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**InFocus Programme on Strengthening Social Dialogue**

**Working Paper**

**Promoting Democracy and Peace Through Social Dialogue:**

**A Study of the Social Dialogue Institutions  
and Processes in Indonesia**

**Peggy Kelly**

**International Labour Office - Geneva  
January 2002**

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## Foreword

During 2001, the InFocus Programme on Strengthening Social Dialogue undertook a study of the social dialogue institutions and processes in ten countries, including Indonesia. The main objective of this study is to analyse the practice of social dialogue in Indonesia, with a view to identifying the areas where it could be improved and, in consultation with the government, employers' and workers' organizations, propose directions of possible reform.

In preparing this study, the author drew upon the wealth of knowledge that the ILO has built up over the years on the development of social dialogue in Indonesia. The author also relied on personal interviews with the tripartite constituents in an effort to gain a first-hand understanding of the problems and prospects associated with the functioning of social dialogue institutions and processes.

Although many obstacles remain to achieving effective social dialogue in Indonesia, this study points to the considerable progress that has been made in recent years, particularly since the introduction of freedom of association in 1998. As the first country in the Asian region to ratify all eight of the ILO fundamental Conventions, Indonesia has clearly demonstrated its commitment to advancing the goals and objectives of decent work, and recognizes the important role that social dialogue can play in this regard.

However, political change and economic and social instability have hampered progress in the area of social dialogue, and on many other fronts as well. Yet with the installation of a new government in July 2001, hope again emerges that Indonesia will have a peaceful and prosperous future. In recognition of the continually evolving situation in the country, however, this study can only accurately reflect the state of affairs as of October 2001.

I would like to record my appreciation to the tripartite constituents in Indonesia who generously shared their experience and expertise with us and to Peggy Kelly, Social Dialogue Specialist in the InFocus Programme, who was responsible for researching and writing this country study.

January, 2002

Patricia O'Donovan  
Director  
InFocus Programme on Strengthening Social  
Dialogue

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The views and opinions expressed in this study are strictly that of the author.

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## List of Abbreviations of Indonesian Terms

KKN:	Korupsi, Kolusi dan Nepotisme [Corruption, Collusion and Nepotism]
MPR:	Majelis Permusyawaratan Rakyat [People's Consultative Assembly]
Repelita:	Rencana Pembangunan Lima Tahun [Five-Year Development Plan]
FSPSI:	Federasi Serikat Pekerja Seluruh Indonesia [All Indonesian Trade Union Federation]
KSPSI:	Konfederasi Serikat Pekerja Seluruh Indonesia [All Indonesian Trade Union Confederation]
DPD:	Dewan Pimpinan Daerah [Regional Executive Board]
DPC:	Dewan Pimpinan Cabang [Branch Executive Board]
SPTP:	Serikat Pekerja Tingkat Perusahaan [Independent Plant Level Union]
SBM:	Serikat Buruh Merdeka Setia Kawan [Independent Trade Union]
SBSI:	Serikat Buruh Sejahtera Indonesia [Indonesian Prosperity Trade Union]
AJI:	Asosiasi Jurnalis Indonesia [Indonesian Journalists Association]
KORPRI:	Korps Pegawai Republic Indonesia [Indonesian Civil Servant Association/Corps]
PGRI:	Persatuan Guru Republic Indonesia [Indonesian Teachers Association]
LKS:	Lembaga Kerjasama [Cooperation Agency/ Institution]
P4P:	Panitia Penyelesaian Perselisihan Perburuhan Pusat [National Labour Dispute Settlement Committee]
P4D:	Panitia Penyelesaian Perselisihan Perburuhan Daerah [Regional Labour Dispute Settlement Committee]
JAMSOSTEK:	Jaminan Sosial Tenaga Kerja [Workers' Social Security Scheme]
BAKORSTRANAS:	Badan Koordinasi Strategi Ketahanan Nasional [Coordinating Agency of National Stability]
APINDO:	Asosiasi Pengusaha Indonesia [Indonesian Employers' Association]
KADIN:	Kamar Dagang dan Industri [Chamber of Commerce and Industry]
PPK:	Pembinaan dan Perlindungan Ketenagakerjaan [Manpower Development and Protection]

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SPTSK:	Serikat Pekerja Tekstil, Sandang dan Kulit [Textiles, Clothing, and Leather Workers' Union]
GOLKAR:	Golongan Karya [The Ruling Party]
ASPEK:	Asosiasi Serikat Pekerja Indonesia [Association of Indonesian Trade Union]
MENPERTA:	Menteri Negara Peranan Wanita [State Ministry for the Role of Women]
SARBUMUSI:	Serikat Pekerja Muslimin Indonesia [Indonesian Moslem Trade Union]
FNPBI:	Front Nasional Perjuangan Buruh Indonesia [National Front of Indonesian Labour Movement]
PPMI:	Persaudaraan Pekerja Muslimin Indonesia [Indonesian Moslem Workers Brotherhood]
FOKUBA:	Federasi Organisasi Pekerja Keuangan dan Perbankan Indonesia [Workers Organization Federation of Indonesian Bank and Financial Institutions]
DK3N:	Dewan Keselamatan dan Kesehatan Kerja Nasional [Occupational Safety and Health Council]
DPPN:	Dewan Penelitian Pengupahan Nasional [National Wage Council]
DLKN:	Dewan Latihan Kerja Nasional [National Training Council]
DPN:	Dewan Produktivitas Nasional [National Productivity Council]
DPUN:	Dewan Pengembangan Usaha Nasional [National Council for Business Development]
FSU:	Forum Solidaritas Union [Union Solidarity Forum]

