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

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

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

Afghanistan

Note from the Office

The Office has never received a report from the Government since the start of the annual review process in 1999.

Armenia

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 Armenia.

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 who have reached the age of 18; and
- workers in the informal economy.

According to article 25 of the Constitution, workers and employers of the military service and the police cannot exercise freedom of association and the right to collective bargaining.

Government authorization/approval is not 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 Armenia.

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	
Penal sanctions				
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		X		X
Capacity building for workers' organizations		X		X
Tripartite discussion of issues	X	X	X	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.

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

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Armenia 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 information and data;
- 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 Armenia, 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	1
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	3
Training of other officials (police, judiciary, social workers, teachers)	2
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 employers' and workers' organizations, and with government authorities outside the Ministry. Oral comments were received from the social partners, in the form of a discussion.

Note from the Office

The Office received no report from the Government for the annual review of 2004.

Bahrain

Government

The Government of the Kingdom of Bahrain reports that there is no change since the last report. [Bahrain has neither ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).] However, it recalls that a new Code of Trade Unions, which takes into account many of the provisions of Conventions Nos. 87 and 98, has been enacted in September 2002. A copy of this Code has already been sent to the ILO.

Brazil

Government

Recognition of this principle and right

In Brazil, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized. [Brazil ratified in 1952 the Right to Organise

and Collective Bargaining Convention, 1949 (No. 98).] Article 8 of the federal Constitution provides freedom of association for professions and trade unions, but there are some reservations. According to article 8, paragraphs II and IV, of the federal Constitution, Brazil did not ratify. The provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), conflict with article 8, paragraphs II and IV, of the federal Constitution, which maintains the system of single trade unions, compulsory contributions and defines the occupational or economic category as the basic social bond for the formation of trade unions.

The constraint of only one union to represent a given occupational or economic category, on a geographical basis, supported by compulsory contributions, in reality constituted a monopoly of trade union representation without, however, any guarantee of representativeness of the category.

There have already been several unsuccessful attempts to ratify the Convention, the last being the draft amendment to the Constitution, PEC No. 623, submitted by the Government for debate by the National Congress in 1998.

At the present time, labour and trade union reform is one of the Brazilian Government's priorities. The Secretariat of Industrial Relations is the department whose chief goal is the promotion and democratization of industrial relations, aligning Brazilian legislation with the new labour market realities, encouraging the adoption in Brazil of a system of trade union freedom and autonomy and bargaining guarantees, in accordance with the Conventions and Recommendations of the International Labour Organization.

To achieve this goal, there needs to be a space for dialogue and agreement between workers and employers, with the involvement of various government agencies. In this connection, the Brazilian Ministry of Labour and Employment is organizing a National Labour Forum (*Forum Nacional do Trabalho – FNT*), a joint, tripartite body. Its principal objective will be to debate the draft industrial relations reform and send it to the National Congress.

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

There is freedom of association and the right to organize in Brazil, but there are certain restrictions. Freedom of association is also addressed in article 5, paragraphs (xvii) to (xxi), of the Constitution:

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

(xviii) 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;

(xxi) associations, when expressly authorized, may legitimately represent their branches in legal or non-legal proceedings.

Although the above rules are universal, the Constitution deals specifically with the right to organize in article 8.

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

(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;

(ii) the creation of a trade union, of any kind, representing an occupational or economic category may not be formed in the same geographical area as defined by the workers or employers concerned but not less than the area of a municipality, is prohibited;

(iii) the trade union is responsible for defending the collective or individual rights and interests of the category, including in legal or administrative proceedings;

(iv) the general assembly shall fix the contribution which, in the case of an occupational category, shall be deducted at source, to defray the costs of the respective confederal system of trade union representation, irrespective of the contribution provided in law;

(v) no person shall be compelled to join or remain a member of a trade union;

(vi) the participation of trade unions in collective bargaining is mandatory;

(vii) a retired member is entitled to vote or be elected in trade union organizations; and

(viii) it is prohibited to dismiss an employee who is a trade union member from the time of registration of his candidacy for trade union executive or representative office and, if elected, even as an alternate, up to one year following the end of the term of office, except in the case of serious misconduct as provided in law.

The provisions of this article shall apply to the organization of rural trade unions and fishermen's colonies, subject to such conditions as are established by law.

Thus, it can be noted that the federal Constitution, in paragraph 1 of article 8, abolished state control of trade unions, recognition and functioning of which was previously subject to the State's discretion. It can also be unhesitatingly asserted that the new constitutional text will introduce a climate of freedom never before experienced by Brazilian trade unions.

The abovementioned article 8 of the federal Constitution establishes other guarantees of freedom of association, such as the freedom to join or remain a member of a trade union (paragraph v) and the mandatory participation of trade unions in collective bargaining (paragraph vi). On the other hand, paragraphs (ii) and (iv) preserve intact two pillars of the trade union model inherited from the state-centred system of industrial relations – the institution of trade union unity and compulsory contributions.

Thus, generally speaking, all the categories of persons listed above can exercise freedom of association and the right to organize, subject to the restrictions indicated above. However, military personnel are not permitted to form trade unions or to strike (article 142, No. 3, paragraph (iv), of the federal Constitution).

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

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

Special attention is given to the situation of specific industries and sectors, such as for dockworkers, rural workers and micro and small enterprises.

In instances where the Government finds that the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected,

the Government reports the matter to the Labour Prosecutor, who initiates the appropriate legal or administrative proceedings.

Initiatives undertaken in Brazil can be regarded as successful examples in relation to freedom of association. Indeed, in Brazil, the National Labour Forum proposed by the present Government to reform industrial and trade union relations is already up and running, with the participation of all the social partners involved in the world of work, i.e. trade unions and employers' organizations. The Forum is consultative, a space for tripartite dialogue with the following objectives:

- to allow the democratization of industrial relations through the adoption of an organizational system based on the freedom of association, freedom and independence envisaged in Convention No. 87;
- to update labour law to make it more compatible with the characteristics of the labour market and employment relationships, consolidating a scenario more suited to generating employment and incomes;
- to ensure social justice, in the context of labour law, relating to trade union prerogatives and guarantees and employment regulatory institutions.

Initiatives undertaken can be regarded as successful examples in relation to the effective recognition of the right to collective bargaining. In the last few years, the Government has presented various draft labour law amendments to the National Congress, central to which was the drive towards collective bargaining as a means of resolving disputes between employers and workers. These proposals seek to ensure that collective rights take precedence over individual rights and to strengthen the role of the protagonists in industrial relations. Several of these proposals became law, noteworthy among them being the following:

- Law No. 10,101 of 19 December 2000 which regulates worker sharing in company profits or gains through collective bargaining;
- Law No. 9,601 of 21 January 1998, which allows fixed-term contracts in any activity, under a collective agreement or contract, in any activity engaged in by the enterprise or establishment involving recruitment that increases the number of employees. It also instituted the so-called "hours bank", which operates on the basis of prior authorization in a collective agreement or contract;
- Law No. 9,958 of 12 January 1998 which authorizes enterprises and trade unions to create bipartite and joint conciliation committees, made up of employers' and employees' representatives, to resolve individual labour disputes.

Other proposed changes to labour law are still in the form of provisional measures, which have the force of law (federal Constitution articles 62 and 84(xxvi). Worthy of mention among these is provisional measure MP No. 2,076-37 of 24 May 2001, which, subject to prior authorization in accordance with a collective agreement or contract, allows the adoption of a system of part-time work, applicable to contracts for working hours of up to 25 hours a week and suspension of the contract of employment with vocational qualification.

Apart from the changes in the regulatory arrangements, the Brazilian Government has in recent years undertaken an intensive programme of seminars, courses, training and

similar activities, aimed at discussing models of collective agreements appropriate to the realities in the country with the social partners, training public officials and employers' and trade union leaders and consolidating the collective bargaining culture in industrial relations. These events have brought together members of the industrial courts, the industrial relations prosecution service, the Ministry of Labour and Employment, employers' and workers' representative organizations and representatives of civil society. In several of these initiatives, the Government has enjoyed the cooperation of the International Labour Organization (ILO), which provided experts, methodology, a wealth of experience and financial resources. Among recent events, the following should be highlighted: the seminar on the organization of work under the new capitalism: flexibility and ethics, held in the town of Belo Horizonte, Minas Gerais, in April 2000, with support from the ILO, the Minas Gerais State Federation of Industry and private companies; the international seminar on collective bargaining, held in the town of Fortaleza, Ceara in August 2000, sponsored by the ILO and the Organization of American States (OAS); the study cycle on dock work and water transport, held in the city of Santos, São Paulo, in July 2000; and the federal mediation and conciliation service course held in Rio de Janeiro in September 2000 with OAS support.

As mentioned above, the National Labour Forum is the main and latest effort by the Brazilian Government to ensure compliance with, promote and realize the principle of freedom of association and the right to organize, by stepping up its efforts to promote collective bargaining.

Report preparation

A copy of this report was sent to the following most representative employers' and workers' organizations;

- National Confederation of Agriculture (CAN);
- National Confederation of Commerce (CNC);
- National Confederation of Industry (CNI);
- National Confederation of Financial Institutions (CNF);
- National Confederation of Transport (CNT);
- Central Union of Workers (CUT);
- General Workers' Confederation (CGT);
- Força Sindical (FS);
- Social Democratic Union (SDS);
- Independent Workers' Confederation (CAT); and
- General Confederation of Workers of Brazil (CGT do B).

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

Despite progress in the constitutional context concerning freedom of association, Brazil is far from having a legal regime of freedom of association and full collective bargaining. The legal limitations on full collective bargaining can be found at the constitutional, legal and administrative level, as will be noticed throughout our comments, and these have serious and profound practical effects on the life of Brazilian trade unions. We shall see below some of the most significant aspects.

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 freely 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 our labour institutions is well known internationally.

In practice, however, workers have created new entities in parallel to those already in existence, 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. However, there is no proposed reform such as mentioned in paragraph 53 of the examination of reports for 2002. It is therefore a retrograde step, given the failure to implement the recommendation of the Committee of Experts on the Application of Conventions and Recommendations in paragraph 45(e) of its 2002 report.

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 of this Federal Senate Committee. The shelving of the abovementioned draft constitutional amendment, however, according to the current view of constitutional experts, makes its implementation impossible.

Below are mentioned some institutional barriers to freedom of association and full collective bargaining.

Constitutional supervision of trade union monopoly

Given the single trade union 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 because they recognize the monopoly of existing unions and have recognized the Ministry of Labour and Employment as the body responsible for trade union registration. This interpretation has allowed the executive power (the Government), to control 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, was effectively determined by the administrative authorities of the Ministry of Labour up to 1985, when the transition to a democratic regime began. Despite the fact that the administrative organ, the Committee on Trade Union Regulation, responsible for the application and interpretation of the legal concept of category was abolished, the orders issued by it have been maintained by interpretations of the Supreme Court of Justice. This court considered them 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, annexed to this report). As can be noticed, the jurisprudence of the Brazilian Constitutional Court has given legal support to the position of the executive power, 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 judicial system of resolving collective industrial disputes of a clearly inquisitorial nature. By taking its inspiration from the Italian fascist model, the labour judiciary acquired jurisdiction over collective disputes. Such judicial proceedings, which were of little relevance in the authoritarian Italian system, prospered on 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.

Based on this power, contained in article 114(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 labour law doctrine as the jurisdictional authority of the Labour Court.

In summary, 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.]

Despite the repeated recommendations of the Committee on Freedom of Association, the Brazilian Government has made no proposal to abolish this mechanism, which limits freedom of association and collective bargaining. [Reference is made to the recommendations of the Committee on Freedom of Association.]

Another example that could be mentioned on the lack of effective action by the Government to promote collective bargaining is the fact that, up to now, no draft regulations have been put forward to implement article 11 of the Constitution. This article provides for the establishment of workers' representation. [Reference is made to the application of the Workers' Representatives Convention, 1971 (No. 135).]

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, the legal existence of trade unions that are challenged is terminated in advance. 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. We shall see below the legal consequences that non-registration with the Ministry of Labour and Employment involves and also the various practical consequences.

Refusal to deposit covenants and collective agreements

If registration of the trade union is challenged, it cannot deposit any covenant or collective agreement concluded with the counterpart employer. This prohibition is clearly expressed in Amendment 11, administrative regulatory decision of this Ministry, consolidated in Order No. 01 of 22 March 2002 (copy annexed). Several new trade unions, especially those linked to the trade union confederation which is the author of these comments, are encountering difficulties in depositing 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 maintains a national register of tax-paying legal persons, called the National Register of Legal Persons (*Cadastro Nacional de Pessoas Juridicas – 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 practice 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, however, depends on prior registration with the Ministry of Labour and Employment, as laid down in article 39(5) 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 noticed, 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. It may happen, under the guidance issued by this body, that amendment 11 consolidated by Order No. 01/2002

relieves mediators of the duty to mediate when it involves a trade union whose registration with the Ministry has been challenged. Registration is thus a sine qua non 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.]

Refusal of the right of civil servants to collective bargaining

The Federal Supreme Court held that the exercise of the right to strike requires prior regulation in infra-constitutional law. [Reference is made to the application of the Right to Organise and Collective Bargaining Convention, 1949 (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 a trade union was determined by article 522 of the Consolidated Labour Act. The number of executives allowed in a trade union under article 522 was a maximum of 24. This, therefore, was a broad interpretation of the legal substance of the article in question.

This article is contained in a set of rules, Title 5 of the Consolidated Labour Act (*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 some rare 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 winds following the adoption of the 1988 Constitution 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), such as 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 fact, recent decisions of the second chamber of the Federal Supreme Court, in disputes involving employers' organizations, on the one hand, and trade unions, on the other, held this article to be subsumed in the new constitutional provisions, i.e. recognized it 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 contained 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 Act. 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.]

Measures taken or envisaged with a view to compliance with, promotion of and implementation of these principle 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, which would allow ratification of Convention No. 87. However, the draft amendment was shelved on a technicality in December 2000, without any debate by the parliamentary majority. 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 Commission, a body for settling disputes between employees and employers. The law was passed by the Government's majority in Parliament, and does not provide even the minimum trade union protection to workers who are members of them, nor is there an 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. Furthermore, 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.

Governments observations on the Central Union of Workers' (CUT) comments

I. Introductory note

For a long period of Brazil's history, freedom of association was severely hampered by the "statist" model of labour relations, which typically found expression in a state-controlled form of trade unionism. The corporatist version which prevailed in the country from the 1930s to the 1980s was marked by the trade unions' dependency on the State, if they were not actually subordinated and subsumed by public organizations; single, state and compulsory collective representative bodies; compulsory resort to state intervention in dispute settlements; abundant and detailed legislation.

From the end of the 1970s, significant changes began to occur in the content and form of industrial dispute resolution. This highlighted the enormous gulf between the current legal order and the stage of the country's economic, social and political development which presaged the emergence of a new industrial relations model. The changes in the technical basis of production, new methods of management of work, the restoration of personal and collective freedoms at that time were all factors that drove the change.

The possibilities of promoting and consolidating the new industrial relations model were considerably strengthened by the promulgation of the federal Constitution (1988) which introduced the right to organize, form professional and trade union associations, including by civil servants, the right to strike, recognition of collective agreements and covenants, the right of the social partners to representation in public bodies, etc. However, although various previous provisions of trade union law were repealed, the Constitution retained the bases of the corporatist structure, the single trade union. It thus did not complete the break with the past, and also prevented the country from acceding to one of the basic labour standards, ILO Convention No. 87.

II. Legal guarantees of freedom of association and the right to organize

The principles of freedom of association and the right to organize enshrine the personal and collective rights and guarantees which form, inter alia, the basis of the State governed by the rule of law. Article 5 of the Constitution contains the various provisions:

(…)

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

xviii. 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;

(…)

Other precepts of article 5 on the representativeness of associations:

(…)

xxi. associations, when expressly authorized, shall be entitled to represent their members judicially and extra-judicially;

(…)

xxiii. the following are guaranteed under the law;

(…)

(b) the right to enjoy the economic benefits of works created by or participated in by creators, interpreters and their respective representative trade unions and associations;

(…)

Freedom of association is a social right. In that respect, the Constitution provides:

Article 8. 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;

(…)

(iii) trade unions are responsible for defending the personal and collective rights and interests of the category, including in judicial and administrative matters;

(…)

(v) no person shall be compelled to join or remain a member of a trade union;

(vi) it is compulsory for trade unions to participate in collective bargaining;

(…)

(viii) it is prohibited to dismiss an employee who is a member of a trade union from the time when he enters his candidacy for a trade union executive or representative office and, if elected, including as an alternate, for one year after the end of the term of office, except in the case of serious misconduct as defined by law.

This right applies to all category of workers, including civil servants, as set out in article 37(vi): civil servants are guaranteed the right of freedom of association.

However, civil servants are not included in the right to collective bargaining, since, under the Constitution, their remuneration may only be fixed or changed by specific legislation (article 37.x). In previous reports and submissions, the Government stated that the administrative reform, by providing for various forms of contracting of personnel in the civil administration, opens up opportunities for certain categories of public employees to resort to collective bargaining in changing their conditions of work, which is what happens, for example, in state enterprises and companies under mixed ownership. It should be emphasized, however, that any use of this instrument depends on the conclusion of the administrative reforms and the legislation which, pursuant thereto, govern labour relations in specific state sectors. It is also recalled that the Supreme Labour Court, in Jurisprudential Guideline No. 5 of the Collective Disputes Section, confirms the understanding that civil servants do not have the right to recognition of collective agreements and covenants and, thus, do not have the right to engage in industrial disputes, unless provided by law.

The Constitution only excludes from the right of freedom of association military personnel – members of the armed forces, members of the state and federal district militia, military police and military fire service, as set out in paragraph 5 of article 42.

Military personnel are prohibited from the right to organize and strike.

The Consolidated Labour Act guarantees freedom to exercise trade union functions and protects workers against acts that discriminate against or curtail the right of trade union membership and activities by enterprises, such acts being subject to appropriate penalties (article 543).

As stated in article 8, paragraph (i), trade unions must be registered with the competent body. This requirement is linked to the maintenance of the system of single trade unions (article 8.ii) which precludes the existence of more than one trade union per occupational or economic category in the same geographical area. Repeated decisions of the higher courts, especially the Federal Supreme Court and the Supreme Court of Justice, define the Ministry of Labour and Employment as the body competent to grant trade union representative status of an occupational or economic category. As indicated by the Supreme Court of Justice, this procedure is not a government interference in trade union

organization, but an administrative act, solely for the purposes of compliance with legal requirements. Registration makes public the existence of the entity, and endows it with legal personality as a trade union. According to the court, the Ministry must "ensure compliance with the principle of a single trade union acting jointly with interested third parties" (AGRRE 207910/SP-DJ 26-6-98).

Apart from the leading jurisprudence of the higher courts and the relevant current law and administrative procedures, trade union registration is at present covered by Order No. 343 of 4 May 2000, as amended by Order No. 376 of 23 May 2000. With the objective of facilitating access by employers, workers, members of the public and interested parties to the provisions of the Constitution and the register of trade unions, the Ministry of Labour and Employment re-issued in 2001 the *Manual on Trade Union Registration Procedures*, the original version of which was published in 1997.

