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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 2003 global report on freedom of association and the right to organize in ILO's member countries.

Keywords

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

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	
Bahrain	
Government	7
Brazil	
Government	9
Observations submitted to the Office by the Central Union of Workers (CUT)	16
Canada	
Government	21
China	
Government	24
El Salvador	
Government	26
Observations submitted to the Office by the Autonomous Trade Union Congress of Salvadorian Workers (CATS)	29
Government observations on Autonomous Trade Union Congress of Salvadorian Workers (CATS)'s comments	32
Observations submitted to the Office by the Trade Union Congress of Democratic Workers (CTD)	34
Government observations on Trade Union Congress of Democratic Workers (CTD)'s comments	36
Guinea-Bissau	
Government	40
India	
Government	42
Observations submitted to the Office by All India Manufacturers' Organization (AIMO) through the Government	45
Government's observations on All India Manufacturers' Organization (AIMO)'s comments ..	47
Observations submitted to the Office by the All India Trade Union Congress (AITUC).....	48
Government observations on the All India Trade Union Congress (AITUC)'s comments	49
Observations submitted to the Office by Hind Madzoor Sabha (HMS)	50
Government's observations on Hind Madzoor Sabha (HMS)'s comments.....	51
Observations submitted to the Office by the International Confederation of Free Trade Unions (ICFTU)	52
Government observations on the International Confederation of Free Trade Unions (ICFTU)'s comments.....	55
Iran, Islamic Republic of	
Government	57
Jordan	
Government	60

Kenya	
Government	63
Kuwait	
Government	68
Lebanon	
Government	70
Observations submitted to the Office by the Federation of Chambers of Commerce, Industry and Agriculture of Lebanon, through the Government	72
Government observations on the Federation of Chambers of Commerce, Industry and Agriculture's comments	72
Malaysia	
Government	74
Mauritius	
Government	76
Mexico	
Government	80
Morocco	
Government	84
Myanmar	
Government	87
New Zealand	
Government	88
Observations submitted to the Office by Business New Zealand	93
Observations submitted to the Office by the New Zealand Council of Trade Unions (NZCTU)	94
Government observations on NZCTU's comments	96
Oman	
Government	96
Qatar	
Government	99
Singapore	
Government	101
Sudan	
Government	103
Thailand	
Government	105
Observations submitted to the Office by the National Congress of Thai Labour (NCTL) through the Government	108
Observations submitted to the Office by the Employers' Confederation of Thailand (ECOT) through the Government	108
United Arab Emirates	
Government	108

United States	
Government	113
Observations submitted to the Office by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)	122
Uzbekistan	
Government	128
Zimbabwe	
Government	130

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

Bahrain

Government

Recognition of this principle and right

In Bahrain, the principle of freedom of association is recognized, but the principle of the effective recognition of the right to collective bargaining is not.

Since the law is not covering them, freedom of association cannot be exercised by workers in the public service, workers engaged in domestic work and workers in the informal economy. However, it can be exercised by the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- migrant workers;
- workers of all ages; and
- all categories of employers.

Workers and employers can exercise freedom of association at the following levels:

- enterprise;
- sector or industry;
- national; and
- international.

According to the law, government authorization/approval is required to establish employers' or workers' organizations and to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize this principle and right.

Types of measures	Freedom of association	
	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X	
Inspection/monitoring mechanisms	X	
Penal sanctions	X	
Civil or administrative sanctions	X	
Special institutional machinery	X	
Capacity building of responsible government officials	X	
Training of other government officials	X	
Capacity building for employers' organizations		X
Capacity building for workers' organizations		X
Tripartite discussion of issues		X
Awareness raising/advocacy		X

Within these measures, no special attention is given to particular situations with respect to women, or specific categories of persons or industries/sectors.

Progress and achievements concerning this principle and right

A new law is under way in 2002, which will allow the establishment of free trade unions. Moreover, the Constitution has been amended. These examples can be considered as major changes and successful examples in relation to freedom of association.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Bahrain in the realization of the principle of freedom of association, are as follows:

- lack of information and data;
- social and economic circumstances; and
- legal provisions.

Concerning the effective recognition of the right to collective bargaining, the main difficulties are the following:

- lack of information and data;
- social and economic circumstances;
- legal provisions; and
- prevailing employment practices.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Bahrain, in particular in the following areas, in order of priority:

1. assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle;
2. strengthening tripartite social dialogue; and
3. awareness raising, legal literacy and advocacy.

Report preparation

In preparing this report, consultations were held, through postal correspondence, with the most representative employer's and workers' organizations, and no comments were received from them.

Brazil

Government

Recognition of this principle and right

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Brazil. It is indeed the subject of various provisions of the federal Constitution of 1988. [Brazil ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) in 1952.]

In particular, freedom of association is guaranteed under article 5 of the Constitution, paragraphs (xvii) to (xx):

(xvii) – freedom of association for legal purposes is fully guaranteed, association of a paramilitary nature being prohibited;

(xvii) – the formation of associations and, in legally prescribed form, cooperatives does not require authorization, any state interference in their functioning is prohibited;

(xix) – associations may only be compulsorily dissolved or have their activities suspended by judicial order which, in the former case, requires a court order;

(xx) – no one may be compelled to join an association or remain a member thereof.

Freedom of association is a social right. In this respect, article 8 of the Constitution provides:

There is freedom of occupational or trade union association, subject to the following:

I. The law may not require authorization by the State to form a trade union, other than registration with the competent body, and the public authorities are prohibited from interfering or intervening in the trade union organization;

The Constitution guarantees security of tenure of trade union members, from the date of registration of their candidature for executive or representative office in a trade union

and, if elected, up to one year following the expiry of their term of office (article 8(viii)). The Consolidated Labour Law (CLT), 1943, guarantees freedom to exercise trade union functions. It also protects workers against acts of discrimination or acts, which curtail the right of association and trade union activity by enterprises. These acts are subject to penalties (article 543).

At regional level, the MERCOSUR Social and Labour Declaration, signed by the Heads of States of the States Parties of MERCOSUR (Rio de Janeiro, 10 December 1998) devotes article 8 to freedom of association of employers and workers and article 9 to the right to organize, protecting workers against discrimination in employment on the grounds of their trade union status.

On the principle of the effective recognition of the right to collective bargaining, the federal Constitution, in its chapter on social rights, states as follows:

Article 7. The following are rights of urban and rural workers, in addition to other rights that seek to enhance their social circumstances:

(xxvi) – recognition of covenants and collective labour agreements (...);

the abovementioned article 8, paragraph (vi) provides:

it is mandatory for trade unions to participate in collective bargaining (...)

The MERCOSUR Social and Labour Declaration proclaims the right of employers and workers to negotiate and conclude covenants and collective agreements on conditions of work (article 10).

The federal Constitution guarantees freedom of association and the right to organize to all categories of workers and employers, and this right also applies to civil servants, as stated in article 37(vi):

Civil servants are guaranteed the right to free association and to organize.

Under article 42, paragraph 5, of the Constitution, military personnel, members of the armed forces, military personnel of the states and the federal district, military police and military firefighters, are excluded from the scope of article 37(vi). Military personnel are prohibited from membership of trade unions and from striking.

The federal Constitution contains various provisions on civil servants' conditions of work (articles 37 to 41). Article 37(x) provides that remuneration be fixed or amended by specific legislation, which excludes civil servants from the right to collective bargaining. The Supreme Labour Court, in Jurisprudence Guideline No. 05 of the Industrial Dispute Section, supports the interpretation that civil servants do not have the right of recognition of collective covenants or labour agreements and, consequently, that the industrial dispute procedure is not available to them, for lack of provision in law.

It should be noted that the current administrative reform envisages other forms of contracting of personnel in the public administration. It furthermore opens up opportunities for civil servants in state service regarded as non-typical to resort to collective bargaining to adjust their conditions of work, as already happens in state enterprises and companies under mixed ownership. Meanwhile, any exercise of this right depends on the completion of the administrative reform and any consequent legislation, which regulates labour relations in specific state sectors.

[Reference is made to the application of Convention No. 98, ratified by Brazil.]

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

The principal measures adopted by the Government in cases of non-compliance with the principle of freedom of association and the effective recognition of the right to collective bargaining relate to the work of the Inspectorate of Labour, whose organization, maintenance and implementation is a federal responsibility under the Constitution (article 21(xxiv)).

The Ministry of Labour and Employment is responsible for enforcing labour protection laws (CLT, article 626). The Secretariat of the Inspectorate of Labour organizes, maintains and coordinates the Federal System of Labour Inspection, which currently consists of 3,200 labour inspectors, also called labour audit and enforcement officers, allocated to regional labour offices. Under article 11 of provisional measure No. 1,915-5 of 25 November 1999, they are responsible throughout the national territory, among other things, for:

- the application of legal and regulatory provisions on labour matters and occupational safety and health;
- compliance with collective agreements, covenants and contracts between employers and workers; and
- compliance with international agreements, treaties and conventions to which Brazil is a signatory.

Audit and enforcement officers monitor compliance with labour laws and regulations through visits to premises and workplaces in enterprises and establishments. If they find cases of non-compliance with legal provisions, they may notify enterprises or establishments to take measures to remedy the problem, issue a notice of violation or even suspend operations or condemn the working environment, in the event of serious risk to the workers.

Workers who consider that their rights have been infringed or threatened, may appeal to the Labour Court, which is responsible for conciliating and deciding individual and collective disputes between employees and employers, including entities governed by external public law and direct and indirect public administration, and other disputes deriving from labour legislation (federal Constitution, article 114). The constituent organs are the Supreme Labour Court, regional labour courts and labour tribunals.

Various judicial decisions reinforce the principles of freedom of association enshrined in the federal Constitution, labour legislation and national practice. In its Decision No. 197, the Federal Supreme Court held that an employee holding representative trade union office may only be dismissed after an inquiry establishing serious misconduct. Jurisprudence Guideline No. 114 of the Supreme Labour Court takes a similar view, and makes a judicial hearing necessary in the case of dismissal on grounds of serious misconduct. The Supreme Labour Court, in Legal Precedent No. 119, considers as abusive a clause in a covenant, collective agreement or regulatory decision imposing on non-unionized workers a contribution to a trade union body as a levy for the cost of the confederative body, welfare,

reinforcing or strengthening of the trade union or suchlike. Jurisprudence Guideline No. 17 expressly states the same. Finally, it is also worth mentioning:

- Legal Precedent No. 83 on the guarantee of free attendance by trade union executives at duly convened trade union assemblies and meetings;
- Legal Precedent No. 91 on guaranteed access of trade union executives to enterprises at meal and rest times, to carry out their functions, it being prohibited to disseminate party-political or offensive material; and
- Jurisprudence Guidelines (OJ) stating that the Labour Court lacks substantive authority in an inter-union dispute concerning the representation of categories (OJ 4.) and trade union jurisdiction (OJ 9).

The Department of Labour Prosecution is another organ responsible for protecting the social and individual interests related to labour matters. As part of the Federal Attorney-General's Office (federal Constitution, article 128), it has the function of "ensuring strict compliance with the federal Constitution, laws and other acts issued by the public authorities, within the sphere of its competence" (CLT, article 736). Supplementary Law No. 75 of 20 May 1993 mentions, among its powers:

- the promotion of public civil action in the Labour Court; and
- the defence of collective interests, where constitutionally guaranteed rights are infringed, and in actions involving declaration of nullity of a clause in a collective agreement, contract or covenant, which infringes the individual or collective rights of workers (article 83).

Progress and achievements concerning this principle and right

In addition to topical changes, the Brazilian Government promotes a policy, which aims at strengthening the right to organize and the right to collective bargaining, that are the pillars of the process of modernization of labour relations.

With the objective of removing the last barriers to full freedom of association, the Government submitted a draft Constitutional Amendment to the National Congress, PEC No. 623/98, which:

- establishes the freedom to form trade unions, abolishes mandatory single unions; replaces confederative contributions by those established in a general assembly; and
- amends the regulatory power of the Labour Court; and creates prior extra-judicial mediation and conciliation bodies to resolve individual disputes.

If adopted, the Amendment will establish the full freedom of association enshrined in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in the country and give a decisive impetus to collective bargaining. However, this matter was shelved by the legislature at the end of 2000, under that body's legislative powers. Another draft (SF PDS 16/84), which approves the text of Convention No. 87, is before the National Congress. It is at present being examined by the Federal Senate Committee on the Constitution and Justice, which will report on it.

Other changes in labour legislation are closely connected to the principle of freedom of association and the recognition of collective bargaining. For instance:

- Law No. 10,192 of 14 February 2001 provides for the fixing of wages and other conditions of work through free collective bargaining and encourages public and private mediation;
- Law No. 10,101 of 19 December 2000 regulates worker sharing in company profits or gains through collective bargaining;
- Law No 9,601 of 21 January 1998 allows fixed-term contracts in any activity and which instituted the so-called “hours bank” by covenant or collective agreement. According to data from the Secretariat of Labour Relations, 1,656 collective agreements, concluded between 1998 and 2002, contain clauses referring to the “data bank” involving 709,896 workers; and
- Law No. 9,958 of 12 January 1998, which authorizes the creation of bipartite and joint conciliation committees to resolve individual labour disputes. From 2000 to June 2002, 1,267 committees were instituted under this law.

The principle of freedom of association and collective bargaining is also given effect to through various institutional mechanisms, where issues relevant to labour and national development are examined and decided. Among these mechanisms, the Tripartite Joint Standing Committee (CTPP) deals with occupational safety and health; and the Governing Board of the Worker Protection Fund (*Conselho Deliberativo do Fundo de Amparo ao Trabalhador*, CODEFAT), is responsible for managing the resources of the Fund, which finances the National Incomes and Employment Generation Programme (PROGER). The Governing Board of the Length of Service Guarantee Fund (*Fundo de garantia do Tempo de Serviço*, FGTS), the resources of which serve as workers’ savings and insurance, finance housing, basic sanitation and urban infrastructure programmes state, municipal tripartite and joint employment committees, and channels of social participation in the national employment system (SINE) and PROGER.

In addition to modernizing legislation and creating institutional areas for bargaining, the Brazilian Government has developed, through the Ministry of Employment and Labour and its Secretariat for Labour Relations, an intensive programme of courses, seminars and similar activities, the objective of which is to:

- discuss with the social sectors model collective contracts suited to the new economic realities and national conditions;
- train public, employers’ and workers’ representatives in collective bargaining; and
- consolidate the bargaining culture in relations between capital and labour.

These events have assembled authorities from the Labour Court, the Labour Prosecution Service, the Ministry of Labour and Employment, civil servants, and teams from employers’ and workers’ representative organizations and civil society. In the majority of these events, the ILO cooperated with the Brazilian Government through the participation of experts, and the provision of methodological resources and experience, and, on occasions, financial support.

At regional level, the most representative employers' and workers' organizations participate in MERCOSUR social and labour forums, such as:

- the Working Subgroup 10 "Labour, Employment and Social Security", a support and advisory organ of the Common Market Group (GMC), charged with studying labour and social security themes in the integration process and proposing to the GMC measures to promote conditions of work in the region;
- the MERCOSUR Social and Labour Commission, an auxiliary organ of the GMC, it is responsible for supporting and promoting the application of the MERCOSUR Social and Labour Declaration; and
- the Economic and Social Consultative Forum, an organ exclusively representative of civil society, in support of the GMC.

It is worth adding that despite the maintenance of the corporative trade union system, territorial base, economic or occupational category and compulsory trade union dues, there has been a proliferation of trade unions, generally fragile and not very vocal, a phenomenon which some labour relations experts call the "paradox of unity". The Brazilian Institute of Geography and Statistics (IBGE) estimates the number of trade unions in Brazil at 20,000; a number close to that recorded in the administrative records of the Ministry of Labour and Employment.

As for collective bargaining, based on the pattern of certain labour relations indicators – covenants and collective agreements, public mediation, collective disputes and strikes – the Government maintains that employers and workers are increasingly resorting to these mechanisms to reconcile their interests.

The data of the Labour Relations Information System (SIRT) in the secretariat of Labour Relations in the Ministry of Labour and Employment, show the following trends in the number of collective labour instruments deposited (some data may show a small difference compared with those presented in previous reports): 9,826 (1997), 15,456 (1998), 16,713 (1999), 18,869 (2000), 21, 963 (2001) and 9,538 (up to and including June 2002). In the same period, there were, respectively, 8,307; 10,220; 9,651; 10,291; 10,179 and 4,768 public collective mediation proceedings in regional labour agencies, to resolve disputes of an industrial nature.

Statistical reports of the Supreme Labour Court show that the number of collective disputes heard in its various instances ranged from 2,725 in 1990 to 2,443 in 1995, and 773 in 2001. The decrease is especially significant in the second half of the 1990s, when various legal and institutional measures were taken to promote free collective bargaining.

With respect to strikes, data from the Inter-Union Department of Statistics and Socio-Economic studies (DIEESE) show that the number of strikes varied from 557 in 1992 to 1,056 in 1995 and 508 in 1999; the number of striking workers from 2,562,385 to 2,277,984 and 1,319,826, respectively; and the number of workers times stoppage hours, from 140,726,352 to 177,278,153 and 47,477,256, respectively. Also, according to the same sources, the monthly average number of strikes fell from 111 in 1996 to 46 in 1999; the number of strikers, 224,515 against 114,889; and workers/stoppage hours, 12,658 against 2,874 in the years concerned.

Priority needs for technical cooperation

The needs for technical cooperation indicated below are, in the main, interdependent, so that progress in a given field will inevitably be reflected in several others. The needs that should be emphasized because of the changes that they could bring about, are as follows:

- “Strengthening tripartite dialogue”: this is a driving force in both legal and institutional change as an expression of the effective practice of the rights in question. Insufficient social dialogue lies at the root of the unfinished transition from the old model of labour relations, based on interference by the State, and the contemporary model, founded on the autonomy of the parties and the promotion of collective bargaining. The failure of several attempts to ratify Convention No. 87 shows that no strong consensus has been reached between the institutions of the State and the social partners; a situation, which crystallizes in conflicts between political parties in the National Congress and in the difficulty in passing bills on freedom of association. There persists, moreover, a conceptual confusion between the principle of the right to organize and freedom of association and the specific forms these could take in practice.
- “Legislative reform”: although it enshrines the principle of freedom of association and the right to organize, the Constitution maintains the basis of the corporative system, territorial base, membership by economic or occupational category and compulsory trade union dues. The fundamental characteristics of labour relations and labour law in Brazil thus consist of the predominance of State law, considerable legislative intervention and limited collective bargaining. The strengthening of the “legislative reform” on the principle of autonomy and freedom of association, means the abolition of state interventionism, and the creation and guarantee of effective autonomous regulatory instruments. This is an undertaking that, because of its scale and complexity, requires broad social dialogue.
- “Sharing of experiences among countries/regions”: this is an exceptional tool to promote reciprocal gains and transfer of knowledge, especially between countries/regions, that have gone through or are still going through economic, social and political processes and/or labour market regulatory systems similar to those of Brazil. Thus, changes will be induced by examples and progress in the field of the fundamental rights concerned by the principle of freedom of association and the effective recognition of the right to collective bargaining.

Report preparation

A copy of this report was sent to the following organizations:

- 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);

- Central Unions of Workers (CUT);
- General Workers Confederation (CGT);
- Força Sindical (FS); and
- Social Democratic Union (SDS).

Observations submitted to the Office by the Central Union of Workers (CUT)

First, despite the fact that the International Labour Office deadlines are known by the Brazilian authorities responsible for complying with this obligation under GB No. 274/2 on the follow-up to the Declaration on Fundamental Principles and Rights at Work, only less than 20 days were left for workers' organizations to prepare their comments.

The Central Union of Workers (CUT) takes this opportunity to reiterate that the consultations carried out by the Brazilian Government are always subject to extremely tight deadlines. This precludes preparation and discussion of the information provided by the authorities, thus affecting the normal exercise of the right to consultation. Given the well-known size of Brazil, the Government would be well advised to prepare its draft reports more promptly in order to safeguard the effective right of the most representative trade unions to make their views known.

Despite progress in the constitutional context concerning freedom of association, Brazil is a long way from having a legal regime of freedom of association and full collective bargaining. [Reference is made to Convention No. 98, ratified by Brazil.] Some of the most significant aspects of the situation in Brazil, with respect to freedom of association and the right to collective bargaining, are as follows.

Monopoly of representation

Brazil adopted the corporative state trade union model in the 1930s, and this system was preserved in the 1988 Constitution. Under this system, workers do not have the freedom to choose the trade union to which they wish to belong, nor can they freely organize trade unions, because the Constitution provides for a single trade union. Thus, there is only one legally recognized trade union to represent a social group or economic sector called categories ("*categorias*") in Brazilian legislation. The "Mussolinian" inspiration of the Brazilian labour institutions is well known internationally.

In practice, however, workers have created new entities in parallel to those that already existed, but they always encounter various legal and administrative barriers, as well as the Constitutional one mentioned above. The most recent attempt to change the text of the Constitution to eliminate the limitation to a single official trade union, the draft Constitutional Amendment – PEC 623/98, was shelved with the support of the Government's parliamentary majority (this has been mentioned in the draft government reports sent to CUT). However, there is no proposed reform, such as the one mentioned by ILO Declaration on Fundamental Principles and Rights at Work, Part I, paragraph 53. It is therefore a retrograde step, given the failure to implement the recommendation of the Experts-Advisors in paragraph 45, subparagraph (e) of the same document.

The proposals to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), have consistently been blocked by the Federal Senate Constitution and Justice Committee or the Chamber of Deputies under the abovementioned constitutional limitation. There is one more proposal for ratification – SF PDS 16/84, which awaits a decision by the Federal Senate Committee. However, according to the current view of Constitutional Experts, the shelving of the abovementioned draft Constitutional Amendment makes its implementation impossible.

Some institutional barriers to freedom of association and full collective bargaining will be mentioned below.

Given the single trade union system provided for in article 8 of the Brazilian federal Constitution, various decisions of the Supreme Court of Justice have limited the right to organize trade unions by recognizing the monopoly of existing unions, and the Ministry of Labour and Employment as the body responsible for trade union registration. In practice, this interpretation has allowed the Government to supervise the system of trade union registration and the possibility of establishing new trade unions.

The legal concept of “occupational or economic category” and the way in which social groups are represented, were effectively determined by the administrative authorities of the Ministry of Labour up to 1985, when began the transition to a democratic regime. Despite the abolition of the Committee on Trade Union Regulation, the administrative organ responsible for the application and interpretation of the legal concept of category was abolished, its orders have been maintained by interpretations of the Supreme Court of Justice. This Court considered them as adopted by the Constitution of 1988. This was the decision reached in the application for an injunction in 1992 (Decision No. 21,305, 1 January 1992). As can be noticed, the jurisprudence of the Brazilian Constitutional Court gave legal support to the position of the Government (through the Ministry of Labour) against freedom of association.

Limitation on collective bargaining

By adopting the corporative state model in the 1930s and 1940s, the Brazilian State adopted a legal solution to resolving collective industrial disputes of a clearly inquisitorial nature. By taking its inspiration from the “fascist model”, the labour judiciary acquired jurisdiction in collective disputes. Such judicial proceedings, which were little used in the authoritarian Italian system, prospered in Brazilian soil, and have been widely used up to the present day. It is a judicial proceeding, which does not observe the principle of the *due process of law*, internationally accepted among democratic States.

Under article 114, paragraph 2, of the Brazilian Constitution, labour courts may, for example, order a strike to end and even impose fines on the striking union. This, moreover, was the case in the controversial oil-workers’ strike, which was the subject of a recommendation by the Committee on Freedom of Association in favour of the workers’ unions. This constitutional power is defined in Brazilian doctrine in labour law as the statutory power of the Labour Court.

To sum up, the judiciary has the power to intervene in a dispute without being requested by the parties or by only one of them. [Reference is made to the recommendations of the Committee on Freedom of Association.]

The Brazilian Government has made no proposals to abolish this mechanism, which limits freedom of association and collective bargaining. [Reference is made to Convention No. 98, ratified by Brazil.]

Moreover, no draft regulations have been put forward to implement article 11 of the Constitution, that provides for the establishment of workers' representation.

Government supervision on trade union registration

As the abovementioned interpretation by the Brazilian Constitutional Court has been consolidated, the Federal Government, through the Ministry of Labour and Employment, has continued to control trade union registration, as it has done since 1931 when the corporative system was introduced. This control is regulated by Order 343 of 23 May 2000 (copy annexed). It should be recalled that the system of registration of legal persons in Brazil is generally through the notarial system, i.e. through so-called registry offices, which are entities controlled by the judiciary and administered by private individuals. This system would not be compatible with the application of freedom of association. Faced with the maintenance of the trade union monopoly, now enshrined in the federal Constitution itself, the judicial power and the Government uphold the requirement to register with the Ministry of Labour and Employment, as established in 1931.

Under the existing regulations, the Ministry of Labour and Employment sets a time limit for any entity that wishes to challenge the legality of a trade union that has applied for registration. If such a challenge is made, under the administrative regulations, the registration will be refused. The result is that in any circumstance the last word on the legality of a trade union in Brazil belongs to the judiciary. In practice, under this administrative mechanism, such trade unions are challenged, and have their legal existence prematurely terminated. The average length of a legal action of this kind in Brazil is ten years. While it awaits a judicial decision, the new trade union is barred from entering into legal contracts. The legal consequences that the non-registration with the Ministry of Labour and Employment involves and its various practical consequences, will be dealt with below.

Refusal to deposit covenants and collective agreements

If registration of the trade union is challenged, it cannot secure the deposit of any covenant or collective agreement concluded with the counterpart employer. This prohibition is clearly expressed in Amendment 11 (an administrative regulatory decision of this Ministry), consolidated in Order No. 01 of 22 March 2002. Several new trade unions, especially those linked to the trade union confederation which is making these comments, are encountering difficulties in securing the deposit of their collective agreements with the Secretariat of Labour Relations in the Ministry of Labour and Employment.

Refusal to allow joint registration in the General Register of Taxpayers

The Ministry of Finance keeps a national register of tax-paying legal persons, called the National Register of Legal Persons (*Cadastro Nacional de Pessoas Jurídicas – CNPJ*). All legal persons are required to be registered. This registration is a necessary precondition for engaging in various activities such as opening a current account in a bank, registering employees, etc. In other words, it is the procedure required to take part in any legal acts

involved in civil life, and to contract legal obligations. The Ministry of Finance requires that trade unions seeking registration have not been challenged in the Ministry of Labour and Employment.

Registration in the CNPJ, therefore, depends on prior registration with the Ministry of Labour and Employment, as laid down in paragraph 5 of article 39 of Regulatory Instruction No. 2 of the Federal Tax Collection Service, an organ of the Ministry of Finance. Where there is a challenge, registration with the Ministry of Labour and Employment is ipso facto refused, and the entity is denied civil existence. Control of the legal personality of trade unions by the Ministry of Labour and Employment in this way ultimately limits not only freedom of association in the strict sense, but the civil right of association. By this means, as it can be noted, the State controls and limits freedom of association in Brazil.