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## Chapter 1 - Background

### The Economic Situation - Pre and Post Crisis

#### ***Background Information and Statistics***

Indonesia, with 205 million people, has the fourth largest population in the world and is the most populous Muslim country. Its population is spread across 6,000 inhabited islands (of a total of some 17,000 islands), and includes 370 ethnic groups who speak 67 local dialects. The country is comprised of 30 provinces, including one special capital city district. Indonesia had been colonized by the Dutch, but proclaimed its independence from the Netherlands in 1945 and achieved its legal independence in 1949. It became a member of the ILO in 1950 and a member of the Governing Body between 1975 and 1978, and again from 1990 to 2002.

According to the 2000 population census, there were 95.65 million people in the Indonesian labour force. Agriculture remains the largest employment sector, followed by trade, restaurants and hotels; manufacturing; and community, social and personal services. The major industries include petroleum and natural gas; textiles, apparel and footwear; mining, cement, chemical fertilizers, plywood; rubber; food; and tourism.

Table 1. Sector Break Down, 2000

<b>Sector</b>	<b>Percentage</b>
Agriculture	45.3
Trade, restaurants, hotels	20.6
Manufacturing	13.0
Community, social, personal services	10.6
Transport and communications	5.1
Construction	3.9

Source: Indonesia Population Census 2000

The unemployment rate has vacillated considerably in the last few years, reflecting the ups and downs of the economy before and after the financial crisis of 1997. Although Indonesian government statistics placed the open unemployment rate at around 6% in the year 2000, some 32% of all workers suffer from underemployment, meaning they are employed for less than 35 hours per week.<sup>1</sup> The informal economy also comprises a significant portion of the overall economy, particularly in certain regions of the country. Informal sector employment was an estimated 63% in 1997, ranging from 81% in the western part of the country to 19% in the eastern part.<sup>2</sup> There are no signs of a reversal of this trend, as the share of informal employment increased to 65% in the year 2000.

<sup>1</sup> Indonesia Population Census 2000.

<sup>2</sup> Directorate of foreign information services, department of information: *Indonesia 1999 an Official Handbook* (drawn from the web site <http://www.indonesia-ottawa.org>, 2000).

## **Economic Conditions - The Financial Crisis**

Over the period from 1967 to 1997, Indonesia achieved significant economic success, ranking it among the best performing East Asian economies. The country was seen as a model of development, as poverty was reduced from 60% of the population to 11%, adult literacy jumped from 56% to 90%, and general living standards improved. Increasing amounts of foreign direct investment (FDI) and a growing presence of multinational enterprises (MNEs) in Indonesia were cited as major contributors to economic growth, expanding employment opportunities and rising living standards during this period.<sup>3</sup>

Then the regional economic crisis hit in 1997, causing an immediate turn about in the economic and social progress that had been made over the past several decades. GDP growth, which had been 7.8% in 1996, ground to a halt by the end of 1997 and the poverty rate doubled from 11% in 1996 to over 20% at the end of 1998.<sup>4</sup> To make matters worse, the flow of FDI fell precipitously, from a peak of \$4.7 billion in 1997 to minus \$0.4 billion in 1998, ranking Indonesia's FDI index at 134 out of 135 countries monitored by the United Nations Conference on Trade and Development (UNCTAD).<sup>5</sup>

The decline in investment led many companies to collapse: a total of 606 companies closed down in 1997, causing 100,000 workers to be made redundant. The situation worsened in 1998, when 957 companies were shuttered, leading to 210,000 redundancies. Statistics from 2000 showed a continued deterioration in the economy, as the number of unemployed and underemployed jumped to 36 million, up from a high of 33.2 million in 1997.<sup>6</sup>

**Table 2. Indonesian Population Aged 15 and Over, 1985-2000 (in thousands)**

<b>Item</b>	<b>1985</b>	<b>1990</b>	<b>1995</b>	<b>1997</b>	<b>2000</b>
Population	99,483.4	113,557.4	128,806.3	135,070.4	141,170.8
Labour Force	61,773.8	71,676.8	84,230.1	89,602.8	95,651.0
LF Participation Rate	62.09%	63.12%	65.39%	66.34%	67.76%
Total Employed	60,435.5	69,524.8	78,322.2	85,405.5	89,837.7
<35 hours/week	21,685.6	23,581.6	27,062.5	29,027.8	30,669.2
% Underemployed	35.10%	32.90%	32.13%	32.40%	32.06%
Open unemployment	1,338.3	2,152.0	5,908.0	4,197.3	5,813.2
% Unemployed	2.19%	3.00%	7.01%	4.68%	6.08%