Various acts of employment tribunals confirmed the principle of freedom of association enshrined in the Constitution, labour legislation and national practice. The Supreme Court of Justice, in its decision No. 197, held that an employee acting as a trade union representative may only be dismissed following an investigation in which he is found to have committed a serious misconduct. The Supreme Labour Court held similarly in its Jurisprudential Guideline No. 114 (SDI-1), which provides for the need for a judicial investigation in the case of dismissal for serious misconduct of a trade union official. The same court, in Legal Precedent No. 119 and Jurisprudential Guideline No. 17, under the constitutional precepts of freedom of association and right to organize (articles 5.xx and 8.v), holds to be unlawful any clause in a collective agreement, covenant or rule which makes contributions to a trade union for the cost of the confederative system, support, restoration or strengthening of trade unions and suchlike compulsory for non-unionized workers. Two other decisions of the Supreme Labour Court concern the exercise of trade union functions: Legal Precedent No. 83 guarantees trade union officials freedom to attend duly convened and approved trade union conferences and meetings. Legal Precedent No. 91 guarantees access by trade union officials to enterprises during meal and rest breaks to carry out their functions, the dissemination of party political or offensive material being prohibited. Other jurisprudential guidelines of the Supreme Labour Court state that the Labour Court has no powers to intervene in an inter-union dispute on representation of categories (No. 4) or trade union coverage (No. 9).

With respect to the constitutional right to strike (article 9), in a judgement delivered on 18 May 2001, the country's highest court held that this prerogative is not absolute, since the category must comply with the relevant legal parameters. In turn, the Supreme Labour Court held, in its decision No. 189, that the Labour Court has power to declare a strike legal or illegal, a position also expressed in Legal Precedent No. 29. The same court holds, in its Jurisprudential Guidelines No. 38, that the determining factor in determining the legality of a strike is the guarantee of the inalienable needs of the population using essential services. "A strike in sectors defined by the law as essential to the community is illegal, unless the basic inalienable needs of the users of the service are assured, as laid down in Law No. 7,783/89."

Also worthy of mention, as an unmistakable sign of the restoration of democratic freedoms in the country, is the amnesty granted to trade union executives and representatives who, for exclusively political motives, were punished or prevented from exercising professional activities between 18 September 1946 and 5 October 1988, the date of promulgation of the Constitution. They are also guaranteed the promotions to which they would have been entitled if they had been actively employed during that period (Constitution, article 8, section 2). Law No. 8,632 of 4 March 1993, the scope of which

was extended by Provisional Measure No. 2,151 of 31 May 2001, as amended, grants an amnesty to trade union executives and representatives who during the period of promulgation of the Constitutional Charter and the publication of that law, were punished for political motives, participation in claims actions or other means of exercising their trade union mandate or representation, ensuring payment of their wages for the period of disciplinary suspension and, to those dismissed, reinstatement in employment with full rights (article 1).

At regional level, it should be noted that the Presidents of the Member States of Mercosur signed the *Mercosur Socio-Labour Declaration* at the Rio de Janeiro Summit on 10 December 1998. This instrument brings together the basic labour rights and commitments recognized by the countries in the block and provides a mechanism for application and promotion, which materialized with the institution of the *Mercosur Socio-Labour Commission*. The principles of freedom of association and the right to organize contained in the Declaration are essentially the same as in Convention No. 87, as can be seen from the following articles:

> Article 8. All employers and workers shall have the right to form such organizations as they deem fit, and to join such organizations, in accordance with current national laws.
>
> The States Parties undertake to ensure, through legal provisions, the right to free association, and shall refrain from any interference in the creation and management of such organizations, and shall recognize their legitimate right to represent and defend the interests of their members.
>
> Article 9. Workers shall enjoy adequate protection against any act of discrimination intended to impair their freedom of association in respect of their employment.
>
> The following shall be guaranteed:
>
> (a) freedom of membership, non-membership or resignation of membership, without prejudice to entry to or continuation in employment;
>
> (b) prevent dismissals or prejudice to a worker on the grounds of his trade union membership of participation in trade union activities;
>
> (c) the right to the represented by a trade union, in accordance with the law, covenants and collective agreements in force in their States Parties.

Both articles are the subject of national reports by States Parties in 2002 and 2003. As in the ILO, the reports, prepared by the Ministries of Labour in consultation with the most representative employers' and workers' organizations, must reflect member countries' legal and institutional situation and practice in relation to their undertakings. The Socio-Labour Commission will examine them finally at the last meeting next year and will produce a consolidated regional report thereon, to be submitted to the Common Market Group (GMC), together with appropriate recommendations.

III. Recent developments in the law and practice of the right to organize and collective bargaining

Despite the constitutional and legal guarantees of freedom of association and the right to organize, the Brazilian Government recognizes that the full application of this right precludes the single union system, i.e. the requirement to organize by economic or occupational category and compulsory dues, which are maintained in the Constitution (article 8, paragraphs (ii) and (iv) in particular). Added to these are the legal requirements (Consolidated Labour Act, article 533 et seq.) on the creation of federations and confederations of employers and workers.

With a view to surmounting these obstacles, the Government proposed an amendment to the Constitution to the National Congress, PEC No. 623/98, which envisaged the freedom to form unions without a compulsory occupational or economic linkage; the end of the monopoly of representation generated by compulsory single unions, replacement of confederative contributions by those decided in general assembly; revision of the regulatory power of the Labour Court; creation of extra-judicial bodies for prior mediation and conciliation of individual disputes. This proposal, had it been approved, would have introduced in Brazil the full freedom of association set out in Convention No. 87 and would have given a crucial impetus to collective bargaining. However, the issue was shelved by the legislature at the end of 2000, under its rules of procedure.

Another government proposal, SF PDS 16/84, to approve the text of Convention No. 87 is currently before the National Congress. The matter is at present with the Federal Senate Committee on the Constitution and Justice, pending a statement by the reporter.

The failure of the various attempts to ratify Convention No. 87 shows that a convergence of views has not been achieved between the state institutions and the social partners on the issue. The trade unions maintain deep divisions concerning the removal of the institution of the single trade union from the Constitution. There remains, moreover, a conceptual uncertainty concerning the principle of freedom of association per se, as established in Convention No. 87, and the concrete forms that the principle might take in practice, including the single trade union system. This state of affairs is reflected in the disagreements in the National Congress and the troubled and unhappy passage of freedom of association issues.

The Government believes that these obstacles can only be overcome through more intensive social dialogue. This is also the way to complete the transition from the statist model to the contemporary model of industrial relations, based on freedom of association and autonomy of the parties.

In short, the various provisions of Brazilian legislation which conflict with Convention No. 87, and especially Article 3 of the latter – the monopoly of trade union representation, compulsory trade union contributions and the requirement to form federations and confederations – are interdependent and based on the same legal provisions as the proposed amendment sought to remove.

Despite the maintenance of the corporatist trade union system, the country is experiencing a proliferation of trade unions, generally weak and with little influence, a phenomenon which some experts in industrial relations call the “paradox of unicity”. According to the initial results of the trade union survey carried out by the Brazilian Institute of Geography and Statistics (IBGE) on behalf of the Ministry of Labour and Employment, there are 11,354 trade unions and 3,581 employers’ organizations. The number of members rose from 15.4 million in 1990 to 19.4 million in 2001. At the same time, the rate of unionization fell from 24.9 per cent to 23.6 per cent. The membership structure of the central trade unions was as follows: Central Union of Workers (CUT): 3,200 affiliated trade unions and 21 million workers; Força Sindical: 1,800 affiliated trade unions and 16 million workers; Social Democratic Union (SDS): 1,800 affiliated trade unions and 11 million workers; General Confederation of Workers (CGT): 1,100 affiliated trade unions and 6 million workers (Journal of S. Paulo, 17 and 24 November 2002).

In recent years, the Government has adopted a policy of modernizing the regulatory framework of the labour market, with the aim of promoting job creation, encouraging regularization of informal activities and tackling the challenges of an open and competitive

economy. The strengthening of trade union organizations, together with the impetus to collective bargaining, was the cornerstone of the process of modernizing industrial relations. Indeed, the introduction of new employment contract regimes, the adoption of which was subject to agreement by the parties, presupposes and at the same time stimulates the exercise of freedom of association and collective bargaining.

This policy is reflected notably in the enactment of the following laws:

(a) Law No. 10,192 of 14 February 2001, on fixing of wages and other conditions of work through free collective bargaining;

(b) Law No. 10,101 of 19 December 2000, which regulates workers' share in company profits through collective bargaining;

(c) Law No. 9,601 of 21 January 1998, which allows fixed-term contracts in an activity and introduced the so-called "hours bank", by collective agreement or covenant. According to data of the Secretariat of Labour Relations in the Ministry of Labour and Employment, 1,656 collective agreements signed between 1998 and June 2002 contain clauses referring to the "data bank", involving 709,896 workers;

(d) Law No. 9,958 of 12 January 1998 which authorizes the creation of prior bipartite and joint conciliation commissions to resolve individual labour disputes. From 2000 to June 2002, 1,267 commissions were set up, according to the source mentioned in the previous paragraph.

The principle of freedom of association and the right to organize is enshrined in various institutional mechanisms, which examine and decide relevant issues in the area of labour and national development, notable among them being: the Governing Board of the Worker Protection Fund (Conselho Deliberativo do Fundo de Amparo ao Trabalhador, CODEFAT), responsible for managing resources which finance the National Incomes and Employment Generation Programme (PROGER); state and municipal tripartite and joint employment committees, which encourage social participation in the national employment system (SINE) and PROGER; the Governing Board of the Length of Service Guarantee Fund (*Fundo de garantia do Tempo de Serviço*, FGTS) whose resources, as well as serving as workers' savings and insurance, finance housing, basic sanitation and urban infrastructure programmes; the tripartite joint standing committees which examine and revise occupational safety and health legislation.

These mechanisms also reflect the constitutional precept of workers' and employers' participation in committees of public bodies in which their occupational or welfare interests are discussed and decided (article 10).

In addition to the efforts to modernize the law and create institutional centres for dialogue, the Brazilian Government has sought to strengthen trade union bodies, involving them in discussions and training on models of employment contracts appropriate to the national and international economic environment and especially methods of consolidating the bargaining culture in capital-labour relations. Throughout these measures, the Government has had the cooperation and support of the International Labour Organization (ILO), which has provided experts, methodological resources, a wealth of experience and even financial support.

The most representative employers' and workers' organizations also participate in the Mercosur Socio-Labour Commission working group (SGT 10) on "Labour, employment

and social security issues", the support and advisory body to the Common Market Group (GMC) for the study of labour and pensions issues in the process of integration and formulation of recommendations to promote conditions of work in the region; and the Mercosur Socio-Labour Commission, an auxiliary organ of the GMC, responsible for monitoring and promoting the application of the Mercosur Social and Labour Declaration. They also belong to the Economic and Social Consultative Forum, the exclusive representative body for the block's social and economic sectors, created by the Ouro Freto Protocol (1994), which advises the GMC in the form of recommendations, on request or on its own initiative.

Despite the continuing legal constraints on trade union law, the available statistical data support the Brazilian Government's views on the remarkable progress achieved by the country in the field of labour relations and the growing resort by employers and workers to independent forms of resolving conflicts of interest.

Tables 1 and 2 show the constant positive growth in the number of collective employment instruments deposited with departments of the Ministry of Labour and Employment.

Table 1. Collective instruments deposited by type of instrument, Brazil 1997-2002

Collective instruments deposited by type of instrument							
Type	**1997**	**1998**	**1999**	**2000**	**2001**	**2002 [1]**	**Total [2]**
CCT	2 765	3 766	3 953	4 052	4 152	3 614	22 302
ACT	6 274	10 501	11 691	13 111	15 771	12 409	69 757
TA/ACT	401	655	559	887	1 014	886	4 402
TA/CCT	248	325	335	472	520	412	2 312
APLR	138	209	175	347	506	420	1 795
Total	9 826	15 546	16 713	18 869	21 963	17 741	100 568

[1] January to October inclusive. [2] Translator's note: the original omits the 2002 figures from the total column. This has been corrected in the translation.
Key: CCT: Collective Covenant (Convencão Coletivo de Trabalho); ACT: Collective Agreement (Acordo Coletivo de Trabalho); TA/ACT: supplementary clause to Collective Agreement; TA/CCT: supplementary clause to Collective Covenant; APLR Company profit-sharing agreement.
Source: Secretariat of Labour Relations, Ministry of Labour and Employment.

Table 2. Collective instruments deposited by economic activity, Brazil 1997-2002

Activity	1997	1998	1999	2000	2001	2002*	Total
Industry	3 814	6 883	7 635	8 569	9 597	7 910	44 408
Commerce	3 151	4 342	4 834	5 536	6 730	5 643	30 236
Land transport	994	1 652	1 670	1 891	2 190	1 683	10 080
Maritime, river and air transport	218	223	232	277	341	206	1 497
Educational and cultural establishments	517	738	754	815	1 031	779	4 634
Communications and advertising	219	304	319	368	409	276	1 895
Differentiated	101	158	143	179	209	157	947

Activity	1997	1998	1999	2000	2001	2002*	Total
Agriculture	450	739	716	775	876	646	4 202
Banking institutions	152	179	167	190	231	150	1 069
Liberal professions	131	143	164	187	229	183	1 037
Civil servants/public employees	49	52	42	57	69	48	317
Other	30	43	37	25	51	60	246
Total	9 826	15 546	16 713	18 869	21 963	17 741	100 568

*January to October inclusive.
Source: Secretariat of Labour Relations, Ministry of Labour and Employment.

The statistics on strikes (tables 3 and 4), although not exhaustive, show a clear downward trend. Without ignoring the influence of the constraints imposed by the low growth in product and employment, the pattern of this variable can be attributed to the new bargaining models between capital and labour.

Table 3. Number of strikes, strikers and workers x hours of stoppages, Brazil 1992-99

Year	Strikes	Strikers	Workers x hours of stoppages
1992	567	2 562 385	140 726 352
1993	653	3 595 770	554 646 174
1994	1 034	2 755 619	134 257 609
1995	1 056	2 277 894	177 278 153
1996	1 258	2 534 960	175 867 016
1997	630	808 925	55 151 929
1998	546	1 251 279	134 360 190
1999	508	1 310 826	47 477 256

Source: DIEESE – Inter-Union Department of Statistics and Socio-economic Studies. Database.

Table 4. Average monthly strikes, strikers and workers/hours of stoppages, Brazil 1996-99

Year	1996	1997	1998	1999
Monthly average strikes	111	57	50	46
Monthly average strikers	224 515	74 681	142 891	114 889
Monthly average workers/hours of stoppages	12 586	4 251	11 165	2 874

Source: Workers Yearbook 2000-01. 5th edition. São Paulo: DIEESE, 2001

The reports of the Supreme Labour Court (table 5) also show a downward trend in the number of collective disputes decided by the various instances of this court, in particular from the second half of the 1990s (except for the last year in the series) when various legal measures and practices were adopted to encourage free negotiation.

Table 5. Industrial disputes decided by the Labour Court, Brazil 1990-2001

Year	Number	Trend (%)
1990	2 725	–
1991	3 474	27.5
1992	2 388	(31.3)
1993	2 142	(10.3)
1994	2 241	4.6
1995	2 443	9.0
1996	1 282	(47.5)
1997	989	(22.8)
1998	937	(5.3)
1999	815	(13.0)
2000	713	(12.5)
2001	773	8.4

Source of basic data: Under-Secretariat for Statistics of the Supreme Labour Court.

IV. Institutions enshrining the principle of freedom of association

Brazil has several institutions, as appropriate to a State governed by the rule of law, responsible for ensuring that the principles of freedom of association and the right to organize are respected.

The Labour Inspectorate is defined by the Constitutional (article 21, xxiv) as the national authority, under the Ministry of Labour and Employment, responsible for ensuring compliance with labour protection laws (Consolidated Labour Act, article 626). The Federal System of Labour Inspection (SFIT) organized, maintained and coordinated by the Secretariat of Labour Inspection (SIT) is the operational basis of the inspection function (*labour auditor-supervisors*, as they are called in the new administrative terminology) assigned to regional labour offices throughout the country. Their responsibilities include ensuring compliance with labour and occupational safety and health legislation; collective covenants, agreements and contracts, and international agreements, treaties and conventions to which Brazil is a signatory (article 11 of Provisional Measure No. 46 of 25/11/02). Inspections are carried out in workplaces and premises of companies and establishments. Where they find failure to comply with legal requirements, auditor-supervisors may order companies and establishments to correct the problem, issue a summons in respect of the offence or even order work to stop or close the workplace in the case of a serious risk to the workers.

Workers who feel that their rights are injured or threatened may resort to the Labour Court, which is responsible for mediating and deciding individual and collective disputes between employees and employers, including state-owned and directly and indirectly administered entities, as well as other disputes under labour legislation (Constitution, article 114). The constituent organs are the Supreme Labour Court, the regional labour courts and labour tribunals.

The Department of Labour Prosecution, within the Federal Attorney-General's Office (Constitution, article 128) is also charged with protecting social and individual interests in labour matters. Supplementary Law No. 75 of 20 May 1993 (article 83) assigned it, inter

alia, with the tasks of prosecuting public civil actions in the labour courts to defend collective interests in the event of failure to respect constitutionally guaranteed social rights, and in actions to have an employment contract or collective agreement declared void because it violates the individual or collective rights of workers.

Canada

Government

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

Collective bargaining

[Canada ratified in 1972 the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).]

There are no changes to report with respect to the information previously provided by the Government.

The Government continues to promote recognition of the right to collective bargaining through various programmes of the Federal Mediation and Conciliation Service (FMCS).

The FMCS's Preventive Mediation Program, provides training and assistance in the building of cooperative industrial relations, across Canada and internationally.

Over the course of 2002-03, FMCS officers held a number of workshops on topics such as problem solving, committee effectiveness training, interest-based negotiations (IBN), negotiation facilitation, negotiation best practices and joint supervisor/steward training.

FMCS officers were also involved in the start of a breakfast speaker series in cooperation with the Province of Nova Scotia; presenting IBN to industrial relations students at the University of Ottawa; and in assisting in Justice Canada's alternative dispute resolution programme for cases of harassment or conflict in the workplace.

The Labour-Management Partnerships Program (LMPP) provides funding to about 30 projects a year that support and promote the development of cooperative labour-management relations in Canada.

The FMCS biennial industrial relations conference provides an opportunity for key people involved in labour relations in Canada to come together to discuss critical industrial relations issues.

The 2003 conference brought together representatives from major Canadian employers and unions, third-party neutrals and academics to discuss recent developments in federal labour law; the impact of amendments to the *Canada Labour Code (Part I – Industrial relations)*; addressing harassment, violence and mental health in the workplace; and the effects of corporate mergers and bankruptcy protection on labour relations.

Report preparation

No comments have been received from the following workers' and employers' organizations, which were invited to provide input to these reports:

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

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:

- 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; and
- workers in the informal economy.

However, public servants 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	X	
Inspection/monitoring mechanisms		X		X
Penal sanctions		X		
Civil or administrative sanctions		X	X	
Special institutional machinery				X
Capacity building of responsible government officials				X
Training of other government officials				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 to women, 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 2002, a tripartite mechanism was set up in the construction industry and a guideline on the establishment of tripartite mechanism on labour relations was drawn up. In June 2003, a circular on further promotion of equal consultation and collective contract systems was written down. A Regulation on Collective Consultation and Collective Contracts was adopted in June 2003.

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:

- awareness-raising, legal literacy and advocacy;
- legal reform (labour law and other relevant legislation); and
- 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, the right to organize and the effective recognition of the right to collective bargaining is fully recognized in the Constitution.

This principle may be exercised at enterprise, sectoral or industry, national and international levels (except for the effective recognition of the right to collective bargaining) by the following categories of persons:

- health professionals, only in private institutions;

- teaching staff, only in private institutions;
- farmers;
- workers employed in home work;
- workers in free zones (ZFI) or enterprises/industries classified as free zones;
- migrant workers; and
- workers in the informal economy.

However, the minimum age for exercising these rights is 14 years. Furthermore, under the Constitution, all employers and workers in the public sector may not exercise the right to organize and that of collective bargaining.

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

In addition, under the Labour Code, in order to form unions, private employers and workers and workers in official autonomous institutions must apply for legal personality through the Ministry of Labour and Social Security.

