and obligations under labour protection law, labour relations law and the Civil and Commercial Code. At present, there is only one Central Labour Court. Its jurisdiction covers the whole kingdom since the provincial labour courts have not been established. Tripartite in composition, the judicial persons in the Central Labour Court consist of judges who are knowledgeable in labour problems, appointed from judicial officials under the law on judicial services and equal numbers of associated judges from the representatives of employers’ organizations and employees’ organizations.
5. *The Code of Practice for the Promotion of Labour Relations in Thailand, B.E. 2539 (1996)*. In 1981 Thailand adopted the Code of Practice for the Promotion of Labour Relations B.E. 2524 (1981) to promote and help employers and workers create sound labour relations, based on the principle of freedom of association and the right to collective bargaining. The Government has so far improved, revised and eventually come up with the existing Code of Practice for the Promotion of Labour Relations in Thailand, B.E. 2539 (1996).

The Labour Relations Act, B.E. 2518 (1975), applies to all workers except those in government agencies, state enterprise undertakings and other undertakings as may be prescribed in the Royal Decree. Government officials and state enterprise employees are governed by the provisions of different specific laws. Certain provisions of the labour relations law lay down certain requirements to form employees’ and employers’ organizations. Employers who wish to set up an association must belong to the same type of undertaking, be 20 years of age and of Thai nationality. Employees wishing to form a



labour union must be employees who work for the same employer or in the same type of work, be 20 years of age and of Thai nationality.

The State Enterprise Labour Relations Act, B.E. 2534 (1991), applies solely to state enterprise employees. It also prescribes the requirements for employees to form a state enterprise employees' association based on their employment in the same state enterprise, the attainment of 20 years of age and Thai nationality.

Under the Labour Relations Act of 1975, an employers' association or a labour union must be registered with the Registrar. The procedure for registration is prescribed and must be followed. The minimum requirements for the organization's regulations are prescribed by law and constitute guidelines for the establishment of the organization. After registration, an employers' association or labour union becomes a legal person, representing its members and carrying out its activities.

Under the State Enterprise Labour Relations Act of 1991, certain requirements for setting up an association and its procedure are prescribed. For an association to be established, it must be registered with the Registrar. Membership of not less than 30 per cent of the total number of employees, together with the minimum particulars of the organization's regulation provided by the law are required for the registration. The association will be recognized as a legal person upon its registration.

The Government can intervene in the functioning of an employers' or employees' organization if such an organization or its committee committed a wrongful act as defined by the law.

Under the Labour Relations Act of 1975, the Registrar is authorized to order the dissolution of organizations under the following conditions: it appears that an employers' association or a labour union has conducted its activities in a manner contrary to its objectives; acted against the law; jeopardized the economy or security of the country; acted against public order or the good morals of the people; denied to carry out a new election of the whole committee as instructed by the Registrar within the period prescribed; or have not carried out activities for more than two consecutive years.

In case of the following wrongful acts committed by a committee member or the whole committee of the employers' association or the labour union, the Registrar is empowered to order the dismissal of such a committee member or the whole committee of the employers' association or the labour union:

- (1) committing an unlawful act which obstructs the performance of duty of the conciliation officer, labour disputes arbitrator or Labour Relations Committee;
- (2) carrying out activities which are not in keeping with the objectives of the employers' association or labour union, as the case may be, thereby violating the law, or being against public order, or jeopardizing the economy or security of the country; or
- (3) permitting or allowing any person who is not a committee member to carry out activities of the employers' association or the labour union, as the case may be.

However, if the organization or committee member is dissatisfied with the Registrar's order, an appeal can be lodged with the prescribed authorities and the matter can be taken to court as a last resort.

Under the State Enterprise Labour Relations Act of 1991, if an employees' association has conducted its activities against the law, or against public order or good morals of people, or jeopardizes the economy or security of the country, the Registrar is authorized to dissolve such an organization.

In case of the following wrongful acts committed by a committee member or the whole committee of the employees' association, the Registrar is empowered to order the dismissal of such a committee member or the whole committee:

- (1) committing an unlawful act which obstructs the performance of duty of the State Enterprise Labour Committee, its subcommittee, the Registrar and competent officers;
- (2) in case of carrying out activities which are not in keeping with the objectives of the employees' association, thereby violating the law or being against public order or good morals of people or jeopardizing the economy or security of the country; or
- (3) permitting or allowing any person who is not a committee member to carry out activities of the employees' association.

The committee member who is dissatisfied with the Registrar's order is entitled to appeal to the prescribed authority, and can take the matter to court as a last resort.

Government officials, including personnel in the armed forces and police, are subject to specific laws governing their administrative and supervisory system. Consequently, they are excluded from collective bargaining procedures.