Source: International Population Survey 1985; 1995; Indonesia Population Census 1990; 2000; and National Labour Force Survey 1997

Worker displacement occurred in all sectors of the economy: 25% from manufacturing; 19% from construction; 37% from services; 10% from trade and hotels; 6% from transport; and 3% from

<sup>3</sup> ILO: response of the Indonesian government to *Seventh survey on the effect given to the tripartite declaration of principles concerning multinational enterprises and social policy*, Part II, summary of reports, GB.280/MNE/1/2.

<sup>4</sup> The World Bank Group: *The World Bank and Indonesia* (drawn from the web site of the World Bank: web site <http://www.worldbank.org>, 1999).

<sup>5</sup> United Nations Conference on Trade and Development (UNCTAD): *World investment report 2001: Promoting wages* (2001).

<sup>6</sup> Indonesia Population Census 2000 and National Labour Force Survey 1997.

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finance. Further changes in the employment structure included a shift from industry and services to agriculture and trade. Urban employment also declined, followed by a drop in formal wage employment and an increase in the informal economy. Workers in the formal economy suffered from a reduction in real incomes due to the accelerated inflation rate, a reduction in hours of work, and less access to supplementary sources of income. Workers in the informal economy suffered from a decline in the demand for products and services, leading to less work and lower earnings for people in this overcrowded part of the economy.<sup>7</sup>

Another problem was high inflation, which eroded the purchasing power of the minimum wage. Legislation was introduced in 1989 to regularize the system of minimum wages that had been in force since the 1970s. Under the new system, minimum wages had to be set with reference to minimum physical needs, the cost of living, and labour market conditions. As prices and labour market conditions vary across different regions of the country, each province establishes its own minimum wages.<sup>8</sup> As a result of escalating inflation, the government increased the minimum wage nationally by 15% towards the end of June 1998, and encouraged businesses to increase nominal wages as far as they could without affecting employment levels.<sup>9</sup>

Aside from strict attention to economic performance, good governance has emerged as another major theme in attracting investment and promoting economic development. Corruption, collusion and nepotism (KKN) have been major problems in Indonesia for decades. According to the World Bank, “Indonesia needs to embark on a long-term program of institution building accompanied by decisive early actions that send strong signals of the government’s commitment as well as contribute to the reduction of corruption and leakage in the short run”.<sup>10</sup> Although there seems to be some progress towards stamping out corruption, the decision in 2001 to proceed with the impeachment of President Wahid based on corruption charges indicates that KKN remains a prevalent problem in Indonesia.

Four years after the onset of the financial crisis, the economy still remains sluggish. Following the string of business failures precipitated by the crisis, there has not been a sufficient re-growth in employment. One telling sign of the failure of the economy to rebound to pre-crisis levels is that although the streets of Jakarta are lined with modern skyscrapers and luxury hotels, many are still sitting vacant.

## **Set up of the Government**

According to the 1945 Constitution of Indonesia, there are six organs of the state: the People’s Consultative Assembly; the Presidency; the House of Representatives; the Supreme Advisory Council; the State Audit Board; and the Supreme Court. The political philosophy of the country is referred to as “Pancasila Democracy”, which means democracy based on the people’s sovereignty. According to the principles of Pancasila, the use of democratic rights should correspond to the following: always be in line with responsibility towards God Almighty according to the respective faith; uphold human values in line with human dignity; guarantee and strengthen national unity; support democracy led by wisdom

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<sup>7</sup> Idem: *Employment and income prospects in the economic crisis: executive summary* (drawn from the web site of the ILO Office in Jakarta: web site <http://www.ilo.org>, 1999).

<sup>8</sup> Ministry of Manpower, Indonesia and The World Bank: *Labour market policies for Indonesia: Indonesian workers in the 21<sup>st</sup> century* (Jakarta, 1996).

<sup>9</sup> ILO: *Employment and income prospects in the economic crisis: executive summary*, op. cit.

<sup>10</sup> The World Bank Group: *The World Bank and Indonesia*, op. cit.

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of deliberation through representativeness; and be aimed at realizing social justice for the whole of the people of Indonesia.