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

Special measures have been implemented or are envisaged in El Salvador 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
Inspection/monitoring mechanisms		X		
Penal sanctions		X		
Civil or administrative sanctions		X		
Capacity building of responsible officials	X			
Capacity building for employers' organizations	X		X	
Capacity building for workers' organizations	X		X	
Tripartite discussion of issues		X		

These measures pay particular attention to the status of women. Through the Higher Labour Council, a matrix has been produced for the institutionalization of the gender aspect in public policies, in which it is sought to analyse alternatives and mechanisms to strengthen women's organization in work in which their interests are represented. On the other hand, no particular attention is paid to specific categories of persons, industries or sectors.

In cases where there has been failure to respect the principle of freedom of association and the right to organize and the effective recognition of the right to collective bargaining, fines are imposed in accordance with article 627 of the Labour Code.

Progress and achievements concerning this principle and right

The most recent reforms of the Labour Code relating to freedom of association and the right to organize and the effective recognition of the right to collective bargaining were introduced in 1994, with technical support from the ILO and agreed upon in the tripartite Forum for Social Dialogue.

As mentioned above, the Labour Code has not been amended in relation to the law in question since the 1994 reforms, which were the subject of a tripartite agreement, In that respect, the ILO felt it worth mentioning in the document published by the Regional Office for Latin America and the Caribbean, concerning the 1994 reforms of the Labour Code, that in El Salvador, the law on collective labour relations was a very advanced text compared with others in Latin America that it had examined.

Difficulties concerning the realization of this principle and right

The greatest difficulty encountered by El Salvador in realizing the principle of freedom of association and the right to organize is the lack of information and data, and the lack of social values and cultural traditions.

As regards the effective recognition of the right to collective bargaining, mention can be made of social and economic circumstances, and the lack of capacity among workers' organizations.

Priority needs for technical cooperation

The Government considers that there is a need to establish technical cooperation with the ILO with a view to facilitating the realization of the principle of freedom of association and the right to organize and the effective recognition of the right to collective bargaining, in particular, in the following spheres, in order of priority:

- capacity building of responsible government agencies;
- strengthening data collection and the ability to maintain and analyse statistics; and
- exchange of experiences between countries or regions.

Report preparation

Concerning the preparation of this report, the most representative employers' and workers' organizations were not consulted, but written consultations and meetings were held with government departments outside the Ministry of Labour and Social Security.

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

- National Association of Private Enterprise (ANEP);

- Salvadorean Association of Industrialists (ASI);
- Chamber of Commerce and Industry of El Salvador;
- Salvadorean Chamber of the Construction Industry (CASALCO);
- National Council of Small and Medium-Sized Enterprise of El Salvador (CONAPES);
- Union of Cooperatives under the Agrarian reform of Producers, Processors and Exporters (UCRAPROBEX);
- Association of Salvadorean Small and Medium-Sized Businesses (AMPES); and
- Association of Sugar Cane Producers (PROCAÑA).

A copy of this report will also be sent to the following workers' organizations:

- Trade Union Federation of the Construction and Transport Industry (FESINCONSTRANS);
- Workers' Federation of El Salvador (FESTRAES);
- Federation of Independent Associations and Trade Unions of El Salvador (FEASIES);
- United Trade Union Federation of El Salvador (FUSS-UNTS);
- National Trade Union Federation of Salvadorean Workers (FENASTRAS);
- Federation of Workers' Trade Unions of El Salvador (FESTES);
- Federation of Food and Drinks Industry Workers (FESINTRABS); and
- General Confederation of Trade Unions (CGS).

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

This report on the respect of internationally recognized core labour standards in El Salvador is one of the series the ICFTU is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organization (WTO) (Singapore, 9-13 December 1996) in which the ministers stated: "We renew our commitment to the observance of internationally recognized core labour standards". The fourth WTO Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998. The ICFTU's affiliate in El Salvador, the Central de Trabajadores Democráticos de El Salvador (CTD), has a membership of 50,000. Approximately 20 per cent of the workforce is unionized.

El Salvador has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

By law, only private sector workers and some employees of autonomous public agencies have the right to form unions. The Government still refuses to ratify Convention No. 87. It claims that by granting civil servants the right to form trade unions the Convention is in breach of the national Constitution which excludes them from that right on the grounds that they provide essential services.

As such, civil servants are not permitted to form trade unions, and may only form employees' associations. These in many cases carry out collective bargaining, but the legal protection afforded to public service employee associations is less than that afforded to trade unions.

To be legally registered, trade unions must obtain prior authorization and follow complex procedures, and registration of legitimate unions is regularly refused on narrow procedural grounds. A union must have a minimum of 35 members in the workplace, and members of unions' leadership bodies must be Salvadorian by birth. Also, trade unions are prohibited from taking part in political activities.

As an example of the improper use of procedural requirements, in 2001, a long-running battle for recognition and reinstatement was won by workers at the privatized telecommunication utility, when a collective agreement was finally signed. Prior to this point, the utility had used restructuring as a premise for dismissing dozen of workers, mostly trade union members. When the workers objected, the utility submitted a request to the Labour Ministry to stop the registration of the union, arguing that it had not followed the proper steps to obtain it, ignoring the fact that two months earlier the Supreme Court of Justice had blamed the Government for delaying the process and ordered the authorities to grant the union legal status.

Anti-union discrimination is prohibited in law, even extending to the period before a trade union is legally recognized. Workers cannot, in theory, be dismissed if their names are on a union application in the process of registration. However, in practice there is considerable discrimination against workers for trade union membership or activities, and the legal prohibition against such discrimination does not begin to eliminate its widespread occurrence. Notwithstanding the long-standing recommendations of the ILO to the effect that reinstatement of dismissed workers is a necessary element of defence against unfair dismissal, the Labour Code does not require the reinstatement of illegally sacked workers, only that employers give the worker a severance payment.

The right to collective bargaining is recognized in law, and collective bargaining occurs in the non-export processing zone (EPZ) private sector. However, the Labour Ministry fails to act impartially and on the contrary in practice favours in its actions those employers that do not engage in collective bargaining. Public sector employee associations also bargain collectively for their members, but there are widespread problems with respect to collective agreements in the public sector. In the EPZs, collective bargaining is non-existent, due to severe anti-union discrimination by EPZ employers and an abdication by the Government of their responsibility to defend the right to collective bargaining of workers in EPZs.

The right to strike is restricted in ways that are not consistent with freedom of association.

The lack of trade union rights and bad working conditions in the EPZs have been the subject of numerous reports, including by the ICFTU. A report carried out by the Labour Ministry itself, published in August 2000, immediately retracted due to the reaction of the EPZ companies, and suppressed for many months by the Government but made public in early 2001 by an American labour rights NGO called the National Labour Committee (NLC), reiterates comprehensively the severity of the problems faced by workers in the EPZs. The report, carried out in El Salvador's four largest export processing zones, San Marcos, San Bartolo, American Park and el Pedregal, found that there was a clear anti-union policy in the *maquilas*, whereby any attempt at organizing was repressed. The many union leaders interviewed said it was very common for supervisors to threaten workers with dismissal if they joined or attempted to form a union.

The Government researchers who produced the report were given free access to the EPZs and the employees, according to the NLC, because government investigations in the past into the EPZs had invariably ignored the gross violations of workers' rights. On this occasion, the researchers confirmed what other observers had been saying for years, and the EPZ employers succeeded in having the Ministry of Labour retract the report the day after publication.

One of the many major allegations of the report was the unsafe working conditions workers face. In 2002, 288 workers in an EPZ plant were treated for chemical intoxication due to the concentration of chemicals in their workplace and the lack of protective measures.

One recent and glaring example of the anti-union discrimination pervasive in the country's EPZs comes from Tainan enterprises, which make clothes for major US labels. A long and protracted battle for union recognition was finally won through strikes, petitions and contacts made with the Taiwanese parent company, international trade union groups and the major brand name customers of Tainan. Shortly afterwards, however, the company began suspending and dismissing workers again, claiming a lack of orders. The union has produced evidence that the company continued receiving orders, but was subcontracting them in order to eliminate its unionized staff. The company has since ceased production in El Salvador, quickly following an application by the union to negotiate a collective agreement, while its plants in China, Cambodia and Indonesia were at the time running at full production.

There have been numerous high-profile cases of violation of trade union rights in the public sector in recent years, several of which have been the subject of investigations by the ILO Committee on Freedom of Association (CFA).

[Reference is made to cases that have been before the Committee on Freedom of Association.]

Freedom of association is recognized in law in the private sector, and to a limited extent in the public sector, but is significantly restricted in practice for many workers. Anti-union discrimination is rife, particularly in the EPZs and in much of the public sector. Some collective bargaining occurs in the private sector, but it is non-existent in the EPZs and is severely restricted in the public sector. The Ministry of Labour produced and then suppressed a report damning the conditions and rights abuses of workers in EPZs.

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

1. Freedom of association and the right to organize

The Constitution of the Republic recognizes the principle of freedom of association in article 7, which provides that all inhabitants of El Salvador have the right to associate freely and meet peacefully without arms for any lawful purpose.

Article 47 of the Constitution provides that: "*Private employers and workers* (emphasis added by the Government)*, without distinction of nationality, sex, race, beliefs or political ideas and regardless of their activity or the nature of the work performed by them, have the right to associate freely to defend their respective interests by forming professional associations and trade unions. Workers in official autonomous institutions shall have the same rights.*

Such organizations shall 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 such cases and according to such procedures as are laid down by law."

"Special laws on the constitution and functioning of professional organizations and trade unions in rural and urban areas shall not restrict freedom of association. (emphasis added by the Government) *Any exclusion clause is prohibited.*

The members of trade union committees shall be Salvadorean by birth and during the period of their election and term of office and for one year after the end of their term of office, they may not be dismissed, suspended for disciplinary reasons, transferred or demoted, except for just cause subject to the prior approval of the competent authority."

Article 39 of the Constitution states: *"The law shall regulate the conditions under which collective contracts of employment and agreements shall be concluded.*

The stipulations apply to undertakings which have signed them, although not members of the contracting organization, and to other workers who are engaged by such undertakings during the currency of such contracts and agreements. The law shall establish the procedure for harmonizing conditions of work in the various economic activities, based on the provisions contained in the majority of collective contracts of employment and agreements in force for each class of activity."

The Labour Code, as secondary legislation, develops these principles in articles 204, 208, 209, 219, 268, 269 and following, and recognizes the following types of trade unions:

Guilds: Formed by workers in the same profession, craft, office or specialist activity.

Company trade union: Formed by workers employed by the same company, establishment or official autonomous institution.

Industry trade union: Formed by employers and workers engaged in the same industrial, commercial, service, social and suchlike industry.

Mixed trade union: Formed by workers in two or more neighbouring companies, each of which has less than 25 employees such that they cannot belong to a guild or industry trade union.

Self-employed workers' union: Formed by self-employed workers who do not employ any wage workers, except on an occasional basis.

As can be seen, both the right to freedom of association and *collective bargaining* are recognized by our domestic legal system for different categories of workers (health professionals, teachers, agricultural workers, workers in free zones, migrant workers, workers of all ages over the age of 14 years), thus enabling employment relations to be established on a firm and stable basis.

As regards the alleged obstacles to the recognition of trade unions contained in our Labour Code, it should be emphasized that in 1994, based on a study and support by a multidisciplinary team from the International Labour Organization, the substantive part of the Code concerning the formation of trade unions was reformed. The proposed reforms were submitted to the Forum for Economic and Social Dialogue created by the Chapultepec Peace Accords, in which the chief social actors, such as labour, employers and government, were presented, together with other political, social and productive actors in the country.

The ILO Regional Office for Latin America and the Caribbean stated that "in terms of employment relations, the law was very advanced compared with other legislation in Latin America in the last decade and especially with regard to the restrictive framework which had existed in the El Salvador Code prior to its revision".

Noteworthy among other aspects of the reforms is the extension of the right of agricultural workers and the self-employed to form trade unions and the prohibition on dissolution of a trade union by administrative decision. Trade unions may now be formed with a minimum number of 35 workers, without having to demonstrate that they represent a majority of workers in the company, as was previously the case. Under another provision, federations and confederations are granted the right to engage in collective bargaining and to strike, provided that their statutes allow them to do so. Previously, they did not enjoy such rights. Furthermore, the majority required to declare a strike illegal has been reduced and procedures for defining it have been simplified. In addition, compulsory arbitration only takes place when the dispute affects an essential service in the strict meaning of the term. (The Challenge of Employment in Latin America and the Caribbean; Working Paper No. 7, ILO Regional Office for Latin America and the Caribbean, Lima, Peru, 1995, pp. 53 and 54.)

It is also important to highlight some aspects which show progress in the matter of the right of freedom of association which took place in the country in 1994:

1. Trade union structure. The formation of guilds, company trade unions and industry trade unions, is recognized (categories already set out in the 1972 Code). In addition, what was new was the possibility of forming mixed company unions and unions of self-employed workers. The first will be formed by workers in two or more neighbouring companies, each of which has less than 25 employees, provided that they cannot belong to a guild or industry trade union. The second will consist of self-employed workers who do not employ any wage workers, except on an occasional basis. This reform provides a favourable legal framework for the organization of workers in the informal sector.

2. The minimum numbers required for the formation of trade unions. In general, the formation of a trade union today requires a minimum number of 35 members, whereas it was previously 40 members for a company trade union and 100 for an industry trade union. In addition, the Labour Code required that the membership of a company trade union must be at least half of the workers in the company. This requirement has disappeared with the reform, which merely states that the employer is obliged to recognize and negotiate with the trade union when it represents a majority of the workers, and may choose voluntarily to recognize it if that is not the case.

3. Procedure for forming a trade union. The 1972 Code contained a long and complicated procedure, which allowed extensive interference by the administrative authorities. With the reform, the rules have been clearly simplified.

   (a) The presence of one or more delegates of the Ministry of Labour is only at the request of the promoters.

   (b) The time allowed for the administrative authority to examine the application for registration of a trade union, for purposes of obtaining legal personality, is reduced from 30 to 10 days.

   (c) Legal personality is acquired automatically on grounds of administrative silence when the Ministry of Labour and Social Security does not issue a decision within 30 working days from the submission of the application for legal personality.

   (d) Trade unions have the possibility of submitting draft statutes which will be approved by the Ministry of Labour following consultation with trade union federations and confederations, in order to facilitate the formation of trade unions. In that case, the time allowed for the Ministry to decide on the application for legal personality shall be reduced.

4. Trade union jurisdiction. Concerning the objective scope of the trade union jurisdiction (i.e. *what* is protected) the rule set out in the 1972 Code is maintained: dismissal, transfer, demotion and disciplinary suspension under certain conditions. As to the subjective scope (i.e. *who* is protected) the 1994 reform extends the guarantee to the following cases: (a) promoters of the formation of a trade union, for a period of 60 days from notification to the employer of their nomination; (b) candidates for an executive position, subject to a maximum of two persons per position; (c) founders of a trade union, up to a maximum of 35, from the date of submission of the notification to the competent authority and up to 60 days after the registration of the trade union.

5. Sanctions for anti-trade union practices. Previously, fines of 500 to 1,000 colons were applicable. The reform amended the fine to ten to 50 times the minimum monthly wage, thus increasing the dissuasive effect and allowing adjustments to reflect monetary depreciation. As to the right to collective bargaining, the Labour Code establishes a procedure for economic collective disputes or conflicts of interest, which must exhaust the following stages:

   (a) direct negotiation;

   (b) conciliation;

   (c) arbitration; and

(d) strike or stoppage.

It should be noted that arbitration is compulsory only when the dispute affects an *essential service in the strict sense of the term.*

It should be explained that the employer is required to recognize and negotiate with the trade union when it represents a majority, and may recognize it voluntarily if that is not the case.

2. Case of the privatized telecommunications company

On 20 December 2000, SUTTEL and CTE S.A. took part in a conciliation meeting at the Directorate-General of Labour, with the following result:

The employers' side stated that it is not true that the 55 workers to which the complaint refers were dismissed. Rather, what had happened was that there had been an organizational restructuring in the course of which some sections of the company disappeared. It was suggested to the workers that their contracts could be terminated, in which case they would be given a voluntary retirement benefit equivalent to more or less than ten months' wages and they would be trained in an area they considered appropriate, so that they could manage their own businesses. In addition, 48 workers had now resigned and received the abovementioned benefits and on the 22 December a bonus equivalent (more or less) to one-and-a-half month's wages. Seven workers had not applied for the benefits, despite the fact that cheques had been written in their favour. For this reason, the legal representative considers that his principal has not violated the Labour Code.

Following that meeting, all the workers accepted voluntary retirement with the compensation reported in the above document and only two workers, proved to be trade union leaders, and they were reinstated in their jobs in the company, and the wages due to them prior to their reinstatement were paid.

It is thus clear that the workers concerned, apart from the reinstated leaders, were at no time members of SUTTEL, and the industrial dispute was definitively settled with the reinstatement and payment of the wages of the two trade union leaders.

At no time were dozens of CTE workers, members of SUTTEL, dismissed, since the 47 members of the union had now increased to 198.

3. Report on international free zones

As regards the information contained in the report prepared by the Labour Relations Monitoring and Analysis Unit, it should be noted once again that the publication was never approved by the Secretariat of Labour and Social Security, because the information in the report lacked sound and sufficient evidence of specific failure to observe the rights that had allegedly been violated.

4. Case of poisoning in the assembly industry

In this regard, the Director of the ILO's International Labour Standards Department was informed in a note dated 11 September 2002 about the incident on 5 July 2002, when some 200 workers (mainly women) in the various companies engaged in the manufacture of clothing and textiles showed signs or apparent symptoms of a sudden and adverse

change in their health in the factories in the international free zone (km 28.5 on the Comalapa Road, La Paz).

In response to that situation, the Ministry of Labour and Social Security, in coordination with other government institutions responsible for the protection of public health (Ministry of Health and Social Assistance, the Salvadorean Social Security Institute, the Forensic Medicine Institute, the Ministry of the Environment and Natural Resources, the Ministry of the Economy and the Free Zone Authority), decided to set up an inter-institutional commission to monitor and check general conditions of work so as to address the problem comprehensively, involving the competencies of each institution.

After conducting a series of analyses of: (a) health and safety conditions with emphasis on the aspects that might have been at the root of the problem, i.e. exposure of workers to substances suspended in the working atmosphere in the form of vapours or gases which might be prejudicial to the their health and which were closely linked to the production processes and operations performed in each workplace; and (b) evaluations of contamination by chemical agents in the air, in the form of gases and vapours with irritant properties such as chlorine and ammonia, using appropriate methods and equipment, namely colorimetric measurement with reactive tubes to the substances concerned and in the following series expressed as parts per million (ppm): (chlorine (0-5 ppm) and ammonia (0-3 ppm); and (c) biological fluids of the workers who were treated in the Zacamil National Hospital (5 gastric samples, 40 blood samples and eight urine samples).

Following the above analyses, the Commission came to the following conclusion:

(i) none of the products authorized in the productive processes of the international free zone caused the problem that arose in the premises concerned;

(ii) according to the analyses by the Forensic Medicine Institute, it could be concluded that the cause of the poisoning of some workers was from chemical agents extraneous to the industrial processes of those companies;

(iii) because they were extraneous to the companies, the cause of the incident could have been prevented by monitoring and prevention systems and actions by the institutions concerned.

On the basis of the above, the Inter-institutional Commission recommended that the Attorney-General's office should pursue the appropriate investigations.

The Ministry of Labour and Social Security is currently engaged in occupational safety and health projects in the assembly sector with the cooperation of the programme for the modernization of the labour market (IDB-SIECA), the Pan-American Health Organization (PAHO) and the Regional Occupational Safety and Health Centre (CERSSO). Implementation of these projects will raise the levels of knowledge of workers and employers in the sector on this subject, and thus contribute to healthy conditions of work.