Refusal of administrative mediation of collective industrial disputes

The Ministry of Labour and Employment has a constitutional obligation to mediate, by administrative means, in collective industrial disputes. Under the guidance issued by this body, that Amendment 11, consolidated by Order No. 01/2002, may relieve mediators of the duty to mediate when it involves a trade union, the registration of which has been challenged. Registration is thus a prerequisite for access by a trade union to the Ministry's mediation service. This refusal to provide a mediation service is a violation of the principle of freedom of association. [Reference is made to a specific case, which was addressed to the Committee on Freedom of Association.]

Civil servants

The Federal Supreme Court held, through its Mandate of Injunction 20-4 of 19 May 1994, that the exercise of the right to strike requires prior regulation in infra-constitutional law. [Reference is made to Convention No. 98, ratified by Brazil.]

Threat to the legal protection of trade union executives

Until the adoption of the 1988 federal Constitution, the number of executives allowed to join a trade union was limited to 24 by article 522 of the Consolidate Labour Law; which was, therefore, a broad interpretation of the legal substance of this article.

The provisions of the same article are contained in a set of rules, Title V of the Consolidated Labour Law (*Consolidação das Leis do Trabalho*, CLT), which set out the corporative trade union model and state intervention in trade unions. After the adoption of the new Constitution, many of these articles were deemed to be repealed by the interpretation adopted in Brazilian doctrine on labour law and a few isolated court decisions on the subject.

Based on these interpretations, Brazilian trade unions, which previously had limited internal powers, reformed their Statutes and increased the number of trade union executives. This measure extended the representativeness and capacity for action of Brazilian trade unions. Previously, a trade union with a base of over 50,000 unionized workers, could not have more than 24 executives to represent them. This process occurred in the liberalizing trends following the adoption of the 1988 Constitution, and gave a great impetus to the trade unions.

The legal status of trade union representation is associated with and, in some cases, conditions the application of other protective legal institutions under Conventions Nos. 87 and 98, as a protection against dismissal on grounds of trade union activities. Under Brazilian legislation, the institution is sheltered by the trade security of tenure of trade union executives, as also enshrined the text of the Consolidated Labour Law.

In recent decisions of the Second Chamber of the Federal Supreme Court concerning disputes involving employers' organizations, on the one hand, and trade unions, on the other, this article was held to be subsumed in the new Constitutional provisions, i.e. recognized as having full force. These were the cases of the extraordinary appeals Nos. 193,345, 224,667 and 227,432 all against decisions of the Higher Labour Court. This means, on the basis of these precedents, that Brazilian employers can in practice challenge the functions of executives of trade unions whose executive body exceeds 24 members. Thus, those "in excess" would not benefit from the legal protections under the regime of security of tenure, which protects trade union officials.

The restrictive confederative system laid down in the administrative regulations of the Ministry of Labour and Employment

Article 4(1) of the abovementioned Ministry of Labour and Employment Order No. 343 requires compliance with articles 534 and 535 of the Consolidated Labour Law. These articles require a minimum number of trade unions to form a federation and a minimum number of federations to form a confederation. These requirements laid down in Brazilian trade union legislation restrict trade union freedom to create general representative entities. In addition, it should be mentioned that the criteria laid down in the articles in question prevent various federations and confederations affiliated to the Central Union of Workers from continuing to function. [Reference is made to the recommendations of the Committee on Freedom of Association.]

Concerning the measures taken or envisaged with a view to compliance with, promotion of, and implementation of, these principles and rights, it is true that the Government submitted a draft amendment to the Constitution to abolish the requirement in the federal Constitution for a single union. This would have allowed the ratification of the Freedom of Association and the Right to Organize Convention, 1948 (No. 87). However, the draft amendment was shelved on a technicality in December 2000, without the parliamentary majority introducing it for debate. Thus, the Brazilian Government failed to honour its obligation to submit Convention No. 87 to the Brazilian authorities for approval and ratification.

All the recent legal changes resulting from proposals by the Government preclude or hinder trade union activities. This is the case of Law 9,958/00, which created the Prior Conciliation Commissions, a body to settle disputes between employees and employers. The Law was passed by the Government's majority in Parliament, and does not provide the least trade union protection to members, nor is there any alternative of control of these commissions by trade unions. The first approach, if adopted, could effectively apply Convention No. 135 in Brazil while the second, alternatively, would extend the role of collective bargaining through trade unions.

In view of the above comments, the Central Workers Union (CUT) hopes that Brazil's non-compliance, especially by the Government, with the principle of freedom of association and the right to collective bargaining will be taken into consideration, and that

these adverse circumstances will be considered by the Governing Body in evaluating the application of the Declaration of Fundamental Principles and Rights at Work.

Canada

Government

Recognition of this principle and right

The principle of freedom of association is enshrined in the *Canadian Charter of Rights and Freedoms*, which applies to the federal and provincial/territorial governments. [Canada ratified Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87) in 1972.] The Canadian Charter of Rights and Freedom is part of Canada Constitution and may only be changed by constitutional amendment.

Paragraph 1(e) of the *Canadian Bill of Rights*, a statute applicable to the Federal Government, also enshrines the principle of freedom of association. The principle of freedom of association is also recognized in the Province of Quebec's *Charte des droits et libertés de la personne (LRQ, c. C-12)*, which applies to the Government of Quebec and to the private sector in that province.

The principle of the effective recognition of the right to collective bargaining is also recognized in Canada. Indeed, all Canadian governments have adopted labour legislation, which recognizes and provides a framework for collective bargaining for employees and employers within their respective jurisdictions.

Freedom of association can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- all workers in the public service;
- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- migrant workers;
- workers of all ages;
- workers in the informal economy; and
- all categories of employers.

Concerning the right to collective bargaining, it appears that with few exceptions, legislation applies to “employees”, that is, workers who have an employment relationship, and dependent contractors. To avoid potential conflicts of interest, persons exercising management functions, or employed in a confidential capacity with respect to personnel or

labour relations matters, are not considered to be employees for the purposes of collective bargaining legislation.

Consequently, the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- all workers in the public service;
- medical professionals: however, in Canada, most doctors are not employees subject to collective bargaining legislation. Generally, their fees and benefits are subject to negotiations between their professional associations and the governments concerned;
- teachers;
- agricultural workers, in all but three jurisdictions;
- workers engaged in domestic work, in all but three jurisdictions: where domestic workers employed in private homes are not covered by collective bargaining legislation in three jurisdictions;
- migrant workers;
- workers of all ages;
- workers in the informal economy; since the right to collective bargaining depends on a worker's status as an employee, regardless of whether he or she is working in the formal or informal economy; and
- all categories of employers.

In four jurisdictions, certain professionals such as doctors, when employed in their professional capacities, are not covered by collective bargaining legislation.

In Canada, collective bargaining rights are generally acquired and exercised at the enterprise level, with sectoral bargaining taking place within a limited number of industries. However, workers and employers organizations may agree to negotiate at any level.

No government authorization/approval is required to establish an employers' or a workers' organization, or to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize freedom of association and the effective recognition of the right to collective bargaining. Canadian jurisdictions promote constructive labour-management relations through tripartite dialogue, conferences and seminars, and preventive mediation programmes.

For example, at the federal level, the Federal Mediation and Conciliation Service (FMCS) held its biennial conference in October 2001. Over 200 representatives of unions,

employers and governments from across the country discussed best practices in industrial relations and collective bargaining and ways to improve labour-management relations.

FMCS's preventive mediation programme provides training and assistance in the building of co-operative industrial relations across Canada and internationally. During the year, training and assistance were provided in joint labour-management committee effectiveness, interest based bargaining, grievance mediation, relationship building, and the facilitation of collective bargaining in more than 20 instances throughout Canada.

The labour-management partnerships programme (LMPP) provides funding to about 30 projects a year that support and promote the development of co-operative labour-management relations in Canada. For example, LMPP helped fund a recent week long conference in Toronto held by the Canadian Industrial Relations Association, which explored, among other things, innovative practices that have been used to improve industrial relations and promote a healthy climate for successful collective agreement negotiations. Also, at the workplace level, a project to assist a union and an employer to study and find solutions to sick leave issues was funded and helped them to successfully conclude a collective agreement several months later.

Within these measures, no special attention is given to particular situations with respect to women, or specific categories of persons or industries/sectors.

Canadian courts have the authority to determine whether federal, provincial or territorial legislation infringes on the right to freedom of association under the Charter. For example, in a December 2001 decision, the Supreme Court of Canada found that, as a result of their exclusion from the *Ontario Labour Relations Act*, the rights of agricultural workers in Ontario to exercise freedom of association are not sufficiently protected. The provision of the Act in question was declared *ultra vires*, and the Province of Ontario was given 18 months to bring its legislation into conformity with the provisions of the Charter.

Independent labour boards, with an equal representation of employers and workers, are charged with administering collective bargaining legislation in all jurisdictions. This includes determining issues related to the exercise of collective bargaining rights and unfair labour practice complaints. All boards can issue orders providing a wide range of remedies. Such orders, when filed with a court, become enforceable as orders of that court.

Priority needs for technical cooperation

In Canada, there is no need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining. However, the Federal Government of Canada would be interested in exploring the use of ILO communication products for the promotion of the 1998 *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*.

Report preparation

In preparing this report, consultations were held with the most representative employers and workers' organizations, and no comments were received from them.

The report was sent to the Canadian Employers' Council and to the *Confédération des syndicats nationaux* (CSN).

China

Government

Recognition of this principle and right

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

Freedom of association can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- all workers in the public service;
- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- migrant workers;
- workers of all ages;
- workers in the informal economy; and
- all categories of employers.

In addition, the right to collective bargaining can be exercised, only at enterprise and sector/industry levels, by the following categories of persons:

- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers;
- workers of all ages; and
- workers in the informal economy.

However, public servants, medical professionals, teachers, and employers cannot exercise this right.

Government authorization/approval is required to establish an employers' organization, but not to establish a workers' organization or to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize the principle.

Types of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)			X	
Inspection/monitoring mechanisms				X
Penal sanctions			X	
Civil or administrative sanctions				X
Special institutional machinery				X
Capacity building of responsible government officials				X
Training of other government officials				X
Capacity building for employers' organizations				X
Capacity building for workers' organizations				X
Tripartite discussion of issues				X
Awareness raising/advocacy		X		

Within these measures, no special attention is given to particular situations with respect to women, or specific categories of persons or industries/sectors. Nevertheless, enterprises' workers and employers are given particular attention with regard to the right to collective bargaining.

In instances where the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected, the Government will ask the parties concerned to make "correction by coordination".

Progress and achievements concerning this principle and right

Several major changes concerning collective bargaining have taken place since the last report. In August 2001, a tripartite mechanism has been set up at national level, and reflected at provincial level in order to promote the right to collective bargaining at enterprise level. In November 2001, the Ministry of Labour and Social Security (MOLSS), the State Commission for Economy and Trade (SCET), the All China Federation of Trade Unions (ACFTU) and the China Enterprise Confederation (CEC) issued a *Circular on further promotion of the system of equal negotiation and collective contract*. MOLSS also issued an *Experimental Method on Collective Bargaining of Wages*, and is now preparing *The Draft Regulation on Collective Bargaining*.

In addition, the Government has undertaken a pilot project on regional collective bargaining at local level, where no trade unions existed in small enterprises. The representatives of such enterprises conducted a regional collective bargaining activity that was quite successful.

Difficulties concerning the realization of this principle and right

In China, the lack of capacity of workers' organizations is the only difficulty being encountered in the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in China, in particular in the following areas, in order of priority:

1. legal reform (labour law and other relevant legislation);
2. capacity building of responsible government institutions; and
3. strengthening tripartite social dialogue.

Report preparation

In preparing this report, consultations were held with the most representative employers' and workers' organizations, and comments were received from them.

A copy of the report was sent to the China Enterprise Confederation (CEC) and the All China Federation of Trade Unions (ACFTU).

El Salvador

Government

Recognition of this principle and right

The principle of freedom of association and the effective recognition of the right to collective bargaining is largely recognized in the Constitution of the Republic of El Salvador.

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, and national levels (only freedom of association can be exercised at the international level) by the following categories of persons:

- medical professionals working in the private sector;
- teachers working in the private sectors;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers; and

- workers in the informal economy.

The minimum age for exercising of these rights is set to 14 years.

Freedom of association can be exercised by all inhabitants of El Salvador, which participate in lawful and peaceful associations. The exercise of freedom of association is a constitutional right for all employers and workers in the private sector, and workers of the official autonomous institutions (article 47 of the Constitution).

However, workers and employers of the public service cannot exercise freedom of association and the right to collective bargaining.

Moreover, according to the Labour Code, in order to establish an organization, employers and workers in the private sector, and employees of the official autonomous institutions must obtain legal status from the Ministry of Labour and Social Security.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

In El Salvador, specific measures have been implemented or are envisaged to respect, promote and realize freedom of association and effective recognition of the right to collective bargaining:

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)				
Inspection/monitoring mechanisms		X		
Penal sanctions		X		
Civil or administrative sanctions		X		
Special institutional machinery				
Capacity building of responsible government officials	X			
Training of other government officials				
Capacity building for employers' organizations	X		X	
Capacity building for workers' organizations	X		X	
Tripartite discussion of issues		X		
Awareness raising/advocacy				

Within these measures, no special attention is given to the situations of women or specific categories of persons. However, a scheme has been approved through the Supreme Labour Council to institutionalise the gender aspect in public services, whereby it is thought to analyse alternatives and mechanisms to help strengthen labour organization of women, so that their interests are represented.

In instances where the principle of freedom of association and the effective recognition of the right to collective has not been respected, fines may be imposed, as laid down in article 627 of the Labour Code.

Progress and achievements concerning this principle and right

The most recent reforms to the Labour Code concerning freedom of association and the right to collective bargaining were carried out in 1994, within a tripartite agreement in the Forum for Social Dialogue, and with ILO technical support.

As mentioned above, the Labour Code has not been amended in respect of this principle since the last reforms in 1994, which were agreed on a tripartite basis, and which were found to be worth highlighting by the ILO in a document published by the Regional Office for Latin America and the Caribbean. This publication referred to the 1994 Labour Code reforms, and which stated that in El Salvador, in terms of employment relations, the law was very advanced compared with other legislation in Latin American that it had examined.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in El Salvador in the realization of freedom of association are related to the lack of information/data, and social values/cultural traditions.

As far as collective bargaining is concerned, social and economic circumstances, and the lack of capacity of workers' organizations should be mentioned.

Priority needs for technical cooperation

There is no need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in El Salvador.

Report preparation

In preparing this report, consultations were held with the most representative employer's and workers' organizations, and government authorities outside the Ministry of Labour and Social Security. Comments by the social partners will be transmitted in due course.

A copy of the report will be sent to the following employers' organizations:

- National Association of Private Employers (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 (CONAPES);

- Union of Cooperatives resulting from Agrarian Reform: Producers, Shareholders and Exporters in the Coffee Industry (UCRAPROBEX);
- Association of Entrepreneurs in Small and Medium-sized Enterprises (AMPES); and
- Sugarcane Producers (PROCAÑA).

Copy of the report will be also sent to the following workers' organizations:

- Federation of Trade Unions in the Construction Industry and Allied Activities, Transport and Other Activities (FESINCONSTRANS);
- Trade Union Federation of Workers of El Salvador (FESTRAES);
- Federation of Independent Associations or Trade Unions of El Salvador (FEASIES);
- Salvadorian Single Trade Union Federation (FUSS-UNTS);
- National Trade Union Federation of Salvadorian Workers (FENASTRAS);
- Federation of Trade Unions of Workers of El Salvador (FESTES);
- Federation of Unions of Workers in the Food, Drink and Allied Industries (FESINTRABS); and
- General Confederation of Unions (CGS).

Observations submitted to the Office by the Autonomous Trade Union Congress of Salvadorian Workers (CATS)

Freedom of association

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) entered in to force on 4 July 1950, exactly 50 years ago. El Salvador still has not ratified this Convention, as it regards this instrument as unconstitutional.

Article 47 of the Salvadorian Constitution clearly states that private employers and workers can exercise the right to freedom of association, and its paragraph 1 grants the same right to workers in autonomous official institutions.

Public officials and employers adopt a narrow interpretation of this constitutional right, and assert that if the drafters of the national Constitution had had the intention to recognize freedom of association for state employees, article 47 would have clearly stated so. Furthermore, a special labour regime for state employees is set out in Chapter I ("The Civil Service") of the Title VII of the Constitution ("On the Administrative System") (Articles 218 to 222). Consequently, according to this interpretation, El Salvador has two completely different labour systems under its Constitution, namely a system for workers in private enterprises and a system for workers in the public sector.

Whenever it has been sought to ratify ILO Convention No. 87, which states that workers on the one hand, and employers on the other, may "join organizations of their own choosing", it has been pointed out that the Constitution limits the right of freedom of

association in defence of the interests of both workers and employers. The Constitution is clear as to the objectives to be pursued by an occupational association, i.e. the trade union. It has no other purpose.

The rules on the interpretation of the law require a more precise approach. If a view parallel to that summarized above is to be provided, ILO Convention No. 87 recognizes the general right of workers to form trade unions, and it is therefore not contrary to the Constitution.

Article 47 of El Salvador's Magna Carta (the Constitution), expressly recognizes this right for employers and workers in the private sector and autonomous official institutions. Article 221 in the part "Administrative System", is the only provision that refers to freedom of association. It prohibits strikes and collective abandoning of their posts by government and municipal workers, but does not expressly prohibit the right to organize.

For state workers to be prevented from exercising that right, the Constitution would have to contain an express provision to that effect, since under normal standards of human rights, the interpretation of constitutional provisions should be broad rather than narrow. In this respect, if the exercise of an individual right is not prohibited or restricted by the Constitution, neither the interpreter nor the secondary legislator should restrict it in the course of its application. This is a specific labour tenet, enshrined in article 8 of the Constitution, which states:

No one shall be obliged to do what is not required by the law nor prevented from doing what is not thereby prohibited.

Moreover, although article 219 of the Constitution of the Republic of El Salvador provides that the civil service shall be governed by a special law, it does not in any way regulate or exclude the exercise of the fundamental right to organize. The purpose of the Chapter on the "Civil Service" is to establish the necessary basis for the recruitment, promotion and duties of public servants, and a disciplinary system based on objective rules rather than political favour, which should be avoided in respect of those who work in the service of the State. In this respect, article 218 of the Constitution specifically states:

Civil servants and public employees are in the service of the State and not a particular political party ...

Finally, another argument in support of the ratification of the Convention No.87 is that El Salvador has ratified international legal instruments, such as, among others, the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1948) and the Inter-American Charter of Social Guarantees (Charter of Bogota, 1948). They broadly recognize the right of all workers to organize without any distinction whatsoever.

If there is a series of international instruments which support this approach, what is the technical reason for rejecting Convention No. 87 on the grounds that it recognizes a broader right to trade union organization? This refusal has no logic in the light of the international obligations already assumed by El Salvador.

The right to organize and collective bargaining

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) entered into force on 18 July 1951. El Salvador has still not ratified this instrument.

The objections to the ratification of ILO Convention No. 98 collapse under their own weight. It is argued that if El Salvador does not recognize the unrestricted right to organize, (which is a prerequisite to the right to collective bargaining), then the ratification cannot be accepted.

The Economic and Social Cooperation Forum was established pursuant to the provisions of Chapter VII of the 1992 peace agreements. One of the matters addressed was the workers' demand of the approval of a series of ILO Conventions, including Nos. 87 and 98. Against this position, the employers, represented by the National Association of Private Enterprise (ANEP), and the Government's own representatives, disagreed and indicated that it was not possible to ratify ILO Conventions Nos. 87 and 98, because that would have meant violating the Constitution. According to them, ratification would require articles 47, 39 and 221 of the Constitution (which deal with the right to organize, collective bargaining and the right to strike respectively) to be amended.

However, the difficulty in El Salvador is not just a matter of clarifying the conceptual framework. Indeed, while the Constitution does not prohibit the right of workers in the public sector to organize or to bargain collectively, it only expressly establishes that right for workers in the private sector and autonomous official institutions (the latter, be it said, are also public employees). Nonetheless, despite the fact that the right to organize is recognized for workers in the private sector and autonomous official institutions, there are huge numbers of cases of violations of the right to form trade unions.

In addition to the non-ratification of the ILO Conventions Nos. 87 and 98, there is also an anti-trade union culture in the country, which is institutionalized in the Ministry of Labour itself. Hence, the impasse, which results in the impossibility in El Salvador to comply with labour standards in this area.

Under the Arena Government, which has been in power for over 13 years, unemployment has increased tremendously. Thousands of workers have been dismissed as a result of policies dutifully applied to reduce the role of Government, increase labour flexibility, as well as private enterprises, which closed their companies in order to contract workers at lower wages.

On 21 December 2001, over 8,000 state workers were dismissed and their organizations dissolved on the pretext that their posts had been abolished. They received one month's salary for each year of service and for up to 12 years; which meant that many workers were deprived of their rights, since the great majority had worked for the State for 18 to 26 years. Likewise, there was a flagrant violation of the right to organize when the members of Executive Committees were similarly dismissed.

Currently, the doctors belonging to the Union of Doctors in the Salvadorian Institute of Social Security (STISS) and the workers of the STISS, as well as the Medical College, have declared a strike from 18 September 2002 against the Government's intention to privatize the health service. The Autonomous Trade Union Congress of Salvadorian Workers (CATS) has declared its solidarity with the workers in this sector.

Government observations on Autonomous Trade Union Congress of Salvadorian Workers (CATS)'s comments

Freedom of association

[The Government refers to the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).]

Article 47 of the Constitution of El Salvador recognizes the principle of freedom of association only for private employers and workers, and workers in autonomous official institutions. It does not recognize the right to freedom of association for public employees nor does it allow the right to organize to the armed forces or the police.

Article 7 recognizes the right of public employees to organize in the sense that they have the right to form associations under civil law.

As to the armed forces, the Constitution of the Republic, article 211, recognizes the armed forces as a permanent institution in the service of the Nation, obedient, professional, apolitical and non-deliberative. Consequently, they may not discuss or express opinions on matters, which are in the purview of the Government, such as the constitutional system, the legal system or national issues.

Article 213 of the Constitution of the Republic provides that the armed forces are part of the Executive Organ and are subject to the authority of the President of the Republic acting as Commander-in-Chief. Their structure, legal system, doctrine, composition and functioning are laid down by law, regulations and special provisions adopted by the President of the Republic. The Constitution of the Republic, national military law, and the national civil police regulations do not recognize the right of members of the armed forces to form or join trade unions, for the protection of their personal interests.

As can be noted, none of the abovementioned articles of the Constitution are consistent with the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Indeed, the Convention recognizes freedom of association for all employers and workers, whether in the private or in the public sector (including the armed forces), while the Constitution of the Republic recognizes this right only for private employers and workers, and workers in autonomous official institutions.

However, the International Covenant on Civil and Political Rights, Article 22(2) states: *“No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right”*.

In the light of the foregoing, and in accordance with article 145 of the Constitution which states *“Treaties which restrict or in any way affect the provisions of the Constitution may not be ratified, unless such ratification may be made subject to the pertinent reservations. Treaty provisions in respect of which reservations are entered are not law in the Republic”*, Convention No. 87 cannot be ratified because it contains provisions which affect the constitutional system of El Salvador.

Right to collective bargaining

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) establishes general protection of employers and workers in their exercise of the right to organize. It recognizes the right of employers and workers to enjoy adequate protection against acts of anti-union discrimination, and the promotion of voluntary collective bargaining.

However, as CATS rightly points out, this Convention is the complement of Convention No. 87, which, as explained above, cannot be ratified on the grounds that it is unconstitutional. Consequently, Convention No. 98 cannot be ratified either, since it establishes protection of the right to organize of employers' and workers' organizations formed under Convention No. 87, whether by private or public sector employers and workers, including the armed forces and the police.

It would be remiss not to mention that the reforms of the Labour Code in 1994, carried out with ILO technical support, and which were the subject of a tripartite consensus in the Forum for Economic and Social Dialogue (formed as result of the 1992 Peace Agreements) were found worth of mention by the ILO itself in a document published by the Regional Office for Latin America and the Caribbean. This document described the Labour Code of El Salvador as a very advanced text compared with others in Latin America with respect to collective employment relations.

As to the alleged dismissals of public employees in December 2002, the following should be borne in mind:

- The abolition of certain posts was carried out in application of Legislative Decree 678 of 18 December 2001; under article 131(9) of the Constitution of the Republic of El Salvador, it is up to the Legislative Assembly “... (9) *to create and abolish posts, and assign salaries to civil servants and employees in accordance with the civil service regulations*”. Article 219 of the Constitution states on this point:

“The civil service shall be regulated by Law, in particular conditions for recruitment, transfers, promotions and termination, as well as the duties of civil servants and appeals against decisions affecting them”.

In accordance with the foregoing, article 3 of the Civil Service Act provides that “*any post, function or public employment may only be created or abolished by law.*”

- The text of the above provisions allows us to state quite correctly that the CATS' observations are directed against a legal act. The heads of the ministries and autonomous official institutions were not involved in any way in the establishment of these provisions. They were only involved in their execution, i.e. in the identifying of the posts to be abolished and persons to be dismissed as a result of the abolition of those posts. These are actions which heads of the ministries and autonomous official institutions are required to perform under article 86 of the Constitution of the Republic. This article limits the powers of civil servants to those expressly laid down by law, and their duties under the constitutional oath to which article 235 of the Constitution refers. Article 86 also requires all civil or military personnel “to fulfil and enforce the Constitution” and “to meticulously fulfil the duties of their office”. It is thus evident that the activities of identifying posts to be abolished and the persons affected is nothing other than the fulfilment of their duties.

- Consequently, at no time did officials of the ministries and autonomous official institutions violate the right to freedom of association. In all cases, it was a matter of law and the reorganization of the ministries and official autonomous institutions.
- Moreover, according to the doctrine that forms part of the right to legal certainty, there are two basic principles: the principle of legality and the principle of exact compliance with the law. Both have given rise to the so-called “rule of law”, under which, precisely, any legal power, any power of government, any act by individuals must be based in law. That is why the Government of El Salvador states quite properly that the main characteristic of the rule of law is that the law is above all those who govern and are governed.

Observations submitted to the Office by the Trade Union Congress of Democratic Workers (CTD)

Since the failed Forum on Economic and Social Dialogue (FCES), attended, inter alia, by an ILO representative, the Government and the National Assembly of El Salvador have not paid any constructive attention to social dialogue or to the ratification of the ILO fundamental Conventions.

The Trade Union Congress of Democratic Workers (CTD) is daily faced with denial of human rights, rights at work and the right to organize, and with a policy of total exclusion and pure propaganda by the Government and private enterprises. The CTD hopes that international action will support its efforts to denounce this situation and educate the authorities with respect to the rights and laws of a true democratic State, based on the rule of law.