The People's Consultative Assembly (MPR), which is the highest state institution, has a very important role to play under Pancasila democracy. The Assembly is meant to fully exercise the sovereign rights of the Indonesian people, and as such is supposed to reflect the aspirations and the wishes of the people in all of its decisions or decrees. The Assembly is also responsible for appointing the President and the Vice-President, and for determining the Guidelines of State Policy for implementation by the President.<sup>11</sup>

Every five years, the government establishes a set of priorities for its administration. Under Repelita VI (the government's five year plan from 1994-1999), four major policy areas were identified in the area of labour and employment. These included:

1. developing a favourable climate for employment expansion, efficiency, and productivity improvements with emphasis on improving the quality of human resources;
2. improving the quality of manpower through major training reforms;
3. creating productive employment by focussing on young educated job seekers, the unemployed and underemployed; and
4. improving the welfare of workers through "Pancasila Industrial Relations" supported by improvements in working conditions and labour protection. The situation of women workers would be improved by eliminating gender discrimination and better protection would be afforded to women, overseas workers and working children.

Pancasila Industrial Relations and Labour Protection were among the "Seven Priorities" of the Ministry of Manpower under Repelita VI. It was advised that suitable processes and institutions should be set up to create a peaceful working atmosphere and good working conditions in order to ensure industrial harmony and national stability. This was to be accomplished by promoting cooperation between the employers and the employees on a bipartite level, improving working conditions and workers' social welfare, and developing the wage system and worker's cooperatives.<sup>12</sup>

With the change in government in 1998, there were important changes made to the five-year plan, including significant developments in the area of industrial relations. These will be discussed in detail in the text below. There were, however, also major changes in the levels of decision-making in the country, with a major move towards decentralization and a greater focus on regional issues. This is reflective of the geographical makeup of the island country, which is divided into 30 provinces, which, in turn, are subdivided into 353 districts, including municipalities, and approximately 4,000 sub-districts.<sup>13</sup>

## **Regional Autonomy**

Act No. 22 of 1999, known as the Law on Regional Autonomy, promoted decentralization of power and decision-making, as well as a shift towards greater autonomy and authority to the regions.

<sup>11</sup> Directorate of foreign information services, department of information: *Indonesia 1999 an Official Handbook*, op. cit.

<sup>12</sup> ILO: *Work Plan: Indonesia-ILO, 1994-1999* (drawn from the web sit of the ILO Office in Jakarta: web site <http://www.ilo.org>, 1999)

<sup>13</sup> Based on information gathered by Dr. Payaman Simanjuntak, Senior Advisor of Minister of Manpower and Transmigration, Jakarta 2001.

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Under the new law, added power and responsibility is granted to the regional governments to administer laws and enact policies, including those on labour issues. The regional autonomy movement came about in part in response to the successful independence movement of East Timor, as the government was fearful of other provinces taking a similar course of action.

Under the new structure, the central government is to focus on certain key areas, namely foreign affairs, defence, finance and religious affairs, while most other issues are to be dealt with by the regions. The central government also maintains responsibility for drafting new laws, although it is up to the regional governments to determine how the laws will be implemented. In the future, it is also expected that there will be greater emphasis on social dialogue at the regional level.

In the area of minimum wage setting, for example, each region is now responsible for coming up with a proposal for its own minimum wage, which takes into account the cost of living for the region. Each Governor decides what the minimum wage should be for the province, upon the advice of a Tripartite Advisory Council. The setting of regional minimum wages in this fashion began in 1999. In the past, the Minister of Manpower used to determine the minimum for each region, based on proposals submitted by each respective Governor.<sup>14</sup>

The law on regional autonomy poses many unanswered questions for the operation of industrial relations and social dialogue in the country. It is unclear if the regions will have any obligation to answer to the central government, or if they are free to act independently without any effective oversight or report-back responsibilities. The central Ministry of Manpower and Transmigration, for example, says that it can only provide instructions to the regional offices of the Ministry; it cannot order them to carry out any duties or functions. Consequently, relations between the central government and the regions are far less authoritative and communication is lacking, which is causing problems for the Ministry at higher levels. According to interviews with Ministry staff, it appears that the district levels are reluctant to share data and information with the regional, provincial and central offices. The feeling of power and autonomy at the lower levels has been translated into an unwillingness of lower levels of government to be answerable to higher levels.<sup>15</sup>

One obvious problem that could arise from the lack of oversight from different levels of government is that the potential for corruption could worsen. There are reports, for example, that district offices of the Ministry of Manpower and Transmigration are imposing a surtax on employers of 1,000 rupia per employee per month as a means of raising revenue. But there is no clear indication of how these funds would be used.<sup>16</sup>

## **Political Change and Instability**

Following the end of its autocratic rule in 1997, Indonesia has suffered a great deal of political instability. The country has seen its fourth president in as many years, following the ousting of Abdurrahman Wahid in July 2001 and the election of Megawati Sukarnoputri. The instability at the top has also had implications for the structure and running of the government. The Ministry of Manpower was merged with the Ministry of Transmigration early in 2001, which initially led to a decline in the stature and importance of manpower issues in the government.

<sup>14</sup> Ibid.

<sup>15</sup> Interview with the Central Ministry of Manpower and Transmigration, Jakarta, 22 May 2001.

<sup>16</sup> Interview with the Secretariat of the Regional Tripartite Council of Bandung, 25 May 2001.