5. Tainan case

As regards this case, it is reported that on 14 April 2002, in an extraordinary general meeting of the shareholders of Tainan S.A., it was unanimously agreed to dissolve and liquidate the company for financial reasons.

With the intervention and supervisions of the Ministry of Labour and Social Security, *the company paid all the workers the full remuneration to which they were legally entitled, after the latter had signed waivers declaring the company free of any labour liability*.

On 18 April of the same year, Mr. Joaquín Alas Salguero, as general secretary of the Textile Industry Workers Union (STIT) submitted to the Directorate-General of Labour in that Ministry an application concerning the conclusion of a collective agreement in factory 2 of the company in question.

As can be seen, the agreement for the dissolution and liquidation of Tainan S.A. did not take account of the application submitted by the trade union to conclude a collective agreement, since that agreement pre-dated the application.

Another factor that should be taken into account and which totally refutes the cause of the closure of the company, being the conclusion of the collective agreement, as suggested by ICFTU, is that the Labour Code, article 270, provides that to exercise the right to conclude a collective agreement for the first time, the membership of the trade union must be at least 51 percent of the workers in the company or establishment. In the case in question, the trade union had only *40 workers* out of a total of *1,200 workers in the company*.

6. Social Insurance case

Concerning this case, as there has been no specific and concrete notification of the rights allegedly violated, no observations can be made.

7. CEL case

Under the mandate set out in article 49 of the Constitution of the Republic, the Directorate-General of Labour, at the verbal request of Mr. Alirio Salvador Romero Amaya, general secretary of the Electricity Workers' Union, proposed conciliation as an effective means of settling the industrial dispute peacefully, in a conciliation meeting held on 20 November 2002 in the presence of the Directorate-General of Labour, in which Mr. Arias Rank, as Legal Attorney of the Rio Lempa Board (CEL) stated *that with respect to the trade union request for the reinstatement of the 29 dismissed workers, it must be taken into account that 16 workers had already signed definitive waivers, duly notarized and that as regards the remaining 13 workers, the CEL board had paid the compensation to which they were entitled by law*.

The trade union's side rejected the offer of payment of compensation, arguing that such an offer was contrary to the provisions of article 47 of the Constitution of the Republic, article 7 of the San Salvador Protocol and article 48 of the Labour Code.

In the light of the above, the intervention of the Directorate-General of Labour was held to be concluded, since the parties stated that they would settle the matter through direct negotiation.

8. The case of the National Public Employees Pensions Institute (INPEP)

The following should be noted:

1. The process of abolition of posts ended in 2001, and was fully known to all the workers and members of the executive committee of the INPEP union, because that had been envisaged since the entry into force of the new pensions savings scheme in January 1997. Thus at no time can it be said that the Institute violated the collective agreement, since the abolition of posts was the result of a law and the *workers in posts that were considered unnecessary, regardless of who occupied them*, were compensated in accordance with the institution's current collective agreement.

2. The reasons which led the INPEP Executive Board to decide to freeze some positions were those already given and, above all, to comply with the provisions of clause 39 of the collective agreement which required the institute to pay compensation to a worker for the time worked in the institution when the resignation is not voluntary on the worker's part.

3. In the budget for the year 2000, there was a budget line, which could still be used for the payment of compensation to workers, which would cease at the end of that financial year. That was not possible in the current year. This situation and other matters explained above are what prompted the Executive Board to freeze the superfluous positions regardless of who occupied them.

At no time were the reasons for the abolition of posts those suggested by ICFTU, since the dismissed personnel included both union members and non-union members.

It should also be noted that up to now, both union and non-union members have been working in INPEP, thus refuting the alleged failure to comply with the collective agreement signed by SITINPEP and INPEP, and the allegations regarding the abolition of posts.

9. Case of El Salvador International Airport (identified by the Committee on Freedom of Association as the FESTRASPES, Case No. 2165)

[Reference is made to cases that have been before the Committee on Freedom of Association.]

The Ministry of Labour and Social Security is focusing its efforts to ensure and safeguard effectively the principles and rights at work, namely: elaboration and implementation of active employment policies; strengthening of social dialogue; occupational safety and health; strengthening labour inspection; eradication of the worst forms of child labour; institutional modernization of the Ministry of Labour and Social Security, inter alia. This will enhance management capacity and the response to the demands and expectations of workers and employers that they will be placed on an equal footing in the labour market and can aspire to real opportunities for decent work.

This, together with the application of domestic labour legislation which guarantees labour rights consistent with the ILO Declaration on Fundamental Principles and Rights at Work, has allowed our country to be regarded as one of the seven countries in Latin America that has made progress in decent work, as stated in the *Labour Panorama of Latin America and the Caribbean 2001*, published by the ILO Regional Office, and specifically mentioned by the Director General of the International Labour Organization, Juan Somavia in his report "Globalization and decent work in the Americas", submitted to the Fifteenth American Regional Meeting in Lima, Peru, in December 2002.

Guinea-Bissau

Note from the Office

The Office received no report from the Government for the annual review of 2004.

India

Government

Since the Government's last report, there has been no change in India in relation to the principle of freedom of association and the effective recognition of the right to collective bargaining [India has neither ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).]

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 the Islamic Republic of 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 at 15 years concerning collective bargaining. However, 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 employers' and 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 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		
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	

Within these measures, special attention is given to particular situations with respect to women, specific categories of persons and industries/sectors.

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

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

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 a 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 from setting 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 initiatives undertaken in the Islamic Republic of Iran that can be regarded as successful examples in relation to 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 the Islamic Republic of Iran in the realization of freedom of association and the effective recognition of the right to collective bargaining, are as follows.

Nature of difficulty	Freedom of association	Collective bargaining
Lack of public awareness/or support	X	X
Lack of information and data	X	X
Legal provisions	X	
Lack of capacity of responsible government institutions	X	
Lack of capacity of employers' organizations	X	
Lack of capacity of workers' organizations	X	

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 the Islamic Republic of Iran, in particular in the following areas, in order of priority:

- capacity building of responsible government institutions;
- sharing of experiences across countries/regions; and
- awareness-raising, legal literacy and advocacy.

Report preparation

In preparing this report, consultation was held only 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.

Iraq

Note from the Office

The Office received no report from the Government for the annual review of 2004.

Jordan

Government

Recognition of this principle and right

In Jordan, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized at enterprise, sector or industry, and national levels. [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, indirectly by all categories of employers, and by the following categories of persons:

- medical professionals;
- teachers working in the private sector;
- workers in export processing zones (EPZs) or enterprises/industries with EPZ status;
- workers over 18; and
- workers in the informal economy.

However, workers in the public service cannot exercise freedom of association, and the right to collective bargaining cannot be exercised at international level, nor by the following:

- public service and localities' employees, as they are not subject to the Labour Law but only to specific regulations;
- agricultural workers do not fall under the articles of chapters 11 and 12 of the Labour Law;

- workers engaged in domestic work, as they are not subject to the articles of the labour law; and
- migrant workers, as they are not Jordanians.

Government authorization or approval is required to establish employers' or workers' organizations, for the purpose of registration and announcing a union, but not 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, in Jordan.

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
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
Awareness raising/advocacy	X		X	

Within these measures, no special attention is given to the situation of women or to specific categories of persons, industries or sectors.

Progress and achievements concerning this principle and right

Since the last report, no changes have been noted in the country 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 Jordan concerning the realization of the principle are as follows:

Nature of difficulty	Freedom of association	Collective bargaining
Lack of public awareness and/or support		X
Social and economic circumstances	X	
Legal provisions	X	
Lack of capacity of responsible government institutions		X
Lack of capacity of employers' organizations		X
Lack of capacity of workers' organizations		X

Priority needs for 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, ILO technical cooperation would be needed in the following areas, in order of priority (1= most important; 2 = second most important):

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the principle	2
Awareness raising, legal literacy and advocacy	2
Strengthening data collection and capacity for statistical collection and 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 (e.g. police, judiciary, social workers, teachers)	2
Strengthening capacity of employers' organizations	1
Strengthening capacity of workers' organizations	1
Strengthening tripartite social dialogue	1

Report preparation

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

Copies of the report were sent to the Amman Chamber of Industry, the Federation of Jordanian Chambers of Commerce, and the General Federation of Jordanian Trade Unions.

Kenya

Note from the Office

The Office received no report from the Government for the annual review of 2004.

Korea, Republic of

Government

Recognition of this principle and right

In the Republic of Korea, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized.

Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry and national 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 informal economy; and
- all categories of employers.

However, freedom of association and the right to collective bargaining cannot be exercised by workers in the public service, except those engaged in manual labour in postal services, railways business, etc. In addition, only freedom of association can be exercised at international level.

Government authorization or approval is not 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 this principle and right.

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

Types of measures	Freedom of association		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Civil or administrative sanctions		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 the situation of women, nor to specific industries or sectors. However, the Government published on 23 June 2003 a Bill guaranteeing the labour rights of public officials for public comments. This text is currently under legislative process. It is meant to guarantee the rights to organize, bargain collectively and conclude collective agreements, except for budget and legal matters. Moreover, the Ministry of Labour, instead of the Ministry of Government Administration and Home Affairs, is now in charge of the legislation to guarantee public officials labour rights, in order to legalize public officials' trade unions.

In instances where the principle has not been respected, employers who infringe on rights of trade unions to organize or bargain collectively will be subject to legal sanctions under charges of unfair practices, in accordance with articles 81 and 90 of the Trade Union and Labour Relations Adjustment Act.

Progress and achievements concerning this principle and right

Since the last report, the major change concerning the principle of freedom of association and the effective recognition of the right to collective bargaining, is the abovementioned Bill of 23 June 2003 guaranteeing the labour rights of public officials, now under legislative process.

The successful example in the Republic of Korea in relation to freedom of association is the gradual expansion of the labour rights of public sector workers, following an agreement at the tripartite commission (composed of government, employers' and workers' representatives and public interest members).

Difficulties concerning the realization of this principle and right

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

- lack of public awareness and/or support;
- social values, cultural traditions; and

- social and economic circumstances.

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 Republic of Korea.

Report preparation

In preparing this report, written consultations were held with the most representative employers' and workers' organizations, and with governmental authorities outside the Ministry. Comments were received from workers' organizations.

Copies of the report were sent to the Korea Employers' Federation (KEF), the Federation of Korean Trade Union (FKTU), and the Korean Confederation of Trade Union (KCTU).

Observations submitted to the Office by the Federation of Korean Trade Unions (FKTU)

Recognition of collective bargaining at various levels

Although there are no legal restrictions to collective bargaining under the current Trade Union and Labour Relations Adjustment Act (TULRAA) of the Republic of Korea, the majority of the existing collective bargaining agreements are in practice concluded at enterprise level, except in a few particular sectors and industries such as transport, textile and banking.

This is because any trade unions established beyond a workplace or company had not been legally recognized in the Republic of Korea for a long time by the previous Trade Union Act.

In that context, the request of trade unions for having collective bargaining at the industrial or national level has not been accepted by the employers and their associations, which often causes conflict in the relationship between trade unions and employers.

Government's authorization or approval

About establishing a workers' organization

The current TULRAA stipulates that *"any one who wants to establish a trade union shall submit an application specifying the following subparagraphs to the Minister of Labour"* (article 10) and then *"the Minister of Labour shall issue a certificate within three days after receiving an application for the establishment"*, but *"in cases where application or bylaws need to be supplemented because of any omission or other reasons, the Administrative authorities shall order to make supplement within a limited period of twenty days"* (article 13).

Based on this legal procedure, the administrative authorities, can refuse to certificate the establishment of certain trade unions, whereby a trade union cannot be legally recognized as seen in the cases of the Remicon Workers' Union and Golf Caddies' Union.

About concluding collective agreements

There is clear requirement for government authorization or approval for the collective agreements concerning personnel, remuneration, retirement age and retirement payment in public enterprises or government organization where the Government holds whole or some shares, for example:

- the Express Railway Corporation Act, article 32 stipulates that: *"the corporation should get approval from the Minister of Construction & Transport when there are changes in organizational structure, account, personnel, remuneration, etc."*;
- the National Health Insurance Act, article 27 stipulates that: *"the insurance corporation determines its regulations on organizational structure, personnel, remuneration and account after the resolution of its directorate and the approval of the Minister of Health & Welfare"*.

Recognition of the rights of public officials to organization

Article 33 of the Korean Constitution, stipulates that *"only those public officials who are designated by Act, shall have the right to association, collective bargaining and collective action"*.

Based on the above stipulation, only those public officials who are employed for skilled or manual work, such as railway and postal workers, are provided with the rights to unionization and collective bargaining.

General and clerical public officials have only been provided with the right to organize Public Officials Workplace Associations (POWA) since early 1999, without proper recognition of the right to collective bargaining.

In this regard, the Government recently (2002) drafted a bill on the recognition of the public officials union, which does not provide any substantial rights to collective bargaining and even does not allow the organization to use the title of "trade union" but "association", and hence provokes a desperate opposition from the public officials and trade unions.

Difficulties in realizing the principle of freedom of association and effective recognition of the right to collective bargaining

The Government quoted the lack of capacity of the Government and workers' organizations along with the lack of social dialogue in answering the above question.

However, the employer's organizations can never be exempted from the responsibility in realizing the principle of freedom of association and effective recognition of the right to collective bargaining, as they have no organizational and moral capacities for the development of collective bargaining, especially the realization of industrial and national level collective bargaining.

Government observations on the Federation of Korean Trade Unions (FKTU)'s comments

The non-existence of employers' organizations at certain levels

At the present stage, trade unions cannot bargain collectively with employers' organizations due to the non-existence of employers' organizations at higher levels.

Conclusion of a collective agreement at public corporations and publicly funded organizations

Public corporations and publicly funded organizations are mandated to produce public goods by using public taxes. Thus, it is impossible for them to decide working conditions, based on collective agreements or employment contracts.

System of reporting the establishment of a trade union

The Trade Unions and Labour Relations Adjustment Act (TULRAA) provides minimum requirements, such as non-participation of an employer or ban on financial assistance from an employer for the establishment of a trade union, to ensure autonomy and democracy within a workers' organization.

Once a reporting organization meets these requirements, the authority issues a certification within three days after reception of the request, or asks the organization to forward additional documentation within 20 days. This process is to ensure the legitimacy of an organization, not in order to allow or disallow establishment of an organization at discretion of an authority, which was alleged by the FKTU.

Recognition of rights to organize of public servants and teachers

According to article 66.1 of the Public Servants' Act and article 5 of the TULRAA, all labour rights are guaranteed to public officials involved in simple skills and manual labour and to some of those employed by the Information and Communications Ministry and the an National Railroad.

The Act on the establishment and operation, etc. of trade unions for teachers was enacted in 1998 under the tripartite agreement at the Tripartite Commission and especially by reflecting opinions of unions.

Article 7.1 of the Act provides: "*The contents of collective agreements concluded in accordance with the provision of article 6.1 shall not take effect as collective agreements, in case they are stipulated by the law, by-laws, and budget, or stipulated by the authority delegated by the law, by-laws and budget".* Yet, article 7.2 of the Act also provides: "*The Minister of Education and Human Resources Development, Superintendents of the Provincial Education Office, and those who establish and run private schools shall make efforts in good faith to implement the matters which do not take effect as collective agreements pursuant to paragraph (1)."*

Ensuring effectiveness of the right to bargain collectively

The Korean Confederation of Trade Unions (KCTU) argues that collective bargaining has not been conducted at industry level and federation level. It is not because the right to bargain collectively is not guaranteed to industry-level unions and union federations, as alleged by the KCTU, but because some industry-level unions or federations are at odds with eight employers on bargaining methods and levels.

Laws provide that violation of collective agreements by employers is subject to fine of 10 million won and compensations to workers or trade unions in order to ensure effectiveness of collective agreements.

However, as has been earlier mentioned, public corporations and publicly funded organizations which are mandated to produce public goods by using public taxes have restriction to some extent on deciding working conditions based on collective agreements or employment contracts.

The right to organize of teachers

Teachers can freely set up their organizations according to the Act on the establishment and operation, etc. of trade unions for teachers enacted in 1998. The issue of the right to organize for teachers at universities and colleges has been discussed at the Tripartite Commission.

The right to organize of migrant workers

Any foreign worker employed for the domestic workplace under legitimate procedures has the right to join a trade union of his/her choice, and shall not been denied union membership just for the reason of his/her nationality.

However, industrial trainees who enter this country with the status of trainees, not workers, under the Immigration Control Act, cannot be in principle regarded as workers.

The right to organize of workers employed in the informal economy

A worker status of those employed in atypical jobs must be decided in consideration of the dual nature of their labour characterized by subordination and independence. Among atypical workers illustrated by the KCTU as not recognized for their rights to organize, visiting tutors for education and golf caddies are guaranteed with their rights to organize.

Ban on multiple unions

The delay in implementing multiple unions at enterprise level until the end of 2006, was already agreed at the Tripartite Agreement on 9 February 2001.

Punishment against unfair labour practices of employers

The Government has investigated cases reported concerning unfair labour practices in a fair and rapid manner, with a view to eradicating such practices.

In this respect, the Government has set the period from 14 May to 30 June 2002 for the period of cracking down on unfair labour practices. During the period, task forces

formed under the auspices of six regional labour administrations investigated acts of disrupting union activities, cases regarding unfair dismissal of union officials, and unjustified refusal of collective bargaining; and provided proper guidance to those involved in the acts.

Observations submitted to the Office by the Korean Confederation of Trade Unions (KCTU)

Recognition of this principle and right

The Korean Confederation of Trade Unions (KCTU) does not agree with the answer provided by the Government of the Republic of Korea concerning the recognition of the principle in the country.

- "The effective recognition of the right to collective bargaining" implies an ability and availability of the possibility for trade unions at enterprise, industry, and national levels to engage in collective bargaining on issues pertaining to the particular relevant level. However, trade union organizations like industry-level federations or industry-wide unions and national confederations (as in the case of the KCTU), do not enjoy the right to bargain collectively with appropriate counterparts on issues which are relevant to them.

- "The effective recognition of the right to collective bargaining", implies mechanisms to guarantee the implementation of the collective agreement obtained through collective bargaining. There is no effective mechanism to sanction employers who fail to implement or violate collective agreement.

- The Government as an employer does not have an internal mechanism for the implementation of collective agreement it has adopted with unions. This stems from the fact that there is no mechanism of consultation and harmonization between the government offices engaging in collective bargaining (such as the Ministry of Education, government-funded agencies, government-invested institutions) and other government offices, which have important roles in the implementation of the agreement (such as the Ministry of Finance and the Ministry of Budget Planning). Therefore, agreements are not implemented or ignored altogether as budget-related items are decided on without any reference to the agreements.

The following categories of persons, such as teachers, migrant workers, and workers in the informal sector, can exercise freedom of association.

- The Korean Government states that freedom of association is guaranteed for teachers, which is not entirely true. Indeed, freedom of association for teachers is not provided under the "Trade Union and Labour Relations Adjustment Act", which defines trade union rights for general workers. The fact that the freedom of association of teachers is provided under a separate law, "Act on the Establishment and Collective Bargaining of Teachers Organizations", removes teachers from other workers, and confines their rights through various restrictions, such as the right to collective action. As such, teachers do not enjoy full freedom of association. Furthermore, university teachers (professors) are excluded from the application of the abovementioned law, thus depriving them of freedom of association and the right to bargain collectively.