The Labour Relations Act of 1975 provides for the authorization of collective agreements by the competent authorities with a view to enabling both parties to observe the agreements. After employers and employees reach their agreement relating to conditions of employment through the collective bargaining system provided by law, the employer is required to register the agreement with the Registrar. Under this Act, the term "Agreement relating to conditions of employment" is defined as an agreement between an employer and employee or between an employer or employers' association and labour union, relating to conditions of employment. These agreements cover employment or working conditions, working days and hours, wages, welfare, termination of employment, or other benefits received by the employer or employee relating to the employment or work. Any changes or amendments to the said agreement are subject to procedures of collective bargaining and disputes settlement stipulated under the Labour Relations Act of 1975.

As regards the means of implementing the principle, various administrative measures have been utilized to promote the understanding and recognition of the principle of freedom of association and collective bargaining. Apart from the functions of labour inspection, labour officers visit establishments with a view to promoting sound labour-management relations, through giving advice on labour laws and practices and exchanging views and information, including providing help to resolve labour disputes in undertakings.

Training courses are provided for management and labour. Training materials are provided to enable them to learn about and appreciate the principle. Documents on labour relations have been published and widely disseminated to the persons and organizations concerned. Meetings and seminars are organized for employers, employees and government officers to enable them to exchange their views and information.

*Update*

The new law, which entered into force in April 2000, is the State Enterprise Labour Relations Act, 2000. It provides for employees in a state enterprise to exercise the right to form a state enterprise labour union (copy of the State Enterprise Labour Relations Act of 2000, not reproduced).

The newly enacted State Enterprise Labour Relations Act of 2000 applies to employees in state enterprises. It sets out the conditions under which they can form a labour union. The union can organize employees of the same state enterprise, who attain 20 years of age and are of Thai nationality. Employees at management level are not entitled to form a labour union.

The Act prescribes certain requirements for setting up a labour union as well as its procedure. In order to obtain legal personality, an association is required to be registered with the Registrar.

Under the Act, if a labour union conducts activities against the law, or against public order or good morals of people, or jeopardizes the economy or security of the country, the Registrar is authorized to dissolve such an organization.

The Registrar is empowered to order the dismissal of such committee member or the whole committee of a state enterprise labour union in case where a committee member or the whole committee of the employee association commits the following wrongful acts:

- (1) an unlawful act which obstructs the performance of duty of the State Enterprise Labour Union Committee, its subcommittee, the Registrar and competent officers;
- (2) carrying out activities which are not in compliance with the objectives of a labour union, thereby violating the law, being against public order or the good morals of people, or jeopardizing the economy or security of the country; or
- (3) permitting or allowing any person who is not a committee member to carry out the activities of a labour union.

A committee member who is dissatisfied with the Registrar's order has the right to appeal to the prescribed authority, and to proceed to the court as a last resort.

**Assessment of the factual situation**

The numbers of employees' and employers' organizations in the whole kingdom are shown in the table in attachment 5 (not reproduced).

The statistics show that the number of private enterprise labour unions and public enterprise associations, including employers' associations, has decreased slightly.

Due to the economic crisis, since 1997, many establishments have closed and the number of workers laid off has increased. The number of enterprise unions declined slightly over the previous year.

*Update*

Statistics covering the period 1995-99 show a slight increase in the numbers of labour unions in private enterprises and employers' organizations. Between 1998 and 1999 the number of labour unions grew from 999 to 1,056, employers' associations from 151 to 180 and employers' councils increased from nine to ten (table not reproduced).

The statistics on action taken to promote bipartite and tripartite systems are as follows:

- Exercises for promoting the bilateral system in workplaces throughout the country were carried out in 6,575 establishments with a total of 923,427 participating employees. Those exercises were aimed at publicizing and enhancing understanding of the economic situation as well as encouraging more cooperation between employers and employees during the economic crisis.
- Visits to, and monitoring of, the performance of employers' and employees' organizations (including the Relations Affairs Committee): 780 times in 749 establishments, and consultations for employees' committees were provided in 411 workplaces.
- Registration of regulations and committee members of employers' and employees' organizations, including the registration of arbitration awards and agreements, involved 800 private and state enterprises, and 581 consultants in private enterprises were registered.

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

As regards the efforts made to ensure respect, promotion and realization of these principles and rights, various measures have been taken to promote freedom of association and the effective recognition of the right to collective bargaining.

The Government of Thailand, through the Department of Labour Protection and Welfare of the Ministry of Labour and Social Welfare, which is directly responsible for labour relations affairs, has set up policy guidelines for labour officers to promote sound industrial relations. The aim is to help develop a pleasant atmosphere in workplaces that would lead to industrial peace and improved productivity, thus creating social justice by:

- (1) promoting a bipartite consultative system within establishments to prevent labour disputes and by encouraging labour-management committees to discuss day-to-day matters not usually covered by collective bargaining;
- (2) initiating grievance procedures through modern personnel management methods;
- (3) strengthening and developing effective mechanisms to settle labour disputes (e.g. collective bargaining, voluntary arbitration);
- (4) encouraging and developing tripartite bodies (consisting of employers, employees and government representatives) for joint consultations on broad social and economic policies affecting industrial relations;

- (5) encouraging employers and employees to form their own representative organizations and strengthening them to help develop responses to social and economic situations at the local and national levels;
- (6) providing training for employers and employees and their representatives on the industrial relations system, social responsibilities and work attitudes, in order to promote better relations; and
- (7) reviewing industrial relations provisions to be more efficient instruments in promoting industrial peace, compatible with social and economic conditions in the country;

[Update

- (8) providing training for labour relations officers throughout the country to carry out their functions in the field of labour relations, collective bargaining techniques, and conciliation of labour disputes.]