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With the new cabinet appointments made by President Megawati in August 2001, the government will once again undergo restructuring and change. One important sign of the weight and significance that this administration is placing on labour and employment issues is the background of the newly appointed Minister of Manpower and Transmigration, Jacob Nuwa Wea. As chair of the Confederation of All-Indonesian Trade Unions (KSPSI), Mr. Nuwa Wea is well acquainted with the problems and struggles between employers and workers in the industrial relations arena.<sup>17</sup> The Minister has already indicated his support for the enactment and enforcement of labour laws, including the pending legislation on disputes settlement and industrial relations (to be discussed below), as well as the need to strengthen bipartite and tripartite institutions of social dialogue.

<sup>17</sup> As discussed in Chapter 3 of this study, the Federation of All-Indonesian Trade Unions (FSPSI) was transformed into the Confederation of All-Indonesian Trade Unions (KSPSI) in July 2001.

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## Chapter 2 - Crisis as Prelude to Change

### Industrial Relations Picture pre-1998

The system of industrial relations instituted in 1974 was known as Pancasila Industrial Relations (HIP). HIP is linked to the philosophical basis of the state and its five principles are related to the national character and culture of Indonesia. The basic principles of Pancasila are:

- belief in the one and only god, i.e., not working only for oneself but as a devotion to god;
- a just and civilized humanity, including valuing the dignity of workers as human beings and not just as factors of production;
- the unity of Indonesia, where employers and workers should strive for a common goal;
- democracy guided by the inner wisdom of deliberations of representatives, as differences should be resolved through consensus rather than through strikes and lockouts; and
- social justice for all the people of Indonesia, with an emphasis on balancing the rights and duties of both parties in an enterprise, and an equal sharing of the results achieved between workers and employers on the basis of partnership.

Despite these nice sounding concepts, these principles were used to pressure unions into restricting their power, in order to maintain security and to further economic growth. During President Suharto's New Order regime, democratic principles were undermined under the guise of higher national interests, and the political and economic interests of those in power were pursued at the cost of workers' rights and freedoms.<sup>18</sup>

### ***Freedom of Association***

In order to appreciate the breathe of changes that have taken place in the industrial relations system from 1998 to 2001, it is important to gain an understanding of the situation in the preceding years. The most significant feature characterizing this period was a lack of freedom of association, as there was a de facto government controlled, single union system, the All-Indonesian Trade Unions (FSPSI) and its 13 federated sectoral unions. The FSPSI transformed itself from a unitary, centralized structure to a federative, decentralized structure in 1995. Its 13 industrial sectors were registered as separate national unions, although the FSPSI was the only trade union federation recognized by the Ministry of Manpower. Any unions that formed had to affiliate with the FSPSI federation, as the government would not recognize any unions outside of the federation. Furthermore, the government had the power to dissolve a union if it believed that the union was acting against Pancasila – although it never actually took this step.<sup>19</sup>

<sup>18</sup> ILO: *Tripartite summit on social dialogue: proceedings*, Tripartite Summit on Social Dialogue, by Goenawan Oetomo, Jakarta, 2000 (Jakarta, 2001).

<sup>19</sup> Interview with Sioe Lan, program officer in the ILO office in Jakarta, in Jakarta, 21 May 2001.

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By the fourth year of Repelita VI, covering the years 1997/98, there were 12,839 FSPSI labour units with 272 branches (DPC) and 27 regional boards (DPD). During the same period, there were also 1,244 workers unions at the enterprise level (SPTP).<sup>20</sup>

Three other labour groups have been active since the early 1990s, but were not recognized by the government: the Independent Trade Union (SBM); the Indonesian Prosperity Trade Union (SBSI); and the Alliance of Independent Journalists (AJI). The SBSI, created in 1992, claimed that it had formed the needed number of factory-level unions to meet the legal requirements for registration as a labour union, but its request in 1994 for registration as a trade union was denied; thus the government considered the SBSI to be illegal. Government actions against the SBSI in 1997 included the detention and interrogation of two members in Binjai, North Sumatra and the breaking up of an SBSI training session in Lampung, Southern Sumatra.

Restrictions on freedom of association were also prevalent in the public sector, as civil servants were not permitted to join a union. Instead, they had to belong to KORPRI, a non-union association chaired by the Minister of Home Affairs. Teachers, likewise, had to belong to the Teachers' Association (PGRI). Mandatory KORPRI and PGRI contributions were deducted automatically from civil servants' and teachers' salaries.<sup>21</sup>

For all intents and purposes, the FSPSI was the only union functioning in Indonesia until 1998. It could hardly be considered an independent and democratic trade union, as the government exerted a great deal of influence over the FSPSI and its federated unions, with the Minister of Manpower even occupying a seat on the FSPSI's Consultative Council. Unions were very closely aligned with the ruling party at this time, and political leaders frequently became union leaders, even if they had no union background. Moreover, the Ministry of Manpower collected the union dues from workers and then transferred them to the FSPSI. This practice was in place until June 1996, when a new regulation was issued allowing unions affiliated with the FSPSI to collect union dues directly through the check-off system. Because of the close ties to the government, and its lack of financial and administrative independence, the FSPSI gained little respect from its members, with many workers referring to it as a "yellow" union.