The national Constitution, the Labour Code, the Universal Declaration of Human Rights, the Protocol of San Salvador and the International Labour Code are CTD’s tools. It hopes that the study, analysis, and dissemination of those instrument will help to achieve socialization and organization, and thus the social dynamic and strength of a State governed by the rule of law.

The principle of freedom of association and the effective recognition of the right to collective bargaining is only recognized in practice in El Salvador, as the Government does not respect the rule of law, nor the principles of democracy.

Freedom of association and the right to collective bargaining can be exercised in the private sphere, at the enterprise, sector/industry, and national (only in autonomous enterprises) levels. Only freedom of association can be exercised at the international level.

Moreover, the Labour Code only recognizes occupational freedom of association for private employers and workers, and workers in official autonomous institutions. It limits this freedom for the following categories of workers:

- workers in the public service;
- medical professionals;
- teachers;
- agricultural workers;

- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers; and
- workers of all ages.

The right to collective bargaining cannot be exercised by workers in the informal economy, employers, and the above categories of workers, except for workers in autonomous institutions (such as the Institute of Agrarian Reform (ISTA), the Executive Port Authority Commission (CEPA), the Salvadoran Social Security Institute (ISSS), the Executive Commission of the Lempa River (CEL), and the National Administration of Aqueducts and Sewer Systems (ANDA)).

In addition, government authorization/approval is required to establish an employers' or a workers' organization, or to conclude collective agreements. If the association is a trade union, the authorization/approval is given by the Ministry of Labour and Social Security (Department of Social Organizations). In the case of a public sector association, or a civil society association, the Ministry of Public Administration exercises a control and grants the right. Indeed, this limits and restricts genuine freedom of association, as laid down in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Article 23 (4) of the Universal Declaration of Human Rights.

Uncoordinated efforts were made to implement measures to respect, promote and realize freedom of association and the effective recognition of the right to collective bargaining. The National Assembly (ANEP) and the Government caused the failure of the Economic and Social Dialogue Forum (FCES). Indeed, the Government is not interested in the issue of freedom of association.

Moreover, only superficial attention is given to particular situations, such as women, specific categories of persons or industries/sectors.

The main difficulties encountered in El Salvador in the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining, are as follows:

- lack of public awareness/support;
- lack of information and data;
- social values, cultural traditions;
- social and economic circumstances;
- political situation;
- prevailing employment and practices;
- lack of capacity of responsible government institutions;
- lack of capacity of employers' organizations;
- lack of capacity of workers' organizations;

- lack of social dialogue on this principle; and
- moral and ethical issues.

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in El Salvador, namely in strengthening tripartite social dialogue.

Government observations on Trade Union Congress of Democratic Workers (CTD)'s comments

The Government wishes to express its concern at the content of the disinformation provided by the CTD, especially as it may be given valuable space in the ILO's annual report.

Moreover, according to the doctrine that forms part of the right to legal certainty, there are two basic principles: the principle of legality and the principle of exact compliance with the law. Both have given rise to the so-called "rule of law", under which, precisely, any legal power, any power of government, any act by individuals must be based in law. That is why the Government of El Salvador states quite properly that the main characteristic of the rule of law is that the law is above all those who govern and are governed.

Within the framework of the rule of law by which the Government is governed, it shall address the situation which is the subject of the CTD's comments, and which centres on the principle of freedom of association and the effective recognition of right to collective bargaining.

Article 7 of the Constitution of El Salvador recognizes the right of freedom of association, establishing that all inhabitants of El Salvador have the right to associate freely and meet peacefully without arms for any lawful purpose.

Article 47 provides:

... private employers and workers, without distinction of nationality, sex, race, religious beliefs or political ideas, irrespective of their activity or the kind of work they carry out have the right of freedom of association to defend their respective interests by forming professional associations or trade unions. The same right is enjoyed by workers in autonomous official institutions.

Such organizations have the right to legal personality and to be duly protected in the exercise of their functions. Their dissolution or suspension may only be ordered in circumstances and according to procedures laid down by law.

The special laws on the formation and functioning of professional organizations and trade unions in rural areas and the city must not restrict freedom of association. Any exclusion clause is prohibited.

Members of trade union executives must be Salvadorian by birth and during the period of their election, term of office and one year thereafter, they may not be dismissed, suspended on disciplinary grounds, transferred or demoted, other than for just cause previously determined by the competent authority.

The national Labour Code, as a secondary law, develops these constitutional principles in its articles 204, 208, 209, 219, 268, 269 and following, and recognizes the following types of unions:

1. Occupational unions, formed by workers in the same profession, craft, office or speciality.
2. Enterprise unions, formed by workers in the same enterprise, establishment or autonomous official institution.
3. Industry unions, formed of employers and workers in enterprises engaged in the same industrial, commercial, services, social and similar activities.
4. Multiple enterprise unions, formed by workers in two or more neighbouring enterprises, each of which has less than 25 workers, where the latter are unable to form part of an occupational or industry union.
5. Independent workers' unions, formed by self-employed workers who do not themselves employ any wage workers, other than on a casual basis.

As can be appreciated, both freedom of association and the right to collective bargaining are safeguarded under domestic law for different categories of workers (health professional, teachers, agricultural workers, workers in free zones, migrant workers, workers of all ages from the age of fourteen years), which allows the Government to establish employment relations on a sound and stable basis.

The Government agrees that the dialogue between governments and social partners involves and seeks to provide greater legitimacy to the design and execution of public policies which have the most impact on labour relations.

That is what lays behind the idea of the Forum for Economic and Social Dialogue, born out of the 1992 Peace Agreements. The aim of this Forum was to achieve a wide range of agreements relating to the country's economic and social development, in which respect for the rule of law was and continues to be an essential condition for economic recovery, investment promotion, increased productivity, the exercise of employers' and workers' rights and industrial peace.

This premise was the basis for the creation in 1994 of the Supreme Labour Council, as an advisory body to the Government. The purpose of this Council is to institutionalize dialogue and the promotion of social and economic collaboration between the public authorities and legally recognized and represented employers' and workers' organizations.

This body is responsible for formulating recommendations on the development, conduct and reform of social policy and contributing to harmony between the factors of production in order to create conditions for better integration of the social and economic aspects of development.

In addition, the Supreme Labour Council is also the consultative body established to comply with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which requires States parties to implement procedures to ensure effective consultation between the Government and the social partners on matters related to ILO activities.

The Council must also be consulted mandatorily on all matters relating to El Salvador's participation in international forums dealing with matters within its area of competency.

Some good tripartite experiences were achieved through the Supreme Labour Council:

1. Creation of labour commissions, responsible for carrying out studies, monitoring and implementing various matters with which they are charged by the Executive Board, including:
 - industrial disputes monitoring commission;
 - study commissions on reform of labour law (2);
 - project implementation commissions: RELACENTRO (Freedom of association, collective bargaining and labour relations in Central America and the Dominican Republic), PRODIAC (Tripartism and Social Dialogue in Central America), Occupational safety and health (3).
2. The National Occupational Safety and Health Commission was created and sworn in, incorporating other relevant institutions, such as the Ministry of Health and Social Welfare, the Salvadorian Social Security Institute, the University of El Salvador, the main activity of which is to advise the Council, monitor projects, study and recommend legislation on these subjects.
3. The following two projects on occupational safety and health were approved:
 - I. regional occupational safety and health for Central America and the Dominican Republic financed by the United States Department of Labour;
 - II. pilot occupational safety and health project financed by the IDB-USAID-SIECA regional project for the modernization of the labour market. As a result of the initiative of the Ministry of Labour and Social Security, the Regional Centre for Occupational Safety and Health (CERSSO) was set up in El Salvador to monitor the first projects.

These projects are being used to train employers, workers and government officials to achieve a new culture of prevention of accidents at work, by implementing actions which enhance the capacity to identify risks and adopt appropriate measures to prevent occupational accidents and diseases.

4. The following projects were approved:

I. Tripartism and Social Dialogue in Central America, PRODIAC

The following actions have been taken under this project:

- In February 2002, tripartite sectoral seminars were held on the subject “Dialogue methods and procedures”, for various employers’ organizations (ANEP, ASI, CASALCO, etc.) and workers’ organizations (the trade union federations FENASTRAS, FUSS, FESINCONSTRANS, FESINTRABS, etc.), and senior officials of the ministries represented in the Council (Labour, Education, Health, INSAFORP (Salvadorian Institute of Professional Training), FSV). Most members of these organizations took part in the seminars, leading to a multiplier effect through their sectors.

- Representatives of the Director of Labour participated both individually and collectively, with the result that they put what they learned from the course into practice in their work.

Training for the sectors will continue under this project.

**II. Freedom of association, collective bargaining and
labour relations in Central America and the
Dominican Republic, RELACENTRO.**

- A consultant was engaged to prepare a diagnostic analysis of employment relations in El Salvador, which, on completion, will be subject to tripartite approval in the Council. Training on the subject will be initiated subsequently.
- 5. As part of the study of the various labour laws on which it is required to express an opinion, a draft new law on occupational safety at the workplace is under review, and will shortly be submitted for approval.
- 6. Under the Partnerships Work Plan prepared by the Council Training, all the tasks assigned to it have been followed up. Diagnostics of functioning, work plan, review of labour legislation, etc have been prepared.
- 7. It was agreed that the content of the Agreement on the Caribbean Basin Initiative (CBI) would be supported.
- 8. An agreement was signed, approving the institutionalization of the gender approach in the assembly industry. The feasibility study on the incorporation of the gender approach was carried out by the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), the Salvadorian Institute for Women's Development (ISDEMU), and GTZ (German Agency for Technical Cooperation) (ECLAC-ISDEMU-GTZ).

In the context of the legal framework (rule of law), under which the Government has addressed the situation which is the subject of the CTD's comments, the Government once again resorts to its stated position that it is impossible to ratify ILO Conventions Nos. 87 and 98, since, as was repeatedly explained, they contain provisions which affect the national constitutional system. This was explained in El Salvador's annual report concerning the follow-up to the ILO Declaration.

It is a source of satisfaction to the Government that the reforms of the Labour Code in 1994, carried out with ILO technical support, and which were the subject of a tripartite consensus in the Forum for Economic and Social Dialogue (formed as result of the 1992 Peace Agreements) were found worth of mention by the ILO itself in a document published by the Regional Office for Latin America and the Caribbean. This document described the Labour Code of El Salvador as a very advanced text compared with others in Latin America with respect to collective employment relations.

The foregoing is evidence of the good labour relations between the various employers' organizations and trade unions represented in the Supreme Labour Council.

This situation allows El Salvador, as a sovereign people which respects the rule of law, to have its legally established institutions recognized by society, by national, regional

and international organizations and taken into account for the purposes for which they were created.

Guinea-Bissau

Government

Recognition of this principle and right

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Guinea-Bissau. [The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), has been ratified by Guinea-Bissau in 1977.]

Although Guinea-Bissau has not ratified the Freedom of Association and the Right to Organise Convention, 1948 (No. 87), freedom of association is enshrined in Article 45 of the national Constitution, and, in particular in Law, No. 8/91 of 3 October 1991. The State never restricts this freedom and, as a result, Guinea-Bissau has currently two trade union federations made up of many trade unions, and one employers' organization consisting of a large number of employers' associations.

With regard to the effective recognition of collective bargaining, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), has been ratified. [Reference is made to the national application of this Convention.]

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers;
- workers of all ages;
- workers in the informal economy; and
- all categories of employers.

All workers in the public service can exercise the right to collective bargaining. However, workers in the military, police, and paramilitary services cannot exercise freedom of association.

Furthermore, no government authorization/approval is necessary to establish an employers' or a workers' organization, or to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

The following specific measures have been implemented to respect, promote and realize the principle of freedom of association and the effective recognition of the right to collective bargaining in Guinea-Bissau:

- capacity building for workers' organizations;
- tripartite discussion of issues; and
- awareness raising/advocacy.

The principle of equality is enshrined in the Constitution. Therefore, women can establish, or freely organize in associations, such as the Association of Economically Active Women. The Institute for Women and Children is also an example of the special attention given to this issue by the Government.

Industries/sectors are subject to equal attention.

The violation of the principle of freedom of association amounts to a violation of the Constitution. Consequently, the Government takes such measures as are necessary through the competent authorities.

Progress and achievements concerning this principle and right

Since the last report, no major changes concerning the principle have been noted.

As regard freedom of association, the aforementioned Law No. 8/91 of 3 October 1991, together with ratification of Convention No. 87 currently scheduled for approval by the National Assembly, can be regarded as successful examples.

With respect to collective bargaining, Guinea-Bissau has ratified Convention No. 98, and the banking and telecommunication sectors are governed by a collective agreement and an enterprise agreement, respectively.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association in Guinea-Bissau, in particular in the following areas, in order of priority: (1 = most important, 2 = second most important, etc.):

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle	2
Awareness raising, legal literacy and advocacy	3
Strengthening data collection and capacity for statistical analysis	3

Type of technical cooperation desired	Ranking
Sharing of experiences across countries/regions	1
Capacity building of responsible government institutions	1
Training of other officials	2
Strengthening capacity of employers' organizations	2
Strengthening capacity of workers' organizations	2
Strengthening tripartite social dialogue	1

Report preparation

In preparing this report, consultations were held with the most representative employers' and workers' organizations, through meetings of the Permanent Council for Social Consultation. No comments were received from the social partners.

A copy of the report was sent to the Chamber of Commerce, Industry and Agriculture, the National Workers' Union of Guinea (UNTG), and the Confederation of Independent Workers Union (CGSI/GB).

India

Government

Recognition of this principle and right

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

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers;
- workers of all ages;
- workers in the informal economy; and
- all categories of employers.

However, persons employed in the armed forces, paramilitary forces, police service and prison, cannot exercise this principle and right.

Government authorization/approval is not required to establish an employers' or workers' organization, or to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

The following measures have been implemented or are envisaged to respect, promote and realize freedom of association and the effective recognition of the right to collective bargaining:

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X	X		
Inspection/monitoring mechanisms	X	X		
Penal sanctions	X	X		
Civil or administrative sanctions	X	X		
Special institutional machinery	X	X		
Capacity building of responsible government officials	X	X	X	X
Training of other government officials	X	X	X	X
Capacity building for employers' organizations	X	X	X	
Capacity building for workers' organizations	X	X	X	X
Tripartite discussion of issues	X	X	X	X
Awareness raising/advocacy	X	X	X	X

Within these measures, a special attention is given to the situation of women, especially in terms of equal opportunity for freedom of association. However, no particular attention is given to the situation of specific categories of persons or industries/sectors.

Violations of trade union rights are dealt with through the implementation machinery of the concerned government for investigation and redress. In cases where employers do not recognize the collective bargaining agents, the Government initiates action by issuing sanctions under the code of discipline.

Progress and achievements concerning this principle and right

No major changes concerning the principle have taken place since last report.

However, several initiatives undertaken can be regarded as successful examples in relation to freedom of association. For instance, a meeting of the Standing Labour Committee (SLC) was convened in May 2002, where all central trade union organizations

(CTUOs) were invited. This is an apex tripartite body where discussions are held in a transparent manner, which is indicative of the Government's initiative to encourage freedom of association among trade unions and workers.

In parallel, the right to collective bargaining was recognized in the coal industry, where many CTUOs had given a strike notice against certain demands. The conciliation machinery of the central Government invited the unions for conciliatory talks. A settlement was reached and the strike averted.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in India in the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining, are the lack of public awareness/support and of information and data; and political situation.

Concerning the right to collective bargaining, social and economic circumstances should also be mentioned.

Priority needs for technical cooperation

In India, there is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining, in particular in the following areas in order of priority (1 = most important):

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle	1
Awareness raising, legal literacy and advocacy	2
Strengthening data collection and capacity for statistical analysis	3
Sharing of experiences across countries/regions	1
Legal reform (labour law and other relevant legislation)	2
Capacity building of responsible government institutions	1
Training of other officials	1
Strengthening capacity of employers' organizations	2
Strengthening capacity of workers' organizations	2
Strengthening tripartite social dialogue	1

Report preparation

In preparing this report, consultations were held with government authorities outside the Ministry of Labour, and with the most representative employers' and workers' organizations. Comments were received from the social partners.

Observations submitted to the Office by All India Manufacturers’ Organization (AIMO) through the Government

According to the All India Manufacturers’ Organization, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in India.

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers; and
- workers in the informal economy.

The minimum age to exercise these rights is set to 18 years old.

Defence Service Personnel, Police Personnel, India Administrative Service (IAS), India Police Service Association (IPSA), Border Security, Research and Analysis Wing (RAW), etc., cannot exercise freedom of association and bargain collectively.

Moreover, establishing an employers’ organization is subjected to Labour Departments’ scrutiny. Concerning the establishment of a workers’ organization, a labour inspector’s report is required to prove membership. Finally, the concluding of collective agreements must take place in the presence of the Labour Commission.

Specific measures have been implemented or are envisaged to respect, promote, and realize freedom of association and the effective recognition of the right to collective bargaining:

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X	X	X	X
Inspection/monitoring mechanisms	X	X	X	X
Penal sanctions	X	X	X	X
Civil or administrative sanctions	X	X	X	X
Special institutional machinery	X	X	X	X
Capacity building of responsible government officials	X	X	X	X

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Training of other government officials	X	X	X	X
Capacity building for employers' organizations	X	X	X	X
Capacity building for workers' organizations	X	X	X	X
Tripartite discussion of issues	X	X	X	X
Awareness raising/advocacy	X	X	X	X

Within these measures, no special attention is given to the situation of specific categories of persons. However, with regard to women, an Awareness Programme for Gender Equality is propagated. Moreover, specific industries/sectors, such as Transport, Railways, and Public Utilities Service may be given special attention, depending on the emergent situation.

In instances where the principle of freedom of association and the effective recognition of the right to collective bargaining is not respected, individual grievances may be heard through personal hearing, as was the case with the police trade unions that were not allowed by central and state governments.

With regard to major changes concerning this principle, the formation of the first National Labour Commission on 2 June 1962, and the 1952 Indian Labour Conference can be noted.

The main difficulties encountered in India in the realization of the principle, are as follows:

- lack of public awareness/support;
- lack of information and data;
- social values, cultural traditions;
- social and economic circumstances;
- political situation;
- legal provisions;
- prevailing employment practices;
- lack of capacity of responsible government institutions;
- lack of capacity of employers' organizations;
- lack of capacity of workers' organizations; and
- lack of social dialogue on this principle.

In India, there is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining, in particular in the following priority areas:

- assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle;
- awareness raising, legal literacy and advocacy;
- strengthening data collection and capacity for statistical analysis;
- sharing of experiences across countries/regions;
- legal reform (labour law and other relevant legislation);
- capacity building of responsible government institutions;
- training of other officials;
- strengthening capacity of employers' organizations;
- strengthening capacity of workers' organizations; and
- strengthening tripartite social dialogue.

Government's observations on All India Manufacturers' Organization (AIMO)'s comments

The AIMO agrees in their observations that the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in India. Freedom of association has been a fundamental right and is thus available to all except with some restrictions in the case of army and police personnel.

Section 21 of the Trade Unions Act, 1926, provides that workers can join any trade union at the age of 15. Hence, it is wrong to mention that freedom of association is exercisable at the age of 18 only.

Moreover, no report from a labour inspector is required to a trade union.

Similarly, the concluding of collective agreements must not necessary take place in the presence of the Labour Commissioners. Bipartite settlements are also valid, provided that a copy of the settlement is sent to the conciliation officer. In case of a tripartite settlement, the conciliation officer (a Labour Commissioner) is present.

Finally, it is wrong to say that establishing an employer's organization is subject to any special scrutiny of the labour department. Since a registered association is given certain privileges, they are logically required to comply with certain provisions of the Trade Unions Act (submission of annual account, etc).

Every possible step is taken by the tripartite constituents to eliminate and minimize the difficulties encountered in the realization of the principle, as perceived by the AIMO. India is a free country in which a vibrant democracy is flourishing at its possible best, considering the prevailing social and economic conditions, unemployment and poverty.

The suggestion made by the AIMO for technical cooperation in this area, are noteworthy, if there are implemented with financial assistance from the regular budget of the ILO.

Observations submitted to the Office by the All India Trade Union Congress (AITUC)

According to the All India Trade Union Congress, the principle of freedom of association and the effective recognition of the right to collective bargaining is only partly recognized in India.

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers (de jure);
- workers engaged in domestic work (partly);
- workers of all ages; and
- all categories of employers.

In many states, however, this principle and right cannot be exercised by government employees, law and order personnel. The same applies in practice to workers in export processing zones (EPZs) or enterprises/industries with EPZ status, migrant workers, and workers in the informal economy, who can exercise this principle and right only under very difficult conditions.

As regard the effective recognition of the right to collective bargaining, there is no law providing for “compulsory” or “automatic” recognition of trade unions. Indeed, all depends upon the strength of workers. Registration of employers’ and workers’ organizations and of collective agreements is done through government department.

No specific measures have been implemented or are envisaged by the Government in view of respecting, promoting and realizing the principle of freedom of association and the effective recognition of the right to collective bargaining. Moreover, no special attention is given to particular situations with respect to women, or specific categories of persons or industries/sectors. In this respect, trade unions lodged complaints against EPZs/free trade zones (FTZs).

In addition, laws by State Governments (for example, Tamil Nadu) enacted prohibition of strike by Government employees and employees in public services.

No major changes occurred since the Government’s last report and no significant initiative was taken.

The main difficulties encountered with respect to realizing the principle of freedom of association and the effective recognition of the right to collective bargaining, are as follows:

- lack of public awareness/support;
- social and economic circumstances;
- legal provisions, in some cases;
- prevailing employment practices;
- lack of capacity of employers' organizations (indirectly opposed to freedom of association);
- lack of capacity of workers' organizations; and
- lack of social dialogue on this principle.

Moreover, in several cases, the governmental machinery is not helpful. Police and law and order authorities have been misused against freedom of association and the right to collective bargaining.

Government observations on the All India Trade Union Congress (AITUC)'s comments

The Government of India does not agree that the principle of freedom of association and the effective recognition of the right to collective bargaining is only partially recognized in India. Freedom of association and the right to organize and collective bargaining are not restricted to any particular group or category. The informal economy sector is scattered and the workers have less bargaining power. Thus, although unorganized labourers have the right to organize, they are unable to exercise this right.

According to the observations by other organizations, this principle is recognized in India. The only exception, if at all, is that in respect of certain groups of Government employees, the principle is restricted, to some extent, or is not on the same scale as the one envisaged in 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). This is because the granting of certain rights to Government employees against the statutory rules is restricted (for instance, the rights to strike, to openly criticize Government policies, to freely accept financial contributions, to freely join foreign organizations, etc). However, it should be noted that the Government already has implemented the spirit behind Conventions Nos. 87 and 98 in an effective manner through domestic laws and regulations. Government employees also have an exceptionally high degree of job security flowing from article 311 of the national Constitution, as compared to industrial workers. They also benefit from the facility of the negotiating machinery under the joint consultative machinery, and the administrative tribunals for the redress of their grievances. The employees of the Union Government also have a right to form and join any association.

As regards EPZs, the position is as follows: there is no restricted activities in the EPZs/special economic zones (SEZs), and the zone units are governed by normal labour laws and rules which are enforced by the respective State Governments. Presently, the

workforce in the EPZs/SEZs is around 95,000, including one-third of female workers (about 34000). The units in EPZs/SEZs are inspected by the State Labour Authorities periodically and action is taken against the defaulters wherever warranted. The suggestions to the contrary contained in the observations made by the workers' organizations have been found to be factually incorrect. Also, certain State Governments have declared Export Processing Zones as public utility services under the Industrial Disputes Act and as a consequence, the unions operating in EPZs are required to give prior notice of less than 14 days and not more than 6 weeks to the employers before going on strike in accordance with section 22 of the Industrial Disputes Act.

As regards "compulsory" or "automatic" recognition of trade unions, this is not an acceptable proposition because there are more than one trade unions vying for the membership of the workers and, therefore, verification is an essential requirement. Hence, recognition cannot be an automatic process.

Observations submitted to the Office by Hind Madzoor Sabha (HMS)

According to Hind Madzoor Sabha, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in India.

This principle and right is recognized for the following categories of workers:

- workers in the public service;
- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- migrant workers; and
- workers in the informal economy.

The minimum age limit is set to 18 years for the exercise of this principle and right.

In addition, the right to collective bargaining is prevalent in the organized sector, but does not exist in the informal sector.

In respect of agricultural workers, workers engaged in domestic work, and workers in the informal economy, establishing employer-employee relationships is a problem. Thus, there can only be individual bargaining. Same is the problem with migrant workers.

As for export processing zones (EPZs), they are said to be special zones, exempted from all labour laws. Although National Labour Law does not specifically forbid freedom of association, in practice, workers in EPZs are not allowed to organize themselves and collective bargaining is not possible.

Government authorization/approval is required to establish employers' and workers' organizations. Under the Trade Union Act, they have to be registered by the Labour

Department. Also, government approval of collective agreements is necessary in case of Public Sector Undertakings. In private establishments, the Government involvement is essential to make collective agreements binding on both parties. However, in some cases of good management, it is not required and the agreements are bipartite.

Specific measures have been implemented or are envisaged to respect, promote and realize freedom of association and the effective recognition of the right to collective bargaining, but not to the desired level

Furthermore, no action is practically taken when the principle has not been respected. Some cases are however referred to the Labour Tribunal, which often takes excessive time in settling the matters.

The main difficulties encountered in India in the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining, are as follows:

- social and economic circumstances;
- political situation;
- lack of capacity of workers' organizations;
- new liberalized economy; and
- lack of social dialogue on this principle.

In addition, the lack of information and data should also be considered as a difficulty with respect to the effective recognition of the right to collective bargaining.

Government's observations on Hind Madzoor Sabha (HMS)'s comments

HMS agrees in their observations that the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in India.

The right to collective bargaining is not largely prevalent in the informal economy sector because this sector is scattered and fragmented, and the incomes of the persons engaged are very low. Thus, although the unorganised labourers have the right to organise, they are unable to organise, they are unable to exercise this right.

As regards EPZs, the position is as follows: there is no restricted activities in the EPZs/special economic zones (SEZs), and the zone units are governed by normal labour laws and rules which are enforced by the respective State Governments. It is therefore wrong to state that labour laws are not applicable to EPZs/SEZs. Presently, the workforce in these zones is around 95,000, including one-third of female workers (about 34000). The units in EPZs/SEZs are inspected by the State Labour Authorities periodically and action is taken against the defaulters wherever warranted. The suggestions to the contrary contained in the observations made by the workers' organisations have been found to be factually incorrect. Also, certain State Governments have declared export processing zones as public utility services under the Industrial Disputes Act and as a consequence, the unions operating in EPZs are required to give prior notice of less than 14 days and not more than

six weeks to the employers before going on strike in accordance with section 22 of the Industrial Disputes Act.