There are a number of labour officers throughout the country to carry out these functions in the field of labour relations. They are responsible for organizing meetings and seminars for trade unions and personnel managers on such issues as labour legislation, administration of trade unions, consultative guidance, collective bargaining techniques and economic and social development in localities. The labour officers are also in charge of dispute settlement by means of conciliation.

The Ministry of Labour and Social Welfare has strengthened its policy for promoting sound labour relations in establishments with a view to: determining practicable measures to be performed by labour relations officers; enabling employers, employees and labour unions to realize the significance and benefits derived from the bipartite system and to be able to cooperate in enhancing and developing the labour relations system within establishments; and by decreasing the number and gravity of labour disputes and conflicts involving employers and employees.

The Code of Practice for the Promotion of Labour Relations in Thailand of 1996, which was updated and reaffirmed, also marks an attempt to raise the awareness of the parties concerned and promote recognition of the principle of freedom of association and collective bargaining.

Actions have been taken in response to such policy guidelines by means of:

1. Determining target groups based on the following criteria:
  - 1.1. The number of establishments for the promotion of labour relations.
  - 1.2. The size of establishments, by separating into three groups: small establishments with 1-49 employees; medium-sized establishments with 50-299 employees; and large establishments with 300 employees or more.
  - 1.3. Groups at risk, taking into account the establishments involved in labour disputes and conflicts, and the establishments likely to become involved in such problems.

- 1.4. Types of undertakings, taking into account those types which are affected by the economic crisis.
  - 1.5. Formation of employees' organizations, taking into account the establishments in which employees' organizations are set up, i.e. labour union, employees' committee, welfare committee, joint consultation committee and any other form of committees' or employees' clubs.
2. Methods and strategies have been implemented to promote labour relations by means of:
    - 2.1. Visiting and observing establishments.
    - 2.2. Organizing meetings for employers to exchange views concerning promotion of labour relations and ways to enhance workplace cooperation.
    - 2.3. Organizing bipartite meetings and seminars on workplace cooperation, promotion of labour relations, measures and means to alleviate the problem of lay-offs, or on the implementation of the code of conduct for the promotion of labour relations during the economic crisis.
    - 2.4. Encouraging employers to organize in-house training for employees in order to acquire knowledge and understanding of their rights and duties, as well as the roles of employees' representatives.
    - 2.5. Visiting the labour congress and labour federations to discuss with labour leaders, in order to learn about situations, exchange ideas and seek cooperation in activities relating to the promotion of labour relations for the benefit of their members and other employees.
    - 2.6. Publicizing and disseminating information and news on labour relations.

Furthermore, training courses on labour relations have been provided for employers and employees in the private sector and also in state enterprises.

Several means have been deployed to promote freedom of association and the effective recognition of the right to collective bargaining.

The Government of Thailand has made persistent efforts to improve existing Thai laws and bring them in line with ILO standards. Many training courses have been provided to workers on the effective recognition of the right to organize and to bargain collectively. The ultimate goal is to enable workers to exercise fully their rights, through collective bargaining procedures in order to promote and safeguard their common interests.

In this regard, the Government of Thailand has worked closely with the ILO, especially ILO specialists based in the Regional Office for Asia and the Pacific in Bangkok, Thailand.

Employers' and employees' organizations, academics and NGOs are always invited and encouraged by the Government to participate actively in strengthening the right to organize and collective bargaining practices, both at national and international levels.

The Government has distinct objectives with a view to the observance, promotion or materialization of the principles and rights. Therefore, the goals to be reached for the development of labour relations included in the 8th National Economic and Social Development Plan are as follows:

- (1) to improve existing labour relations law to be in accordance with social and economic changes, by enhancing the consultation system and increasing the roles of employers' and employees' organizations in labour dispute settlement procedures;
- (2) to encourage a bipartite and tripartite labour relations system, emphasizing joint consultation and cooperation between employers and employees at enterprise level;
- (3) to enhance the solidarity and unity of employers' and employees' organizations to act as representatives to collective bargaining so as to settle conflicts at the enterprise level, efficiently;
- (4) to improve employers' and employees' knowledge of labour relations with regard to legal practices and the peaceful settlement of labour disputes;
- (5) to encourage employers to improve productivity in response to technological change, labour market conditions, and the attitude of employees, by promoting consultation and a workers' participation system in the form of employees' committees; standardizing pay-roll structures; and developing employees' skills and capacities;
- (6) to support the roles and activities of labour unions, labour federations and the labour congress, emphasizing the protection of members' benefits in parallel with their participation in social development, through the promotion of labour education and training; and emphasizing their rights and duties as well as the improvement of occupational safety and health; and
- (7) to encourage employers to provide personnel development training for qualified supervisors for the benefit of business management and employees' decent quality of life, and to reduce conflict between management and labour.