The leaders of the factory unions in FSPSI also garnered little credibility with their members because they were selected by employers. A 1995 regulation stated that workers must only notify their employer that they wished to form a union, and that they could proceed if they did not receive a response from their employer within two weeks. But employers regularly tried to prevent the formation of union branches, which frequently led to strikes. These strikes were generally successful, with FSPSI units being formed shortly thereafter. However, workers who were active in the formation of unions were frequently dismissed, as they had no protection either by law or from government practice.

In 1994, the International Confederation of Free Trade Unions (ICFTU) lodged a formal complaint against Indonesia with the ILO, accusing the government of denying workers the right to set up unions of their own choosing, harassing independent workers' organizations, and taking other actions contrary to ILO standards on freedom of association and the right to collective bargaining. The ILO's Committee on Freedom of Association then urged the Indonesian government to eliminate impediments to the registration of unions, including the SBSI, and to resolve several cases related to detained, and possibly murdered, trade union leaders.<sup>22</sup>

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<sup>20</sup> Directorate of foreign information services, department of information: *Indonesia 1999 an Official Handbook*, op. cit.

<sup>21</sup> Interview with Sioe Lan, op. cit.

<sup>22</sup> ILO: *Official Bulletin: Report of the Committee on freedom of association*, Committee on Freedom of Association, Geneva, case No. 1773, Nov. 1997.

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## **Collective Bargaining**

Until 1994, only the FSPSI could legally bargain on behalf of employees or represent workers in the Ministry of Manpower's labour courts. In early 1994 (in response to the complaint lodged by the ICFTU) a government regulation was passed (PER01/MEN/1994) which allowed the establishment of company unions (SPTPs). The SPTPs could act as representatives of workers in collective bargaining, but it was the prerogative of the employer to recognize or not recognize these workers' organizations as their counterpart in the bargaining process. Workers in a single company with more than 25 employees could join together as an enterprise level union and negotiate a legally binding agreement with their employer outside the FSPSI framework, although the government strongly encouraged these enterprise level unions to join the FSPSI within two years of their formation. According to the regulation, a prospective workers' organization had to win support from 50% of the workers in order to gain representation, although there was no accepted procedure in place for voting in favour of unionisation in a company.<sup>23</sup>

By the end of 1997, a total of 1,234 such enterprise level unions were established. But a number of NGOs charged that many of the unions were formed by company management with little or no worker participation. There were also reports that workers had accepted payments from their employers to set up enterprise level unions in the factories because the SPTPs were considered even weaker than the FSPSI.<sup>24</sup>

Government statistics stated that approximately 80% of enterprise level FSPSI units had collective bargaining agreements. The negotiations had to be concluded within 30 days or be submitted to the Ministry of Manpower for mediation and conciliation or arbitration; consequently, most negotiations were concluded within this 30-day time frame. Agreements were for two years in duration, although they could be extended for another year. In general, the provisions of collective agreements rarely went beyond the legal minimum standards established by the government, and the agreements were often presented to workers' representatives for signing, without going through any real negotiation process. According to the FSPSI, of 23,525 agreements signed between employers and workers as of September 1997, 10,776 of these were "imitation" agreements because they were concluded in non-unionised companies.

The June 1997 report of the ILO's Committee of Experts on the Application of Conventions and Recommendations "observed with deep concern that the discrepancies between the Convention on the one hand, and legislation and national practice on the other, have continued for many years." The Committee also noted "the government had not given sufficient proof of a willingness to comply" with the provisions of ILO Convention 98, The Right to Organise and Collective Bargaining Convention, 1949, "as it has not requested technical assistance in this respect."

## **Tripartite Bodies**

National and regional tripartite consultation forums have existed under Indonesian regulations since 1983. According to government statistics, Tripartite Cooperation Boards (LKS), which provide a forum for consultation and communication among representatives of government, labour organizations and employers, had been established in all municipalities and in 239 regencies throughout Indonesia by the end of fiscal 1997/98. A Bipartite Cooperation Board (LKS) was also established where

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<sup>23</sup> Ministry of Manpower, Indonesia and The World Bank: *Labour market policies for Indonesia: Indonesian workers in the 21<sup>st</sup> century*, op. cit.

<sup>24</sup> Embassy of the United States of America, *Country report on human rights practices for Indonesia* (Jakarta, 1997).

entrepreneurs and workers would come to solve industrial problems. During 1997/98, 925 bipartite units were established, bringing the total during four years of Repelita VI to an additional 3,513 LKS bipartite units. Furthermore, 96 units in 13 LKS sectoral Tripartite Boards had been established in all provinces.<sup>25</sup>

Although they existed in name and in number, the functioning and effectiveness of these tripartite forums were highly dubious. For the most part, the tripartite bodies were not activated and utilized, nor did they demonstrate by their track record any ability to effectively confront the country's many pressing labour and social issues. Part of the problem lay in the fact that the government was the dominant force in any discussions, as the social partners were weak and the workers' group was heavily controlled by the government. Consequently, social unrest became the natural outgrowth of the lack of workable channels to reach a social consensus on hard policy choices.