The HMS itself agrees in its observations that specific measures have been implemented or are envisaged to respect, promote and realize freedom of association and the effective recognition of the right to collective bargaining, though not to the desired level as perceived by the HMS.

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

The International Confederation of Free Trade Unions reminds that India has neither ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

The right to freedom of association is guaranteed in the Constitution (Article 19). Furthermore, the Trade Union Act, 1926, prohibits discrimination against union members and organizers in the formal and informal sectors, without distinction. However, as discussed below, union membership in the informal sector is rare. In general, trade union rights are respected in the formal sector in India and employers may be penalised if they discriminate against employees engaged in union activities. In both the public and private sectors, trade unions often exercise the right to strike and employers are prohibited from taking action against employees involved in legal strike action.

Collective bargaining is the normal means of setting wages and settling disputes in unionised plants in the organized industrial sector. Nonetheless, many important collective agreements expired in 1998, and unions were put under considerable pressure by the authorities to sign ten-year agreements, rather than the traditional five-year agreements. Although a system of specialised labour courts adjudicates labour disputes, there are long delays and a backlog of unresolved cases.

Legislation restricting trade union rights has been passed by the upper house of Parliament. If ratified, this legislation will increase the minimum membership for a trade union to be registered from 7 workers to 100 – or 10 per cent of the workforce, whichever is less – the minimum membership for a trade union to be registered. Recognition of registered trade unions is regulated by the Code of Discipline, which is non-binding and is often breached by employers.

Planned amendments to the Industrial Disputes Act, 1947, would enable firms employing less than 1000 people to lay-off workers or close down altogether without any consultation of the workforce. This threshold of 1000 workers would mean that three quarters of the formal workforce would be deprived from its right to consultation and essentially denied any job security. The Government is also planning to amend the Contract Labour (Regulation and Abolition) Act, 1970, to facilitate outsourcing employment contracts. Workers would then receive less legal protection.

The law on trade unions does not apply in Sikkim (a State annexed to India since 1975). As a result, workers in Sikkim are not able to exercise their trade union rights. There are some workers' organizations, but their coverage is minimal. The government notice regarding freedom of association – replacing the law on trade unions in Sikkim – provides for excessive interference by the police and also by the public in applications for registration of a workers' organization.

In this respect, the Government of the State of Western Bengal declared in December 2000 that in order to attract industry, trade union activism would no longer be allowed.

In addition, there are three export processing zones (EPZs) and four special economic zones (SEZs) in India. In theory, all labour and factory legislation fully apply in the zones, and workers in the zones have the right to organize and bargain collectively. The Government has expressed an assurance at the Indian Labour Conference and Standing Labour Committee that it will protect workers and trade union rights in these zones. However, in practice, trade unions are rare, despite the efforts to organize workers there. EPZs are surrounded by security gates, and entry usually limited to the employees who are bussed directly to and from the factory door, meaning that union organizers are not allowed access.

Furthermore, there is a clear intention to exempt EPZs and SEZs from the applicability of labour laws. For instance, some States, such as Andhra Pradesh, have directed labour departments against conducting inspections in the zones.

Besides, women constitute the bulk of the workforce in EPZs, employed in establishments such as ready-made garments and electronic-based and software industries. [Reference is made to a case of complaint pending before the Committee on Freedom of Association.]

Workers fear victimisation by management and those who protest are immediately sacked. It is common for workers to be employed by fictitious contractors on temporary contracts rather than directly by the company. [Reference is made to a case of complaint before the Committee on Freedom of Association.]

There remain serious problems in the tea plantation sector [Reference is also made to a case of complaint pending before the Committee on Freedom of Association.]

In practice, legal protection of workers' rights are provided only for the 30 million workers in the formal sector, out of a total workforce of approximately 400 millions. Outside the formal sector, laws are not enforced and collective bargaining does not exist. Union membership is rare, due to the lack of legal recognition and the common absence of a contract or a clear employment relationship. Also, trade unions find it difficult to organize informal workers due to lack of adequate resources and means. Informal or unprotected workers are prevalent in all sectors of the economy. Out of 28.9 million workers engaged in the manufacturing sector, only 7.3 million – about 25 per cent – operate in the formal sector. In trade and commerce, 98 per cent of the total workforce is informal. Similarly, out of 191 million workers engaged in the agriculture, forestry and fishing and plantation sector, about 190 million – 99 per cent – are informal.

A further category of informal workers are the millions of home-based workers, primarily women, who produce consumer products at home and on a piece rate basis. While this matter is under discussion, at present the Government does not recognize them as workers but as self-employed, meaning that they do not fall within the purview of the Minimum Wages Act and other protections provided by labour laws.

While the Federal Government and some State Governments, such as Kerala and Maharashtra, have introduced programmes of poverty alleviation to assist the workers concerned, particularly in the agricultural sector, the plight of informal sector workers remains an extremely serious problem. Labour in the informal sector constitutes the bottom rung of India's workforce in terms of level of wages, employment security, conditions of

work and social security. They serve as a vast reservoir of cheap and easily available workforce, often compelled to work on wages lower than the minimum wages fixed by the State. Furthermore, at present many workers in long-established formal sectors, such as manufacturing and industrial plants, are faced with massive layoffs; meaning in many cases production is transferred to the informal sector through subcontracting.

Many categories of workers in the public sector – such as firefighters, law and order staff, prison staff, judicial officers and defence forces staff – are denied the right to join unions. These groups can only form associations to represent staff. The law in some States requires workers in certain non-public sector industries to give prior strike notice. The Essential Services Maintenance Act (ESMA), 1981, allows the Government to ban strikes. It also requires conciliation or arbitration in specified essential industries. However, despite this ban, it is not uncommon for strikes to be held and settlements reached through negotiation between the union and the Government.

The services to be treated as essential under the ESMA have not been defined. Consequently, interpretation differs from State to State. [Reference is made to a case of complaint pending before the Committee on Freedom of Association]

Moreover, the Conduct Rules state that no civil servant can resort to any form of strike or coercion in connection with any matter in relation to his/her service; and that making use of joint representations is a subversion of discipline and is not permitted. The provisions of these Conduct Rules have been cited by the Government of India as one of the reasons for its failure to ratify ILO Conventions Nos. 87 and 98.

According to a ruling of the ILO Committee on Freedom of Association, a 1993 law on recognition of service organizations restricts the freedom of association of public servants and provides overly detailed regulations. It limits the free election of representatives of associations, makes their constitutions subject to prior government approval, and bans associations from publishing a magazine or periodical without government approval. The law provides for existing recognition given to public servants associations to be withdrawn if they do not abide by the detailed criteria in the law, although there are no reports that this has taken place. The law does not mention the recognition of federations for the purpose of collective bargaining.

In conclusion, while India has a reasonable record of trade union rights in the formal sector and trade unions can generally operate in a non-hostile environment, some of these protections are coming increasingly under threat. It is clear that in a number of areas there is much room for improvement, particularly regarding trade union rights for informal workers, civil servants, and workers in export processing zones (EPZ's). Many of the informal workers, as well as those in the EPZ's and special exporting zones (SEZ's), have no real protection of their rights at work, and are directly involved in producing exports. An important State Government made clear its intent to crush trade unions as an inducement to investment.

Government observations on the International Confederation of Free Trade Unions (ICFTU)'s comments

Right to organize and collective bargaining

The Government of India's comments in this regard have been furnished in the past. To recapitulate, the Government has already implemented the spirit behind 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 an effective manner through domestic laws and regulations. Government employees also have an exceptionally high degree of job security flowing from article 311 of the Constitution of India, as compared to industrial workers and the facility of negotiating machinery under the joint consultative machinery and the administrative tribunals for the redress of their grievances. The employees of the Union Government also have a right to form and join any association.

Union membership in the informal sector is low because of the scattered and fragmented nature of the establishments in this sector.

About certain collective agreements which expired in 1998

It is incorrect to state that after the collective agreements that expired in 1998, the unions were put under considerable pressure by the authorities to sign a ten-year agreement rather than the traditional five-year agreements. The unions agreed to a ten-year agreement because the terms were beneficial to them.

Delay in backlog of unresolved cases in the specialized labour courts

In India, there are at present 17 Central Government Industrial Tribunal-cum-Labour Courts. The number of cases engaging the attention of these labour courts has increased as the system for settling labour disputes is very transparent. However, every effort is being made to avoid delays and thus dispose of the backlog of cases.

Legislation restricting trade union rights

The limit of minimum 100 workers (or 10 per cent of the workforce in establishments subject to a minimum of 7) required for registration of trade unions under the recently amended Trade Unions Act, may be slightly on the high side according to the normal international standards. It is, however, found to be quite reasonable in the Indian context.

The Trade Unions Act, 1926, has been amended recently with a view to limit the multiplicity of trade unions in industries, to reduce the influence of outsiders on the trade unions, and for promoting positive internal democracy. The amended provisions have come into force with effect as from 1 September 2002. In the national context, the number of members prescribed for registration of a trade union cannot be considered excessive. Indeed, smaller unions are often responsible for avoidable disturbances in industrial situations and for inter-union rivalries. The recent amendment is expected to encourage smaller unions to join together to constitute a majority union having strong character to promote healthy trade unionism.

About amendment in the Contract Labour (Regulation and Abolition) Act, 1970

In the wake of the economic liberalization, and keeping in view the demands of the employers and those of the trade unions, the Government is considering a proposal to make changes to the abovementioned Act. This proposal, however, has not been finalized yet. The interest of contract workers would always be kept in view while finalizing the proposals.

Trade unions rights in Sikkim

The law on trade unions does not apply in Sikkim as the Trade Unions Act has not been enforced in this State so far. However, the trade unions in Sikkim are already functioning in the names of their associations and organizations. Registration of such trade unions is subject to prior permission from the Land Revenue Department of the Government of Sikkim after a police enquiry. No instance public to the creation of trade unions has come to the notice of the Government. Moreover, the provisions of the Trade Union Act are applicable to the State of Sikkim.

Export processing zones (EPZs)

As regards EPZs, the position is as follows: there are no restricted activities in the EPZs/special economic zones (SEZs), and the zone units are governed by normal labour laws and rules which are enforced by the respective State Governments. Presently, the workforce in the EPZs/SEZs is around 95,000, including one-third of female workers (about 34000). The units in EPZs/SEZs are inspected by the State Labour Authorities periodically and action is taken against the defaulters wherever warranted. The suggestions to the contrary contained in the observations made by the workers' organizations have been found to be factually incorrect. Also, certain State Governments have declared export processing zones as public utility services under the Industrial Disputes Act and as a consequence, the unions operating in EPZs are required to give prior notice of less than 14 days and not more than six weeks to the employers before going on strike in accordance with section 22 of the Industrial Disputes Act.

The Essential Services Maintenance Act (ESMA), 1981

Although the Essential Services Maintenance Act (ESMA) enables the Government to ban strike in certain industries/sectors, it is up to the State Governments to decide the definition of "essential services" in a particular area and context. A service may not be called as essential for the purpose of applying the ESMA at the initial stage of an agitation in a particular industry/sector, but if it prolongs and starts adversely affecting the public life, thus inconveniencing the innocent public, the State Government can declare the services of the sector/industry as "essential" and can apply the ESMA. To avoid any rigidity in defining the nature of services for the purpose of ESMA, no specific mention has been made in the Act.

Under the provisions of the Industrial Disputes Act, a 14-day time frame is devised to provide the opportunity or possibility for conciliation to avert the strike.

Recognition of registered trade unions under the Code of Discipline

It is incorrect to mention that the recognition of registered trade unions under the Code of Discipline is not binding and is often breached by employers. Actually, the Code is binding on the parties, including on the employers, who formalise their acceptance in writing. The incidence of breaches of the Code of Discipline by employers is negligible.

The Government of India appreciates the ICFTU's conclusion that India has a reasonable record of trade union rights in the formal sector and that trade unions can generally operate in a non-hostile environment. It agrees that there is always room for improvement in the areas touched upon in the report of the ICFTU.

It is the Government's request that it should be given reasonable time to collect information on the various points raised by the workers' and employers' organizations. Shortage of time and insufficient notice result in inadequate or incomplete replies to the issues raised by the organizations.

Iran, Islamic Republic of

Government

Recognition of this principle and right

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

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- workers in the informal economy; and
- all categories of employers.

In addition, it should be noted that while workers of all ages can exercise freedom of association, the minimum age is set to 15 years concerning collective bargaining.

Workers in the public service, military staff and migrant workers cannot exercise any of these rights.

According to laws and existing regulations, government authorization/approval is necessary to establish an employers' or workers' organization, or to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize the principle of freedom of association and the effective recognition of the right to collective bargaining:

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X			X
Inspection/monitoring mechanisms	X		X	
Penal sanctions		X		
Civil or administrative sanctions		X		
Special institutional machinery				
Capacity building of responsible government officials	X		X	
Training of other government officials	X		X	
Capacity building for employers' organizations	X			
Capacity building for workers' organizations	X			
Tripartite discussion of issues		X		X
Awareness raising/advocacy	X		X	

Women have actively participated in all instances, including associations, collective bargaining and seminars and other meetings.

For particular groups, including women and religious minorities, the practicability of participation in associations and collective bargaining has been envisaged.

The situation of specific industries/sectors was also taken into account.

Action is taken where the principle of freedom of association and the effective recognition of collective bargaining has not been respected. Indeed, penalties such as fine and imprisonment have been stipulated under Article 178 of the Iranian Labour Code. For instance, the Yazd Province Municipality was convicted by the 15th branch of Yazd Province Public Court for having prevented its units to set up Islamic Labour Councils (Grievance No. 80-1371).

Progress and achievements concerning this principle and right

With respect to collective bargaining, some changes in relevant laws and regulations are under way, by which possible barriers will be removed.

Concerning freedom of association, it seems that associations ought to be set up freely. Related affairs must be contemplated by the very members of these associations, based on the observation of social principles.

As for the right to collective bargaining, it is provided for in Articles 139 to 146 of the Labour Code. Furthermore, in recent years some instances have been set up with ILO assistance and led to the conclusion of agreements, such as:

- the Agreement of 24 December 2001 on labour force employment in workshops occupying five employees or less; and
- the Agreement of 15 July 2002 to establish national tripartite councils.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Iran in the realization of freedom of association and the effective recognition of the right to collective bargaining, are as follows:

- lack of public awareness/support;
- lack of information and data;
- legal provisions;
- lack of capacity of responsible government institutions;
- lack of capacity of employers' organizations; and
- lack of capacity of workers' organizations.

With regard to collective bargaining, the main difficulties lie in the lack of public awareness/support, and of information/data.

According to the workers' representatives, the independence of Islamic Labour Councils is questionable to the extent that these councils are set under a tripartite body in which government and employers are also represented. Furthermore, the national labour law does not address the issue of employers' enforcement of the right to collective bargaining.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Iran, in particular in the following areas, in order of priority:

1. assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle;

2. awareness raising, legal literacy and advocacy;
3. strengthening data collection and capacity for statistical analysis;
4. sharing of experiences across countries/regions;
5. legal reform (labour law and other relevant legislation);
6. capacity building of responsible government institutions;
7. training of other officials;
8. strengthening capacity of employers' organizations;
9. strengthening capacity of workers' organizations; and
10. strengthening tripartite social dialogue.

Report preparation

In preparing this report, consultation was held with the most representative employers' and workers' organizations, and comments were received from them.

A copy of the report was sent to the Iran Confederation of Employers' Association and the Iran Confederation of Islamic Labour Councils.

Jordan

Government

Recognition of this principle and right

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Jordan. [Jordan ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in 1968.]

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry and national levels (only freedom of association can be exercised at international level) by the following categories of persons:

- medical professionals;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- workers who have reached the age of 18 year old;
- workers in the informal economy; and
- all categories of employers.

Teachers in the private sector can also join a trade union.

However, workers in the public service cannot exercise freedom of association and the right to collective bargaining. The same applies to agricultural workers and workers engaged in domestic work, since they are not subject to the provisions of the Labour Law. In addition, migrant workers can exercise the right to collective bargaining, but not freedom of association, as they are not Jordanians.

Government authorization/approval is required for the registration of an employers' or a workers' organization, but not for the conclusion of a collective agreement.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize the principle of freedom of association and the effective recognition of the right to collective bargaining in Jordan:

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X			X
Inspection/monitoring mechanisms		X		X
Penal sanctions				
Civil or administrative sanctions				
Special institutional machinery	X		X	
Capacity building of responsible government officials	X		X	
Training of other government officials				
Capacity building for employers' organizations	X		X	
Capacity building for workers' organizations	X		X	
Tripartite discussion of issues				X
Awareness raising/advocacy	X		X	

Within these measures, no special attention is given to particular situations with respect to women, or specific categories of persons or industries/sectors.

In instances where the right to collective bargaining has not been applied, the Government may carry out conciliation procedures that can end before the Labour Court. Decisions resulting from these procedures are binding to the parties in the collective dispute.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Jordan in the realization of the principle of freedom of association, are as follows:

- social values, cultural traditions;
- social and economic circumstances;
- legal provisions; and
- lack of social dialogue on this principle.

Concerning the effective recognition of the right to collective bargaining, the main difficulties are the following:

- lack of public awareness/support;
- lack of information and data;
- lack of capacity of responsible government institutions;
- lack of capacity of employers' organizations;
- lack of capacity of workers' organizations; and
- lack of social dialogue on this principle.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Jordan, in particular in the following areas, in order of priority: (1 = most important):

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle	2
Awareness raising, legal literacy and advocacy	2
Strengthening data collection and capacity for statistical analysis	2
Sharing of experiences across countries/regions	2
Legal reform (labour law and other relevant legislation)	2
Capacity building of responsible government institutions	2
Training of other officials	2
Strengthening capacity of employers' organizations	1
Strengthening capacity of workers' organizations	1
Strengthening tripartite social dialogue	1

Report preparation

In preparing this report, consultation was held with the most representative employers' and workers' organizations, and no comments were received from them.

Kenya

Government

Recognition of this principle and right

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Kenya. [The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), has been ratified by Kenya in 1964.]

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- migrant workers;
- workers of all ages;
- workers in the informal economy; and
- all categories of employers.

However, these rights are not recognized with respect to workers engaged in the administration of State; uniformed services (which include the armed forces or the reserve, as respectively defined in the Armed Forces Act, 1968); the Kenya Police; the Kenya Prisons Service or the Administration Police Force or any reserve force or service; and the National Youth Service.

Section 9(1) of the Trade Unions Act (Chapter 233) (No. 23 of 1952) makes it mandatory for an employers' or a workers' organization to apply for registration before commencement of their operations or business. Nonetheless, Government authorization or approval is not required to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged in Kenya to respect, promote and realize the principle of freedom of association and the effective recognition of the right to collective bargaining.

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)		X		X
Inspection/monitoring mechanisms	X		X	
Penal sanctions		X		X
Civil or administrative sanctions	X		X	
Special institutional machinery				
Capacity building of responsible government officials		X		X
Training of other government officials	X		X	
Capacity building for employers' organizations		X		X
Capacity building for workers' organizations		X		X
Tripartite discussion of issues	X		X	
Awareness raising/advocacy	X		X	

Concerning legal reform, a task force to review labour laws and harmonize them with provisions of ratified Conventions and core labour standards was constituted in May 2001. It is set to finalize the review in late 2002 or early 2003.

The Government is also benefiting from ILO technical cooperation programme, launched in May 2001, which aims at improving the capacity of Government and social partners (workers' and employers' organizations), as well as implementing, respecting and realizing the principle of freedom of association and the effective recognition of the right to collective bargaining. The project "Strengthening of Labour Relations in East Africa (SLAREA) covers Kenya, Uganda, and the United Republic of Tanzania.

With respect to inspection and monitoring mechanisms, the Government is seeking technical assistance from the ILO and bilateral donors in order to improve the capacity of the field inspection staff in reporting aspects concerning the principles alongside their normal field inspection reporting.

Penal sanctions for the violations of the principle are being addressed within the framework of the taskforce on review of labour laws, and constitutional reforms, which are under way. Civil and administrative sanctions are envisaged under the ongoing restructuring of the public sector. Relevant Government Ministries and Departments have the power under the Code Regulations to issue administrative directives from time to time, with the objective of ensuring respect for the principle.

Capacity building of responsible government officials, and of employers' and workers' organizations, is being implemented under the ILO-US funded technical cooperation project "Strengthening Labour Relations in East Africa" (SLAREA).

In addition, the Government is seeking technical assistance from the ILO and other bilateral and multilateral donors to help strengthen tripartite institutions and machinery in Kenya, through capacity building of key tripartite partners and provision of necessary materials and equipment.

Finally, the need for awareness and advocacy campaigns has been recognized by the Government. Consequently, any assistance by the Organization will be highly welcome.

Within these measures, no special attention is given to particular situations with respect to women, or specific categories of persons or industries/sectors. Nevertheless, the situation of disabled workers, children workers and migrant or refugee workers will be addressed by the task force on the review of labour laws.

In instances where the principle has not been respected, the Government has the power, through the Ministry of Labour, to order any employer or person to respect workers' rights under the principle. It does so by according recognition to a Union, which workers have joined for the purposes of collective bargaining, so long as the Union has met these three conditions enumerated in section 5(2) of the Trade Dispute Act Cap 234:

- the Union is concerned with the relevant industry;
- recruited workers represent more than 51 per cent of the total workforce;
- there is no rival union seeking representation of the same employees.

In other instances, which do not fall within the purview of the Ministry of Labour, the parties whose rights have been infringed, have sought redress through civil action in the High Court.

Progress and achievements concerning this principle and right

There are several successful examples in relation to freedom of association.

For instance, all registered trade unions conducted their elections in 2002. Shop-floor, branch and national elections took place from February to end of June 2001.

Elections for the Umbrella Workers' Organization, Central Organization of Trade Unions (COTU) (K) took place in August 2002, and resulted in the election of new office bearers, who among others included the current Secretary-General of (COTU) (K).

The ban on Kenya Civil Servants Union was lifted in November 2001, allowing public employees to organize themselves and collectively bargain for their rights.

As for the right to collective bargaining, dialogue and negotiations between the Ministry of Labour and the Ministry of Education, Science and Technology, on the one hand, and the Kenya National Union of Teachers, on the other, averted a national strike. This strike, planned for 10 June 2002, aimed at pressing for the stalled implementation of teachers' salary increase agreement signed in 1997.

Indeed, a government-appointed panel consisting of the union representatives, Ministry of Labour officials, Ministry of Education officials, and other independent members, has been deliberating on the dispute since early June 2002. This action has resulted in the Teachers' Union calling off and the withdrawal of the strike notice, thus averting an almost shut complete shut down of all public schools in the country.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Kenya in the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining, are as follows:

- lack of public awareness and/or legal support;
- lack of information and data;
- social and economic circumstances;
- political situation;
- legal provisions;
- prevailing employment practices;
- lack of capacity of responsible government institutions;
- lack of capacity of employers' organizations;
- lack of capacity of workers' organizations; and
- lack of social dialogue on this principle.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Kenya, in particular in the following areas, in order of priority: (1 = most important, 2 = second most important, etc., 0 = not important).

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle	8
Awareness raising, legal literacy and advocacy	7
Strengthening data collection and capacity for statistical analysis	1
Sharing of experiences across countries/regions	3
Legal reform (labour law and other relevant legislation)	0
Capacity building of responsible government institutions	4
Training of other officials	9
Strengthening capacity of employers' organizations	6
Strengthening capacity of workers' organizations	5
Strengthening tripartite social dialogue	2

Indeed, the machinery for data collection within the Ministry needs to be re-designed to allow for comprehensive data collection and analysis. This will require training of

officers in data collection techniques, and methodology as well as the identification of the best tools for such an exercise.

The capacity of officers in analysing the data collected needs to be built in order to allow the formulation of useful and appropriate policy decision derived from the data collected.

The need to deploy adequate tools machinery and equipment for purposes of data collection is also important. Such machinery will include stationery, computers, vehicles, telephones, faxes and e-mail.

In addition, the social partners, i.e. the Government, workers' and employers, organizations need to be sensitized about developing strong tripartite social dialogue institutions that are capable of addressing tripartite issues in an effective, efficient and satisfactory manner.

To this end, social dialogue institutions need to be firmly entrenched in the laws of Kenya, in order to make them independent and unamenable to external influences. Currently, certain social dialogue institutions have no legal backing and this undermines their legitimacy and sometimes their operations. An example of this is the National Joint Industrial Consultative Council.

The central Government authorities need to be sensitized on the role the Ministry of labour plays in the social-economic sphere of the country and particularly the importance of recognizing the significant place and role of tripartite social dialogue institutions in resolving labour and social questions affecting workers and employers.

Such measures would make the central government authorities appreciate the strategic role of the Ministry of Labour in the economy and thus allocate it adequate budgetary resources to meet its objectives.

Finally, government officials need to be able to share experience across countries and regions, which have ratified Conventions dealing with this fundamental principle. This may be achieved through study tours and excursions to countries in the developed and developing. The study should focus on their experiences before ratifying the relevant Conventions and their implementation of the principle.

Report preparation

In preparing this report, no consultations were held with the social partners or other government authorities outside the Ministry of Labour and Human Resource Development.

No comments on the report were received from employers' and workers' organizations.

Kuwait

Government

Recognition of this principle and right

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Kuwait. [The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), was ratified by Kuwait in 1961.]

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- all workers in the public service;
- medical professionals;
- teachers;
- agricultural workers;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers;
- migrant workers; and
- all categories of employers.

Workers engaged in domestic work cannot exercise freedom of association and the right to collective bargaining.

Moreover, Article 72 of the Law No. 38 of 1964 concerning Labour in the private Sector Code provides that in the private sector, only workers who have reached the age of 18 years can join trade unions.

Government authorization/approval is required to establish employers' or workers' organizations, or to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize freedom of association and effective recognition of the right to collective bargaining in Kuwait.

Within these measures, no special attention is given to particular situations with respect to women, or specific categories of persons or industries/sectors.

The Law No. 38 of 1964 concerning Labour law in the Private Sector (also referred to as “Labour Law”) deals with instances where the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected.

With regard to freedom of association, Article 75 of the Labour Law provides that “the Ministry of Social Affairs and Labour shall, within 15 days from the date of depositing the documents provided for in Article 74, notify the trade union of any objections relating to any measures of the Trade Union formation contradictory to the provision of this Law”. If the Trade Union fails to rectify such objected measures within 15 days following the date of objection, the formation of the Trade Union shall be considered null and void as from the very date of establishment.