In order to meet the abovementioned objectives, training and seminars on labour issues should be encouraged, to strengthen understanding and promotion of the fundamental principle of freedom of association and effective recognition of collective bargaining. The improvement of relevant statistics is necessary as well.

In this connection, it is necessary for the Ministry of Labour and Social Welfare to improve the performance of labour relations officers. The Ministry, therefore, with the ILO's support, has conducted workshops on the training of trainers on the labour protection law and the improvement of labour-management relations. The knowledge acquired from these training courses is used to develop and improve consultative processes and negotiation between labour and management, which are seen as effective mechanisms for preventing labour disputes.

### *Update*

The Government has devoted human, material and financial resources to the realization of the principle. In addition, the Labour Relations Act of 1975 is undergoing an amendment process to make it more compatible with the principle. The draft amendment of the Labour Relations Act is being examined by the Council of State. Later on, the draft

amendment will be resubmitted to Cabinet for approval before being forwarded to Parliament for consideration. The Bill contains several provisions that are more compatible with ILO standards. They include the following: (a) an employee, irrespective of sex, race, nationality or political opinion, can be a member of a labour union; (b) employees shall be protected in forming a labour union and being member of a labour union; and (c) a state enterprise labour organization can be a member of labour organization in the private sector.

The Thai Government has continuously acted in cooperation with, and received assistance from, ILO specialists in the Regional Office in Bangkok to spread knowledge about international labour standards and, in particular, to review existing labour relations laws to bring them into conformity with Conventions Nos. 87 and 98.

As an ILO member State that strongly supported the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up during the International Labour Conference in June 1998, it is clearly shown that the Thai Government has undertaken a commitment to respect, promote and realize in good faith, the fundamental principles and rights.

Although Thailand has not yet ratified Conventions Nos. 87 and 98, it has continuously made efforts to implement the principles of freedom of association. In general, Thai workers and employers freely enjoy the right to organize and to bargain collectively in a manner compatible with international standards.

The Government has undertaken to review national legislation and practices in respect of Conventions Nos. 87 and 98, after discussions with ILO experts in the multidisciplinary team (MDT) in Bangkok. There are plans to undertake in the first quarter of 2001, a study and research, funded by the ILO on relevant existing national laws and practices.

In order to meet the abovementioned objectives of strengthening understanding and promotion of the fundamental principle of freedom of association and the effective recognition of the right to collective bargaining, we are in need of ILO technical assistance to provide training and seminars for government officials, workers and employers, on Conventions Nos. 87 and 98, and to improve relevant statistics and information.

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

A copy of this report has been sent to the following most representative employers' and workers' organizations:

- (1) Employers' Confederation of Thailand;
- (2) Employers' Confederation of Thai Trade and Industry;
- (3) Labour Congress of Thailand; and
- (4) The National Congress of Thai Labour.



### ***Observations received from employers' and workers' organizations***

Up to the time of submitting the report, no comment was received from any of these organizations.

#### ***Annexes (not reproduced)***

Chapter 8 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1977).

Labour Relations Act, B.E. 2518 (1975).

State Enterprise Labour Relations Act, B.E. 2534 (1991).

The Code of Practice for the Promotion of Labour Relations in Thailand, B.E. 2539 (1996).

Statistics on the number of employers' and workers' organizations in Thailand, 1998.

Labour Studies and Planning Division, Department of Labour Protection and Welfare, *table on the number of labour organizations in the whole Kingdom, December 1999.*

## **Thailand**

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

Under the 1975 Labour Relations Act (LRA), civil servants are banned from joining trade unions. The Government sets wages for both State enterprise workers and civil servants.

Trade unionists in private enterprises can be discriminated against and fired. While the 1975 Labour Relations Act protects workers against acts of anti-union discrimination, it does not protect workers organising new unions, even after the union has been registered. Ten workers are required to "found" a union, and they must apply to register the union. Within 120 days of being registered they have to hold a general meeting and elect officers. The minutes and the list of officers are sent to the Ministry of Labour, which issues a certificate to each union committee member.

In order to fire a union committee member, permission has to be obtained from the labour court. But union "founders" are not protected unless they are registered committee members. At the end of 1999, the labour courts had before it for consideration, cases submitted by nine trade union leaders facing such victimization.

Many company-controlled "in-house" unions exist and employers regularly use subcontracting as a means of avoiding legal obligations of collective bargaining.

Decree No. 54, which was brought in by the military government in 1991, obliges private sector unions to register their advisers (anyone who is not a member of that union branch) with the State. It states that 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. In practice, there are unregistered advisers.

Onerous and unduly bureaucratic conditions hinder the establishment of a federation or confederation.

Under the 1975 Labour Relations Act, every executive board member of a trade union must be a full-time employee at the factory where he or she has been elected, which means unions cannot employ full-time leaders.

Decree No. 54 requires 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.

Only Thai nationals enjoy freedom of association.