## **Industrial Disputes**

In the area of disputes, all organized workers, except civil servants, were afforded the legal right to strike, and private sector strikes tended to occur frequently. Before a strike could occur legally, however, intensive mediation was required by the Ministry of Manpower and prior notice had to be given of the intent to strike. Yet in practice, dispute settlement procedures were rarely followed, and formal notice of the intent to strike was rarely given because the procedures by the Ministry of Manpower were slow and had little credibility with workers. Strikes have been a common occurrence, as statistics from the Ministry of Manpower indicate. There was a peak in 1996 of 360 strikes involving 221,557 workers, as tens of thousands of workers took to the streets following the implementation of the new minimum wage in April 1996.<sup>26</sup>

**Table 3. Strike Activity, 1980 to 2000**

Year	No. of Strikes	Workers Involved	Work-hours Lost
1980	100	32,287	328,466
1985	78	21,148	55,001
1990	61	31,234	262,014
1995	276	126,855	1,300,001
1996	360	221,557	2,497,973
1997	234	144,929	1,250,673
1998	278	152,495	1,550,945
1999	125	48,232	915,105
2000	273	126,045	1,281,242

Source: Ministry of Manpower and Transmigration, Republic of Indonesia, 2001

The National and Regional Labour Dispute Settlement Committees (P4P and P4D), which help to solve disputes and job dismissals, registered 4,298 cases in 1997/98 and solved 4,086 of these.<sup>27</sup> Despite these favourable-sounding government statistics, the dispute settlement bodies remained fairly ineffective in terms of preventing and resolving industrial disputes. This was largely attributable to

<sup>25</sup> Directorate of foreign information services, department of information: *Indonesia 1999...*, op. cit.

<sup>26</sup> Statistics from Ministry of Manpower and Transmigration, Republic of Indonesia, 2001.

<sup>27</sup> Directorate of foreign information services, department of information: *Indonesia 1999...*, op. cit.

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union members' belief that the dispute resolution committees tended to side with employers. As a result, workers frequently presented their grievances directly to the National Human Rights Commission, Parliament, and NGOs. Moreover, workers found to have been illegally dismissed were rarely reinstated to their jobs, as administrative decisions in favour of these dismissed workers tended to be monetary awards rather than reinstatement. According to the law, employers were required to obtain the approval of the labour dispute resolution committee before firing workers, but in practice this was often ignored.<sup>28</sup>

## **Social Insurance**

In the area of occupational health and safety, PER04/MEN/1987 gives the Ministry of Manpower the authority to set up Safety and Health Committees to develop safety-related practices at the enterprise level. In the mid-1990s, there were about 10,000 of these committees functioning in Indonesia.<sup>29</sup> In fiscal 1997/98, there were 87 Guiding Committees for Health and Safety at Work established, with a total of 2,614 such committees set up in four years of Repelita VI.

A Worker's Social Security Program, known as Jamsostek, was established in 1978 as the principal social security scheme, providing life insurance, retirement benefits, healthcare for workers, and workers' compensation insurance for work-related accidents and illnesses. A major component of Jamsostek is a compulsory savings scheme, or a provident fund, which makes disbursements to workers upon retirement. But investments have not always produced a positive real rate of return, so the lump sum payment made at retirement provides poor protection over the ensuing years. Aside from this provident fund, there is no provision in Indonesia for income support or a social safety net, nor is there unemployment insurance.<sup>30</sup> Workers are entitled to draw the balance from their account, if they have been members of the scheme for at least five years and have been unemployed for six months. Jamsostek has a Tripartite Board of Commissioners, comprised of five persons, which oversees the activities of the fund.

As of December 2000, Jamsostek covered 18.2 million employees, out of a total workforce of some 95.65 million. Consequently, Jamsostek only provides coverage to a mere 19% of the labour force. Moreover, both contributors and beneficiaries perceive it to be ineffective. The FSPSI has called for the fund to be restructured, drawing attention to the low level of benefits and coverage, the lack of transparency in the system and the inappropriate use of social security funds.<sup>31</sup>

## **Role of Police and Military**

The police and the military traditionally played an active role in labour relations matters, despite the Minister of Manpower's revocation in 1994 of a 1986 regulation allowing the military to intervene in strikes and other labour actions. Furthermore, a decree of 1990 remained in effect which

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<sup>28</sup> Embassy of the United States of America: *Country report on human rights practices for Indonesia*, op. cit.

<sup>29</sup> Alexandra Cox Edwards: *Labour regulations and industrial relations in Indonesia* (The World Bank, 1996), p. 13.