Article 77 provides that the Trade Union may be dissolved in either manner of the following:

- (a) optional dissolution: the funds of the Trade Union shall be liquidated under a resolution passed by the General Assembly in accordance with the Organic Statute, and the Ministry of Social Affairs and Labour shall be notified accordingly, within a week from the date on which the dissolution’s decision was passed;
- (b) compulsory dissolution: by institution of a legal action brought before the Court of First Instance by the Ministry of Social Affairs and Labour for the purpose of rendering a judgement dissolving the Trade Union if it committed any acts deemed to be contradictory to the provisions of this Law and the Laws relating to the preservation of the public order and moral. The said Court judgement may be appealed within 30 days from the date of its pronouncement before the Court of Appeal whose judgement shall be final. The funds of the Trade Union after liquidation shall, in all cases, be handed over to the Ministry of Social Affairs and Labour.

With respect to collective bargaining, Article 88 of the Labour Law provides that in any event any disputes arises between the employer and all/or part of his labourers regarding the terms of work, they shall abide by the following procedures for settlement of such dispute.

First, direct negotiation between the employer or his representative and the labourers or their representative. In case an amicable agreement is reached between the two parties, it shall be registered at the Ministry of Social Affairs and Labour within seven days from the date of its signing, in conformity with the procedure determined by the Ministry.

Second, if no agreement is reached between the two parties to settle their dispute through negotiations, either or both parties may submit in person or through a representative a request to the Ministry of Social Affairs and Labour in an attempt to settle the dispute.

Third, if the Ministry of Social Affairs and Labour fails to settle the dispute within 15 days from the date of submitting such a request, the dispute, at the end of the said period, shall be referred to the Labour Disputes Arbitration Committee, which shall be composed in the following manner:

1. a person from the High Court of Appeal is duly appointed every year by the General Assembly of the said court;

2. a Chief Prosecutor to be assigned by the Prosecutor General;
3. a representative from the Ministry of Social Affairs and Labour, to be appointed by the Minister of the said Ministry. The employer, or his representative for this purpose, and the representatives of the labourers may appear before the Committee, provided that the representatives of either party shall not be more than three.

The decision of the said Committee shall be conclusive and binding on both parties.

Article 89 of the Labour Law provides that the Ministry of Social Affairs and Labour shall issue all decisions, rules and instructions regulating the procedure provided for in Article 88.

Lebanon

Government

Recognition of this principle and right

The principle of freedom of association is recognized in Lebanon since ever and entrusted in the Labour Code of 1946 [Lebanon ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in 1977.]

In the public service, the workers in public institutions have the right of freedom of association and have their own old trade unions; although employees in public administration, judicial services or military police do not. However, the Draft Labour Code Amendment allows public administration employees to enjoy freedom of association. According to the Public Service Council, a proposal to allow workers in the public service to adhere occupational organizations and trade unions has been approved. This Council has recently prepared an amendment to staff regulations in the public services, recognizing their right to adhere to occupational and trade unions.

To date, certain categories of the public sector have established their own associations, which defend their rights and interests and which are recognized, such as teachers' associations in the public sector and the Association of Graduates and Trainees of Public Administration Institutions.

Freedom of association can be exercised at enterprise, sector/industry, national and international by the following categories of workers:

- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers, who can join an occupational trade union under the general conditions laid down in the Labour Code; and

- workers in the informal economy.

According to the national Labour Code, the age of 18 years is required to join an occupational trade union.

Moreover, by virtue of Article 86 of the same Code, employers' and workers' organizations can be established after acquiring the permission of the Ministry of Labour.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize freedom of association and effective recognition of the right to collective bargaining. Indeed, the tripartite committee established by virtue of Ministerial Decree (Ministry of Labour) No. 210-1 of 21 December 2000 in order to amend the provisions of the Labour Code, has introduced most of the principles mentioned in the Freedom of Association and Protection of the Right to Organise (Convention No. 87). A copy of the project has been sent to the ILO Regional Office in Beirut, and in Geneva, for information.

Since Convention No. 87 does not make any distinction between men and women, no special attention was given to women by the tripartite committee. However, special attention was given to the situation of specific categories of persons, but not to specific categories of industries/sectors: under the Labour Code, there are immunities which are granted to members of executive councils of trade unions against any arbitrary layoff. Furthermore, the Draft Labour Code Amendment includes a provision, which authorizes certain categories of persons to enjoy the right to organize, while according to laws and regulations in force, such persons do not have that right.

Difficulties concerning the realization of this principle and right

No difficulties were encountered in the realization of the principle of freedom of association, which is respected in Lebanon.

Priority needs for technical cooperation

The Government of Lebanon would appreciate ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Lebanon, in particular in the following four priority areas:

- capacity building of responsible government institutions;
- strengthening capacity of employers' organizations;
- strengthening capacity of workers' organizations; and
- strengthening tripartite social dialogue.

Report preparation

In preparing this report, consultations were held with government authorities outside the Ministry of Labour.

A copy of the report form has been sent to:

- the Council of General Service;
- the Association of Lebanese Industrialists;
- the Federation of Chambers of Commerce, Industry and Agriculture, Lebanon, and
- the Confederation of Trade Unions.

No comments were received from the occupational employers' and workers' organizations.

Observations submitted to the Office by the Federation of Chambers of Commerce, Industry and Agriculture of Lebanon, through the Government

According to the Federation of Chambers of Commerce, Industry and Agriculture of Lebanon, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in the country.

Workers in the public service can exercise freedom of association and the right to collective bargaining, except for people working in the military sector.

Workers and employers can exercise freedom of association and the right to collective bargaining at enterprise, sector/industry, national and international levels.

Government authorization/approval is required to establish an employers' or workers' organization, but not to conclude collective agreements.

No specific measures were undertaken to respect, promote and realize in Lebanon the principle of freedom of association and the effective recognition of the right to collective bargaining.

Government observations on the Federation of Chambers of Commerce, Industry and Agriculture's comments

Right to organize and the right to collective bargaining in the civil service

Civil servants working in the public institutions have the right to organize. They have their active unions. Officials and salaried employees working in public administrations, security forces and magistracy, do not currently enjoy the right to collective bargaining. However, certain categories of this sector set up associations to defend their rights and interests; these associations are recognized as teachers' associations in the public sector, and as the Association of the Public Administration Institute's Graduates and Trainees.

It is worth noting that the draft amendment of the Lebanese Labour Law, prepared by a tripartite committee set up by virtue of the Minister of Labour's Order No. 1/210 of 21 December 2000, gives the Public Administration's officials the right to organize.

Right to organize and the right to collective bargaining in production sectors

The Government would like to clarify that the right to collective bargaining does not only cover the industrial sector, but also other sectors such as commerce, services and agriculture, etc.

Collective *agreements*

Collective agreements are concluded between a party representing one or more salaried employees' union or federation, and a party representing one or more employer or representative of one or more employers' trade association or federation of trade associations.

The collective agreement is approved by the General Assembly of the unions or trade associations parties to the agreement (articles 1 and 4 of the Collective Agreements, Mediation and Arbitration Act, applied by virtue of Decree No. 17386 of 2 September 1964).

The Government's role in a collective agreement is limited: if it appears to the Ministry of Labour that some items are not in conformity with public order, it can request the parties to the agreement to review its terms before publication.

It should be noted that a collective agreement is not binding until it is published in the Official Bulletin by the Ministry of Labour, or after a month of the date of its registration with the Ministry (articles 2 and 6 of the abovementioned law).

Respect, promotion and implementation of the principle of freedom of association and the effective recognition of the right to collective bargaining in Lebanon

The Government affirms once again that Lebanon respects, promotes and implements freedom of association and the right to collective bargaining, as it obviously appears in the following:

1. The great and ever growing number of trade unions in Lebanon.
2. The steady increase in the number of collective agreements that have been concluded.
3. Furthermore, the abovementioned draft amendment of the Labour Law contains several articles aim at promoting freedom of association and the right to collective bargaining, in terms of:
 - the principles set out in the unratified Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
 - the provisions of the ratified Right to Organise and Collective Bargaining Convention, 1949 (No. 98); and

- the application of the principles of both Conventions to categories currently excluded from the exercise of the right to organize and the right to collective bargaining.

The Ministry of Labour already provided the International Labour Office, through the Regional Office in Beirut, with a copy of the draft amendment of the Labour Law.

Malaysia

Government

Recognition of this principle and right

The principle of the effective recognition of the right to collective bargaining is recognized in Malaysia [the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), has been ratified by Malaysia in 1961.]

Freedom of association can be exercised at enterprise, sector/industry, national and international levels (through affiliation).

The right to collective bargaining be exercised at enterprise, sector/industry and national levels by the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- migrant workers;
- workers who have reached the age of 16 years old; and
- all categories of employers.

The right to collective bargaining is not recognized for workers engaged in domestic work and workers in the informal economy, as they are too negligible in number to form associations.

The exercise of this right is denied to workers in the public service, public officers holding any post in the Managerial and Professional Group, except those exempted by the Chief Secretary to the Government.

Moreover, government authorization/approval is not necessary to conclude collective agreements. They must however be deposited to the Industrial Court for cognizance. Trade unions are registered under the Trade Union Act, 1959, while associations are registered under the Societies Act, 1966.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

In Malaysia, specific measures have been implemented or are envisaged to respect, promote and realize the effective recognition of the right to collective bargaining.

Types of measures	Collective bargaining	
	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)		X
Inspection/monitoring mechanisms		X
Penal sanctions		
Civil or administrative sanctions		X
Special institutional machinery		X
Capacity building of responsible government officials	X	
Training of other government officials	X	
Capacity building for employers' organizations	X	
Capacity building for workers' organizations	X	
Tripartite discussion of issues		X
Awareness raising/advocacy	X	

Within these measures, no special attention is given to particular situations with respect to women, or specific categories of persons or industries/sectors.

Action is taken in instances where the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected. Indeed, in the public sector, National Joint Councils are responsible for discussing and to some extent negotiating terms and conditions of employment, including remuneration. The Congress of Unions of Employees in the Public and Civil Service (CUEPACS), the officers of the Joint Councils, and the Public Services Department meet on a regular basis to discuss issues affecting employees in the public service, including the statutory bodies and local authorities.

Progress and achievements concerning this principle and right

The formation of enterprise-based unions in 1989 can be seen as a major change with respect to freedom of association.

Although the Government did not ratify the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), it does not deprive workers of their right to form or join trade unions. The federal Constitution reiterates the right of all citizens to form associations. It is merely a question of forming or joining the right trade union. It is the Government's contention that when workers are organized on an in-house or industrial union basis, it is easier to bind them together in a strong organization through lasting community interests. This facilitates the process of collective bargaining, as each union will be able to focus its attention on a particular place of employment or industry, which its leaders are familiar with. Moreover, the formation of trade unions is solely the right of workers, introduced by the Trade Unions Act, 1959. Admittedly, it is not in conformity

with Convention No. 87, which Malaysia has not ratified. It has nevertheless served the Government and its trade union movements as well, as evidenced by the steady growth of trade unions and the stable industrial relations climate in the country. As of August 2002, some 597 trade unions had been registered with a total membership of 811,051, as compared to 529 trade unions with a total membership of 728,774 in 1996.

As far as the right to collective bargaining is concerned, several initiatives undertaken can be regarded as successful. The number of collective agreements voluntarily concluded on an annual basis and for a minimum duration of 3 years (and taken cognisance of), are as follows:

Year	1998	1999	2000	2001
Number	284	268	324	373

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Malaysia in the realization of the principle of freedom of association, are related to social values, cultural traditions, and social and economic circumstances.

Mauritius

Government

Recognition of this principle and right

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

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- migrant workers;
- workers of all ages;
- workers in the informal economy; and
- all categories of employers.

For reasons of public safety, members of the discipline force (i.e. the Police Force, Fire service personnel, and Prison staff) cannot exercise these rights.

Government authorization/approval is required to establish an employers' or a workers' organization, but not to conclude collective agreements. Section 5 of the Industrial Relations (Amendment) Act, 1997, requires every trade union to apply to the Registrar of Associations for registration purposes, within 3 months after the date of its formation. The application for registration shall be made in the prescribed form and shall be accompanied by the prescribed fee, two copies of the rules of the trade union, and a statement of particulars in the prescribed form.

Notices of applications that have not been rejected are then published by the Registrar in the *Government Gazette* and in two daily newspapers. Any registered trade union may lodge, no later than 21 days following the publication of the notice in the Gazette, 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.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

In Mauritius, specific measures have been implemented or are envisaged to respect, promote and realize the principle of freedom of association and the effective recognition of the right to collective bargaining.

Types of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X			X
Inspection/monitoring mechanisms		X		X
Penal sanctions		X		
Civil or administrative sanctions		X		
Special institutional machinery		X		
Capacity building of responsible government officials		X		X
Training of other government officials		X		X
Capacity building for employers' organizations		X		X
Capacity building for workers' organizations		X		X
Tripartite discussion of issues		X		X
Awareness raising/advocacy		X		X

Special attention was given to the situation of women, through capacity building of workers' organizations and awareness raising carried out by the Education and Training Branch of the Ministry of Labour and Industrial Relations. Also, the Ministry of Women's Rights, Child Development and Family Welfare, has undertaken a project aimed at conducting leadership courses and communication skills training with women in various sectors, including trade unions.

However, the situations of specific categories of persons, industries/sectors were not taken into account.

In instances where the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected, the Conciliation and Mediation Department of the Ministry of Labour and Industrial Relations intervenes either by carrying out enquiries at the workplace with employers' and workers' representatives, or by conducting conciliation meetings at the Ministry Headquarters. Such meetings are sometimes chaired by the Minister of Labour and Industrial relations, when the situation so requests. Follow-up meetings or visits are carried out with a view to monitoring the restoration of harmonious labour relations. Whenever negotiations fail, the matter is dealt with by the Industrial Relations Commission.

Progress and achievements concerning this principle and right

No major changes occurred since last report.

Nonetheless, several initiatives can be regarded as successful examples in relation to freedom of association.

For instance, the Government budget 2002/2003 has made provisions for 3 millions Rupees (about US\$100,000 as of September 2002) for the Trade Unions Trade Fund, in order, inter alia, to finance training and education programmes organized for the benefit of trade unions federations.

The University of Mauritius is running, at the request of the Government, a two-year part time Certificate Course in Industrial Relations for government officials (funded by the Government), and employers' and trade unions representatives (funded by the Mauritius Employers' Federation and the Trade Union Trust Fund, respectively).

Furthermore, the Trade Union Trust Fund has commissioned a study to be carried out by the University of Mauritius on "*Low rate of Unionisation in Mauritius – causes, strategy for Reinvigoration*". This ongoing project is benefiting from ILO funding.

Finally, the Trade Union Trust Fund has also organized, from 26 to 28 September 2001, a National Trade Union Conference on "The role of trade unions in the social, political and economic transformation of the Mauritian Society." This activity received the technical and financial support of the ILO.

As far as the effective recognition of the right to collective bargaining is concerned, the Conciliation and Mediation Division and the Industrial Relations Commission provides for a forum where workers' and employers' organizations, which have reached a deadlock in the process of collective bargaining, may continue discussions with the help of a third party.

In addition, the Ministry of Labour and Industrial Relations organized in collaboration with the ILO a two-day training programme on Conciliation and Mediation on 20 and 21 May 2000. The training was attended by government officials and workers' and employers' representatives.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Mauritius with respect to realizing freedom of association and the effective recognition of the right to collective bargaining are related to the lack of information and data and legal provisions.

With respect to collective bargaining, these difficulties lie on lack of information and data, prevailing employment practices and lack of capacity of workers’ organizations.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining, in particular in the following areas, in order of priority: (1 = most important, 2 = second most important, etc., 0 = not important).

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle	2
Awareness raising, legal literacy and advocacy	0
Strengthening data collection and capacity for statistical analysis	3
Sharing of experiences across countries/regions	3
Legal reform (labour law and other relevant legislation)	1
Capacity building of responsible government institutions	2
Training of other officials	0
Strengthening capacity of employers’ organizations	2
Strengthening capacity of workers’ organizations	2
Strengthening tripartite social dialogue	2

Report preparation

In preparing this report, consultations were held with the most representative employer’s and workers’ organizations, as well as government authorities outside the Ministry of Labour and Industrial Relations.

A copy of the report form was sent to the stakeholders and employers’ and workers’ organizations, which have been invited to submit their observations. No comments were received from employers’ and workers’ organizations.

The following employers’ and workers’ organizations have been sent a copy of this report, after its preparation:

- the Mauritius Employers’ Federation;
- the *Confédération Mauricienne des Travailleurs*;
- the *Fédération des Syndicats des Corps Constitués*;
- the *Fédération des Travailleurs Unis*;

- the Federation of Civil Service Unions;
- the Federation of Progressive Unions;
- the General Workers' Federation;
- the Mauritius Labour Congress;
- the Mauritius Labour Federation;
- the State Employees Federation;
- the National Trade Union Confederation; and
- the National Trade Union Congress.

Mexico

Government

Recognition of this principle and right

The principle of freedom of association is recognized in Mexico. [The Freedom of Association and the Protection of Right to Organise Convention, 1948 (No. 87), has been ratified by Mexico in 1950.]

The principle of effective recognition of the right to collective bargaining is set out in the Federal Labour Act, 1969, which defines a collective employment contract as an agreement concluded between one or more trade unions and one or more employers (or one or more employers' organizations), with the object of establishing the conditions under which workers must work in one or more enterprises or establishments (Article 386). According to this Article, an employer who employs workers who are members of a trade union shall have the obligation, at the request of the trade union, to conclude a collective agreement. If the employer refuses to conclude this agreement, workers may exercise the right to strike.

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- all workers in the public service;
- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or other enterprises/industries with EPZs status;

- migrant workers;
- workers in the informal economy; and
- all categories of employers.

The employment of children below 14 years of age is prohibited under Article 123, section A, Paragraph III of the Political Constitution of the United States of Mexico. Therefore, people below 14 year of age cannot exercise these rights.

Government authorization/approval is not necessary to establish an employers' or a workers' organizations, or to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize the principle of freedom of association and the effective recognition of the right to collective bargaining.

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X		X	
Inspection/monitoring mechanisms				
Penal sanctions				
Civil or administrative sanctions				
Special institutional machinery				
Capacity building of responsible government officials				
Training of other government officials				
Capacity building for employers' organizations				
Capacity building for workers' organizations				
Tripartite discussion of issues		X		X
Awareness raising/advocacy				

Within these measures, no special attention is given to particular situations with respect to women, or specific categories of persons or industries/sectors, as the principle applies equally to all workers, industries and sectors within the national territory.

To deal with cases of violation of the principle, the Government has established three institutions at federal or local level:

- labour inspection: inspectors have the obligation to monitor compliance with labour laws. When any non-compliance is detected, they are required to impose a penalty on the employer (Article 541 of the Federal Labour Act);

- labour Legal Defence Service: the object of this service is to propose conciliation to the parties concerned (workers and employers) in order to settle disputes and record the result in judicial acts. If conciliation is not achieved, the Service will undertake, before any authority, to represent or advise workers and their trade unions who so request, on matters related to the application of labour laws. It will also instigate ordinary or extraordinary proceedings in defence of a worker or trade union (Article 530 of the Federal Labour Act); and
- conciliation and arbitration panels: these organs are responsible for hearing and resolving labour disputes between workers and employers, arising out of employment relations or matters closely related thereto (Articles 601 and 604 of the Federal Labour Act).

Progress and achievements concerning this principle and right

The Government has launched a project called “New Labour Culture”, which seeks to promote the benefits derived from local and external production and marketing by presenting work as the instrument, which unleashes human aptitudes and skills. In this way, human development is achieved as factors of production sharing the country’s economic development.

Labour law reform is in progress. This will help to promote training, participation and fair remuneration for workers. It will also enable the creation of formal jobs, enhance the competitiveness of enterprises and provide greater legal certainty and security to the factors of production through consensus between workers, employers, various government authorities and society in general.

In addition, the Council for Dialogue with the Productive Sectors was created on 28 February 2001. Its purpose is to maintain a continuing dialogue, participation and collaboration, to air problems arising out of the new national and international conditions affecting labour.

The Council is composed by representatives of industrial and rural workers, employers and the public sector. It is chaired by the Secretary of Labour and Social Security and includes Heads of the Secretariats of the Treasury and Public Finance, Economy, Agriculture, Livestock, Rural Development, Fisheries and Food, Public Education, Social Development, and Tourism.

The Heads of the Bank of Mexico; the Mexican Institute of Social Security; the National Housing Fund; the National Institute for Statistics, Geography and Information Technology; the National Minimum Wage Commission and the Fund for the Promotion and Guarantee of Workers’ Consumption, are invited as permanent observers.

The objectives of the Council for Dialogue are to:

- participate, as laid down by law and the Federal Government, in the preparation, revision, and implementation of the National Development Plan and the related programmes in the labour sector;
- analyse problems of a general character which affect the labour sector and propose appropriate solutions;

- promote an environment that encourages dialogue and conciliation between the factors of production and industrial peace;
- propose measures to raise workers' real wages and generate jobs;
- suggest actions to raise workers' productivity and the competitiveness of enterprises;
- promote competitiveness through industrial productivity and, thus, encourage education and training programmes;
- promote programmes and actions to improve safety and health at the workplace;
- propose to the Federal Government, through the Secretary of Labour and Social Security, measures to coordinate and involve social and private sectors and to achieve quality jobs and self-employment and training; and
- undertake studies and research and organize fora, seminars, conferences and all kinds of events for the purpose of information and analysis.

Difficulties concerning the realization of this principle and right

The main difficulty concerning the realization of the effective recognition of the right to collective bargaining arose from legal provisions. Also, Mexico has been unable to ratify the Right to Organise and Collective Bargaining Convention, 1957 (No. 98). Indeed the Senate accepted to ratify this instrument, provided that a reservation could be made with respect to Article 1(2) (b) of the said Convention. In this way, the mandates established in Article 123 of the Constitution and the Federal Labour Act would take precedence in the field of freedom of association. However, reservations are not allowed, and consequently the ratification could not take place.

Priority needs for technical cooperation

There is no need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Mexico.

Report preparation

In preparing this report, consultations were held with the most representative employers' and workers' organizations, and comments were received from them.

A copy of the report was sent to the Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN), the Confederation of Employers of the Mexican Republic (COPARMEX), and the Confederation of Workers of Mexico (CTM).

Morocco

Government

Recognition of this principle and right

The principle of freedom association and the effective recognition of the right to collective bargaining is recognized in Morocco. [The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) has been ratified by Morocco in 1957.]

It can be exercised at enterprise, sector or industry, national or international level by the following categories or persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers;
- workers of all ages;
- workers in the informal economy; and
- all categories of employers.

However, officials and personnel employed in a function which involves carrying arms, persons covered by the special regulations of the Ministry of the Interior and the Judiciary may not exercise the right to freedom of association and collective bargaining.

The constitution of an employers' or workers' organization and the conclusion of collective agreements are not subject to government authorization or approval.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures been implemented or are envisaged to respect, promote and realize freedom of association and the effective recognition of the right to collective bargaining, as follows:

Type of measure	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X			X
Inspection/monitoring mechanisms		X		X

Type of measure	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Penal sanctions		X		X
Civil or administrative sanctions		X		X
Special institutional machinery		X		X
Capacity building of responsible government officials		X		X
Training of other government officials	X		X	
Capacity building for employers' organizations		X		X
Capacity building for workers' organizations		X		X
Tripartite discussion of issues		X		X
Awareness raising/advocacy		X		X

The status of women is not singled out for special attention in the context of these measures. However, child labour, the textiles and clothing sectors, urban transport and the canning industry are of particular concern to the public authorities.

In instances where the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected, the Government takes action through social dialogue or the Labour Inspectorate.

At the level of social dialogue, a national committee on investigation and collective agreements has been created. It is responsible for promoting social dialogue and encouraging the social partners to work together and to settle labour disputes at national level.

In addition, the Labour Inspectorate plays an important role in collective bargaining. It advises the social partners, urges them to engage in social dialogue, brings the two parties positions closer together and encourages collective bargaining.

Furthermore, in the event of infringements of trade union rights, labour inspectors can initiate prosecutions which are then submitted to the competent court for judgement.

In addition, as part of the measures taken by the Government to promote the principle of freedom of association and effective recognition of the right of collective bargaining, the Ministry of Employment, Vocational Training, Social development and Solidarity has set itself the following goals:

- strengthening of enforcement of labour law;
- promotion of occupational health;
- development of contract law;
- elaboration, adoption and implementation of appropriate labour law in line with the spirit of international labour standards;

- improvement of the management of industrial relations by promoting collective bargaining and collective settlement of industrial disputes; and
- strengthening of the monitoring of the conditions of work of vulnerable social categories (working children and women).

Progress and achievements concerning this principle and right

Considerable changes relating to this principle have taken place since Morocco's last report. For example, the Regional Programme for the Promotion of Social Dialogue in French-speaking Africa (PRODIAF) was launched in October 2001. An advocacy and training campaign for the social partners was also launched on that date.

Special measures were taken in Morocco, which can be regarded as successes in relation to freedom of association and effective recognition of the right to collective bargaining. Thus, Dahir (Decree) No. 1-00-01 of 9 *Kaada 1420* (13 February 2000) promulgates law No. 11-98 of 15 February 2000, a copy of which was provided to the ILO. In addition, concerning the right to collective bargaining, the agreements of 1 August 1996 and of 19 *Moharram 1421* (23 April 2000) encourage the conclusion of collective agreements.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Morocco in realizing the principle of freedom of association and the effective recognition of the right to collective bargaining concern social values and cultural traditions, and the lack of resources in the responsible government institutions and employers' and workers' organizations.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining, especially in the following areas, in order of priority (1 = most important):

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle	2
Awareness raising, legal literacy and advocacy	2
Strengthening data collection and capacity for statistical analysis	2
Sharing of experiences across countries/regions	2
Legal reform (labour law and other relevant legislation)	1
Capacity building of responsible government institutions	1
Training of other officials	2
Strengthening capacity of employers' organizations	2
Strengthening capacity of workers' organizations	2
Strengthening tripartite social dialogue	1

Report preparation

In the course of preparing the report, the Government consulted the most representative employers' and workers' organizations, and government bodies other than the Ministry of Employment, Vocational Training, Social Development and Solidarity. In addition, a copy of this questionnaire was provided to the social partners, but no observations were received from them by the Ministry.

A copy of this report was sent to the following employers' and workers' organizations:

- the General Confederation of Moroccan Enterprises (CGEM);
- the Federation of Chambers of Commerce, Industry and Services of Morocco (FCCISM);
- the Democratic Labour Confederation (CDT);
- the Moroccan Labour Union (UMT); and
- the General Union of Workers of Morocco (UGTM).

Myanmar

Government

Recognition of this principle and right

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Myanmar. [The Freedom of Association and the Protection of Right to Organise Convention, 1948 (No. 87), has been ratified by Myanmar in 1955.]

Freedom of association can be exercised by all workers in the public service and all categories of employers. However, the right to collective bargaining can be exercised by all categories of employers, but not in the public service.

Freedom of association and the effective recognition of the right to collective bargaining can be exercised at the enterprise level.