- Contrary to the statement by the Korean Government, migrant workers do not have the right to exercise freedom of association. There are about 400,000 migrant workers living and working in the Republic of Korea. Only a very small portion of this population could be said to enjoy freedom of association. Industrial trainees brought into the Republic of Korea by overseas subsidiaries of Korean firms, industrial trainees recruited by the National Federation of Small to Medium Enterprise Cooperatives, National Federation of Fisheries Cooperatives, and National Federation of Construction Enterprise Cooperatives, are not recognized as "workers", and are deprived of the right to form or join a trade union. A majority of these categories of workers (estimated to be around 260,000) dissociate themselves from the "training-providing" enterprises due to unacceptable working conditions, including wage levels, and become "undocumented" workers in violation of entry visa conditions. This category of worker does not enjoy freedom of association at all.

- Concerning workers in the informal sector, the KCTU's point of view differs from that of the Korean Government. To begin with, the law does not allow unemployed workers to form or join a trade union and the Government has failed to bring about a legislative amendment to rectify this for the last five years. Moreover, workers in a wide category of employment types are not recognized as workers and thus denied the right to organize or join a union. They are: "special employment" workers (self-owned vehicle operators "contracted" by individual firms to provide services; learning-aid delivery and tutoring service workers (hired by learning-aid production company); door-to-door insurance subscription salespersons (hired by insurance companies), telemarketing operators, after-service providers (contracted by major product producers/sellers to provide after-service), golf course caddies (hired by golf clubs, but are described as being hired by individual golfers), scriptwriters for TV and radio programmes. These categories of workers are not regarded by law and legal practice as employees/waged workers who are eligible to enjoy and exercise freedom of association and the right to bargain collectively (the right to form or join a trade union).

The KCTU does not agree with the Government that all workers in the public service can exercise the right to collective bargaining, referring to medical professionals. Workers employed in "essential public service" enterprises regardless of public or private (in terms of ownership), are governed by a "compulsory arbitration" mechanism. When negotiations at an essential public service enterprise, for example, a hospital, are deadlocked, the Labour Relations Commission can refer the dispute to "arbitration". Once arbitration is invoked, no industrial action is possible within 15 days. Once an arbitration award is delivered, it has the same effect as a concluded collective agreement. This is an "ante-facto" prohibition of strike. This system has been abused by employers who have learned that arbitration is in their favour and thus do not feel compelled to bargain with the union. If a union strikes, faced with foot-dragging by employers who would be content to wait for arbitration to be invoked, it is declared illegal. "Compulsory arbitration" thus derails the right to bargain collectively.

About exercising freedom of association at different levels, contrary to the statement by the Government, multiple unions at enterprise level are prohibited by the Trade Union and Labour Relations Adjustment Act (Addenda, article 5, paragraph 1), thus limiting freedom of association at enterprise level.

The principle of the effective recognition of the right to collective bargaining is recognized in enterprise, sector or industry, and national levels. However, concerning sector or industry and national levels, contrary to the government response, there is no

effective recognition of the right to collective bargaining at the supra-enterprise levels, and no existing supra-enterprise level collective bargaining. The Government has not made any effort to facilitate collective bargaining at these levels, and where unions are organized at supra-enterprise levels and make demands to conduct collective bargaining at these levels, there is no legal requirement on the part of the employers to engage in negotiation. Employers' organizations deny that they have the mandate to bargain on behalf of their members.

With respect to government authorization or approval required in the Republic of Korea to establish a workers' organization, contrary to the government statement, the current system of "giving notice" on the formation of a union under the provision of the Trade Union and Labour Relations Adjustment Act, provides conditions required to be recognized as a dual established union. The current system works in fact as an authorization system. A union giving notice of its establishment is required to supplement its notice within 20 days of "rejection". A failure to meet this means a final rejection of the notice, thus denying the formation of the union.

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

According to the government report, specific measures have been implemented or are envisaged to respect, promote and realize the principle in the Republic of Korea. However, there is no current effort to reform the trade union law or system. The current legislative effort by the Government concerning government employees in the civil service (state government officials and local government officials) is not addressing the full implication of this principle. The tripartite discussions the Government mentioned refer to the Tripartite Commission, of which the KCTU (which represents about half of the organized labour in the Republic of Korea) is not a member. This body at the same time excluded the organization of government employees while it dealt with the issue of freedom of association.

As for special attention given to the situation of specific categories of persons, the KCTU disagrees with the Government stipulating that special measures are being undertaken to bring about freedom of association of government employees in the civil service. The current Act on the Establishment and Operation of Public Officials Workplace Associations, provides for the establishment of workplace associations/councils in each of the unit offices of the Government, for public officials of ranks below 6:

- it is limited to government employees of and below rank 6;
- a broader (for example, national) association of unit associations is prohibited; and
- the "consultation" to which the association is invited is only a mechanism for the employees to air their views to management on very limited area of issues/concerns.

Thus, what is provided by this law is unrelated to the principle of freedom of association and the right to bargain collectively. In March 2003, government employees in the civil service organized a "Korean Government Employees Union", which does not enjoy legal status, and its members, activists, and leaders are subjected to harassment, such as arrest and being wanted for arrest. On 18 September 2002, the Government gazetted a Bill entitled "Act on the Establishment and Operations of Public Officials Association". This Bill, however, does not provide guarantees for freedom of association and the right to bargain collectively, it rather institutionalizes a violation of these principles, as follows:

- Organization of government officials are not grounded on the Trade Union and Labour Relations Adjustment Act, thus distinguishing government employees (civil service workers) and general workers.

- The Bill disallows the organization of government employees to use the term "trade union"; in doing so, the Government expresses a negative view of trade unions and denies government employees the right to strike.

- The Bill stipulates the government employees organization to be established at specific units (for example, for state public officials, at the National Assembly secretariat, judiciary, constitutional court, election management commission, and different ministries; for local public officials, at various government administrative units, such as metropolitan cities, provinces, cities, counties, and districts; it disallows organizations to be established along horizontal or vertical occupational groupings). The membership base of an organization is the prerogative of the organization itself, and cannot be compelled by a law. Furthermore, the notice of establishment (which can be rejected!) is to be submitted to the head of the unit at which the organization has been established. This is tantamount to submitting the application for establishment to the partner with which the organization has to bargain with. Under the Trade Union and Labour Relations Adjustment Act, new unions are required to submit notification to the head of the administrative office, which has jurisdiction over the area or the Minister of Labour. Thus, the new requirement stands at odds with the existing practice.

- The government Bill limits eligible members to employees of ranks lower than (including) 6, denying the principle that the membership is to be determined by the organization itself. In doing so, the government Bill denies freedom of association of employees of higher ranks, and thus also restricts the overall principle of freedom of association.

- The government Bill limits concerns that can be dealt with in a bargaining to wage and other working conditions. In doing so, issues which related to policy matters, office organization, personnel matters, budget allocation are set out of bounds for negotiation. These issues, if they have implications for working conditions, need to be addressed in collective bargaining.

- The government Bill disallows the organization of government employees to delegate its power and authority to bargain to another party, and goes further to prohibit its affiliation to a national organization of trade unions, or the formation of a wider national association. Violation of these stipulations carries a penalty of less than three years' imprisonment and/or a fine of 30 million won [about US$25,900 as of September]. In doing so, the Bill strikes an outright violation of the fundamental principle of freedom of association.

- The government Bill denies the possibility of concluding an agreement through the bargaining process. At the same time, it prohibits all kinds of industrial action, such as, strikes, go-slows, work-by-rule actions. In doing so, the government Bill denies the very foundation of a trade union, in a serious denial of freedom of association.

Thus, not only does the government Bill deny the organization the use of "trade union" in its name, but it also denies the very essence of trade union enshrined in the principle of freedom of association.

In instances where the Government finds that the principle has not been respected, the KCTU refutes the Government statement that "employers who infringe on rights of trade unions to organize or bargain collectively will be subject to legal sanctions under charges of unfair practices".

- While unfair practices of employers are widespread and serious, there has not been any substantial sanctions against them. Even in the cases where a sanction has been applied, they have been limited to small sum fines. This lies in stark contrast to the widespread arrests and imprisonment of trade union members.

- Legal, prosecutorial proceedings against trade unions for perceived violation of law, are undertaken by a special union responsible for "public safety". There is a systematic/structural asymmetry: trade unions are perceived as a potential or dispositional threat to public safety requiring a permanent unit to maintain a constant surveillance, while employers the other side of industrial relations are subjected to meagre legal attention. Trade union activities, including strikes, are dealt with in the same category of "subversive actions".

- Employers' violations of freedom of association and the right to bargain collectively are perceived as less than minor offences by prosecutorial authorities; and the Ministry of Labour, which is in charge of labour administration, lacks the will and capacity to maintain a sound level of inspection.

- The KCTU has found that 219 trade unionists were imprisoned in 1998, 129 in 1999, 97 in 2000, 241 in 2001, and 165 in 2002 (as of October); however, only a handful of employers have been subjected to a prosecutorial action for unfair labour practices.

- The Central Labour Relations Commission reported that only 10.1 per cent of complaints of unfair labour practices submitted by workers (104 out of 1,031 cases) have been recognized as bona fide unfair labour practices.

Progress and achievements concerning this principle and right

The description of initiatives undertaken in the Republic of Korea can be regarded as a successful example in relation to the effective recognition of the right to collective bargaining. However, the Government's report points to the Tripartite Commission composed of representatives of the trade union organization, employers' organization, Government, and public interest as an instance of initiatives that can be regarded as successful example in relation to the effective recognition of the right to collective bargaining. It mentions that application of the principle of freedom of association is widened through agreement between the labour, employer, and the Government and it points to the recognition of freedom of association for teachers, the establishment of workplace association of government employees, and the efforts to introduce freedom of association for government employees as its achievements. The KCTU, however, finds these examples to be inappropriate.

- The KCTU does not participate in the Tripartite Commission on a number of grounds: the presence of "public interest representatives" means that the Government's position is upheld against the views of the labour. It lacks a capacity to enforce whatever agreement is produced through discussion, thus cannot function as a genuine social pact mechanism. It is a governmental body in the guise of a tripartite composition.

- Recognition of freedom of association for teachers is deficient: the law concerning teachers' union (article 6) limits the issues which can be brought to collective bargaining to wage, working conditions, and welfare arrangements, while those matters which require budget allocation are ignored by the relevant authorities. In collective bargaining regarding private schools, the actual managerial group of the schools are excluded from negotiations, requiring the collective bargaining to be held only with the umbrella group of private school managers, thus disallowing collective bargaining on issues that relate directly to conditions at individual schools. Furthermore, teachers' union is not allowed to mandate a third party (national confederation) to conduct bargaining on its behalf. And the law compels the unions to establish a single bargaining agent in case multiple unions exist. This requirement of the law infringes on freedom of association.

- The various developments concerning freedom of association for government employees in the civil service, fraught with limitations, and in places an outright violation of the principle of freedom of association, cannot be seen as an example of successful efforts towards the realization of freedom of association.

Difficulties concerning the realization of this principle and right

The main difficulties encountered with respect to realizing the principle are:

- lack of public awareness and/or support;

- social values, cultural traditions; and

- social and economic circumstances.

Nevertheless, KCTU disagrees with the Government's view that the difficulty in realizing the principle and right lies with a lack of public awareness, social values and cultural traditions, and social and economic circumstances. The Government itself has the primary responsibility and obligation to guarantee freedom of association. However, the Government itself has been the most vocal opponent and obstacle to this. The Government itself must have a clear understanding and commitment and will have to realize freedom of association; and on this basis, make positive efforts to identify the problem areas, and provide vision for change. Employer resistance to freedom of association is another key difficulty. Employers are resistant to the implication of freedom of association: it calls for recognizing workers as partners on an equal footing with regard to issues that arise at workplaces, in the economy, and society.

Report preparation

Regarding the preparation of this report, the KCTU received the request of the Government to comment on a report it has prepared (without prior consultation) on 26 October with a request to return comments by 4 November. Only post-write-up comments were sought from the KCTU.

Government observations on the Korean Confederation of Trade Unions (KCTU)'s comments

Regarding the statement that trade union organizations such as industry-level federations or industry-wide unions

and national confederations do not enjoy the right to bargain collectively with appropriate counterparts

The current Trade Union and Labour Relations Adjustment Act (TULRA) does not imply any restriction on the level of establishment of trade unions. Industry-level trade unions have the right to bargain collectively and conclude collective agreements.

- It is true that in the Republic of Korea, there is no negotiating partner that can be matched with an industrial-level union, because an upper-level organization of individual employers has yet to be formed. But this is not an area where the Government can intervene. The Government cannot force employers to form an employers' organization at the industry level.

- Even now, it is possible for employers to conduct collective bargaining with industrial-level trade unions if employers agree to entrust their right to bargain collectively to the representative. Some industry-level trade unions do currently engage in collective bargaining with employer representatives.

- In conclusion, whether collective bargaining at the industry or national level will be conducted is a matter that should be decided by trade unions and employers (or employers' groups).

In the meantime, the Government will continue to consult with national-level workers' and employers' organizations on various policy tasks by way of the Tripartite Commission, etc.

- The Government plans to expand such dialogue and consultation with workers' and employers' organizations to the industrial and regional levels.

Regarding the statement that there is no effective mechanism to sanction employers who fail to implement or violate collective agreements

Implementation of collective agreements can be ensured by the procedures set in each agreement.

- Trade unions can also ensure implementation of collective agreements by filing a lawsuit that demands implementation of the collective agreement.

- Another way is to request the Labour Relations Commission to provide its observation on the interpretation and the means of implementation of such collective agreements, ensuring employers to implement the collective agreement according to the decision of the Commission.

In addition, to ensure the implementation of any collective agreements, the current TULRA places sanctions on employers who violate collective agreements. Employers are put under criminal punishment if they violate agreements on matters concerning wage, working hours, cause of dismissal, safety and health benefits, workers' compensation for on-the-job injury, or provision of facilities or other conveniences to the trade union.

Regarding the statement that the Government does not have an internal mechanism for the implementation of collective agreements it has adopted with unions; that there is no

mechanism for consultation and harmonization between the government offices; and that therefore, agreements are not implemented as budget-related items are decided without any reference to the agreements

Public sector collective agreements have a certain limit in terms of implementation due to the fact that the budget and related provisions are decided by the National Assembly.

To overcome such limitations, the Government has formed and has been operating the "Public Sector Special Committee", under the Tripartite Commission, consisting of representatives of workers, employers, government.

- The Government is considering measures to expand dialogue and consultation on major issues, including budget, between labour and management of public institutions and relevant government agencies.

Regarding the statement that teachers do not enjoy the full freedom of association because the freedom of association of teachers is provided under a separate law, separating teachers from other workers and confining the right to collective action; and that professors are not covered by the Act and, thus, do not have the freedom of association and the right to bargain collectively

The aforementioned Act regarding public and private teachers provides all teachers with the same benefits and duties as other public officials. The right to their collective action, including strikes, is thus restricted since it may not be in harmony with students' right to learn.

- Instead, a Labour Relations Commission consisting of representatives of labour, management, and public interests has been set up to adjust and mediate disputes with teachers' unions.

- The remedy system for unfair labour practices protects teachers or teachers' unions as well as general workers from anti-union activities, such as employers' indolence in collective bargaining or disciplinary measures for union activities.

Thus, it is not correct to state that teachers in the Republic of Korea do not enjoy freedom of association simply because teachers are not allowed to exercise the right to strike.

With respect to professors' basic labour rights, the Government will give careful consideration to this issue by collecting opinions through discussions at the Tripartite Commission.

Regarding the statement that foreign workers are not recognized as workers and cannot exercise freedom of association

Freedom of association for foreign workers is not restricted. TULRA provides them with the right to join trade unions.

But, since industrial trainees came to the Republic of Korea as trainees not workers, they are not being considered workers whose freedom of association must be granted.

Regarding the statement that under TULRA, unemployed persons are not allowed to establish or join a trade union and that insurance salespersons, tutors hired by learning aid production companies, golf course caddies are not recognized as workers who can exercise the right to organize and bargain collectively by law and legal practice

TULRA uses the term "worker", which means any person who lives on wages, salary, or other equivalent form of income earned in pursuit of any type of job. According to TULRA, workers can establish and join trade unions.

In interpretation of this article, courts have not recognized unemployed persons as workers, taking into account the characteristics of the trade union structure in the Republic of Korea, where the majority are enterprise-level trade unions.

- As part of the measures for the Industrial Relations Advancement plan, the Tripartite Commission is currently considering a measure to recognize unemployed persons as workers who can form or join a trade union, thus allowing them to join industry-level trade unions. However, it will limit the right to join enterprise-level trade unions to any of those workers who were formerly employed in that field. The Government plans to amend the related law after thorough consultations at the Tripartite Commission.

  As in the case of other countries, the court has divided workers into two groups, workers who can form or join trade unions, and self-employed or autonomous workers who cannot, based on a subordinate employment relationship.

- As a consequence, some persons who are under service contracts with companies such as insurance salespersons, are not recognized as workers under TULRA if their subordinate employment relationship is not recognized.

Regarding the statement that when negotiations at an essential public service enterprise are deadlocked, and arbitration is invoked, no industrial action is possible; that since an arbitration award has the same effect as a concluded collective agreement, once it is delivered, it is a de facto prohibition of strike; and that compulsory arbitration derails the right to bargain collectively, since once arbitration is invoked, employers become indolent in negotiations, waiting for an award of arbitration

The system of binding arbitration was introduced to guarantee the harmony of public welfare and workers' right to collective action.

- Binding arbitration is invoked in case of industrial conflicts in public interest services, such as hospitals, which have a large influence on the national economy or daily lives of the public, and where the workers are difficult to replace in case of a strike.

- When arbitration is invoked, industrial action is prohibited for 15 days. When an award of arbitration is confirmed, it has the same effect as a collective agreement.

However, the Labour Relations Commission is not willing to invoke arbitration as long as labour and management are willing to negotiate or the damage of the strike to the public interest is not considered huge.

Starting from 2003, the requirements and procedure for invoking arbitration in cases of essential public services have been improved.

- Currently, the Labour Relations Commission decides whether to invoke arbitration, considering whether the work stopped by any strike may damage the public interest and whether replacement of the workers is possible to prevent such damage.

- In case there is little concern for damage to the public interest because the trade union maintains the minimum level of work needed to protect public interest, the Labour Relations Commission encourages labour and management to negotiate with each other, rather than invoking arbitration by authority. For the 11 months of 2003, there was only one workplace for which arbitration by authority was invoked.

Arbitration is a neutral process and as such, should not be seen as favourable only to employers. Thus, it is not acceptable to argue that arbitration infringes upon workers' right to collective bargaining.

Meanwhile, the Tripartite Commission is planning to discuss the possible abolishment of the essential public service exceptions and their arbitration while maintaining a minimum level of service in the event of any strike of workers in government service for the public interest.

Regarding the statement that multiple unions at the enterprise level are prohibited, thus limiting freedom of association at the enterprise level

Under the current law, multiple unions at enterprise level that share union members are prohibited until the end of 2006. Starting from 1 January 2007 this will be permitted. The Government is developing measures to unify bargaining channels for the introduction of the multiple trade union system.

Regarding the statement that the right to collective bargaining is not effectively recognized because employers do not have legal requirements to engage in negotiations when industrial or national level trade unions make demands to conduct collective bargaining and that the Government has not made any effort to facilitate collective bargaining at these levels

Please refer to the reply to No. 1.

Regarding the statement that the current system of "giving notice" of the formation of a union works in fact as an authorization system

Under the current law, to guarantee autonomy and democracy of trade unions, the notice of establishment of a union is immediately accepted if the requirements are met, such as stipulating some particular items in the covenant or general clause of trade union. Only when the documents, such as the covenant, fail to meet these requirements, is the

union requested to submit supplementing documents. The Government neither accepts nor rejects notices of establishment of a union based on an arbitrary judgement and is not operating the notice system as an authorization measure.

Regarding the statement that the Act on the establishment and operation of public officials' associations, which was aimed at bringing about freedom of association of government employees in the civil service, denies an organization the use of "trade union" in its name, thus denying the organization the very essence of trade union

The statement made by the KCTU is not appropriate as it was based on the Act on the establishment and operation of public officials' associations, which was submitted to the National Assembly on 18 October 2002.