## Thailand

### **Government observations on ICFTU's comments**

With regard to the ICFTU's observations that civil servants are banned from joining trade unions, the Ministry of Labour and Social Welfare would like to state that the conditions of employment of civil servants are different from employees in the private sector, therefore the laws applying to each sector are also different. Although the Labour Relations Act B.E. 2518 (A.D. 1975) does not apply to the Central Administration, Provincial Administration and the Local Administration, including the Bangkok Metropolitan Administration, civil servants have the right to organize themselves in the form of an association, such as the Civil Service Association that is under the Civil and Commercial Code. Its role is to:

- (a) acquire and protect the civil servants' interests as regards their conditions of employment and work;
- (b) promote better relations between the association and the Government, and among members themselves;
- (c) propose suggestions relating to conditions of employment, benefits, welfare, and amendments with respect to discipline and any unfair rules, which are considered obstacles to performing the duty of the Government.

The Labour Relations Act B.E. 2518 (A.D. 1975) stipulates that a labour union may be established with no less than ten employees. The conceptual framework being to strengthen a union's bargaining power, the requirement of a minimum number of ten persons is suitable and an employee agrees with this provision, which is shown in the draft of the Labour Relations Bill proposed by employees. An objective of a registered labour union is to certify an employees' organization to be accredited by employers and the other concerned organizations, as well as to guarantee the status of an employees' organization

as a legal person, so that a labour union can perform any legal act in the common interest of the organization.

The provision which stipulates that a newly established labour union must hold the first ordinary meeting within one hundred and twenty (120) days from the date of registration, aims to bring the law and practice to the knowledge and approval of union members. It also provides for the election of a committee to act in their common interest. The employees' side agrees to this provision, and therefore this provision has been maintained in the draft of the Labour Relations Bill proposed by employees. However, the Labour Relations Act B.E. 2518 (A.D. 1975) does not require that a labour union submit a list of elected officers and the minutes of the meeting, to the Minister of Labour and Social Welfare.

As regards the absence of a clear measure for protecting promoters of a labour union, the Labour Relations Act B.E. 2518 (A.D. 1975) provides that the Labour Relations Committee, a tripartite entity, has authority to decide upon complaints concerning an unfair practice, to order the employer to reinstate any employees, to pay for damages incurred, or to compel a violator to perform any act, as deemed appropriate. However, the Ministry has considered the insertion of an additional provision in the draft of the Labour Relations Bill to protect promoters of a labour union. This Bill is under consideration by the Council of State.

In response to the ICFTU's comment that the companies control many in-house labour unions, the Ministry is of the opinion that it depends on the management of the given organization. In this connection, each labour union is recognized as a legal person and the management authority is left to its own committee. If the committee is not strong enough, the committee may bring its organization under the employer's control. Where an employer commits an unfair act or act of discrimination, members of a labour union have the right to submit a claim to the Labour Relations Committee.

Regarding the comment that an employer prefers to subcontract to avoid legal obligations for collective bargaining, it is the employer's right to choose the form in which employees are to be hired. Nevertheless, employees of a subcontracting company have the right to organize and to submit their demands to their subcontractor or employer.

The Announcement of the National Peace Keeping Council No. 54 B.E. 2534 (A.D. 1991) prescribes that a labour union's advisers must be registered with the Government very two years. The Government can refuse to issue the license, if an adviser does not have the appropriate qualifications. The employees' side can then seek an efficient adviser who can protect the interests of their organization. Moreover, an adviser is not only the third person in a bargaining process but also has an important role vis-à-vis the two other parties. It is worth noting that the said registration does not obstruct the right to appoint an adviser. According to the records on the registration of advisers, in September 2000 there were 167 employees' advisers.

The observation has been made that under the Labour Relations Act B.E. 2518 (A.D. 1975), members of a labour union committee have to be full-time employees and therefore cannot work for their labour union on a full-time basis. In this case, the Labour Relations Act B.E. 2518 (A.D. 1975) stipulates that a member of a labour union must be an employee working in the same establishment in order that he can control the operation of his organization and prevent any interference from outsiders. Consequently, the Act does not prohibit the hiring of an expert to be an officer of a labour union. In addition, labour unions, where their financial status is strong enough, may hire full-time staff for

administrative jobs, accounting or other office jobs. An employee who is a committee member of a labour union has the right to take leave to conduct the activities of the labour union in the capacity of employees' representative in a negotiation, settlement and arbitration of a labour dispute and to attend meetings as specified by a government agency. The leave taken by that employee must be regarded as a working day, provided that the employee has given the employer advance notice and produced any relevant documents. Besides, labour unions can conduct activities other than those mentioned above if they obtain the employer's permission. If the labour union needs the committee member to work full time, the labour union can apply the bipartite mechanism to bargain with the employer on this matter. At present, many committee members and members of labour unions have obtained permission to work half time and full time.