No government authorization/approval is required to establish an employers' or a workers' organization, or to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize the principle. In this respect, special attention was given to the situations of women and of specific categories of persons. Indeed, in trade disputes, both legal and social considerations are taken into account.

**Progress and achievements concerning
this principle and right**

The Myanmar Overseas Seafarers' Association, established in 2001, can be considered as a major change regarding freedom of association.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining Myanmar, in particular with regard to the assessment of difficulties and their implication for realizing this principle.

Report preparation

In preparing this report, the Department of Labour held two meetings with other departments concerned and the most representative employers' and workers' organizations. During the final meeting, all comments from the parties concerned were integrated in the final report. No comments on this report were received from employers' and workers' organizations.

A copy of the report was sent to:

- the Department of Marine Administration under Ministry of Transport;
- the Attorney General's Office;
- the Departments of the Ministry of Labour;
- the Union of Myanmar Federation of Chamber of Commerce and Industries (UMFCCI); and
- the Workers' Welfare Associations concerned.

Annexes (not reproduced)

- (Annexes not received)

New Zealand**Government****Recognition of this principle and right**

The Employment Relations Act (ERA), 2000 is the primary piece of legislation that provides recognition of the right to freedom of association and the right to collectively bargain in New Zealand. A complete report on the ERA was provided in 2000, and a supplementary report in 2001.

In addition, the New Zealand Bill of Rights Act 1990 (NZ BOR Act) and the Human Rights Act, 1993 (HR Act) also reinforce the right to freedom of association and affirm the

right to freedom from discrimination. The NZ BOR Act reinforces workers' and employers' right to freedom of association, by providing the right of every person to be free from discrimination on the grounds provided for by the HR Act. Further, the HR Act also makes unlawful certain discriminatory behaviour by an employees' or employers' organization, or any professional or trade association. The situation where a professional association refuses or omits to accept any person for membership of that organization as a consequence of any prohibited grounds of discrimination, is an example of such behaviour.

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- all workers in the public service;
- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- migrant workers;
- workers of all ages
- workers in the informal economy; and
- all categories of employers.

The ERA covers "employers" as defined in the Act. The armed forces are not "employees" according to this definition, and do not therefore receive the protection of the Act to establish and join employees' organizations. Under section 45 of the Defence Act 1990, the Chief of the New Zealand Defence Force has a statutory responsibility to determine conditions of employment for the armed forces, in consultation with the State Services Commission.

The police are covered under the ERA, but with certain separate arrangements that apply to sworn police officers under the Police Act, 1958. This Act restricts the matters that may be negotiated as of right. The Police Association and the Police Managers Guild are representative organizations of the police, and both are registered as unions under the ERA. The police do not have the right to strike, but instead have a right to final offer arbitration. Staff may be employed in individual employment agreements.

However, all workers have the right to freedom of association under the NZ BOR Act, as already mentioned. Workers, who are not defined as "employees", can – and in practice do – belong to workers' organizations. For example, UNITEI is a union registered under the ERA that specifically aims to organize workers such as beneficiaries. Associations of independent contractors also operate. For example, there is an association of rural mail contractors.

Government authorization/approval is necessary to establish a workers' organization, but not to establish an employers' organization or to conclude collective agreements.

Indeed, the ERA defines a union, as a union registered under Part 4 of the Act, which provides for the registration of unions that are accountable to their members. section 12 provides that the object of Part 4 is to:

- (a) recognize the role of unions in promoting their members' collective employment interests;
- (b) provide for the registration of unions;
- (c) confer on registered unions the right to represent their members in collective bargaining; and
- (d) provide representatives of registered unions with reasonable access to workplaces for purposes related to employment and union business.

Any society that is entitled to register as a union may apply to the Registrar of Unions. This requires an application accompanied by:

- a copy of the society's certificate of incorporation under the Incorporated Societies Act, 1908;
- a copy of the society's rules as registered under the Act; and
- a statutory declaration made by an officer of the society setting out the reasons why the society is entitled to be registered as a union (section 13).

Section 14 sets out the conditions that entitle a society to be registered as a union:

- (a) an object of the society is to promote its members' collective employment interests;
- (b) this society is incorporated under the Incorporated Societies Act, 1908;
- (c) the society's rules are democratic, not unreasonable, not unfairly discriminatory or prejudicial, and not contrary to the law; and
- (d) the society is independent of, and operates at an arm's length from, any employer.

Membership had previously declined under the Employment Contract Act, 1991 (although this trend predated the Act), from 35.1 per cent of the employed labour force in 1997 to 17 per cent in 1999. However, unionization has increased significantly under the ERA. Since then, 170 unions have been registered and membership has increased by 12.4 per cent to 340,000 members as of March 2002, i.e. 18.2 per cent of the employed labour force.

This growth has reflected both the consolidation of traditional unions and the formalization of previous types of representation. About half of the current unions were incorporated before the ERA came into force, including the ten largest unions. However, since the implementation of ERA, a number of new, enterprise-based unions have emerged, many of which operated as staff associations under the previous legislation. Despite their number, however, these bodies represent only a small, and arguably fragile, proportion of overall union membership. As of March 2002, the ten largest unions accounted for 75 per cent of union members, while 40 per cent of unions had less than 100 members at this time.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize the principle.

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)		X		X
Inspection/monitoring mechanisms		X		X
Penal sanctions		X		X
Civil or administrative sanctions		X		X
Special institutional machinery		X		X
Capacity building of responsible government officials		X		X
Training of other government officials		X		X
Capacity building for employers' organizations		X		X
Capacity building for workers' organizations		X		X
Tripartite discussion of issues		X		X
Awareness raising/advocacy		X		X

Although employment legislation in New Zealand has a universal scope, the assistance provided under the ERA is particularly significant for those who are generally most disadvantaged, including women and young persons.

As described in New Zealand's 2000 and 2001 reports, the ERA acknowledges and addresses the inherent inequality of bargaining power in many employment relationships. It recognizes that employees who are vulnerable in this situation require the ability to pursue and express their interests more effectively through unions and collective bargaining.

The good faith obligations of the ERA also provide wide protection to disadvantaged categories of persons. For example, good faith includes an obligation to consult on matters arising under a collective or individual agreement, including proposals by the employer that may impact on an employee. Employment Relations Education (ERE) can also provide benefits to people who are disadvantaged by their lack of skills or knowledge.

The services provided by the Department of Labour are also available to a universal audience, but can benefit certain groups. The Department adopts a proactive role in promoting awareness, by offering its services to persons, groups or industries where particular issues arise. Between 2 October 2000 and 30 June 2002, mediators have undertaken 610 seminars and talks on problem resolution services and other employment related topics. Information Officers and Labour Inspectors have conducted approximately 400 talks or seminars about employment rights and obligations with high schools, tertiary

providers, Citizens Advice Bureaux, industry training providers, workplaces, community representatives, and employers.

Progress and achievements concerning this principle and right

Significant developments and initiatives have taken place since the last report.

New Zealand has been in dialogue with the International Labour Office for 18 months over the compatibility of the ERA with 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). Three possible areas of incompatibility have been identified during this correspondence and as part of the Government's assessment of compatibility:

- the treatment of sympathy and protest strikes;
- the situations when union access may be denied on religious grounds; and
- the lack of an explicit protection for employees from discrimination for participating in lawful strikes.

Consultation is currently underway with New Zealand's social partners – the New Zealand Council of Trade Unions and Business New Zealand – to address the compatibility of the ERA with Convention Nos. 87 and 98. This consultation is required under ILO Tripartite Consultation Convention (International Labour Standards), 1976 (No. 144), which New Zealand has ratified.

In addition, to strengthen employers', employees', and unions' understanding of the "rules" around collective bargaining – in particular of union access rights and the application of good faith bargaining – the Department of Labour published in October 2001 a best practice guide entitled "Collective Bargaining under the Employment Relations Act, 2000: in Good Faith". This publication provides practical advice examples and suggestions about how to bargain in good faith for a collective agreement under the ERA. It has been enclosed with this report.

Finally, Employment Relations Education (ERE) has also helped increase employers' employees' and unions' skills and knowledge of employment matters, including freedom of association and collective bargaining. This has improved workplace relationships and promoted good faith. To date, some 110 ERE courses have been approved, mainly focusing on good faith bargaining, communication skills, and productive employment relationship techniques¹. Participants report positive benefits in upgrading negotiations and relationship skills. Work to comprehensively evaluate the effectiveness of the ERE Programme is currently underway, with initial findings expected in October 2002.

¹ In the public sector, the Public Service Association (PSA) has received ERE funding to develop a qualification in the public sector employment relations, building on an New Zealand Qualification Authority (NZQA) proposal for a new National Certificate in Employment Relations, with the assistance of the Public Service Training Organization (PSTO).

A key feature of the ERE Programme is a contestable Government fund of \$5 million, paid out over a three year period from 2001 to 2003. Eligible applicants are invited to apply to the ERE Courses. An ERE Advisory Committee is responsible for considering the applications and recommending to the Minister those selected for funding approval.

Two funding rounds have been run since 2001, with a third round currently underway. Fifteen applicants were successful in the first round and 19 in the second one; in each case the applications received greatly exceeded the funds available, \$1 million in the first round and \$2 millions in the second. Successful applicants included the New Zealand Council of Trade Unions, Business New Zealand, various unions and employers' groups, and local education providers.

Approved grant help to develop the capacity of eligible organizations to provide long-term, high quality ERE Programmes. Further capacity building of employers' organizations and unions from this funding will contribute to the promotion of collective bargaining, by increasing the capacity of those organizations, unions, and their members to participate in collective bargaining. Capacity building through this funding includes short-term support of specialist staff, resources for ongoing use, including web-based resources, and development costs of actual courses. For example, funding has been used to develop and deliver courses covering such matters as productive workplace relations, developing the skills of good faith behaviour, health and safety, and a guide to minimum employment conditions in New Zealand.

Priority needs for technical cooperation

As already mentioned, New Zealand has been engaged in a comprehensive dialogue with the ILO over the compatibility of the ERA with Conventions Nos. 87 and 98. As part of this dialogue a tripartite meeting was held in New Zealand in February 2002, with the Director of the International Labour Standards Department. This consultation has been highly constructive and valuable for helping to facilitate New Zealand's realization of the principle of freedom of association and effective recognition of the right to collective bargaining.

Report preparation

In preparing this report, full reports were sent to Business New Zealand, the national organization that represents the interests of New Zealand's business and employing sectors, and the New Zealand Council of Trade Unions, which brings together nearly 300,000 New Zealand union members in 34 affiliated unions. They were invited to make their comments on the completed report forms.

Observations submitted to the Office by Business New Zealand

Although Business New Zealand agrees that special attention is given to women within the measures aiming at realizing the principle, it also queries the assumption that women in New Zealand suffer from labour market disadvantage. Individuals may at times have difficulty in obtaining employment, for a variety of reasons, but this is as true for men as it is for women. If recent statistics indicate anything, it is that women's labour market participation rates have increased significantly over the last 15 years. Employment Relations Act changes notwithstanding, there is no reason to suppose that women necessarily do better where coverage under a collective agreement is actively promoted rather than left as a matter of individual choice. For western economies at least, the

tendency to place women in the victim category is far from helpful and, in New Zealand, not borne out by available evidence.

Business New Zealand also stressed that because of the likely incompatibility of Employment Relations Act provisions with Conventions Nos. 87 and 98, it would be concerned if the Government were to proceed with its proposal to ratify these two Conventions. Although the language of the Conventions poses no difficulty, their interpretation by the Committee on Freedom of Association would cause problems. Business New Zealand does not believe it is in the interest of New Zealanders, and more generally of employers, to face the possibility of sympathy strikes and boycotts and strikes on social, and economic grounds, which they have no ability to resolve. Strikes of this kind affect employers and consumers alike, effectively inconveniencing, if not damaging, both groups. And consumers, of course, include other employees. Such strikes amount effectively to an attempt by one group of employees to impose its views on others who do not necessarily share the same opinions. This is a profoundly different state of affairs from strike action as originally conceived, that is, as an action to enable employees with little bargaining power to challenge an employer with greater bargaining power. Strikes on social and economic grounds, as well as sympathy strikes, load the balance of power heavily against employers, frequently depriving other employees of their means of livelihood in the process.

However, given the gloss put on Convention wording by the Freedom of Association Committee, Business New Zealand is of the view that even if some kind of tripartite agreement were reached, approving the Employment Relations Act in its current form, there could be no guarantee that such an approach would continue to hold good. On the other hand, as emphasized, to change the legislation to produce conformity would be contrary to the country's general good. New Zealand has a free electoral process by means of which New Zealanders are able to show their approval, or otherwise, of a government's social and economic policies.

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

As for the New Zealand Council of Trade Unions (NZCTU), it has had an opportunity to consider the draft Government's Declaration report on freedom of association and the effective recognition of the right to collective bargaining. The NZCTU considers Conventions Nos. 87 and 98 to be of particular significance, as they are two of only eight core ILO Conventions. As such, they embody fundamental labour rights around freedom of association and the effective recognition of the right to collective bargaining. Given that the New Zealand Government's membership of the ILO requires respect, promotion and realization of the principles underpinning these Conventions, the NZCTU considers that achieving compliance with these Conventions is an important issue of national credibility.

The NZCTU welcomed the emphasis placed on these ILO Conventions within the Employment Relations Act (ERA), 2000. Section 3 lists the objects of the Act, and explicitly states that these include the promotion of the observance in New Zealand of the principles underlying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1948 (No. 98).

Concerning freedom of association, national legislation provides a right to strike. However there are outstanding concerns about legal fine-tuning required around political strikes. The ILO has expressed a view that the Employment Relations Act, 2000 may well

comply with Convention No. 87. Nonetheless, some academic commentators are of opinion that specific prohibition of strikes outside the parameters authorised by the Act is in breach of the Convention. One such view is provided by Associate Professor Paul Roth in “*International Labour Organisation Conventions 87 & 98 and the Employment Relations Act*”, published in the *New Zealand Journal of Industrial Relations* 26(2): 145-169. At the very minimum, this issue needs to be clarified through consultation, with and possibly technical advice from the ILO.

Furthermore, the NZCTU does not consider that there are significant limitations on the right to organize in New Zealand. The ERA complies with the specific requirements of Convention No. 87. However, in practice the intention of the law continues to be frustrated, to some extent, by employers who pursue strategies to discourage workers from joining unions, or who support the establishment of new company unions as an alternative to established unions.

Similarly, the NZCTU is really concerned about the practical implementation of the right to collective bargaining. In this regard, compliance with ILO Conventions places any given jurisdiction under an obligation to adapt both its legislation and practice accordingly.

According to the Government, changes concerning the principles have been occurring since 1999, a year before the Act’s implementation. Although the NZCTU acknowledges that repeal of the Employment Contracts Act was a significant step towards legal compliance with Conventions Nos. 87 and 98, it considers that the Government interpretation of the union membership data is somewhat optimistic. It fails to take sufficient account of the acknowledged shortcomings in the Employment Relations Act, 2000. The Government has made a commitment to address this issue, with further “fine-tuning” amendments to the Act proposed in the Labour Party Manifesto prepared for the 2002 General Elections.

The need for the strengthening of the Act been highlighted by the conservative approach taken by the Court of Appeal in *Courts Cars Limited v Baguley*. That decision reveals an apparent determination by some members of the Court to “read down” the ERA, in particular its new good faith provisions, in favour of the more contractual approach reflected in the repealed Employment Contracts Act.

Moreover, in its 2002 Election Manifesto, the Labour Party agreed that there was a need to revisit whether the principles of good faith is given sufficient weight in the application of the ERA. Thus, the NZCTU does not concur with the Government’s assessment that “the good faith obligations of the ERA also provide wide protection to disadvantaged categories of persons”.

The Government has announced in its Election Manifesto that the Labour Party will review the operation of the ERA to identify if any fine-tuning is needed, either in the law, or in administrative supports that operate for its implementation. The review will focus on the promoting, as opposed to the simply permitting, of free association of workers and collective bargaining. It will cover the following matters:

- whether more administrative support is needed to facilitate multi-employer collective bargaining, particularly where the size of employer units, in particular sectors, makes enterprise bargaining inefficient and ineffective;
- the adequacy of provisions in the ERA to discourage and prevent the undermining and avoidance of collective bargaining;

- provisions allowing union fee deductions for union members not covered by a collective agreement;
- improvement of monitoring and research into labour market practices;
- whether compliance costs associated with the bargaining process can be reduced;
- processes for accessing employment relations education leave (EREL), and the provision of EREL for union members not covered by collective agreements;
- the extent to which the intent of the Act, and in particular the principles of good faith bargaining, are given sufficient weight in the application of the Act; and
- whether the provisions of the Employment Relations Act are consistent with ILO Conventions Nos. 87 and 98, so as to enable ratification.

The NZCTU's own internal discussions have revealed considerable concern about aspects of the Employment Relations Act, 2000. Many of these are reflected in the broad scope of the Labour Party's Manifesto commitments. These include:

- inadequacy of the good faith provisions;
- lack of specific promotion of mechanisms to underpin collective bargaining, including multi-employer bargaining; and
- the lack of clarity over preference.

The NZCTU will continue to assess the extent to which Government's policy, specifically the review of the ERA, analyses and then addresses current limitations on effective compliance, in law and practice, with ILO Conventions Nos. 87 and 98.

Government observations on NZCTU's comments

The New Zealand Council of Trade Unions has noted that the New Zealand Government has made commitments to review the Employment Relations Act. The objective of the review, recently confirmed in the Speech from the Throne (www.beehive.govt.nz/throne.cfm), is to identify any fine-tuning needed in the Act or its administration. Work conducted towards the review is still in its early stages and no proposals have yet been developed or considered by the Government. The Government will include more details on the scope and progress of the review in its next declaration report on freedom of association and the effective recognition of the right to collective bargaining.

Oman

Government

Recognition of this principle and right

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

Freedom of association and the right to collective bargaining can be exercised by the following categories of persons:

- all workers in the public service;
- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers;
- workers of all ages; workers in the informal economy; and
- all categories of employers.

With regard to workers in the service public, each Ministry has its own Committee of Staff Affairs. The Ministry of Civil Service is in charge of all categories of employers working in the public service.

Moreover, there is no discrimination between national and expatriate workers in Oman.

Government authorization/approval is required to establish an employers' or a workers' organization, and to conclude collective agreements, for registration purposes only.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize the principle of freedom of association and the effective recognition of the right to collective bargaining in Oman.

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X	X		X
Inspection/monitoring mechanisms		X		X
Penal sanctions		X		X
Civil or administrative sanctions		X		X
Special institutional machinery		X		X
Capacity building of responsible government officials		X		X
Training of other government officials	X	X	X	X

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Capacity building for employers' organizations		X		X
Capacity building for workers' organizations	X	X	X	no
Tripartite discussion of issues		X		X
Awareness raising/advocacy		X		X

Within these measures, attention is given to the situation of women. More than ten women associations have been established.

Furthermore, given that the Law applies to all categories of persons, no special attention was given to any specific categories of persons, with the exception of handicapped persons and persons with special needs, who have their association.

Similarly, no special attention was given to specific industries/sectors.

In instances where the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected, the Government holds a short dialogue with the social partners, and then tries to eliminate the difficulties. Finally, it assists the social partners in achieving their goals.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Oman in the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining, are as follows:

- lack of public awareness/support;
- social values/cultural traditions;
- legal provisions; and
- lack of capacity of workers' organizations.

Priority needs for technical cooperation

There is no need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Oman.

Report preparation

In preparing this report, consultations were held with the most representative employers' and workers' organizations, and with government authorities outside the Ministry of Manpower. No comments were received from the social partners.

Copy of the report was sent to the Chamber of Commerce and Industry and the Public Authority for Labour Insurance.

Qatar

Government

Recognition of this principle and right

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

Freedom of association cannot be exercised (by categories of persons, such as workers in the public service; medical professionals; teachers; agricultural workers; workers engaged in domestic work; workers in export processing zones (EPZs) or enterprises/industries with EPZ status; migrant workers; workers of all ages; workers in the informal economy; and all categories of employers).

However, the absence of trade unions in the country does not imply the absence of organizations. There are many associations and organizations in which men and women take part. For instance, the Mutual Social Fund of Employees of the Ministry of Education, and the Committee of Workers of Qatar Petrol, a public establishment.

The right to collective bargaining at enterprise level can be exercised by the following categories of persons:

- medical professionals;
- teachers;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers;
- workers of all ages; and
- all categories of employers.

There are no established collective bargaining mechanisms for agricultural workers, workers engaged in domestic work, and workers in the informal economy. Likewise, regulations and laws do not provide for mechanisms for the organization of collective bargaining in the public sector. Yet, this does not mean that there is no negotiation or dialogue between the administration and the workers.

Approval of the competent authorities is required for the establishment of employers' or workers' organizations, the conclusion of collective agreements, the establishment of the Chamber of Commerce and Industry of Qatar, and the constitution of joint committees in enterprises.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize the principle.

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X		X	
Inspection/monitoring mechanisms	X		X	
Penal sanctions	X		X	
Civil or administrative sanctions	X		X	
Special institutional machinery	X		X	X
Capacity building of responsible government officials	X		X	
Training of other government officials	X		X	
Capacity building for employers' organizations	X		X	
Capacity building for workers' organizations	X		X	
Tripartite discussion of issues	X		X	
Awareness raising/advocacy	X		X	

Within these measures, no special attention is given to particular situations with respect specific categories of persons or industries/sectors. However, that there is no discrimination between men and women in the abovementioned measures. The principle of equality between persons of different sex is emphasized and abided by.

Progress and achievements concerning this principle and right

The draft Labour Code Amendment can be cited as a major change concerning the principle of freedom of association and the effective recognition of the right to collective bargaining.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Qatar in the realization of the principle of freedom of association are related to the social and economic circumstances and legal provisions.

Moreover, the established laws in the country do not deal with the question of freedom of association. The vast majority of the labour force is precarious, being composed by immigrant employees with different nationalities and languages.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Qatar, in particular in the following areas, in order of priority:

1. Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle;

2. Strengthening data collection and capacity for statistical analysis; and
3. Legal reform (labour law and other relevant legislation).

Also, in case of establishment of trade unions, there will be a need for awareness raising and training.

The Government would appreciate a continued technical cooperation with the ILO in following up and applying the Declaration on Fundamental Principles and Rights at Work, including the principle of freedom of association and the effective recognition of the right to collective bargaining.

Report preparation

In preparing this report, consultations were held with the most representative employer's and workers' organizations, and no comments were received from them.

A copy of the report was sent to the Chamber of Commerce and Industry of Qatar, and the Workers' Committee of Qatar.

Singapore

Government

Recognition of this principle and right

The principle of freedom of association and the right to collective bargaining are enshrined in the industrial relations system in Singapore. [The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) has been ratified by Singapore in 1965.]

The Government recognizes the important roles played by the trade unions and employers' organizations. It also regards them as key social partners in the formulation and implementation of laws, policies and guidelines on matters relating to employment, industrial relations, human resources, wages, etc, within the tripartite framework. This is reflected in the formulation of various tripartite committees with representation from the trade unions, employers and Government to study issues of common concern, such as the extension of retirement age, wages guidelines and amendment to labour legislation.

Singapore also ratified in 1965 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) to provide protection against anti-union discrimination and measures to promote and encourage collective bargaining.

Trade union laws have been instrumental in fostering the fundamental shift in Singapore's industrial relations climate from a confrontational and adversarial situation in the 1950s and 1960s, to a cooperative relationship since the 1970s. Trade union laws also serve to protect the interests of the workers by ensuring that the election of officers is based on democratic principles and that union funds are prudently managed. The harmonious industrial relations climate created over the years, has helped create a conducive environment for foreign investments and contribute to Singapore's economic achievements.

Subject to the rules of the trade union, a person above 16 years of age may be admitted as a member of a registered trade union. Union membership is open to foreign workers operating in Singapore. Public sectors employees can form or join a trade union, except for those engaged in the security and defence of the country. Employees working in the teaching and medical professions – such as teachers, nurses, laboratory technicians, pharmacy technicians, etc. – are allowed to join trade unions.

Under the Trade Unions Act, 1940, a trade union can seek registration by submitting the prescribed form signed by a minimum of seven union members. The registration would confer upon the trade union certain rights, immunities or privileges under the Act. The management of the affairs of the trade union and its branches is entrusted to the executive committees the members of which are usually elected every three years. The duties and responsibilities of the union executive committees are spelt out in the union rules. These rules also provide for, amongst other things, the objects for which the trade union is established; the application and investment of its funds; and the dissolution procedure, including the disposal of union funds upon its winding up.

Progress and achievements concerning this principle and right

Since last report, there have been no major changes to the existing legislation and policy on freedom of association and collective bargaining.

However, as of 31 December 2001, there were 71 employees' trade unions, three employers' organizations, and one federation of trade unions, the National Trade Union Congress (NTUC). The total employee union membership was about 338,000, that is to say a 24,000 increase since the previous year.

Over the years, the NTUC and its affiliated unions have been actively involved in collective bargaining, and have also played a significant role in promoting skills upgrading and productivity improvement among workers. This has helped to better prepare the workers to meet the challenges of the new economy where long-term employability depends on one's skills and knowledge.

Both the Singapore National Trade Union Congress and the Singapore National Employers' Federation (SNEF) were consulted in the development and implementation of the various measures.

Priority needs for technical cooperation

The Government is satisfied with the cooperative relationship with the ILO and looks forward to working closely with the ILO on areas concerning freedom of association and the effective recognition of the right to collective bargaining.

Report preparation

The Singapore National trade Union Congress and the Singapore National Employers' Federation made comments, which were taken into consideration in the preparation of the report. The final report was forwarded to them.

Sudan

Government

Recognition of this principle and right

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Sudan, according to the law. [The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) has been ratified by Sudan in 1957.]

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- all workers in the public service;
- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers;
- workers in the informal economy; and
- all categories of employers.

However, with regard to collective bargaining, a minimum age is set at 18 years.

Diplomats, judges, and legal advisors of the Attorney general cannot exercise freedom of association.

Moreover, government authorization/approval is required to establish employers' or workers' organizations, or to conclude collective agreements (at national level only). Organizations are formed according to the Trade Union Act, 2001.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize freedom of association and effective recognition of the right to collective bargaining in Sudan.

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)		X		X
Inspection/monitoring mechanisms				X
Penal sanctions		X		
Civil or administrative sanctions				
Special institutional machinery				
Capacity building of responsible government officials		X		X
Training of other government officials				
Capacity building for employers' organizations				
Capacity building for workers' organizations		X		X
Tripartite discussion of issues		X		X
Awareness raising/advocacy		X		X

Within these measures, no special attention is given to the situation of specific categories of persons. However, some specific industries/sectors benefit from special contracts, even in the public sector. Equal treatment of men and women is guaranteed in the law. Some exceptions are nonetheless provided for, as in the Maternity Leave Act

The Workers' Trade Union Federation and the Attorney General have joint jurisdiction over instances where the principle of freedom of association has not been respected. In cases where the right to collective bargaining has not been respected, the problem is solved through special judicial procedures.