- Since the inauguration of the current Government, a new Bill has been prepared to raise public officials' basic labour rights to the level of those guaranteed by the Teachers' Union Act. The Government plans to submit the Bill to the National Assembly.

Regarding the statement that while unfair practices of employers are widespread and serious, there have been no substantial sanctions against them

Under current law, the followings are categorized as unfair labour practices and thus, prohibited: employer rejection of union demands for collective bargaining and employer discrimination against union members based on the establishment of or participation in a trade union and lawful union activities.

- Workers and unions can ask the Labour Relations Commission to remedy such discriminatory acts. To force employers to implement decisions by the Labour Relations Commission, the related law has an article that stipulates that those who do not implement the decisions by the Labour Relations Commission are subject to criminal punishment.

  Anyone who has violated remedy orders, which were finalized by the Labour Relations Commission, shall be punished by imprisonment up to three years, or by a fine up to 30 million won. (Article 89 of the Trade Union and Labour Relations Adjustment Act.)

- Aside from asking for the remedy, workers and trade unions can directly request criminal punishment of employers who have committed unfair labour practices. The level of punishment should be decided in court.

  Anyone who has committed unfair labour practice shall be punished by imprisonment up to two years, or by a fine up to 20 million won. (Article 90 of the Trade Union and Labour Relations Adjustment Act.)

- Unlike the United States and Japan, the Republic of Korea has criminal punishment against unfair labour practices to better protect trade union activities.

Decisions on unfair labour practice are made through an impartial and fair procedure. A committee consisting of three public interest members invites more than one representative of workers and employers when asking the labour and management about an alleged unfair labour practice.

- In this regard, the mere proportion of the cases recognized as unfair labour practices in the total cases cannot be a standard to judge the effectiveness of the Labour Relations Commission.

Regarding the statement that the presence of "public interest representatives" means that the Government's position is upheld against the views of the labour in the Tripartite Commission; that the Commission lacks a capacity to enforce whatever agreement is produced through discussion, and thus cannot function as a genuine social pact mechanism; and that it is a governmental body in the guise of a tripartite composition

The Tripartite Commission is composed of representatives of workers, employers, Government and public interest.

- The President appoints public interest members with deep knowledge and experience concerning labour issues, after hearing opinions of national-level workers' organizations (FKTU and KCTU) and employers' organizations in accordance with article 4 of the Act on the Establishment and Operation of the Tripartite Commission.

Public interest members do not take the role of representing the Government's stance. They take part in the Commission with an impartial perspective as representatives of the public interest.

- In general, social consultative bodies in other countries have policy experts as members. The policy experts are similarly public interest members.

In addition, since the establishment of the Commission in 1998, there have been agreements on 130 policy items of which 110 have been implemented. The Tripartite Commission has been operating its function to the fullest extent.

Given this, the Tripartite Commission cannot be considered to work as a government organization just because a particular workers' organization does not take part in it.

Regarding the statement that with respect to teachers' unions, it runs counter to the principle of freedom of association to limit collective bargaining, to prohibit bargaining with individual private school managers, to inhibit a teachers' union from mandating a third party to conduct bargaining on its behalf; and to compel the unions to establish a single bargaining channel

The current Act on Trade Unions for Teachers was legislated in 1999, on the basis of the agreement made in the Tripartite Commission.

- Teachers' trade unions can bargain with the education authority or private school managers at the national, provincial, or municipal level on matters related to working conditions.

The matters related to the government budget will be negotiated within the limit of the confirmed budget. If matters related to the future government budget are agreed through negotiation, the education authority can ask the budget authority to consider the agreed matter, according to the procedure of drawing up the government budget (the Government subsidizes private schools, in such forms as teachers' remuneration).

The Act says those private school teachers' trade unions shall bargain with private school managers at the national, provincial, or municipal level. This article was legislated based on the agreement made, in consideration of the similarity of working conditions of public and private school teachers, in the Tripartite Commission.

- It is possible for representatives of a teachers' union to discuss the matters, which should be decided at individual school level through consultations with the private school manager.

- Under the current law, the parties of collective bargaining are specified as representatives and members of teachers' unions, and representatives of the education authority.

- The law says that in case where there are multiple teachers' unions at the national, provincial, or municipal level where collective bargaining is conducted, the unions shall establish a single bargaining channel.

It cannot be seen as infringing teachers' freedom of association that the Act on teachers' unions specifies the level and parties of collective bargaining, based on the agreement made in the Tripartite Commission for efficient collective bargaining.

Regarding the report preparation

The KCTU states that it received, on 26 October 2003, the request of the Government to comment on a report it had prepared with a request to return comments by 4 November 2003.

- But the Government sent its report on 23 June 2003 to workers' organizations and requested them to return comments by 16 July 2003. The KCTU has not sent its comments on the report to the Government.

Annex (not reproduced)

- Comparison of two government Bills: the Bill on public officials' trade union and the Bill on public officials' workplace associations.

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. [Kuwait ratified in 1961 the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).]

Freedom of association and the right to collective bargaining can be exercised by all workers in the public service at enterprise, sector/industry, national and international levels.

Government authorization/approval is not 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

No 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.

In instances where the principle has not been respected, a Conciliation Committee for Collective Labour Disputes is held for conciliation or reference to arbitration.

Following the amendment of article 69 of the Labour Code No. 38 of 1964, 18 new trade unions were announced, including 17 in the public sector and one in the oil sector.

Progress and achievements concerning this principle and right

Since the last report major changes concerning the principle have taken place. Article 72 of the Labour Code for the private sector provides the following:

- A worker is not allowed to join a trade union unless he has attained the age of 18 and an accredited certificate about good conduct issued by the competent party.
- Non-Kuwaiti workers, having met these two conditions and obtained a working card, are allowed to join a trade union, without having the right to vote nor to be elected. However, they have the right to designate one among them to represent them and to express their point of view in the council of the trade union.
- Non-Kuwaiti workers can join a trade union only after a stay of five uninterrupted years in Kuwait as from the date of promulgation of this law.
- No worker is allowed to join more than one trade union.

Initiatives undertaken in Kuwait can be regarded as successful examples in relation to freedom of association. Article 69 of the 1964 Labour Code has been amended to allow a large participation of government workers in the formation of new trade unions.

Difficulties concerning the realization of this principle and right

The main difficulty encountered with respect to realizing the principle of freedom of association and the effective recognition of the right to collective bargaining is that the 1964 Labour Code, including its new amendments, does not cover all categories of workers.

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 Kuwait.

Report preparation

In preparing this report, written consultations were held with the most representative employers' and workers' organizations, and with governmental authorities outside the Ministry. Comments were received from employers' and workers' organizations.

Copies of the report were sent to the Chamber of Commerce and Industry of Kuwait and to the General Confederation of Trade Unions of Kuwait.

Lao People's Democratic Republic

Note from the Office

The Office received no report from the Government for the annual review of 2004.

Lebanon

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 Lebanon. [Lebanon ratified in 1977 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).]

Freedom of association and the right to collective bargaining can be exercised by all workers in the public service at enterprise, sector/industry, national and international levels.

Government authorization/approval is required to establish employers' and workers' organizations.

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.

Within these measures, no special attention is given to the situation of women, since there is no discrimination between men and women according to established laws. However, special attention was given to the situation of specific categories of persons. Under the Labour Code, article 50, there are immunities which are granted to members of executive councils of trade unions against any arbitrary lay-off. 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.

In instances where the Government finds that the principle has not been respected, the offender shall be referred to the competent judicial authority. The amended Draft Labour Code has taken into account international labour standards and fundamental principles and rights at work, including the principle of freedom of association.

Progress and achievements concerning this principle and right

Since the last report, the major change concerning freedom of association relates to the increasing number of occupational trade unions in comparison to previous years.

The following initiatives undertaken in Lebanon can be regarded as successful examples in relation to freedom of association:

- All types of trade unions, at all levels, play a very important role in submitting and proposing social and economic laws, participating effectively in determining the economic policy in the country, and conducting negotiations and dialogue with employers on working conditions and terms and prevention of labour disputes.

- Trade unions enjoy liberty of movement to defend their interests, a fact which has been proved on several occasions. Workers' and employers' organizations participate in the committees established by the Ministry of Labour to prepare projects of a social nature. Many activities have been undertaken in this regard.

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 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 the most representative employers' and workers' organizations.

Malaysia

Government

Recognition of this principle and right

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

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

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

The right to collective bargaining can be exercised at enterprise, sector/industry and national 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 who have reached the age of 16;
- workers in the informal economy; and
- all categories of employers.

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

- members of the Royal Malaysian Police;
- members of any prison service;
- members of the armed forces; .
- public officers engaged in a confidential or security capacity;
- public officers holding any post in the managerial and professional group; and
- officers prohibited by any other law from joining a trade union.

Indeed, the Chief Secretary to the Government is empowered to exclude officers in the managerial and professional fields from the prohibition by means of a direction in writing issued by him. He is also empowered to decide on any question as to whether any officer is engaged in the confidential or security capacity. Similar prohibitions and restrictions are also imposed upon employees of statutory authorities.

In Malaysia, a machinery appropriate to national conditions has been established in the public sector in order to discuss and to some extent negotiate terms and conditions of employment. Collective bargaining is very much affected by certain constraints and factors peculiar to the public sector, which is vast and includes the diffusion of employee decision-making authority with the Government, budgeting, etc. Certain aspects of conditions of employment in the public sector depend upon legislative actions and the applicability of overall government policy, which has national security implications.

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

The registration of a trade union is provided for under the Trade Unions Act, 1959. In order to function legally and to enjoy the rights, privileges and immunities granted by law, a trade union must apply to the Director-General of Trade Unions for registration.

Moreover, government authorization/approval is necessary to establish employers' and workers' organizations. Although collective agreements are freely concluded between the parties without prior authorization or approval by the Government, such agreements must be deposited at the Industrial Court for cognizance.

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
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

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 three years (and taken cognizance of), are as follows:

Year	1998	1999	2000	2001	2002
Number	284	268	324	373	236

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

In Mauritius, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized. [Mauritius ratified in 1969 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98.]

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, 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 employers' and workers' organizations, but not to conclude collective agreements. Section 5 of the Industrial Relations Act requires every trade union to apply to the Registrar of Associations for registration purposes, within three months after the date of its formation. The application for registration shall be made in the prescribed form and shall be accompanied by the prescribed fee, two copies of the rules of the trade union and a statement of particulars in the prescribed form.

The Registrar then publishes in the Government Gazette and in two daily newspapers a notice of the application, which has not been rejected. 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 this principle and right.

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 governments 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. Regarding capacity building for workers' organization and awareness-raising, the Information, Education and Communication Division of the Ministry of Labour and Industrial Relations carries out regularly site-level talks and workshops on communication skills, leadership, motivation, negotiation skills, disciplinary and grievance procedures. These activities are conducted for the benefit of both male and female workers.

However, no special attention is given to specific categories of persons or 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 Conciliation and Mediation Department of the Ministry of Labour and Industrial Relations intervenes either by carrying out inquiries 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

Since the last report, no changes have occurred.

Nonetheless, several initiatives undertaken in Mauritius can be regarded as successful examples in relation to freedom of association, as follows:

For instance, the government budget for 2003-04 has made provisions for 3 million rupees (about US$100,000 as of October 2003) for the Trade Union Trust Fund in order, inter alia, to finance training and education programmes organized for the benefit of trade union federations.

Furthermore, the two-year tripartite Certificate Course on Industrial Relations run by the University of Mauritius was completed by 11 candidates in May 2003.

The first phase of the study on "low rate of unionization in Mauritius", commissioned by the Trade Union Trust Fund and entrusted to the University of Mauritius, has been completed. Subsequently a workshop was held in December 2002 to discuss the report of the study with trade unions federations.

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

In addition, the Industrial Relations Commission organized a one-day workshop on Conciliation and Mediation for the Sugar Industry Sector on 28 April 2003.

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 as follows.

Nature of difficulty	Freedom of association	Collective bargaining
Lack of information and data	X	X
Social and economic circumstances		X
Legal provisions	X	
Prevailing employment practices		X
Lack of capacity of workers' organizations		X
Lack of social dialogue on this principle		X

Priority needs for technical cooperation

To facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Mauritius, ILO technical cooperation would be needed in the following areas, in order of priority (1= most important; 2 = second most important, 3 = third most important).

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the principle	2
Strengthening data collection and capacity for statistical collection and 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
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 employers' and workers' organizations but not with governmental authorities outside the Ministry.

A copy of the report was sent to the stakeholders, employers' and workers' organizations. Comments were received from workers' organizations only.

The following employers' and workers' organizations have been sent a copy of this report:

- 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 Free Democratic Unions Federation; and
- the General Workers' Federation.

Mexico

Government

Recognition of this principle and right

In Mexico, there has been no change in relation to the principle of freedom of association and the effective recognition of the right to collective bargaining since the

Government's 2002 annual report was provided. [Mexico ratified in 1950 the Right to Organise and Collective Bargaining Convention, 1948 (No. 87).]

Progress and achievements concerning this principle and right

No changes have been made to the legal framework applicable to the content of the present instrument since 1 July 2002.

With respect to the initiatives undertaken in the country that can be regarded as successful examples in relation to the principle, the Government is working on a labour legislation reform that will help promote the training, participation and fair remuneration of workers, as indicated in the 2002 report, as part of the Government's "new labour culture".

To this end, the Central Decision-making Committee for Amending the Federal Labour Act was established in which Mexican workers' and employers' organizations, with the Government acting as a facilitator, and after laborious days of work, managed to produce a draft amendment of the federal Act which deals with the issue of the principle of freedom of association and the effective recognition of the right to collective bargaining.

On 12 December 2002 this draft amendment became a proposed law. Legislators from three significant Mexican political parties (the Institutional Revolutionary Party (PRI), the National Action Party (PAN) and the Mexican Environmentalist Green Party (PVEM) submitted the proposed law.

Report preparation

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

The International Affairs Unit of the Labour and Social Security Department of Mexico sent a copy of the report to the Mexican Confederation of Chambers of Industry (CONCAMIN), the Mexican Employers' Confederation (COPARMEX), and the Confederation of Mexican Workers (CTM).

Morocco

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 Morocco. [Morocco ratified in 1957 the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).]

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

- doctors;

- teachers;
- agricultural workers;
- workers employed in domestic service;
- workers in free zones (ZFE) or similar enterprises/industries;
- migrant workers;
- workers of all ages;
- workers in the informal sector; and
- all categories of employers.

However, government officials and personnel performing a function involving the right to carry arms, persons subject to the special regulations of administrators of the Ministry of the Interior and the judiciary, may not exercise the right of freedom of association and the right to collective bargaining.

The formation 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

Special 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.

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 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 the subject of particular attention in the context of these measures. However, children at work, women employees, the textiles and clothing sectors, urban transport and the canning industry are of particular concern to the Government.

In the event of violation of this principle, the Government intervenes through social dialogue or the labour inspectorate:

- at the level of social dialogue, a national inquiry and contracts commission has been created. Its task is to stimulate social dialogue, encourage cooperative links between the social partners and to settle industrial disputes at national level; and
- at local level, the labour inspectorate plays an important role in collective bargaining. It advises the social partners, invites them to engage in social dialogue, reconciles the positions of the two parties and encourages collective bargaining.

In addition, in cases of violation of trade union rights, labour inspectors may initiate prosecutions, and the dossier will then be sent to the competent court for trial.

Furthermore, as part of the Government's efforts to promote the principle of freedom of association and effective recognition of the right to collective bargaining, the Ministry of Employment has set itself the following goals:

- to strengthen enforcement of labour law;
- to promote health at work;
- to develop contract law;
- to harmonize labour law with the principles of international standards;
- to improve industrial relations management by encouraging collective bargaining and the settlement of collective industrial disputes; and
- to strengthen monitoring of conditions of work of vulnerable social groups (children and women at work).

Progress and achievements concerning this principle and right

Major changes concerning the principles have taken place since Morocco's last report :

- adoption of the draft Labour Code by Parliament (end 2003);
- elaboration of the regulatory part (end 2003 early 2004); and
- launch of the programme to strengthen industrial relations (May 2004).

In Morocco, specific measures, which can be regarded as examples of success relating to freedom of association and collective bargaining have been taken. Thus, Dahir [decree] No. 1-00-01 of *9 Kaada 1420* [13 February 2000] promulgates the Trade Unions Act, Law No. 11-98 of 15 February 2000, in harmony with the principles of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

In addition, regarding the effective recognition of the right to collective bargaining, the agreement of 30 April 2003 between the Government and the social partners encourages the conclusion of collective agreements, and the draft Labour Code was adopted in June 2003.

Difficulties concerning the realization of this principle and right

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

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 = important).

Needs for technical cooperation	Priority
Evaluation in cooperation with the ILO of the difficulties encountered and their impact on putting the principle into practice	2
Awareness raising, legal initiation and advocacy	2
Strengthening data collection and the ability to maintain and analyse statistics	2
Exchange of experiences between countries or regions	2
Legal reform (labour law and other legislation))	1
Capacity building of responsible government agencies	1
Training of officials of other departments (e.g., police, lawyers, social workers, teachers)	2
Capacity building of employers' organizations	2
Capacity building of workers' organizations	2
Strengthening of tripartite social dialogue	1

Report preparation

During the preparation of the report, the Government consulted the most representative employers' and workers' organizations, as well as government agencies other than the Ministry of Employment, Social Affairs and Solidarity. However, no comments on this questionnaire, which was sent to the following social partners, have reached the Ministry.

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

Observations submitted to the Office by the World Confederation of Labour (WCL)

Morocco has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The following comments concern Convention No. 87 which Morocco has not ratified.

In January 2003, the World Confederation of Labour (WCL) organized a seminar/think tank on compliance with that Convention in Morocco in the light of the discussion on the new labour law and the introduction of a law regulating the right to strike. The seminar was organized with the two organizations affiliated to the WCL in Morocco, the Moroccan General Workers' Union (UGTM) and the Democratic Confederation of Labour (CDT).

These two draft laws raised several problems of non-consistency with the established principles of freedom of association. The campaign conducted after the seminar by the WCL and its affiliated organizations in Morocco helped to strengthen the dialogue between the Government and the trade unions. A new Labour Code was ratified. It includes suggestions put forward by the trade unions.

It is noteworthy, however, that the draft legislation on strikes remains. At present, there continues to be a legal vacuum concerning protection of the right to strike and the trade unions had issued serious reservations concerning the approval of a law on the subject separate from the Labour Code. In the view of the CDT, this right should be guaranteed by the Labour Code and not by another legal instrument. Moreover, the Government's ideas would be detrimental to workers. The criteria adopted for declaring a strike would make it practically impossible to do so. Such a law could open the way to more undermining of workers' rights, a faster descent into poverty and precariousness in the labour market.

In the present situation, the exercise of the right to strike is complicated. There are obstacles before, during and after the strike.

Firstly, in the public sector, some government officials cannot strike even though they do not work in services regarded as essential in the strict sense of the term. Several cases in recent years also indicate that the right to strike is often thwarted.

In addition, in the private sector, the obstacles to its exercise are also frequent. There is, moreover, the possibility of signing a protocol of agreement with the trade union representatives. Once approved, the ratified guarantees are not applied. If a strike is launched, the enterprises concerned often resort to subcontract labour and exert pressure on strikers to suspend their action. This pressure includes the pretext of illegal occupation of the workplace, non-payment of wages or dismissal.

Likewise, pressure on people frequently occurs after the end of the strike in the form of harassment of union members or obstacles to the exercise of freedom of association in the workplace. Trade union officials are among the first victims of such situations.

Finally, the slowness of legal proceedings hinders the rapid settlement of disputes.