The ICFTU commented that the definition of "essential services" in the Labour Relations Act B.E. 2518 (A.D. 1975) is too broad and causes most of the strikes to become illegal. In this connection, undertakings where strikes are not allowed are in the public utilities sector, and the stoppage of their operations can affect the national economy, cause hardship to the public or endanger the security of the country or public order. However, even though employees in such undertakings are not allowed to launch a strike as prescribed by the law, their right to organize and to submit a demand is not limited. Moreover, where a labour dispute cannot be settled, the Labour Relations Committee, a tripartite body, will arbitrate such a dispute. The employee will be treated fairly, according to economic conditions and the performance of the establishment.

## 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.

It is recognized by the Constitution and the following labour laws:

- The National Constitution of 1995.
- The Trade Union Decree No. 20 of 1976 as amended by the Trade Unions (Miscellaneous Amendment) Statute 1993.
- The Trade Disputes Act 1964, as amended by Amendment Decree No. 18 of 1974.

Although unionization is a constitutional and legal right in Uganda, members of the armed forces, members of the police and prisons service are excluded from the right to organize, and they are not covered by the legislation.

Articles 29(1)(e) and 40(3) of the Constitution provide for the right of workers to freedom of association and to collective bargaining and representation. Section 8(3) of the trade union Decree No. 20 of 1976 provides for a minimum number of 1,000 members for the registration of a trade union and section 19(1)(e) thereof provides that an employer shall be bound to recognize a trade union in which at least 51 per cent of the employees are members.

It is submitted that these provisions conflict with the aforementioned articles 29(1)(e) and 40(3) of the Constitution. However, in terms of article 2(2) of the Constitution, the quoted provisions of the said trade union Decree are void since they curtail the rights of persons to form or join trade unions. This contradiction is being addressed within the framework of the Labour Law Reform Project under the ILO-UNDP's Support for Policy and Programme Development Activities.

The Government can intervene in the functioning of an employers' or workers' organization, under the following circumstances:

- if there is a violation of the provisions of the Trade Union Decree, the Government comes in as third party to conciliate, mediate and arbitrate;
- if the trade union's operations contravene the law;
- if the Government suspects mismanagement of funds.

Although the passing of the Trade Unions Law (Miscellaneous Amendment) Statute 1993 extended the right to collective bargaining to cover employees in the public service, teaching service and the Bank of Uganda, certain categories of employees within the public service, teaching service and the Bank of Uganda are still excluded.

#### **Assessment of the factual situation**

There are 19 registered trade unions, an improvement from the previous number of 17. The difficulty of providing a factual assessment remains unresolved, due to lack of data. A number of trade union disputes regarding the application of this principle were reported to the Department of Labour, Employment and Industrial Relations.

According to the information available from the trade disputes register, 75 per cent of the cases are due to management's failure to recognize a trade union, and the remaining 25 per cent involve refusal by management to negotiate with the union for their collective agreement, wrongful dismissal, and non-payment of termination benefits.

The Department takes active steps to resolve the matters in dispute, by mediation and conciliation. However some disputes are referred to the Industrial Court.

The current situation is quite difficult. Given the background of structural adjustment programmes and enterprise restructuring, most unions have experienced a loss of membership and this has affected their right to bargain collectively.

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

Sensitization and awareness raising have been undertaken through meetings, workshops, seminars, conferences and the media, and the workers' representatives in Parliament.

Through technical and financial support from the ILO, there have been a number of tripartite workshops and seminars on the principle of freedom of association and the effective recognition of the right to collective bargaining, at both national and subregional levels.

The objectives of the Government of the Republic of Uganda are: good governance; democracy; social justice; and equitable social development.

There is urgent need to establish a database on the application of this principle, thus the need to carry out a national survey to collect disaggregated statistics and information.

Regarding legislative reform, the relevant legal provisions governing trade unions and the industrial relations system are under review. This process has been going on for some time now, but with the recent technical and financial support from the ILO-UNDP under the Support for Policy and Programme Development this process is expected to be completed very soon.

There is need for training and capacity building for the social partners, and strengthening of the tripartite structures, such as the Labour Advisory Board and the Industrial Court.

The Labour Inspectorate, in particular, needs to be strengthened in order to improve the monitoring system and promote respect and implementation of 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 Federation of Uganda Employers (FUE) and the National Organization of Trade Unions (NOTU).

***Observations received from employers' and workers' organizations***

Any observations received by Government from employers' and workers' organizations will be forwarded to the ILO.

**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 recognise the rights to organize, bargain collectively or strike. Pay is set by individual contracts that are reviewed by the Ministry of Labour or, in the case of domestic workers, by the Ministry of Immigration.

Workers' individual grievances can be addressed through conciliation committees run by the Ministry of Labour, or by special labour courts. [Comment concerning the 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 organise unions or going on strike.

[Comment concerning the general situation of migrant workers not directly relevant to freedom of association or collective.]

### ***Government observations on ICFTU's comments***

Having examined 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.

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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.
- (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.

### *Third: 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 litigants, workers receive all due care and legal protection.

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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

In August 2000, the National Labor Relations Board approved placing both temporary workers and regular employees in the same bargaining unit without first getting the permission of the employer and the temporary agency, if the employer and agency are joint employers of the temporary employees and a "community of interest" exists between the temporary employees and the regular employees (*M.G. Sturgis Inc.*, 331 N.L.R.B., No. 173, 8/25/00).