Progress and achievements concerning this principle and right

Some initiatives undertaken can be regarded as successful examples in relation to the effective recognition of the right to collective bargaining. For instances, an annual discussion concerning wage increase is conducted by the Higher Council for Wages, which is a tripartite body. In the public sector, bargaining concerning specific benefits is done within the industry or workplace.

In the private sector, the negotiation on wages takes place at the workplace, or between the Workers' Trade Union Federation and the Sudanese Businessmen and Employers' Federation.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Sudan concerning the effective recognition of the right to collective bargaining are related to social and economic circumstances, political situation, and prevailing employment practices. Sometimes, legal provisions are also an obstacle to the realization of freedom of association.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle in Sudan, in particular in the following areas, in order of priority: (1 = most important, 2 = second most important, etc., 0 = not important).

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle	0
Awareness raising, legal literacy and advocacy	3
Strengthening data collection and capacity for statistical analysis	2
Sharing of experiences across countries/regions	1
Legal reform (labour law and other relevant legislation)	2
Capacity building of responsible government institutions	2
Training of other officials	2
Strengthening capacity of employers' organizations	2
Strengthening capacity of workers' organizations	1
Strengthening tripartite social dialogue	1

Report preparation

In preparing this report, consultations were held with the most representative employer's and workers' organizations, and comments were received from trade unions.

A copy of the report was sent to the Sudanese Businessmen and Employers Federation, and to Sudan Workers Trade Union Federation.

Annexes (not reproduced)

- The Trade Union Act, 2001 (annex not received).

Thailand

Government

Recognition of this principle and right

In Thailand, freedom of association cannot be exercised by categories of workers such as public servants; workers engaged in domestic work (as they must take a status of employee according to the Labour Protection Act B.E 2541); people under 15 years of age (whose employment is prohibited by law); and workers in the informal economy.

Indeed, the Labour Relations Act B.E. 2518 does not apply to public servants due to the difference in employment conditions with employees in the private sector. The definition of a "trade union" under this Act does not include associations of public servants. However, they have their own organization, the Civil Service Association of Thailand.

Moreover, the definitions of “employer” and “employee” under the Labour Relations Act B.E. 2518 do not cover employment in the informal economy. In this connection, workers in the informal economy may not be entitled to establish a trade union, or to submit demands under the Act.

Concerning the establishment of employers’ and workers’ organizations, section 55 of the Labour Relations Act B.E. 2518 prescribes that an employers’ association must have regulations and be registered with the Registrar, after which it becomes a legal entity. Under section 87 of the same Act, a workers’ organization is subject to the same requirements.

Section 42 of the State Enterprise Labour Relations Act B.E. 2543 prescribes that a State Enterprise Trade Union must be established by not less than 25 per cent of the total number of employees in the State Enterprise, excluding employees engaged in work characterized by occasion, incident, shift, season or project. A State Enterprise Trade Union must have its regulations and be registered with the Registrar. Upon registration, the State Enterprise Labour Union becomes a legal entity.

Besides, section 130 of the Labour Relations Act B.E. 2518 prescribes that any employer who violates or fails to comply with section 20 – the provision concerning the protection of right to collective bargaining – shall be liable to a fine not exceeding Baht 1,000 [about US\$20 as of October 2002.]

Section 158 holds that any employer who violates section 121 or section 123 – the provision concerning the prevention of unfair labour practices against the members of a trade union – shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding Baht 10,000 [about US\$200 as of October 2002], or both.

According to section 159, any person who violates section 122 – the provision concerning the prevention of coercion or threat against the members of a trade union – shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding Baht 10,000 [about US\$200 as of October 2002], or both.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

The Labour Relations Act (No. 3) B.E. 2544, which applies to freedom of association, was enacted on 17 November 2001. With regard to the right to collective bargaining, the State Enterprise Labour Relations Act B.E 2543 was passed on 23 March 2000. It repeals the State Enterprise Labour Relations Act B.E 2534.

The Government has also tried its best to pursue the application of the principle and right of freedom of association. This right has been essentially realized by both employers and employees, and an increasing number of organizations was established under the Labour Relations Act B.E. 2518 and the State Enterprise Labour Relations Act B.E 2543:

Type of organization	Year 2000	Year 2001
Public enterprise association	44	45
Private enterprise trade unions	1084	1 084
Trade union federations	19	19

Type of organization	Year 2000	Year 2001
Trade union councils	9	9
Employers' associations	226	256
Employers' association federations	3	3
Employers' councils	10	11

In addition, the Department of Labour Protection and Welfare set up a relevant and major policy, which aims at promoting the right to collective bargaining by:

- promoting bipartite labour relations to prevent and settle labour disputes in both the private sector and the state enterprises, by encouraging employers and employees to play greater roles, and pushing into force of the State Enterprise Labour Relations Act 8 April B.E 2543; and
- promoting unity among employers' and employees' organizations on principle-making and awareness raising among employers and employees in terms of working morals and safety to bring about efficient labour management:

Finally, the Department also set up a Code of Practice for the Promotion of Labour Relations in Thailand (B.E. 2539) in order to implement the right to collective bargaining for the persons concerned. Training curriculum on labour relations is also provided to employers, employees, and state enterprise employees for setting the training course in their own organizations.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Thailand, in particular in the following areas, in order of priority (1 = most important).

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle	2
Awareness raising, legal literacy and advocacy	1
Strengthening data collection and capacity for statistical analysis	1
Sharing of experiences across countries/regions	2
Legal reform (labour law and other relevant legislation)	2
Capacity building of responsible government institutions	2
Training of other officials	2
Strengthening capacity of employers' organizations	1
Strengthening capacity of workers' organizations	1
Strengthening tripartite social dialogue	1

Report preparation

This report was prepared without any consultations, but copies were sent to:

- Employers' Confederation of Thailand;
- Labour Congress of Thailand; and
- National Congress of Thai Labour.

Observations submitted to the Office by the National Congress of Thai Labour (NCTL) through the Government

NCTL is of opinion that the report produced by the Government is accurate and presents the facts based on actual national circumstances. Nevertheless, the right to organize a labour union in the private sector has not been protected adequately. In this regard, NCTL suggests that the Government accelerate the amendment of the Labour Relations Act, 1975 in the very near future.

Observations submitted to the Office by the Employers' Confederation of Thailand (ECOT) through the Government

ECOT considers that the lack of information and data is one of the difficulties encountered in the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining.

United Arab Emirates

Government

Recognition of this principle and right

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

Medical professionals, teachers, and all categories of non-professional workers can exercise freedom of association at sectoral, national, and international levels (only non-professional workers can exercise it at the enterprise and industry levels), and the right to collective bargaining at enterprise, sector/industry, and national levels. However, the minimum age for exercising this right is set to 18 years, and government authorization/approval is required to establish an employers' or a workers' organization, but not to conclude collective agreements.

There are no laws regulating freedom of association and the right to collective bargaining for non-professional workers, agricultural workers, workers engaged in domestic work, workers in export processing zones (EPZs) or enterprises/industries with EPZ status, migrant workers and workers in the informal economy. Consequently, they cannot exercise these rights.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures are implemented or are envisaged to respect, promote and realize freedom of association and effective recognition of the right to collective bargaining in the United Arab Emirates.

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)	X			
Inspection/monitoring mechanisms				X
Penal sanctions	X			
Civil or administrative sanctions		X		
Special institutional machinery		X		X
Capacity building of responsible government officials	X			X
Training of other government officials		X		X
Capacity building for employers' organizations	X			X
Capacity building for workers' organizations	X			
Tripartite discussion of issues		X		X

Within these measures, special attention is given to women, and specific categories of persons or industries/sectors.

For instance the participation of women in public life has been emphasized by various measures. They enjoy the right to freedom of association and form their own committees and federations. Five were appointed as members of the Consultative Council of Sharjah. The possibility for women to become members of the Federal National Council is also envisaged.

Furthermore, an authority for social development and social welfare was established so as to give special attention to handicapped persons and other special categories of persons.

Concerning the situation of specific categories of industries/sectors, workers' organizations may be established according to economic sectors, for instance industry, banking, petroleum and other sectors.

Collective bargaining and settlement of disputes

In instances where the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected, penal and administrative sanctions are taken. For instance, the matter may be submitted to a court.

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. However, 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 Board the award of which shall be final and binding on both parties;
- (iv) the Law has defined those higher structures that shall strive to settle collective labour disputes. For instance, Article 160 provides for the establishment of a Supreme Arbitration Board 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 Ministers' Decree No. II 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 Board for the settlement of collective labour disputes;
- (v) as for the establishment of the conciliation committees, the Law has mandated the Minister of Labour and Social Affairs, under Article 157, to set up these committees 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 chairperson, the employer or his representative, and a representative of the designated workers;
- (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 dispute. 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 Board.

These are the general rules and framework set by the Federal Law No. 8 in Chapter 9.

Finally, Articles 154 to 165 provide for the steps to be followed to solve collective labour disputes between employers and workers, so as to restore industrial peace and stability in the country's labour relations.

Progress and achievements concerning this principle and right

Since last report, major changes concerning the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining, have taken place in the United Arab Emirates.

Concerning freedom of association, an Amendment to the Labour Law was proposed in May 2002. It provides for the possibility of establishing workers' organizations in the country. A technical committee was set up to study this possibility and make recommendations in this respect.

In September 2002, the Conciliation Board and the Supreme Arbitration Board were activated in order to promote the mechanism of collective bargaining.

As a background concerning the progressive realization of the principle of freedom of association in the United Arab Emirates, the following should be mentioned.

The Federation of the United Arab Emirates is a young nation, which gained its independence 1971 and adopted the same year its first Constitution. The country has no previous experience with the setting up of trade unions or labour federations.

Following the creation of the Federation, enterprises were established and various laws organizing the functioning of a modern State were enacted. These included legislation to organize the activities of employers and professional associations. Professional organizations were established, which were different in form to traditional workers' organizations. However, in essence, their activities were similar to trade unions and labour federations. In this context the following should be noted:

The constitutional and legal framework

Article 33 of the Constitution of The United Arab Emirates states:

The freedom to meet and establish associations is guaranteed within the limits of the law.

Federal Law No. 6 of 1947, amended by Federal Law No. 20 of 1981, organizes public benefit associations. Ministerial Decree No. 297 of 1994 deals with the creation of a coordinating body for 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. Thus, associations of teachers, sociologists, legal, engineering, medical, economic and financial professions, were created. Wage earners and self-employed persons are also among these categories of workers.

Under Federal Law No. 6 of 1974 and its amendments, these associations hold periodic elections to set up their governing bodies, according to their rules and regulations, without any interference from the authorities.

Ministerial Decree No. 297 of 1994, establishing the Coordinating Committee of Professional Associations Operating in the Country, organizes the work of these associations and sets out the following goals:

- (a) coordinate activities between the professional associations operating in the country and unify their efforts in order to guarantee the fulfilment of the purposes for which they were established, and work to protect the material and moral interests of the members of these professional associations;
- (b) help professional associations to improve their professional standards and strengthen their role in society through training seminars, colloquia and scientific lectures;

- (c) identify problems encountered by professional associations and propose solutions and measures to solve them;
- (d) strengthen cooperation with Government and private entities which have activities that are connected to those of the professional associations; and
- (e) represent the professional associations at international and local conferences and meetings that are related to their subject matter.

This Decree also defines the purview of this Coordinating Committee, such as:

- the rules governing the establishment of its governing body and its meetings;
- the meetings and mandate of the General Assembly;
- the resources and internal rules, including means of dissolution; and
- other matters related to activities.

Since its inception in 1994 and in the light of this framework, the Coordinating Committee has exercised its activities in a positive and effective manner.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in the United Arab Emirates in the realization of freedom of association, are as follows:

- lack of public awareness/support;
- lack of information and data;
- social values, cultural traditions;
- social and economic circumstances;
- political situation;
- legal provisions;
- prevailing employment and practices;
- lack of capacity of workers' organizations; and
- lack of social dialogue on this principle.

As far as the right to collective bargaining is concerned, the difficulties encountered are related to prevailing employment practices.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association in the United Arab Emirates, in particular in the following areas, in order of priority: (1 = most important, 2 = second most important, etc.).

Type of technical cooperation desired	Ranking
Sharing of experiences across countries/regions	1
Legal reform (labour law and other relevant legislation)	2
Capacity building of responsible government institutions	3
Training of other officials	3
Strengthening capacity of employers' organizations	3
Strengthening capacity of workers' organizations	2
Strengthening tripartite social dialogue	2

Report preparation

In preparing this report, consultations were held with the most representative employers' and workers' organizations, and with government authorities outside the Ministry of Labour and Social Affairs.

A copy of the report will be communicated to the United Arab Emirates' Federation of Chambers of Commerce and Industry, and the United Arab Emirates' Co-ordinating Committee of Professional Associations.

United States

Government

Many of the questions in the report are not susceptible to simple yes/no answers; however, to accommodate the ILO's request, yes/no answers have been provided that reflect the *general* principles of US law and practice. The following are brief explanations of a complicated and detailed system of laws, and of necessity these statements cannot fully reflect US law and practice. Additional materials and web sites referenced in this report, and prior reports on related ILO Conventions, should be consulted for a more complete explanation of US law and practice.

Relevant federal constitutional provisions, legislation, regulations, and related materials were provided to the ILO in 1998 as supplements to the Reports of the Government of the United States on the position of national law and practice for the period ending 31 December 1997 for the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Additional information may be obtained at the Internet sites for Agencies referenced in this report:

- National Labor Relations Board: www.nlr.gov
- Federal Labor Relations Authority: www.flra.gov
- Federal Mediation and Conciliation Authority: www.fmcs.gov
- National Mediation Board: www.nmb.gov
- Department of Labor: www.dol.gov
- Bureau of Labor Statistics: www.bls.gov

Recognition of this principle and right

The United States recognizes, and is committed to, the fundamental principle of freedom of association and the effective recognition of the right to collective bargaining. This principle is assured by the First, Fifth, and Fourteenth Amendments of the United States Constitution, supplemented by legislation including the Railway Labor Act (1926), the Norris-LaGuardia Act (1932), the National Labor Relations Act (1935), the Labor-Management Relations Act (1947), the Labor-Management Reporting and Disclosure Act (1959), the Postal Reorganization Act (1970), the Civil Service Reform Act (1978), the Congressional Accountability Act (1995), and the Presidential and Executive Office Accountability Act (1996), together with State Constitutions, State legislation, State and Federal administrative regulations, and private agreements. Additional information on these provisions is provided below.

Freedom of association is protected against interference by the Government by operation of the First, Fifth and Fourteenth Amendments of the United States Constitution.

The First Amendment to the United States Constitution, adopted in 1791, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”.

The Fifth Amendment provides that no person can be “deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation”.

Finally, the Fourteenth Amendment prohibits the States of the United States from making or enforcing “any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”.

Taken together, these Constitutional provisions guarantee that workers and employers are entitled to establish and join organizations of their own choosing, without previous authorization by or interference from either the Federal Government or the State Governments.

The policy of the United States affirming freedom of association is also supported by legislation. The National Labor Relations Act (NLRA) (United States Code, 29 U.S.C. paragraphs 151-187), governs the relationship between most private employers and their non-supervisory employees. The declaration of policy in the NLRA states:

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Section 7 of the NLRA guarantees that “employees shall have the right to self organization, to form, join, or assist labour organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...” (29 U.S.C. paragraph

157). Examples of rights protected by section 7 are: forming or attempting to form a union among the employees of a company; joining a union whether the union is recognized by the employer or not; assisting a union to organize the employees of an employer; and refraining from activity on behalf of a union. Interference with the exercise of these rights is an unfair labour practice (29 U.S.C. paragraph 158(a)(1)).

The NLRA expressly protects covered employees against acts of anti-union discrimination. section 8(a)(3) of the NLRA, (29 U.S.C. paragraph 158(a)(3)), makes it an unfair labour practice for an employer “by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labour organization ...” Section 8(a)(4) of the NLRA, (29 U.S.C. paragraph 158(a)(4)), makes it an unfair labour practice for an employer to “discharge or otherwise discriminate against an employee because he has filed charges or given testimony under [the NLRA]”.

The NLRA also protects workers’ and employers’ organizations from interference by each other. Section 8(a)(1) of the NLRA, (29 U.S.C. paragraph 158(a)(2)), provides that it is an unfair labour practice for an employer to “interfere with, restrain, or coerce employees in the exercise of the rights guaranteed” by the NLRA. It is also an unfair labour practice for an employer to “dominate or interfere with the formation or administration of any labour organization or contribute financial support to it...” (29 U.S.C. paragraph 158(a)(2)). Similarly, the NLRA makes it an unfair labour practice for a labour organization to restrain or coerce an employer in the selection of its representatives for purposes of collective bargaining (29 U.S.C. paragraph 158(b)(1)(B)).

The NLRA also protects labour organizations from employer interference by generally prohibiting the payment of anything of value by an employer to any representative of the employer’s employees, to any labour organization, or to any labour organization officer or agent. In addition, no payments may be made to a group of employees in excess of their normal wages and compensation, for the purpose of causing the group to influence other employees in the exercise of their right to bargain collectively through representatives of their own choosing.

Railway and airline employees are covered by the Railway Labor Act (RLA), (45 U.S.C. paragraphs 151-188), and are provided protections similar to those contained in the NLRA. The RLA expressly recognizes that employees “have the right to organize and bargain collectively through representatives of their own choosing,” prohibits a carrier from denying “the right of its employees to join, organize, or assist in organizing the labour organization of their choice,” and makes it unlawful for an employer to “interfere in any way with the organization of its employees...or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labour organization...” (45 U.S.C. paragraph 152).

The right of employees of the United States Government to organize is governed by the Civil Service Reform Act of 1978 (CSRA), (5 U.S.C. paragraphs 7101-7135). The CSRA applies to almost all federal civilian employees, and provides that “[e]ach employee shall have the right to form, join, or assist any labour organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.” (5 U.S.C. paragraph 7102). Protections of the CSRA were extended to certain employees of the legislative branch of the Federal Government by the Congressional Accountability Act of 1995, (2 U.S.C. paragraphs 1301-1438), and to certain employees of the Executive Office of the President by the Presidential and Executive Office Accountability Act of 1996, (3 U.S.C. paragraphs 401-

471). Postal Workers are protected under the NLRA and provisions of the Postal Reorganization Act of 1970, as amended, (39 U.S.C. paragraphs 1201-1209).

State and local government employees are excluded from coverage of the NLRA, but they too are entitled to the protections of the United States Constitution described above. In addition, the State and local governments have a diverse variety of legislation covering freedom of association and collective bargaining by state and local employees: however, those laws cannot be inconsistent with fundamental Constitutional guarantees of freedom of association.

Private sector employees who are not covered by the RLA or the NLRA (primarily agricultural, domestic, and supervisory employees who are excluded from NLRA coverage under 29 U.S.C. paragraph 152(3)), are nonetheless protected by the First, Fifth and Fourteenth Amendments of the United States Constitution which, taken together, guarantee that workers are entitled to establish and join organizations of their own choosing, without previous authorization by or interference from either the Federal Government or the State Governments. The exclusion of these categories of employees from coverage means that they do not have access to the specific provisions of the NLRA or RLA for enforcing their rights to organize and bargain collectively.

In addition to the NLRA and RLA, the Norris LaGuardia Act protects employees in the exercise of their right to organize and bargain collectively, by limiting Federal court jurisdiction to grant injunctive relief in labour disputes. The policy of the Act expressly recognizes that it is necessary for an employee to “have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labour, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection...” (29 U.S.C. paragraph 102). Employees such as agricultural and supervisory workers who are not covered by the NLRA, are nonetheless covered by the Norris LaGuardia Act.

In addition to federal legislation, many States have constitutional provisions or legislation that expressly guarantee freedom of association and collective bargaining. These State laws provide coverage for employees who are not within the jurisdiction of the NLRA, and in most cases are patterned on the NLRA or the Norris-LaGuardia Act, or provide other similar provisions.

It is the policy of the United States to encourage collective bargaining between labour and management to settle differences and reach collective agreements. As articulated in the NLRA, this policy includes the concept that “sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the process of conference and collective bargaining between employers and the representatives of their employees.” (29 U.S.C. paragraph 171(a)).

This policy of voluntary collective bargaining is advanced in several ways. The NLRA makes it an unfair labour practice for an employer to refuse to bargain collectively with representatives of its employees (29 U.S.C. paragraph 158(a)(5)). Similarly, it is an unfair labour practice for a labour organization, that is the representative of employees, to refuse to bargain collectively with the employer (29 U.S.C. paragraph 158(b)).

Under the NLRA, collective bargaining expressly encompasses the mutual obligation of the employer and the union to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, and the execution of a written contract incorporating any agreement reached, if requested by either party. The duty to bargain does not include a duty to make concessions, nor does it compel either party to agree to a proposal made by the other party (29 U.S.C. paragraph 158(d)). In addition, the government cannot compel the parties to agree.

Under the NLRA, if either party is not satisfied with the other's bargaining position, it may exert economic pressures, including the right to strike and lock out in support of their respective bargaining positions, as discussed below. The obligation to bargain is not suspended by such economic action. Mediation, arbitration, and other procedures available to assist in the resolution of disputes that arise during the negotiation of collective bargaining agreements, are discussed below.

The NLRA also provides that employee representatives that have been "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purpose, shall be the exclusive representatives of all the employees in such unit for purposes of collective bargaining." (29 U.S.C. paragraph 159(a)). The NLRA provides machinery for determining both the appropriate unit for purposes of collective bargaining, and for determining which labour organization, if any, has been selected by a majority of the employees as their exclusive representative. The most common method by which employees can select a bargaining representative is by secret-ballot representation election, conducted by the National Labor Relations Board (NLRB) (29 U.S.C. paragraph 159). Whether voluntarily recognized or certified by election, a labour organization is required to represent all of the employees in the bargaining unit (29 U.S.C. paragraph 158(d)).

The NLRA recognizes that "the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes." (29 U.S.C. paragraph 171(b)).

Disputes that cannot be resolved by the parties themselves are generally resolved through the use of mediation, conciliation, and arbitration. Use of these procedures is usually voluntary. The Federal Mediation and Conciliation Service (FMCS) has the responsibility of assisting parties to labour disputes to settle such disputes through conciliation and mediation (29 U.S.C. paragraph 173).

FMCS has no enforcement authority. It may offer its services in a labour dispute, either on its own motion or at the request of one or more of the parties. However, there is no requirement that the parties use the services of FMCS to assist in the resolution of their disputes, with the limited exception of the health care industry, where special notice, mediation procedures, and "Boards of Inquiry" are used to help resolve disputes, and the even more limited category of certain national emergency disputes (29 U.S.C. paragraphs 179, 183).

In addition to availability of services of the FMCS, private arbitration is frequently used to resolve disputes. Almost every private sector collective bargaining agreement has a

grievance procedure that the parties can use to resolve differences that they may have regarding their understanding of the agreement. These grievance procedures frequently provide for arbitration of disputes. The FMCS maintains a Division of Arbitration Services that submits panels of arbitrators to employers and unions, if requested by the parties. The arbitrators are not employees of FMCS, and the expenses of arbitration are paid by the parties. The parties may select arbitrators using other means, including private associations. Unlike mediators, arbitrators make decisions that are legally binding on the employer and the union.

Under the NLRA, it is recognized that employees have the right to “engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” (29 U.S.C. paragraph 157). This includes the right to strike. While employees have the right to strike, the employer has a corresponding right to continue operations during the strike.

The RLA promotes the use of collective bargaining in the railway and airline industries in a manner similar to the NLRA (45 U.S.C. paragraphs 154-155). The RLA sets forth specific procedures, including mandatory mediation, that must be followed before a strike or lockout can take place in those industries.

As noted above, the rights of employees of the United States Government are governed by the CSRA. With the exception of limitations on the subject matter of collective bargaining, the rights of Federal public servants to freedom of association and collective bargaining are similar to those provided to most private sector employees under the NLRA. For example, the CSRA makes it an unfair labour practice for an agency to engage in anti-union discrimination and interference with workers’ organizations (5 U.S.C. paragraph 7116(a)). Similarly, the CSRA imposes a duty to bargain in good faith, to the extent not inconsistent with federal law (5 U.S.C. paragraph 7116-7117). However, Federal employees generally do not have the right to strike. Strikes by Federal government employees are considered to be against the public interest, and any employee who engages in a strike is subject to termination of employment and possible criminal penalties (5 U.S.C. paragraph 7311; 18 U.S.C. paragraph 1918).

The Federal Labor Relations Authority (FLRA) performs functions for Federal employee labour organizations similar to those performed by the NLRB for private-sector employees, including resolution of complaints of unfair labour practices and disputes over the scope of collective bargaining negotiations (5 U.S.C. paragraphs 7104-7105). In addition, the FMCS has authority to help resolve bargaining disputes between Federal agencies and labour organizations. If the dispute cannot be resolved voluntarily, either party may request the Federal Service Impasses Panel (FSIP) to consider the matter. The FSIP has authority to take whatever action is necessary to resolve the impasse, including direct assistance or binding arbitration (5 U.S.C. paragraph 7119). Special procedures also apply to Postal Service employees, including mandatory mediation, fact-finding, and arbitration (39 U.S.C. paragraph 1207).

The State and local governments have a diverse variety of legislation covering collective bargaining by state and local employees, including mediation, arbitration, or other method of dispute resolution: however, those laws cannot be inconsistent with fundamental Constitutional guarantees of freedom of association. The right of state and local government employees to strike is governed by state law. While these laws vary from state to state, most states preclude strikes by state employees.

As regards the exercise of freedom of association and the right to collective bargaining, it is recognized at enterprise, sector/industry, national and international levels for the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- migrant workers;
- workers of all ages;
- workers in the informal economy; and
- all categories of employers.

All workers in the public service can exercise freedom of association, but not the right to collective bargaining. Indeed, as noted above, the right of employees of the United States Government to organize is governed by the Civil Service Reform Act (CSRA). The CSRA applies to almost all Federal civilian employees, but not members of the Armed Forces and security agencies. In addition, state and local employees are covered by a wide variety of State and local legislation.

The First, Fifth, and Fourteenth Amendments of the United States Constitution apply to all categories of persons. Accordingly, there are no categories of persons who do not enjoy the right to establish and join organizations of their own choosing. However, as noted above, legislation relating to labour relations does vary for different categories of persons, but all such legislation must be consistent with the protections assured by the First, Fifth, and Fourteenth Amendments.