All these factors lead us to conclude that despite positive progress following the concerted approval of the new Labour Code, the law does not guarantee the full exercise of

the right to strike. Furthermore, the new draft law on the subject does not appear to take account of the views of the trade unions.

The WCL hopes, therefore, that the Moroccan authorities will ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It also hopes that dialogue with the workers' organizations will be continued and strengthened and that measures will be taken to meet their demands relating to protection of the right to organize (especially the right to strike).

In the light of new information which has reached the Democratic Confederation of Labour (CDT), the WCL would like to clarify the following points:

- certain categories of government officials, such as customs officers (including those who do not carry arms) do not have the right to form trade unions. An attempt to unionize this category of worker was made by the National Union of Finance, affiliated to the CDT, and met with refusal by the Minister of Finance;

- article 5 of Order No. 2-57-1465 of 5-5-1958 concerning the exercise of trade union rights by government officials prohibits "any collective and concerted stoppage of work". The last tripartite social agreement (30 April 2003) envisages the abolition of this provision. However, up to now, the agreement has not been honoured;

- in seeking to guarantee "freedom of labour", article 288 of the Penal Code, in practice, ultimately jeopardizes the right to strike.

Government observations on the World Confederation of Labour's comments (WCL)

The Moroccan Constitution guarantees the exercise of the right to organize and the right to strike. The Moroccan Government acts within the framework of law, in no way impedes the exercise of the right to organize and does not interfere in the organization or functioning of any occupational grouping of workers or employers. On the contrary, it invites the partners to engage in social dialogue and encourages collective bargaining.

Furthermore, to provide employers' and workers' organizations with adequate protection of their right to organize, Law 11-98 amending and supplementing the *dahir* of 16 July 1957 on occupational unions severely punishes any hindrance of the exercise of the right to organize.

In the context of efforts to promote social dialogue, an agreement was signed between the Moroccan Government and the social partners on 30 April 2003.

In addition, Morocco has ratified seven of the eight fundamental Conventions. With a view to harmonizing national legislation with the fundamental Conventions, the recently adopted new Labour Code, drawn up in consultation with the trade unions and employers, incorporates the principles of these Conventions.

Other measures have been taken in connection with the implementation of the agreement of 30 April 2003. There has been correspondence concerning the following texts:

- article 5 of the Order of 5 February 1958 on the exercise of the right to organize by civil servants;

- article 77 of the *dahir* of 24 February 1958 containing the general regulations governing the civil service;
- article 288 of the Penal Code;
- *dahir* of 1938 on conscription.

Moreover, article 14 of the Moroccan Constitution guarantees the right to strike in both the public and private sector.

The draft law on the exercise of the right to strike was drawn up by the Ministry of Employment, Social Affairs and Solidarity, and was the subject of consultations with the trade unions on 20 May 2003. The draft law has been referred to the trade unions for their comments.

Despite the absence of a legal framework,, the right to strike is exercised in practice, freely and without let or hindrance. One of the best illustrations of this is the number of strikes called by the various trade unions in all sectors of activity.

Myanmar

Government

Recognition of this principle and right

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

[Reference is made to the application of ratified Convention No. 87.]

The right to collective bargaining can be exercised by all categories of employers, and Government authorization/approval is not necessary to conclude collective agreements.

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

In Myanmar, specific measures have been implemented to respect, promote and realize the effective recognition of the right to collective bargaining. In this respect, the Government has always been promoting and safeguarding workers' rights. While the Constitution is still under drafting stage and, in the absence of trade unions, the Government, being aware of the circumstances, is directly engaged in actively pursuing alternate measures to address workers' rights. [Reference is made to the application of ratified Convention No. 87.]

Within the existing workers' welfare association, workers have the right to individually or collectively bargain for their rights.

From July 2002 to July 2003, the township level workers' supervisory committees have heard and settled 305 cases of workers' rights that were either collectively or individually bargained for by the workers.

Within these measures, special attention is given to women and other specific categories of persons, and specific industries/sectors. Indeed, in trade disputes, both legal and social considerations are taken into consideration.

Progress and achievements concerning this principle and right

[Reference is made to the application of ratified Convention No. 87.]

The right to bargain collectively is enjoyed by workers of factories and establishments. The State, for its part, assumes responsibility for ensuring the settlement and attainment of workers' rights. In the public sector, workers' rights are stressed in the fundamental rules, orders and directives.

Workers in the private sector have their rights protected by the labour laws. They can lay their claim to payment of wages, working conditions, overtime, bonus of all kinds, compensations including lay-offs, severance pays, etc. either individually or as a group through the respective workers' welfare associations to the township workers' supervisory committees that have successfully settled 305 cases.

Workers' rights are discussed in the workers' welfare associations and referred to township workers' supervisory committees.

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 Myanmar, in particular in the assessment of the difficulties identified and their implication for realizing the principle.

Report preparation

In preparing this report, meetings were held by the Department of Labour with the other departments concerned and representatives of the employers' and workers' organizations. A final report was then prepared, highlighting the main issues of these meetings, including the comments received from the social partners.

The report has been communicated to the following organizations:

- the Department of Marine Administration under the Ministry of Transport;
- the Attorney-General's Office;
- the departments under the Ministry of Labour;
- the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI); and
- the workers' welfare associations concerned.

Nepal

Government

In Nepal, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized. [Nepal ratified in 1996 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).]

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;
- migrant workers, the existing laws and by-laws have not made any separate arrangement, neither is there such demand from any quarter made on the Government;
- workers 16 years old or over;
- workers in the informal economy; and
- all categories of employers.

However, with respect to freedom of association the gazetted level civil servants engaged in the management of state affairs and senior level employees of public enterprises cannot exercise this right. Concerning collective bargaining, all workers in the public service and any group of workers that fails to organize into collective entities or unions cannot exercise this right.

Government authorization or approval is required to establish employers' and workers' organizations, but not to conclude collective agreements. The prevailing law in the Kingdom requires that such organizations, to obtain legal recognition or status, register themselves with the government offices as prescribed by the law for that purpose. The enterprise level unions have to seek renewal after every two years while the sectoral and national level unions have to seek renewal after every four years.

New Zealand

Government

Recognition of this principle and right

In New Zealand, there has been no change in relation to the principle of freedom of association and the effective recognition of the right to collective bargaining since the

Government's 2002 annual report was provided. [New Zealand ratified on 9 June 2003 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).]

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

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.

Conventions Nos. 87 and 98

New Zealand ratified Convention No. 98 in June 2003. This followed a process involving a detailed assessment of the compatibility on national law, policy and practice with the requirements of the Convention, consultation with the social partners (New Zealand Council of Trade Unions and Business New Zealand), and examination of Convention No. 98 by the Foreign Affairs, Defence and Trade Committee. In addition, the Government is continuing to monitor the compatibility of national law, policy and practice with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) to assess whether ratification of this instrument will be possible in the future.

Employment Relations Act, 2000: Review

The Government is currently reviewing the Employment Relations Act, 2000. The purpose of the review is to consider what legislative changes are required so that the Act can better meet its statutory objectives of promoting productive employment relationships, good-faith collective bargaining, and the effective resolution of employment relationship problems.

As the review is still in progress, the Government will provide information on the outcomes of the review of the Employment Relations Act in the Government's next report.

With regard to measures described concerning freedom of association and effective recognition of the right to collective bargaining, there has been no change since the New Zealand Government's 2002 annual report was provided (this report provides a detailed description of the Employment Relations Act, 2000).

Whether special attention is given to the situation of specific industries or sectors, there has been no change since the New Zealand Government's 2002 annual report was provided.

No changes were noted since the New Zealand Government's 2002 annual report was provided in instances where the Government finds that this has not been respected.

Progress and achievements concerning this principle and right

Since the last report, no major changes have been noted. In the previous report, the role of Employment Relations Education was described. Employment Relations Education has continued to assist employers, employees, and union skills and knowledge of employment matters including freedom of association and collective bargaining. Since that report, the third funding round has occurred. As with the first and second round, applications exceeded the available funding of NZ$2 million. Twenty-one applications

were successful in the third round, including the New Zealand Council of Trade Unions, Business New Zealand, various individual unions and employer groups and training providers.

Examples of Employment Relations Education courses that have been funded include courses on good-faith obligations during bargaining for a collective employment agreement, understanding workplace employment rights and obligations, and training in bargaining and negotiating skills.

Difficulties concerning the realization of this principle and right

Since the last report, no major changes have been noted with regard to main difficulties encountered as to realizing this principle.

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 effective recognition of the right to collective bargaining.

Report preparation

In preparing this report, consultations were held with the most representative employers' organizations (Business New Zealand) and the most representative workers' organizations (New Zealand Council of Trade Unions).

This report has been communicated to the New Zealand Council of Trade Unions (NZCTU) and the Business NZ, and comments were received from them.

Observations made by Business New Zealand (BNZ) through the Government

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

In New Zealand, 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. Business New Zealand notes in relation to this question that the Government's reference to the Employment Relations Act (ERA) 2000 review and the statement that the review's purpose is to consider what legislative changes are required so that the Act can better meet its statutory objectives of promoting productive employment relationships, good faith collective bargaining, and the effective resolution of employment relationship problems.

As Business New Zealand pointed out in relation to the ILO Resolution on Tripartism and Social Dialogue, under the ERA only unions have the right to bargain collectively, a feature of the Act that itself promotes collective bargaining by registered unions. To the extent that employees do not want to belong to a registered union (and under previous legislation they had the right to bargain collectively whether or not they were union members), it is true that they cannot engage in collective bargaining. However, the right *not* to join a union is as important an element of freedom of association as is the right to become a union member. By the same token, employees and employers should have the

right to bargain collectively whether or not the employees belong to a registered union. It would be a proper recognition of the right to bargain collectively if the previous ability to do so other than through a registered union were to be restored.

At the very least, however, it is to be hoped that nothing that comes out of the ERA Review will in any way diminish the current right to choose not to belong to a particular union or to any union. Respect for the principle of freedom of association requires that no change be made that effectively coerce employees to join unions when they have opted not to, or to pay union dues when they have chosen not to be part of the bargaining in which the union has engaged.

Business New Zealand notes that in relation to this question, the Government's response is that there has been no change since its 2002 report, suggesting that its comment that women are among the disadvantaged in the labour market still stands. A reference of this kind is, however, a gross generalization with labour market disadvantage, where it exists, experienced as much by men as by women, and for a variety of reasons, including a lack of skills, work experience or adequate training.

In relation to women's labour market situation it may be of interest to the ILO to know that New Zealand's Household Labour Force Survey for the year ending June 2003 shows an increase in women's employment of 2.1 per cent as compared with a 1.8 per cent increases for men, while the Quarterly Employment Survey for the year ending May 2003 shows an increase in women's earnings of 1.6 per cent as compared with a 0.7 per cent increase for men.

Observations made by the New Zealand Council of rade Unions (NZCTU) through the Government

For the majority of the report the information is the same as in the 2002 Government report on freedom of association and effective recognition of the right to collective bargaining. The NZCTU commented on the 2002 report at the time and those comments still apply.

The NZCTU has no further comments to make on the 2003 Declaration report.

Oman

Government

Recognition of this principle and right

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

Freedom of association can be exercised at enterprise, sector/industry, national and international (in the future, when a higher committee is established) 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 of all ages;
- workers in the informal economy; and
- all categories of employers.

With regard to workers in the public service, the Civil Service Law allows each ministry to establish a staff committee.

On the other hand, freedom of association cannot be exercised by categories of workers subject to the formation of committees and associations. The new Labour Law, which was issued this year, has provision to establish a labour committee in each company. A higher commission will be established to represent the committees in regional and international conferences.

Furthermore, 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;
- workers over 18; and
- all categories of employers.

Government authorization or approval is required to establish employers' or workers' organizations, and to conclude collective agreements. The Labour Law has already given the right, and the Committees only register themselves in the ministry after being formed.

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		Collective bargaining	
	Envisaged	Implemented	Envisaged	Implemented
Legal reform (labour law and other relevant legislation)		X		X
Inspection/monitoring mechanisms		X		X
Capacity building of responsible government officials		X		X

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

Within these measures, no special attention is given at present to the situation of specific industries or sectors. Yet, it will be studied according to requests and cases.

In instances where the Government finds that the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected, social partners are called for a common meeting with the Government to discuss the issues.

Progress and achievements concerning this principle and right

Since the last report, the major change concerning the principle of freedom of association is the new Omani Law in 2003, giving more freedom of association and better opportunity for collective bargaining.

The successful example in Oman in relation to freedom of association is the establishment of committees in each organization. A higher commission will be established to represent the committees in regional and international conferences.

Difficulties concerning the realization of this principle and right

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

Nature of difficulty	Freedom of association	Collective bargaining
Lack of public awareness and/or support	X	X
Social and economic circumstances	X	

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, written consultations were held with the most representative employers' and workers' organizations, together with governmental authorities outside the Ministry of Manpower. However, no comments were received from employers' and workers' organizations.

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

- the Chamber of Commerce and Industry;
- the Board of Employers;

and to the following workers' groups:

- the Oman Oil Company;
- Port Qaboos;
- the Dhafar Omani French Bank; and
- the Gralfor Group of Companies.

Qatar

Government

Recognition of this principle and right

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

Freedom of association cannot be exercised at enterprise, sector/industry, national and international levels by all categories of employers and workers.

There are to date no regulations for the organization of trade unions. Nevertheless, the new draft Labour Code contains provisions concerning trade union organizations.

The right to collective bargaining 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.

However, it cannot be exercised by:

- all workers in the public service;
- agricultural workers;

- workers engaged in domestic work; and
- workers in the informal economy.

With respect to other specific categories of workers who cannot exercise this right, there are no legal rules for the organization of collective bargaining for these categories, but these exist for workers in industrial and commercial enterprises that are governed by the actual Labour Code No. 3 of 1962. The new draft Labour Code contains a special chapter for collective bargaining and collective agreements.

In Qatar, workers can exercise freedom of association only at enterprise and sector or industry levels, whereas employers can only exercise it at national and international levels. The right to collective bargaining is recognized at enterprise and sector/industry levels.

Government authorization or approval is required to establish employers' and workers' organizations, and to conclude collective agreements. The Chamber of Commerce and Industry of Qatar has been established with the approval of the Government, and the establishment of joint committees in enterprises requires the approval of the competent authority.

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	Collective bargaining
	Envisaged	Envisaged
Legal reform (labour law and other relevant legislation)	X	X
Inspection/monitoring mechanisms	X	X
Penal sanctions	X	X
Special institutional machinery	X	X
Civil or administrative sanctions	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 the situation of women, to specific categories of persons, nor to specific industries/sectors. However, there is no discrimination between men and women in the abovementioned measures, and the principle of equality between persons of different sex is emphasized and abided by.

To date, there are no cases of instances where the Government finds that the principle of freedom of association and the effective recognition of the right to collective bargaining has not been respected.

The efforts made by Qatar to respect, promote and realize the principle of the freedom of association and the effective recognition of the right to collective bargaining consist in

continuing cooperation with the ILO, regarding the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work and its application. Certain activities promoting these principles have already been undertaken in cooperation with the ILO.

Progress and achievements concerning this principle and right

Since the last report, the major change concerning the principle of freedom of association and the effective recognition of the right to collective bargaining is the new draft Labour Code, which includes detailed provisions concerning this principle.

No initiatives undertaken in Qatar can be regarded as successful examples in relation to freedom of association.

Difficulties concerning the realization of this principle and right

All the difficulties have been overcome by the new draft Labour Code, which includes provisions on the organization of trade unions and collective bargaining.

Priority needs for 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, ILO technical cooperation would be needed in the following areas, in order of priority (1= most important; 2 = second most important; 3 = third most important):

Type of technical cooperation desired	Ranking
Assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the principle	1
Strengthening data collection and capacity for statistical collection and analysis	2
Strengthening tripartite social dialogue	3

Report preparation

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

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

Saudi Arabia

Government

Recognition of this principle and right

The Kingdom of Saudi Arabia reaffirms once again the importance of the principle of freedom of association and the right to collective bargaining, and its endeavour to promote it.

Progress and achievements concerning this principle and right

Since the Government's last report, several steps have been taken in this respect. Since the approval of the regulations for the establishment of workers' committees in enterprises by the Council of Ministers' Decision No. 12, of 8/1/1422 [2001], followed by Ministerial Decision No. 1691, of 27/1/1423 [2003] concerning the statutes for these regulations established in cooperation with the ILO, the Government has continuously sought to publicize the said committees.

Workers' committees are the means for realizing workers' representation in enterprises with a large number of workers. Several information meetings attended by a large number of workers and employers, were held in different parts of the country regarding these committees. Their aim is to publicize these committees and the role they are expected to play in the defence of workers' rights in enterprises and throughout consultations with management in view of bringing about sound labour conditions.

The Chairman of the ILO Governing Body, following an official invitation by the Minister of Labour and Social Affairs, made an official visit to the Kingdom during which many labour issues of common interest were discussed, inter alia, with the Deputy Prime Minister, the Interior Minister, and the Chairman of the Manpower Council. This visit was a further opportunity to establish links between the ILO and Saudi workers who are currently preparing and completing measures to set up workers' committees in the enterprises concerned.

In January 2003, the Government, in cooperation with the ILO, organized an information meeting about the ILO, which was attended by many of the government departments concerned, some employers and workers. Other information meetings were held to familiarize workers and employers with the fundamental principles and rights at work, and the role of the workers' committees in enterprises in this regard. These meetings will be further organized in order to inform enterprise workers about the importance of these committees.

Other actions undertaken were a visit by the Secretary-General of the International Federation of Arab Trade Unions to the Kingdom to discuss matters of common interest, and to meet with workers in large enterprises so as to strengthen cooperation between the Kingdom and the Federation and promote the principle of freedom of association and the right to collective bargaining. This should enable workers' committees to play their required role.

Several technical delegations from the ILO have also visited the Kingdom, including the ILO Executive Director for the Standards and Fundamental Principles and Rights at Work Sector and several ILO senior officials working on labour standards, Declaration and employment issues. Continuous meetings are also being held between ILO and the Gulf Countries Cooperation (GCC) to intensify efforts, cooperation and coordination, as well as to provide the necessary technical assistance to promote the fundamental principles and rights at work, especially the principle of freedom of association and the right to collective bargaining.

The Government hopes that the workers' committees that have been established in enterprises shall play their expected role as they are an important step to promote the principle, within the capacities and characteristics of Saudi Arabia, and with the technical support of the ILO.

Report preparation

Copies of the report were sent to the employers' representative of the Council of Saudi Chambers of Commerce and Industry, and to the workers' representative of Aramco [a Saudi oil company.]

Singapore

Government

Recognition of this principle and right

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

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

The Singapore Government will continue to engage in tripartite consultations with social partners to ensure that the right to freedom of association and collective bargaining is adhered to.

Progress and achievements concerning this principle and right

During the period covered by this report, there was no development of major importance with respect to relevant national law and practice outlined in the report submitted for the last annual review.

Report preparation

A copy of the report has been forwarded to the Singapore National Employers' Federation and the National Trade Union Congress.

Solomon Islands

Note from the Office

The Office has never received a report from the Government since the start of the annual review process in 1999.

Somalia

Note from the Office

The Office received no report from the Government for the annual review of 2004.

Sudan

Government

Since the Government's last report, there has been no change in Sudan in relation to the principle of freedom of association and the effective recognition of the right to collective bargaining. [Sudan has not ratified the Freedom of Association and Protection of the Right to Collective Bargaining Convention, 1948 (No. 87).]

Thailand

Government

Recognition of this principle and right

In Thailand, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized.

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

- medical professionals: they must have a status of employee under the Labour Protection Act of 1998;
- agricultural workers, provided that they have explicit employers;
- workers engaged in domestic work: they must have a status of employee under the Labour Protection Act of 1998;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- migrant workers; and
- workers 15 years of age and over.