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

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the United States Council for International Business (USCIB) had the opportunity to comment on the report as it was being drafted, and copies are being submitted to them as required under article 23 of the ILO Constitution.

#### *Annexes (not reproduced)*

Decision *MG Sturgis Inc.*, 331 N.L.R.B., No. 173, 8/25/00, available also at [www.nlr.gov/slip331.html](http://www.nlr.gov/slip331.html).

## United States

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

[Comments of a complaint-like nature are made with respect to the likelihood of union supporters being dismissed.]

A poll conducted in 1994 found that 79 per cent of Americans believed workers were likely to get fired if they tried to organize a union at their workplace. The National Labor Relations Board (NLRB) is estimated to have a backlog of almost 25,000 cases, involving unfair labour practices 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. When faced with employees who want to join a trade union, 80 per cent of 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 whether 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, the body that governs industrial relations in most of the private sector, do not provide workers with effective redress in the face of abuses by employers. Lengthy and ineffective legal procedures discourage many workers from using them – it takes an average of 557 days for the NLRB to resolve a case. One study found that, where employees are ordered to be reinstated, only 40 per cent actually return to work and only 20 per cent remain employed for more than two years. The workers who quit, give unfair treatment as their main reason for leaving.

Should the NLRB determine that an employer's unfair labour practices have made fair trade union elections impossible, it may order a new election. [Reference of a complaint-like nature is made to a specific instance, in respect of a representation election.]

Although illegal, employers threaten to close or move their plants in over half of all organizing campaigns, according to a study released in 1996. 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.

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 employers commit the unfair labour practices. Unlawful acts by employers who deny trade union rights to their employees often accomplish their intended goal before any proceedings are concluded.

Since 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 alleged 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.

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In the meantime, union supporters quit or are fired, and new workers are hired, often after the employer has screened out persons deemed to be potential union supporters, sometimes by using psychological and other tests.

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.

[References of a complaint-like nature are 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 is made to specific alleged 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 can’t 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.

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 trade union de-certification election to withdraw 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.

[References of a complaint-like nature are made to specific alleged instances of refusal to rehire striking workers subsequent to the industrial action.]

There have been cases of strikes having been provoked by employers (with successful enterprises), to push demands for 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, were caused by the legal use of strike breakers by the employers. [Reference of a complaint-like nature is made with respect to the situation in a specific enterprise.]

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 is made to a specific instance in which an enterprise used replacement workers to avoid collective bargaining.]

[Comments 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 is made, with regard to attempts by migrant workers to obtain recognition for their trade union.]

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, that 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.

## **Viet Nam**

### ***Means of assessing the situation***

#### Assessment of the institutional context

So far, the validity of the last report submitted for the annual review of 2000 remains the same. In case of changes, we will keep the ILO updated on additional information with regard to implementation and observance of the principles and rights.

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

Vietnam Chamber of Commerce and Industry (VCCI);

Vietnam Cooperatives Alliance (VCA);

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Vietnam General Confederation of Labour (VGCL).

***Observations received from employers'  
and workers' organizations***

So far, no objections have been received from the organizations mentioned.

**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's constitution.

The VGCL is the only legal trade union centre and all unions must be part of its structure. There are no independent trade unions.

The law requires prior authorization from the authorities before a trade union can be setup. The local branch of the VGCL must also approve any union formed by workers themselves.

Viet Nam's 1994 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. Some collective agreements have been signed.

The Code gives workers restricted rights to strike. Previously, strikes were forbidden, although the growth of the private sector in recent years led to the tolerance of peaceful strikes at foreign-owned factories. Lengthy procedures must be completed before a strike can take place.

Strikes are banned in enterprises that the Government defines as public utilities, and in enterprises essential to the national economy, security and defence. In 1996, strikes were banned in 54 "key" occupational sectors and businesses, including the postal service, public transport, banking, public works, and the oil and gas industry.

The Prime Minister can suspend or end a strike considered to be a threat to the economy or public safety.

In 1998, the Government blamed foreign firms for labour unrest, and said that research by the Labour Ministry had shown that most labour conflicts took place at small-scale enterprises owned or partly owned by companies from [other countries]. Official statistics on strikes announced in 1998, for the preceding three years, showed that half of all strikes took place at [certain] companies. The employers were blamed for more than 90 per cent of those strikes.

In February 1999, the official media said that a survey of companies with foreign investment, showed that many of them did not abide by the labour regulations. It also said

that trade unions had not yet fulfilled their role of protecting the interests of workers in these companies.

Around the same time, the VGCL said that measures to deal with violations of the Labour Code were inadequate, and that they had partly limited the positive aspects of the Labour Code.

The Code applies in the six export processing zones that employ over 160,000 workers. [The various countries from which the investors originate are identified.]

## Zimbabwe

### *Means of assessing the situation*

#### Assessment of the institutional context

Zimbabwe has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

It is important to note that the Zimbabwean Government has already ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which is related to Convention No. 87.