The NLRA coverage extends to covered employees as defined by section 2 of the Act (29 U.S.C. paragraph 152(2),(3),(5)). Therefore, its application to the above list of employees depends on whether the particular employee is included in the Act's definition of the term. Section 2(3) of the NLRA explicitly excludes agricultural labourers, domestic service employees, independent contractors, supervisors and employees covered by the Railway Labor Act (RLA) (29 U.S.C. paragraph 152(3)). As discussed above, the RLA provides coverage for airline and railroad employees similar to the coverage provided by the NLRA. State and local employees are not covered by federal legislation regarding freedom of association and the right to bargain collectively, but many are covered by a wide variety of State and local legislation. In addition, many of the private-sector employees that are excluded from coverage of the NLRA are covered by state or local legislation. A recent report by the United States General Accounting Office estimates that about 78 per cent of the civilian workforce is covered by either federal, state, or local legislation (*United States General Accounting Office, "Collective Bargaining Rights: Information on the Number of Workers With and Without Bargaining Rights," (GAO-02-835, at 2 (2002)).*

No government authorization/approval is required to establish an employers' or a workers' organization, or to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize the principle.

Type of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)		X		X
Inspection/monitoring mechanisms		X		X
Penal sanctions		X		X
Civil or administrative sanctions		X		X
Special institutional machinery		X		X
Capacity building of responsible government officials		X		X
Training of other government officials		X		X
Capacity building for employers' organizations		X		X
Capacity building for workers' organizations		X		X
Tripartite discussion of issues		X		X
Awareness raising/advocacy		X		X

These measures are applied uniformly to all categories of covered employees, employers and labour organizations. Consequently, no special attention was given to the particular situations with respect to women, or specific categories of persons (there are differences in the laws covering various categories of persons, as noted above) or industries/sectors.

Enforcement of most provisions of the NLRA is by the NLRB, the NLRB's independent General Counsel, and the judicial system. An individual, union, or employer initiates an unfair labour practice case by filing a charge with an NLRB regional office alleging a violation of the NLRA by an employer or labour organization. The charge is investigated by the regional office on behalf of the General Counsel to determine whether there is reasonable cause to believe that the NLRA has been violated. If the Regional Director concludes that the charge has merit, the Regional Director will seek to remedy the apparent violation by encouraging a voluntary settlement by the parties. Most cases are settled voluntarily.

If a case is not settled, a formal complaint is issued and a hearing is held before an Administrative Law Judge (ALJ). After the hearing and the parties have briefed the issues, the ALJ issues a decision containing proposed findings of fact and a recommended order. If a party fails to comply with the Board's order voluntarily, the Office of the General Counsel files an enforcement petition in the United States Court of Appeals. Similarly, any

“person aggrieved” (which includes both the respondent and the charging party) by a final order of the Board may seek to have the order reviewed and set aside by filing a petition with the United States Court of Appeals.

The most common NLRB remedial order is an order that directs whomever commits an unfair labour practice to discontinue the unlawful conduct, and will usually require that an employer or union that commits an unfair labour practice post in a conspicuous location a signed notice which sets forth the terms and conditions of the order. The Board also has authority to order the payment of monies to compensate an individual for earnings lost as a result of employment discrimination by the employer or union, and under some circumstances, the Board has authority to order the reinstatement of employees who have been unlawfully discharged.

Two recent cases illustrate the NLRB’s enforcement of NLRA violations. On 29 June 2001, the US Court of Appeals for the District of Columbia enforced an NLRB order against Allied Signal, Inc. The NLRB’s order determined that Allied Signal had engaged in unfair labour practices and ordered the company to provide severance pay, interest, and medical and tuition reimbursements. In addition, the order called for the employer to bargain with the United Auto Workers over severance benefits. Following the Court’s ruling, United Auto Workers and Honeywell (Allied Signal’s successor) signed a compliance agreement on 30 September 2002, calling for the payment of \$17.6 million in severance and other benefits to over 500 former employees. In another case, the NLRB entered into a compliance agreement with Alwin Manufacturers culminating nearly ten years of litigation, including decisions by two US Courts of Appeals, and providing \$6.4 million in back pay and other monetary relief.

The RLA establishes the National Mediation Board, which performs for the railway and airline industries functions similar to those performed for other industries by the NLRB and the FMCS. However, the RLA’s provisions relating to anti-union discrimination and non-interference are enforced by civil suit, and are subject to criminal penalties for wilful failure or refusal of a carrier to comply (45 U.S.C. paragraph 152).

State laws vary, with some States providing administrative procedures similar to the NLRA, and other States relying on enforcement by private actions in the judicial system.

Progress and achievements concerning this principle and right

Since last report, no major changes occurred concerning freedom of association.

With respect to the right to collective bargaining, the NLRB announced that it had unanimously adopted a new policy designed to achieve more-timely processing of cases pending on appeal before the Board in Washington. The Board’s ultimate goal is to issue decisions in all pending appeals cases within a few months, and to have no case pending on appeal more than a year.

As of 2 October 2001, the NLRB reported that it had succeeded in achieving its three major goals for fiscal year 2001. Specifically, the Board:

- issued decisions in all unfair labour practice cases pending on appeal for over two years;

- issued decisions in all representation election cases that were pending on appeal over 18 months; and
- reduced the number of pending appeals in unfair labour practice cases to below 450.

Priority needs for technical cooperation

There is no need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in the United States.

Report preparation

The draft report was reviewed by members of the Tripartite Advisory Panel on International Labor Standards, a subgroup of the President's Committee on the ILO, which includes representatives from the United States Council for International Business, the American Federation of Labour and Congress of International Organizations (AFL-CIO), and other government federal government agencies information from which was obtained from the pertinent web sites.

Comments on the report were made by workers' organizations.

A copy of the report was sent to the United States Council for International Business and the American Federation of Labor and Congress of International Organizations (AFL-CIO).

Observations submitted to the Office by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Introduction

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) hereby submits these comments on the Report of the United States Government on Freedom of Association and the Effective Recognition of the Right to Collective Bargaining (2002) (Report) pursuant to the Declaration of Fundamental Principles and Rights at Work and its Follow-up (Declaration), as the workers' organization designated by the US to review the Report prior to its submission to the International Labour Organization (ILO). The AFL-CIO urges the Department of Labor to revise its draft in the interests of accuracy and completeness after reviewing the following comments.

In their 2000 *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Part I*, the ILO Declaration Expert-Advisers noted that "Even fully democratic societies sometimes encounter difficulties in promoting the principles [of freedom of association and the right to collective bargaining] in all respects." (paragraph 3). The AFL-CIO regards that statement as irrefutable. Yet, the United States' 2002 draft *report* depicts the exercise of freedom of association and the right to collective bargaining in this country as operating without flaws whatsoever.

This approach is remarkable for its lack of candour. The 2002 report form prepared by the ILO attempts to minimize the opportunity for countries that have not ratified the core Conventions to rest on bland, overly broad, and ultimately self-congratulatory

generalizations about law and practice. By relying, at least in part, on detailed checklists with respect to issues such as implementation of, major changes in, and difficulties encountered with respect to, realization of freedom of association and collective bargaining, the report form *requires* at least a modicum of honesty and self-analysis. Yet, by admitting no vulnerabilities whatsoever in law or practice, the United States report entirely lacks perspective, analysis, and self-awareness. Not only does this create a serious issue of credibility, but it also undermines the purpose of the Declaration and its Follow-up and renders the United States *report* of little value to the ILO in its important work.

Moreover, the current draft also represents an inexplicable departure from the 1999 report, which stated:

... the United States acknowledge[s] that there are aspects of this system that fail to fully protect the rights to organize and bargain collectively of all employees in all circumstances. The United States is concerned about these limitations and acknowledges that to ensure respect, promotion and realization of the right to organize and bargain collectively, it is important to re-examine any system of labour laws from time to time to assure that the system continues to protect these fundamental rights.

That modest admission drew praise from the ILO in its 2000 *Review of annual reports* (paragraph 44). There, the Declaration Expert-Advisers praised the United States for its “open recognition of difficulties still to be overcome or situations ... deemed relevant to achieving full respect for the principles and rights in the Declaration ...”.

The 1999 Report relied in part on the *report and recommendations* of the Commission on the Future of Worker-Management Relations (*Dunlop report*) (December 1994), a non-partisan study chaired by former Secretary of Labor John T. Dunlop for the situations and difficulties it described. For example, the 1999 Report by the US Government cited several specific findings by the *Dunlop report* to demonstrate how “some workers face significant barriers to the exercise of [protected] rights” [2000 *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Part II*, page 154.] Quoting the Dunlop Commission, the 1999 report observed that:

[r]epresentation elections as currently constituted are highly conflictual for workers, unions and firms. This means that many new collective bargaining relationships start off in an environment that is highly adversarial.

[t]he probability that a worker will be discharged or otherwise unfairly discriminated against for exercising legal rights under the NLRA has increased over time.

Roughly a third of workplaces that vote to be represented by a union do not obtain a collective bargaining contract with their employer.

The [2000 *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Part II*, page 155] cited *Dunlop report* and also relied on the Dunlop Commission’s earlier *Fact-finding report* (May 1994), in which the Commission observed that:

The [Dunlop] report examined problems in the process by which workers decide whether or not to be represented at the workplace and engage in collective bargaining, and recommended for consideration several possible changes to United States Law. For example, the Commission observed that on average it takes seven weeks for workers to obtain a vote in representation elections, and recommended changes to reduce that time to as little as two weeks. In its fact-finding report, the Commission found that the injunctive relief currently available for illegal terminations that occur during an organizing campaign is “pursued infrequently ... and is usually too late ... to undo the damage done.” Fact-finding report, page

72. *The Commission noted that unlike a wide range of subsequently-enacted anti-discrimination statutes, the NLRA does not provide for compensatory or punitive damages for illegal terminations. Fact-finding report, pages 72-73.*

The [2000] report also relied on the Dunlop Commission's observation that "remedies available to the NLRB may not provide a strong enough incentive to deter unfair labour practices by some employers during representation elections and first contract campaigns," and that "a substantial number of newly certified labour organizations failed to reach a first contract". The [2000 *Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Part II*, page 155] cited *Dunlop report* and the Dunlop Commission's recommendation that "consideration be given to expanding access" of union representatives to employees at work in light of their diminished access when compared with the employer.

The AFL-CIO strongly objects to the omission of this or similar language from the current report. It is not aware of any circumstances that have eliminated these barriers to freedom of association and effective recognition of the right to collective bargaining, nor does the draft *Report* attempt to make that assertion. Moreover, some significant developments in law and practice have taken place since 1999 (discussed below) that would make reference to these difficulties and problems equally germane today. Thus, the AFL-CIO does not understand the rationale for the US Government's decision to omit this important language from its *report* (restored).

Coverage of workers under the NLRA

The draft Report gives the highly misleading impression that under the NLRA, virtually all categories of workers in the United States can exercise meaningfully their rights to freedom of association and collective bargaining either through coverage under the NLRA or, where the NLRA contains an exclusion, through inclusion in state and local laws. Thus, the Report states that:

The NLRA coverage extends to covered employees as defined by section 2 of the Act (29 U.S.C. paragraph 152(2), (3), (5)). Therefore, its application to the above list of employees depends on whether the particular employee is included in the Act's definition of the term. Section 2(3) of the NLRA explicitly excludes agricultural labourers, domestic service employees, independent contractors, [and] supervisors. State and local employees are not covered by Federal legislation regarding freedom of association and the right to bargain collectively, but many are covered by a wide variety of State and local legislation. In addition, many of the private-sector employees that are excluded from coverage of the NLRA are covered by State or local legislation.

In reality, state and local legislation fails to cover in any significant scope those categories of private sector workers excluded from coverage under the NLRA. According to a newly-released report by the Government Accounting Office (GAO), "*Collective Bargaining Rights: Information on the Number of Workers with and without Bargaining Rights*" (GAO-02-835):

There are 18 states that have laws that provide collective bargaining rights to some employees who would otherwise be excluded from the federal NLRA. Of these 18 states ... 11 states [extend coverage] to independent contractors, eight states include supervisors, five to agricultural labourers, and one includes domestic servants.

Id. at 42 of GAO Report (footnotes omitted).

Thus, some of the United States most vulnerable workers enjoy no statutory protection or enforcement of their two key collective rights. Moreover, the GAO Report (at 6) also found that only state and local law covers only 66 per cent of the 20 million government workers in this country. The GAO Report described the situation with respect to these workers as follows:

Among public sector workers, uneven coverage among states led to the relatively low percentage of workers with bargaining rights. While 26 states and the District of Columbia have laws that provide collective bargaining rights to essentially all public employees, 12 states essentially do not have any laws for collective bargaining among state and local employees. The remaining 12 states have laws that provide bargaining rights to specific groups of workers (e.g. state workers teachers, or firefighters) but not to all state and local government workers.

Id. at 8-9 of GAO Report (footnotes omitted).

Thus, almost half of all states within the United States either fail to cover entirely, or leave significant gaps in coverage for, their government workers. The draft Report's silence as to these gaps is a serious omission that must be corrected.

Discussion of recent developments and/or changes in the law

Overall, the *report* presents an entirely misleading and inaccurate portrait of developments and changes in the law. This occurs in several instances throughout the draft. First, the US are asked to “describe action taken in recent instances” to illustrate what the Government does when it finds that “the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected.” The draft cites a sole example:

On August 19, 2002, the NLRB announced a \$6.4 million settlement resulting from allegations by members of the United Steel Workers of America of unfair labour practices by their Wisconsin employer. In addition to the \$6.4 million in back pay, the agreement provided the unusual remedy of payment to the union of its bargaining and strike costs.

The employer in this case – Alwin Manufacturing Co., Inc. – did not merely settle “allegations” of unfair labour practices by union members, as the draft claims. Rather, the company paid this sum pursuant to a decision of the United States Court of Appeals for the Seventh Circuit enforcing an order of the National Labor Relations Board. *Alwin Mfg. Co. v. N.L.R.B.*, 192 F.3d 133 (1999). The Board's order followed its conclusion that Alwin “had engaged in ‘egregious’ conduct,” including unfair labour practices that prevented good faith bargaining from taking place, and that such behaviour justified the range of remedies described in the draft. *Id.* at 142. Thus, to the extent that the US seeks to convey the impression that workers are able, on their own, to win monetary remedies from their employers in the face of behaviour that violates freedom of association and the right to collective bargaining, nothing could be further from the truth. The NLRB issued its decision in 1998. *See Alwin Mfg. Co. and United Steelworkers of America*, 326 N.L.R.B. 646 (1998). The Court of Appeals decided *Alwin* in 1999. According to the NLRB's Press Release (*see* National Labor Relations Board, Office of General Counsel, “NLRB Announces \$6.4 Million Settlement with Alwin Manufacturing Corporation,” (R-2456), August 19, 2002), the union filed its first set of unfair labour practice charges in this case in 1992, **a full decade** before the workers, who were either terminated illegally or not restored to their jobs at the end of a strike, received any backpay whatsoever, and fully **4 years** from the Board's order. This case is typical of “recent” action on the part of the

Government not because it demonstrates the effectiveness of the NLRA's remedial scheme, but only because it underscores the fact that remedies occur so long after workers' rights have been violated as to make them wholly inadequate. While monetary relief in this case amounted to millions of dollars, even the Department of Labour (DOL) characterizes it as "unusual." Moreover, as is typical in enforcement actions under the NLRA, reinstatement offers occurred only after the lengthy process of litigation, far longer than the employees could have afforded to wait.

Second, the draft asserts that there have been no major changes concerning the core principles since the United States' last report. According to the *ILO report form on freedom of association and the effective recognition of the right to collective bargaining (2002)*, such changes include those "in the regulatory, policy or institutional frameworks, initiation of significant new programmes, new data". Yet, even the GAO Report (at 18) concludes that "Under two recent Supreme Court rulings, some workers currently with bargaining rights may either lose bargaining rights or have their rights diminished." [Reference is made to a case currently pending before the Committee on freedom of Association.] One of these rulings is the *National Labor Relations Board v. Kentucky River Community Care, Inc.*, (532 U.S. 706 (2001)). The AFL-CIO agrees with the GAO that an understanding of freedom of association and collective bargaining in the United States today must include an analysis of how these two cases have reshaped the protections at issue.

The GAO Report (at 18) summarizes the impact of *Kentucky River* as follows:

The *Kentucky River* ruling affected the test that the Board uses to determine supervisory status, a status that can determine coverage of the act, and, therefore, bargaining rights. The Court ruled that the Board's test was inconsistent with the NLRA in that it introduced a categorical restriction on the term "independent judgment", a key concept in the statutory definition of a supervisor. Because any future tests used by the Board to determine whether or not employees are supervisors should be less categorical and more fact-specific, the *Kentucky River* decision could have the effect of increasing the number of employees considered supervisory and thus excluded from coverage under the Act.

While it is not possible to determine the number of workers potentially affected by this decision, its implications for coverage under the NLRA are far-reaching. Thus, the draft *Report* remains incomplete without discussion of *Kentucky River*.

Third, the *ILO report form on freedom of association and the effective recognition of the right to collective bargaining (2002)* asks for a description of "any initiatives undertaken in your country that can be regarded as successful examples in relation to" freedom of association and the effective recognition of the right to collective bargaining, respectively. The draft *Report* states that:

As of October 2, 2001, the NLRB reported that it had succeeded in achieving its three major goals for fiscal year, 2001. Specifically, the Board: 1) issued all unfair labour practice cases that were over two years old, 2) issued all representation election cases that were over 18 months old, and 3) reduced the number of pending unfair labour practice cases to below 450.

While this may have been the case at the time that the NLRB made its report, it is certainly no longer the case. As of October 1, 2001 (the start of Fiscal Year 2002) the NLRB had 408 pending unfair labour practice cases (C cases) and 62 pending representation cases. As of August 1, 2002, however, the number of C cases had risen to

471, an increase of over 15 percent, and the number of R cases had risen to 193, an increase of over 200 percent. Thus, the US cannot claim that it has succeeded in keeping the number of pending cases in either category to levels that it met as recently as one year ago.

***Difficulties with respect to realization
of the core principles***

The United States were asked to identify “the main difficulties encountered with respect to realizing the principle of freedom of association and effective recognition of the right to collective bargaining” by checking off all of the following categories that apply: lack of public awareness and/or support; lack of information and data; social values, cultural traditions; social and economic circumstances; political situation; legal provisions; prevailing employment practices; lack of capacity of responsible government institutions; lack of capacity of employers’ organizations; lack of capacity of workers’ organizations; lack of social dialogue; and other. **Astoundingly, the draft acknowledges problems in none of these areas, a choice which only intensifies the report’s lack of candour.**

As discussed above, merely the lack of coverage under the NLRA of such categories as agricultural and domestic workers, as well as public employees, surely warrants recognition that “legal provisions” pose real difficulties in enforcing the right of freedom of association and collective bargaining. Moreover, as also discussed, the delay in enforcement also poses a “main difficulty” in effective realization of these core rights, if only because of “lack of capacity of responsible government institutions”. Only a bare modicum of candour is required to acknowledge these flaws in labour law and practice and the failure to do so seriously undermines the *report’s* overall credibility.

Equally important, however, is the fact that employers have powerful tools to defeat workers who try to organize. Drawing on the research of a number of sources, the AFL-CIO has summarized the pervasiveness of these tactics and others in its Issue Brief entitled *The Silent War: The Assault on Workers’ Freedom to Choose a Union and Bargain Collectively in the United States* (June 2002). For example, 75 per cent of employers hire consultants to help them fight organizing drives. These consultants operate in the shadows to orchestrate campaigns of fear and intimidation. Seventy-eight per cent of employers force workers to attend one-on-one anti-union meetings with managers, and 92 per cent force employees to attend mandatory anti-union meetings. A quarter of all employers illegally fire at least one worker for union activity during an organizing campaign. In practice, they face no timely or effective sanctions for doing so. *Id.* at 2.²

The United States cannot submit a meaningful report to the ILO and at the same time ignore the well-documented difficulties encountered by workers in this country in enforcing the right of freedom of association and collective bargaining. At a minimum, the *Report* should acknowledge the following difficulties on the chart provided by the ILO:

² These statistics come from the following sources: US Trade Deficit Review Commission, *Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing*, by Kate Bronfenbrenner, Sept. 6, 2000; *Unfair Advantage: Workers’ Freedom of Association in the United States Under International Human Rights Standards*, Human Rights Watch, 2000; *What Workers Want*, Richard B. Freeman and Joel Rogers, ILR Press; “A Proposal to American Labor,” Richard Freeman and Joel Rogers, *The Nation*, June 24, 2002.

political situation; legal provisions; prevailing employment practices; lack of capacity of responsible government institutions; and lack of social dialogue. Correspondingly, the United States should, in response to the *ILO report form on freedom of association and the effective recognition of the right to collective bargaining (2002)* recognize the need for technical assistance and list the following as our most important technical cooperation needs: assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle; strengthening data collection and capacity for statistical analysis; legal reform; and building of responsible government institutions.

To conclude, the AFL-CIO cannot concur in the *Report* as written because of the serious omissions it contains as well as its overall lack of candour about basic elements of the fundamental rights of freedom of association and collective bargaining. It would be happy to discuss this matter further before the United States submits the final *Report*.

Uzbekistan

Government

Recognition of this principle and right

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Uzbekistan. [The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) has been ratified by Uzbekistan in 1992.]

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, and international levels (only freedom of association can be exercised at national level) by the following categories of persons:

- all workers in the public service;
- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- migrant workers;
- workers of 14 years old and over;
- all categories of employers.

Only workers in the informal economy are not recognized such rights.

Government authorization/approval is required to establish an employers' or workers' organization, or to conclude collective agreements.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

Specific measures have been implemented or are envisaged to respect, promote and realize the principle.

Types of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)		X		X
Inspection/monitoring mechanisms		X		X
Penal sanctions		X		X
Civil or administrative sanctions		X		X
Special institutional machinery		X		X
Capacity building of responsible government officials		X		X
Training of other government officials		X		X
Capacity building for employers' organizations		X		X
Capacity building for workers' organizations		X		X
Tripartite discussion of issues		X		X
Awareness raising/advocacy		X		X

Within these measures, special attention is given to the situation of women. Indeed, 2001 was recognized as the Year of Woman and Child. However, no special attention was given to the situation of specific categories of persons, or sectors/industries.

There is no instance where the principle has not been respected.

Progress and achievements concerning this principle and right

The fact that in 2001, the registration process of organizations became easier can be considered as a major change concerning both freedom of association and the right to collective bargaining.

Moreover, the Government adopted on 21 August 2001 Resolution No. 347 on "Development of Registration of Organizations and Enterprises".

Freedom of association is guaranteed by national legislation.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Uzbekistan (1 = most important, 2 = second most important, etc.).

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle	1
Awareness raising, legal literacy and advocacy	1
Strengthening data collection and capacity for statistical analysis	1
Sharing of experiences across countries/regions	1
Legal reform (labour law and other relevant legislation)	3
Capacity building of responsible government institutions	2
Training of other officials	1
Strengthening capacity of employers' organizations	1
Strengthening capacity of workers' organizations	2
Strengthening tripartite social dialogue	1

Report preparation

In preparing this report, consultations were held with the most representative employers' and workers' organizations, as well as government authorities outside the Ministry of Labour and Social Protection. No comments were received from employers' and workers' organizations.

No copies of the report were sent to the social partners.

Zimbabwe

Government

Recognition of this principle and right

The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in Zimbabwe. [The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) has been ratified by Zimbabwe in 1998.]

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons:

- medical professionals;
- teachers;
- agricultural workers;
- workers engaged in domestic work;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- migrant workers;

- workers of all ages;
- workers in the informal economy; and
- all categories of employers.

Government authorization/approval is not required to establish an employers' or a workers' organization, or to conclude collective agreements.

However, in the public service, the uniformed forces (i.e. army, police, and prison personnel) cannot exercise freedom of association and the right to collective bargaining.

Efforts made or envisaged to ensure respect, promotion and realization of this principle and right

The following specific measures have been implemented to respect, promote and realize the principle of freedom of association and the effective recognition of the right to collective bargaining in Zimbabwe:

- legal reform (labour law and other relevant legislation);
- inspection/monitoring mechanisms;
- penal sanctions;
- civil or administrative sanctions;
- special institutional machinery;
- capacity building of responsible government officials;
- training of other government officials;
- capacity building for employers' organizations;
- capacity building for workers' organizations;
- tripartite discussion of issues; and
- awareness raising/advocacy.

Within these measures, no special attention is given the situation of specific categories of persons or industries/sectors. However, women are encouraged to take positions in trade unions and employers' organizations, and take part in collective bargaining teams.

In instances where the Government finds that the principle has not been respected, it **directs** the offending party to respect the principle concerned. Recently, the Government directed that employers in the transport sector should respect the second union operating in this sector.

Progress and achievements concerning this principle and right

Since last report, no major changes concerning the principle have taken place.

However, the current amendment of the Labour Relations Act, 1984 can be considered as a successful example of initiative undertaken regarding freedom of association. The Labour Amendment Bill is oriented by the idea of ensuring that national labour laws are in conformity with international labour standards.

Moreover, the cabinet approved in May 2002 the ratification of the Freedom of Association and Protection of the Right to Collective Bargaining Convention, 1948 (No. 87). The request is to be tabled in Parliament before December 2002.

Difficulties concerning the realization of this principle and right

Zimbabwe is encountering no difficulties with respect to the principle of freedom of association and the effective recognition of the right to collective bargaining, which is being realized in the country.

Priority needs for technical cooperation

There is a need for ILO technical cooperation to facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Zimbabwe, in particular in the following three areas, in order of priority:

- strengthening data collection and capacity for statistical analysis: In this area, the Government needs assistance in setting up a Labour Market database and in training officials in the analysis of the data. The data bank should include labour market organizations, such as workers' and employers' organizations, as well as statistics concerning wages/salaries obtained from chambers where collective bargaining takes place;
- legal reform (labour law and other relevant legislation): The social partners in Zimbabwe are currently being assisted through the ILO/Swiss Project on Social Dialogue and Dispute Settlement. The objective of this project is to review the Labour Amendment Bill with the view of effecting in detail the principles embodied in 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) This kind of assistance is needed beyond the life span of the said project, because the reforms are ongoing; and

Strengthening tripartite social dialogue: the social partners in Zimbabwe need support in the capacity building of social dialogue institutions and structures, such as the Tripartite Negotiating Forum (TNF), which is the apex structure for dialogue between social partners.

Report preparation

In preparing this report, consultations were held with the most representative employer's and workers' organizations, and with government authorities outside the Ministry of Public Service, Labour and Social Welfare.

A copy of the report was sent to the Zimbabwe Congress of Trade Unions (ZCTU), the Employers Confederation of Zimbabwe (EMCOZ), the Public Service Commission (PSC), and the Public Service Association (PSA). No comments were received from these organizations.

Annexes (not reproduced)

- Zimbabwe Congress of Trade Unions (ZCTU), Proposed amendments to the Labour Relations Amendment Bill No. 19 of 2001, the workers' perspectives, 5 September 2002.