However, freedom of association cannot be exercised by the following categories of workers:

- public servants excluding the employees of state enterprise: the Labour Relations Act of 1975 does not apply to public servants due to the difference of employment conditions between public servants and employees in the private sector. "A Labour Union" under the Act does not cover the association of public servants. Alternatively, public servants have the right to form any other types of their own organization. At present, public servants have their own organization for safeguarding their rights and interests, cited as "Civil Service Association of Thailand";
- teachers;
- workers in the informal economy: this type of work is temporary and often piecework. There is no "employer" and "employee" relationship under the Labour Relations Act of 1975. Accordingly, workers in the informal economy may not be

entitled to organize a labour union under the Act. By all means, they have the right to form any other type of their own organization;

- certain types of workers under the provisions of the Labour Relations Act of 1975; and
- all categories of employers in the public service.

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

- medical professionals: in private hospitals only;
- agricultural workers, provided that they have explicit employers;
- workers engaged in domestic work: they must have a status of employee under the Labour Protection Act of 1998;
- workers in export processing zones (EPZs) or enterprises/industries with EPZs status;
- migrant workers; and
- workers of all ages.

Nevertheless, collective bargaining cannot be exercised by categories of workers such as:

- public servants excluding the employees of state enterprise: the Labour Relations Act of 1975 does not apply to public servants due to the difference of employment conditions between public servants and employees in the private sector. Public servants cannot submit demands and bargain under the Act. The duties of public servants are to secure the national stability and peace. Nevertheless, public servants can exercise their right to protect their interests through the Civil Service Association of Thailand;
- teachers;
- workers in the informal economy: this concerns self-employed persons, including workers in activities with the exception of the Labour Relations Act of 1975, and all categories of employers in the public service. Since they cannot organize as a labour union under the Labour Relations Act of 1975, they cannot submit demands and bargain collectively under the Act. However, in practice, their rights to bargain or negotiate in other manners are not deprived. They still have the right to demand and bargain with the hirer directly or through their own organization; and
- all categories of employers.

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

Section 18 of the Labour Relations Act of 1975 prescribes that if an employer or employers' association and employees or labour unions are able to agree on a demand submitted under section 13, an agreement relating to conditions of employment shall be

written, signed by the employer or representative of the employer and representative of the employees or committee member of the labour union as the case may be, and the employer shall, within three days of the date of the agreement, openly display a notice of the conditions of employment for at least 30 days at the place where employees involved in the demand work.

The employer shall register the agreement relating to conditions of employment under paragraph 1 with the Director-General or a person entrusted by the Director-General within 15 days of the date of the agreement. Section 55 of the Labour Relations Act, B.E. 2518, prescribes that an employers' association shall have regulations and shall be registered with the Registrar. After registration, the employers' association shall be a juristic person. Section 87 of the same Act prescribes that a labour union shall have its regulations and shall be registered with the Registrar. After registration, the labour union shall be a juristic person.

Section 42 of the State Enterprise Labour Relations Act of 2000 prescribes that a State Enterprise Labour Union shall 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 Labour Union must have its regulations and be registered with the Registrar. Upon registration, the State Enterprise Labour Union shall be a juristic person.

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 governments 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

Other measures have been envisaged such as the pilot project on the promotion of tripartism and labour relations network, the best establishment context on labour relations practice, and the establishment of the assessment for accreditation to conform to the

requirements on freedom of association and collective bargaining of the Thai Labour Standard (TLS.8001-2003).

Within these measures, no special attention is given to particular situations with respect to women, specific categories of persons or 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 following shall apply:

- 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 the 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 six months or to a fine not exceeding baht 10,000 [about US$200 as of October 2002], or both; and

- 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 six months or to a fine not exceeding baht 10,000 [about US$200 as of October 2002], or both.

Progress and achievements concerning this principle and right

As far as freedom of association is concerned the Labour Relations Act (No. 3), B.E. 2544, was enacted on 17 November 2001, and the Thai Labour Standard (TLS.8001-2003), B.E. 2546, was established on 24 June. With regard to the right to collective bargaining, the State Enterprise Labour Relations Act, B.E 2543, was passed on 23 March 2000 and repeals the State Enterprise Labour Relations Act, B.E 2534.

The relevant initiatives undertaken by the Government are as follows:

- revision of existing labour relations laws to be in closer accordance with the change in socio-economic conditions, for example by creating the consultation system and by increasing the roles of employers' and employees' organizations in the procedure of labour disputes settlement;

- promotion of a bipartite and tripartite labour relations system emphasizing joint consultation and cooperation between employers and employees in establishments;

- enhancing solidarity and unity of employers' and employees' organizations as the representatives to efficiently negotiate conflicts at the enterprise level;

- disseminating knowledge on labour relations to employers and employees with regard to legal practices and labour-conflict management;

- encouraging employers to improve the productivity in well response of the changes of technology, labour market conditions and attitudes of new workers, for example, the introduction of joint consultative systems and employees' participation systems in the

form of employees' committees, the formulation of precise and standard wage structure, and the development and standardization of employees' skills and capabilities;

- supporting the roles and activities of labour unions, labour federations and employee congress emphasizing the protection of members' benefits in parallel with participation in social development, for example, to promote labour education and training, to educate employees on their rights and duties, and to encourage occupational safety and health; and

- encouraging employers to provide their personnel with development on industrial management and administration for workers' quality of life in order to alleviate conflicts between management and workers.

Both employers and employees increasingly recognize the rights to freedom of association which reflect in the increased numbers of their organizations set up under the Labour Relations Act of 1975 and the State Enterprise Labour Relations Act of 2000, as follows.

Type of organization	2002	2003
State enterprise associations	44	45
Private enterprise labour unions	1 160	1 196
Labour federations	19	19
Labour confederations	9	9
Employers' associations	282	295
Employers' federations	3	3
Employers' confederations	11	11

In addition, the Department of Labour Protection and Welfare set up major policies to promote the right to collective bargaining by promoting:

- bipartite labour relations to prevent and settle labour disputes in both the private sector and state enterprises, by encouraging employers and employees to play greater roles, and pushing for the coming into force of the State Enterprise Labour Relations Act, 8 April, B.E 2543; and

- 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 developing their own training course.

As for unratified Conventions Nos. 87 and 98, the Government, through the Department of Labour Protection and Welfare (DLPW), has allocated the budget to study the readiness of Thailand to ratify Conventions Nos. 87 and 98. The duration of the study is 12 months from 4 August 2003 until 3 August 2004.

Difficulties concerning the realization of this principle and right

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

Nature of difficulty	Freedom of association	Collective bargaining
Lack of public awareness and/or support	X	X
Lack of information and data	X	X
Social values, cultural traditions	X	X
Social and economic circumstances	X	X
Political situation	X	X
Legal provisions	X	X
Prevailing employment practices	X	X
Lack of capacity of responsible government institutions	X	X
Lack of capacity of employers' organizations	X	X
Lack of capacity of workers' organizations	X	X
Lack of social dialogue on this principle	X	X

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; 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	5
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)	5
Capacity building of responsible government institutions	5
Training of other officials	5
Strengthening capacity of employers' organizations	2
Strengthening capacity of workers' organizations	1
Strengthening tripartite social dialogue	4

Report preparation

This report was prepared without any consultations, but copies were sent to:

- Employers' Confederation of Thailand;

- Employers' Confederation of Thai Trade and Industry;
- Labour Congress of Thailand; and
- National Congress of Thai Labour.

Observations submitted by the Employers' Confederation of Thai Trade and Industry (ECONTHAI) through the Government

ECONTHAI finds that the Government's report reflects fairly the situation of this principle and right and has nothing further to add.

Observations submitted by the National Congress of Thai Labour (NCTL) through the Government

NCTL agrees with the Government's report, but notes the following:

- during the period 2000-03, there has been no progress made with regard to this principle and right. Therefore, the Government should accelerate its effort in formulating relevant measures;
- ILO technical assistance is needed in order to strengthen the capacity of employers' and workers' organizations.

Uganda

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 Uganda. [Uganda ratified in 1963 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).]

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; and
- all categories of employers.

However, the following categories of persons cannot exercise these rights:

- all workers in the public service: the Trade Unions Laws (Miscellaneous Amendments) Statute, 1993, extended eligibility for membership to cover employees in the public service, but certain categories of public employees are still excluded as provided under section 1(a)-(f) of the Trade Union Laws (Miscellaneous Amendments) Statute, 1993;

- workers engaged in domestic work;

- workers in export processing zones (EPZs) or enterprises/industries with EPZs status, since it does not exist in Uganda.

- migrant workers;

- workers under 18 years of age: according to the Employment Act No. 4 of 1975, Laws of Uganda 2000, Vol. IX Employment Act, Cap 219, section 50, persons under the age of 18 years of age shall not be employed otherwise as provided in the Act. However there is an exception in the case of light work. Section 51 provides that no person may employ a person of or under the apparent age of 12 years, except by Statutory Order of the Minister;

- workers in the informal economy, despite their big potential; and

- the armed forces (Uganda People's Defence Forces), police and prisons employees. However, there are private security organizations that have been allowed to unionize within the Amalgamated Transport and General Workers' Union.

Government authorization/approval is required to establish employers' and workers' organizations, but not to conclude collective agreements. Both the employers' and workers' organizations are required under the Trade Unions Act to register their organizations with the Office of the Labour Commissioner.

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		
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

Most of the activities which are under awareness raising and advocacy, capacity building and training of the tripartite partners have been taken care of under the ILO/SLAREA Project in the country.

Within these measures, special attention is given to situations with respect to women and specific categories of persons but not to industries or sectors:

- As far as women are concerned, the revised laws (which are still in draft bill form) have been made gender sensitive. This is also applied when considering officials for training and capacity building. However, there is still a need for awareness-raising/ advocacy to ensure that special attention is given to the situation of women. With regard to tripartite discussion of issues, the focus is on representation by the three social partners (government, employers and workers) rather than gender.

- In the case of the workers, one woman is a Member of Parliament.

Progress and achievements concerning this principle and right

No major changes concerning the principle of freedom of association and the effective recognition of the right to collective bargaining have taken place since the last report.

The following initiatives undertaken can be regarded as successful examples in relation to freedom of association in Uganda:

- there are five Members of Parliament who represent workers' interests; and

- the number of registered trade unions has increased from 19 to 21.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in Uganda concerning the realization of the principle are as follows.

Nature of difficulty	Freedom of association	Collective bargaining
Lack of public awareness and/or support	X	X
Lack of information and data	X	X
Social values, cultural traditions	X	X
Social and economic circumstances	X	X
Political situation	X	X
Legal provisions	X	X
Prevailing employment practices	X	X
Lack of capacity of responsible government institutions	X	X
Lack of capacity of workers' organizations	X	X
Lack of social dialogue on this principle	X	X

Priority needs for technical cooperation

To facilitate the realization of the principle of freedom of association and the effective recognition of the right to collective bargaining in Uganda, ILO technical cooperation would be needed 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 implication for realizing the principle	10
Awareness-raising, legal literacy and advocacy	4
Strengthening data collection and capacity for statistical collection and analysis	1
Sharing of experiences across countries/regions	8
Legal reform (labour law and other relevant legislation)	9
Capacity building of responsible government institutions	2
Training of other officials (e.g. police, judiciary, social workers, teachers)	7
Strengthening capacity of employers' organizations	6
Strengthening capacity of workers' organizations	5
Strengthening tripartite social dialogue	3

With respect to strengthening data collection and capacity for statistical analysis, the lack of data and statistical information presents difficulty in providing factual assessment of the situation regarding the implementation of the principle of freedom of association and the effective recognition of the right to collective bargaining.

As for capacity building of responsible government institutions, the Government currently lacks of capacity to oversee the implementation of this principle. The labour inspectorate in particular needs to strengthen the monitoring system.

Concerning strengthening tripartite social dialogue, there is need for tripartite cooperation, and it is through social dialogue that all three can work towards real respect and promotion of this principle. Thus, strengthening the tripartite structures, such as the Labour Advisory Board and the Industrial Court, is important.

Report preparation

In preparing this report, consultations were held only with the most representative employers' organizations. The Government will forward any comments received from the employers' and workers' organizations to the ILO upon receipt.

A copy of the report has been sent to the Federation of Uganda Employers (FUE) and the National Organization of Trade Unions (NOTU).

United Arab Emirates

Government

Recognition of this principle and right

In the United Arab Emirates, the principle of freedom of association and the effective recognition of the right to collective bargaining is recognized.

Medical professionals, teachers, and all categories of employers can exercise freedom of association at sector, national and international levels (only employers can exercise at enterprise and industry levels, directly or indirectly), and the right to collective bargaining is recognized at enterprise, sector/industry, national and international levels.

However, freedom of association and the right to collective bargaining cannot be exercised by the following categories of persons:

- workers in the public service;
- 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 "non-professional" workers.

There are no laws regulating freedom of association for the above categories. However, the right to collective bargaining is regulated by the Labour Law.

Government authorization or approval is required to establish employers' and workers' organizations, but not 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. In particular, the Government is currently studying ways and means of establishing workers' organizations in the United Arab Emirates.

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		X
Capacity building of responsible governments 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
Awareness raising/advocacy	X			

Within these measures, special attention is given to the situation of women, specific categories of persons and 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, as indicated in a previous report;
- an authority for social development and social welfare was established so as to give special attention to the disabled and other special categories of persons; and
- for specific categories of industries/sectors, workers' organizations may be established according to economic sectors, such as industry, banking, petroleum and others.

In instances where the principle of collective bargaining has not been respected, penal and administrative sanctions are taken; the matter being referred to the courts.

Progress and achievements concerning this principle and right

Since the last report, the major change concerning freedom of association is an amendment to the Labour Law approved by the Ministry of Justice and submitted to the Cabinet in July 2003. The major change about collective bargaining is the promotion of the

mechanism activated by the Conciliation Board and the Supreme Arbitration Board in May 2003.

The successful example in the United Arab Emirates, in relation to freedom of association, is an amendment in the Labour Law to form workers' organizations, as proposed by the Ministry of Labour and the Ministry of Justice. This amendment has been submitted to the Cabinet for approval. A technical committee is following this matter actively.

Difficulties concerning the realization of this principle and right

The main difficulties encountered in the United Arab Emirates concerning the realization of freedom of association and the effective recognition of the right to collective bargaining are as follows.

Nature of difficulty	Freedom of association	Collective bargaining
Lack of public awareness and/or support	X	
Lack of information and data	X	
Social values, cultural traditions	X	
Social and economic circumstances	X	
Political situation	X	
Legal provisions	X	
Prevailing employment practices	X	X
Lack of capacity of workers' organizations	X	
Lack of social dialogue on this principle	X	

Priority needs for 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 Arab Emirates, ILO technical cooperation would be needed in the following areas, in order of priority (1= most important; 2 = second most important; 3 = third most important).

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 (e.g. police, judiciary, social workers, teachers)	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, together with governmental authorities outside the Ministry of Labour and Social Affairs. However, no comments were received from employers' and workers' organizations.

Copies of the report were sent to the United Arab Emirates Federation of Chambers of Commerce and Industry, and the United Arab Emirates Coordinating Committee of Professional Associations.

United States

Government

As mentioned in the 2002 report, the principle of freedom of association is recognized in the United States, and for most workers is guaranteed by the National Labour Relations Act (NLRA), which is enforced by the National Labour Relations Board (NLRB).

While not contravening this principle, a recent and much-discussed United States Supreme Court decision modified the availability of one remedy under the NLRA. In *Hoffman Plastic Compounds Inc. v. National Labour Relations Board*, 535 US 137 (2002), an NLRB award of back pay to an undocumented worker as a remedy for violations of the NLRA was found to conflict with federal immigration policy, as expressed in the Immigration Reform and Control Act of 1986 (IRCA), 8 USC 1324a. The court concluded that back pay should not be awarded "for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud" 535 US at 149. The court was very clear that the limitation on back pay did not affect the other remedies available to the NLRB and the courts in enforcing the NLRA. The *Hoffman* decision did not alter or question, but rather confirmed, the general principle that in the United States undocumented workers have the right to form and join trade unions.

Observations submitted by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) through the Government

The AFL-CIO strongly disagrees with the draft update to the report on freedom of association and the effective recognition of the right to collective bargaining prepared by the United States Government for the year 2003. In 2002 the AFL-CIO submitted detailed comments that criticized the reports filed by the United States at that time. The report disregarded the current reality with respect to critical aspects of these fundamental rights. In particular, the AFL-CIO objected to the often glaring discrepancies between the rights guaranteed to workers in theory under United States law, and the failure to extend these same rights in actual practice.

The AFL-CIO calls particular attention to the fact that the 2003 update, like its 2002 counterpart, removed without justification the United States Government's admission that:

> ... the United States acknowledge 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 acknowledge 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.

In the view of the AFL-CIO, the persistent lack of candour that underlies this omission contributes significantly to the failure of the United States to take necessary steps towards achieving full realization of the rights of freedom of association and collective bargaining in this country.

The situation has not improved since last year, and the AFL-CIO therefore views with increased scepticism the continued refusal of the US Government to include the above-quoted language in the United States report. Indeed, the AFL-CIO own research, based on statistics published by the National Labour Relations Board, indicates that unlawful terminations during organizing campaigns are on the increase. Thus, a strong case can easily be made that workers in this country face escalating interference from employers for choosing to form and join unions.

This situation is particularly acute for undocumented workers. In this respect, the draft report's discussion of *Hoffman Plastic Compounds v. National Labour Relations Board*, 535 US 137 (2002) is extremely disingenuous. In *Hoffman Plastic*, the Supreme Court held that undocumented workers are not entitled to the remedy of back pay for violations by employers of their rights under the National Labour Relations Act. The dissent in *Hoffman Plastic* correctly recognized the devastating effect of this holding:

> In the absence of the back pay weapon, employers could conclude that they can violate the labour laws at least once with impunity. The back pay remedy is necessary; it helps make labour law enforcement credible; it makes clear that violating the labour laws will not pay 535 U.S. at 154 (Breyer, J., dissenting).

Thus, as the AFL-CIO argued in its recent complaint to the ILO over *Hoffman Plastic*, the Supreme Court's decision, and the failure of the United States Congress to reverse it, stand in contravention to the rights guaranteed to **all** workers under Conventions Nos. 87 and 98, regardless of their immigration status:

> Where undocumented migrant workers are involved, back pay is the only potential deterrent to unlawful discrimination, because reinstatement is not possible. Eliminating the back pay remedy grants carte blanche to employers to violate undocumented workers' rights with impunity, and discourages workers from exercising their rights. It strains credulity that the US Government's draft Update glosses over this fundamental issue and simplistically maintains that undocumented workers continue to enjoy the full range of rights except for back pay.

A recent decision of the Inter-American Court on Human Rights (No. 18/03) underscores the disingenuousness of the United States conclusion regarding *Hoffman Plastic*. In an advisory opinion of 17 September 2003 treating the legal status and rights of undocumented migrant workers (a copy of which is now attached to the AFL-CIO's *Hoffman Plastic* complaint to the ILO), the court emphasized that once the employment relationship begins, unauthorized workers become entitled to the full panoply of labour and employment rights available to authorized workers. Withdrawing the right of back pay

removes a vital protection to undocumented workers who are discriminated against for exercising their fundamental rights, and undermines those rights to which they remain entitled.

The AFL-CIO strongly disagrees with the draft update on freedom of association and the right to collective bargaining, and urges the United States Government to incorporate their comments into the final update to the ILO. In the meantime, the AFL-CIO is also evaluating whether or not to file a minority report on these critical issues.

Uzbekistan

Note from the Office

The Office received no report from the Government for the annual review of 2004.

Viet Nam

Note from the Office

The Office received no report from the Government for the annual review of 2004.