The fact that the Zimbabwean Parliament has ratified Convention No. 98 shows that the competent authorities of Zimbabwe are committed to the Constitution of the ILO and its guiding principles and policies.

What then is the problem with ratifying Convention No. 87?

The constraint to the ratification of Convention No. 87 lies in the fact that, at independence in 1980, Zimbabwe inherited a two-tier labour administration system – one governing the public service (proper), including civil servants such as teachers and nurses, and another for the private sector.

In the 1990s, it became clear that this type of labour administration was not sustainable for economic development, since it created a situation whereby employees in one country were governed by different labour laws. The coming of the Economic Structural Adjustment Programme (ESAP) in the 1990s worsened the situation, as both the labour laws governing the public service (proper) and that which applied to the private sector, were said to be non-applicable when considering employees in the export processing zones (EPZs).

The employees in EPZs were initially said to be governed by labour legislation in the field of industrial relations.

It was against that background that there arose the idea of harmonizing Zimbabwe's labour laws so that there would be single legislation covering workers in both the public and private sectors, including those working in the EPZs.

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### Assessment of the factual situation

Workers/employees in the public service (proper), as defined in the Zimbabwe Constitution, face a significant barrier to the exercise of their freedom of association. For example, there is no proper specific legislation that regulates the formation and registration of trade unions per se in the public service.

This does not, of course, mean that trade unions are prohibited. Rather, this absence of legislation means that workers' organizations in this part of the public sector operate under common law.

As a result, only employee associations such as the Public Service Association (PSA) and the Zimbabwe Nurses' Association (ZINA), among others, operate in the public service (proper).

In practice, there is a problem because of the clear distinction between the common law association and the modern form of registered trade unions in Zimbabwe's private sector.

The latter is, by virtue of registration, a body corporate with entitlement to represent its members in a variety of circumstances, including in court actions. Such a feature demonstrates the fragility of Zimbabwe's public service employees' associations. The entitlement to represent their members in court, while generally recognized by the courts, was not automatic.

It is submitted that this absence of a positive statutory right to join and participate in trade unions in the public service amounts, to a certain extent, to a prohibition of trade union activities, thus constituting a barrier to the exercise of freedom of association of public service employees.

As a corollary to the absence of a regulatory framework for trade union activities in the public service, there is no effective and meaningful collective bargaining in the strict sense in Zimbabwe's public service.

Accordingly, the question of recognition of unions for the purpose of collective bargaining does not arise.

However, in the Public Service Act (1995), there is a short and clear recognition procedure, as the Minister of Labour has a prerogative to inform an association that it is recognized for purposes of consultations and the Minister may revoke the recognition at any time by written notice to the association concerned.

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

Faced with this dilemma of different labour laws with different coverage for workers in one nation State, the social partners – Employers' Confederation of Zimbabwe (EMCOZ) and Zimbabwe Congress of Trade Unions (ZCTU) – in a tripartite meeting with Government, agreed to the harmonization of labour legislation so as to provide the same provisions for freedom of association and the right to collective bargaining in both the private and public sectors of the economy of Zimbabwe.



After intensive debate, a Labour Law Harmonization Bill came into existence in 1998.

It later became clear to the three social partners that since the harmonization task would prolong the process, it was better to make substantive amendments to the Labour Relations Act of 1985 as reflected in LRA, Chapter 28:01 (1996).

The Labour Relations Amendment Bill came into existence. The amendments incorporated the Presidential Powers Regulations of 1998 meant to deal with “stay-aways”, which were then being organized by the ZCTU.

After representations by the ZCTU, objecting to the Presidential Powers Emergency Regulations, the Amendment Bill which was before Parliament had to be withdrawn to allow the removal of presidential powers.

Currently, the Labour Amendment Bill is to be resubmitted to Parliament and, once it passes Parliament, initiatives to ratify Convention No. 87 will be set in motion.

It is also important to note that the proposed new Zimbabwe Constitution, which was put to a referendum and rejected, was progressive, in that the issues of freedom of association and assembly were adequately addressed.

It is hoped that the Labour Amendment Bill will be submitted to Parliament before the end of the year 2000.

The ILO is called upon to assist in funding awareness-raising campaigns for legislators. In this way, they may support initiatives in the Labour Amendment Bill to facilitate the process of ratifying Convention No. 87, as it guarantees the right to strike to counterbalance the power of employers at the workplace.

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

Copies of this report have been sent to the most representative employers' organization, namely, the Employers' Confederation of Zimbabwe (EMCOZ) and also to the Zimbabwe Congress of Trade Unions (ZCTU).

### ***Observations received from employers' and workers' organizations***

The social partners made inputs during the debate on Zimbabwe's delay in ratifying Convention No. 87 at the Kwekwe Workshop on International Labour Standards and the meeting on the ILO Declaration on Fundamental Principles and Rights at Work – Zimbabwe. All the social partners appreciated that we must first and foremost have national legislation in place and to put it into practice, before ratifying an ILO Convention such as Convention No. 87. The most important thing is to put the principles into practice.