<sup>30</sup> ILO: *The social impact of the Asian financial crisis: Technical report for discussion at the High-Level tripartite meeting on social response to the financial crisis in east and southeast Asian countries* (Bangkok, 1998), p. 45.

<sup>31</sup> Idem: unpublished manuscript as contribution to the ILO publication, *The social impact of the Asian financial crisis...*, see note No. 1.

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gave the Agency for Cooperation of National Stability (Bakorstranas) the authority to intervene in strikes in the interest of political and social stability. A number of unions complained that police and the local military harassed and sometimes detained union leaders, and seized materials from union offices without warrants. The most commonly cited complaint, however, was that police and the military colluded with employers to intimidate workers.<sup>32</sup> The demands for less military interference in civil society have been associated to an extent with concerns over the suppression of workers' rights and interests, as the military and/or the police were seen as intervening too forcefully in worker protests and strike actions.<sup>33</sup>

## **Development of Social Dialogue Coming Out of the Crisis**

When the financial crisis hit Indonesia in 1997, it drew attention to many of the deficiencies in the country's industrial relations system, and in particular, to the lack of consultation and involvement of the social partners in policy making on labour and employment matters. But as the crisis worsened, organized labour began to push for social dialogue as a means of finding solutions to the resultant problems, such as seeking alternatives to layoffs. FSPSI, for example, set up a team to consult with and assist companies contemplating mass layoffs. The team also provided legal assistance to workers who were facing dismissal. The main objective of the team was to promote the search for alternatives to layoffs through the reduction of working time, the elimination of overtime, alternating work shifts, cutting production costs and alternating home rest periods. The Indonesian Employers' Association (APINDO) also began providing a similar range of services to its members and attempted to monitor the incidence of layoffs through its network of 27 provincial offices. Yet the search for alternatives to layoffs was not a widespread practice, mainly due to the gravity of the crisis, but also because the means for building labour-management trust and strong workplace cooperation were not deeply institutionalised.<sup>34</sup>

Another outcome of the crisis was that the credibility of the FSPSI was deeply eroded, and workers began to look elsewhere for effective representation in dealing with their grievances. The federation admitted its limitations and ineffectiveness in relation to the authorities, and complained of the government's general tendency to ignore trade unions in policy-making. Upon recognition of its shortcomings, the FSPSI leadership then sought the assistance of the ILO in pushing for political reforms and facilitating the democratisation process, particularly in relation to trade union rights. The FSPSI followed with a strong statement calling for the elimination of all existing laws restricting freedom of association. These actions were supported by opposition political parties, independent trade union leaders, NGOs, leaders of official unions, university academics and students, some government officials and employers, as they acknowledged that socio-economic reforms and the construction of legitimate labour market institutions were needed for resolving the crisis.

As a first step in the promotion of social dialogue as a means of dealing with the crisis, a tripartite delegation, comprised of the Ministry of Manpower, the Indonesian Chamber of Commerce and Industry (KADIN), the Indonesian Employers' Association (APINDO) and the FSPSI came together in January 1998 to discuss the current manpower situation in Indonesia. Among the

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<sup>32</sup> Embassy of the United States of America: Country report on human rights practices for Indonesia, op. cit.

<sup>33</sup> Alan Boulton: *New labour laws in Indonesia: Promoting freedom of association and the right to collective bargaining* (drawn from the Australian Industrial Relations Committee web site [www.airc.gov.au](http://www.airc.gov.au), 1999).

<sup>34</sup> The following information is drawn from ILO: *The social impact of the Asian financial crisis...*, op. cit.

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recommendations that came out of this tripartite meeting was a definition of the priority tasks of tripartite institutions and bodies. These included:

1. maximizing efforts to create harmonious employment conditions to strengthen undertakings and enterprises;
2. minimizing lay-offs by considering alternatives such as reducing overtime work, rearranging working hours, cutting costs which are not directly required by the production process, and relocating workers to other companies within the group; and
3. promoting negotiations between workers and employers on the management of lay-offs where they are unavoidable.

Unfortunately, however, the meeting did not elaborate on how these recommendations would be pursued and implemented.

It also became evident that a root cause of the weak basis for dialogue was the constraints on freedom of association. A precondition for effective social dialogue is for the parties to be free, able and willing to discuss issues seriously, make commitments, and deliver on them. This necessitates the existence of free, representative and strong trade unions to defend the interests of workers before employers and the government. Yet initiatives to develop independent and democratic trade unions in Indonesia were contained by government repression. As a result, workers' organizations were forced to operate illegally and often clandestinely, and so were unable to openly criticize government policies and programmes.

To highlight the problem of freedom of association, two cases were submitted to the ILO's Committee on Freedom of Association alleging violations of trade union rights in Indonesia. At its meeting in November 1997, the Committee adopted interim conclusions in the pending cases and expressed its deep concern that no action had been taken by the government to remedy the situation of workers in Indonesia. The Committee then requested the government to do the following:

- eliminate the requirements for union registration which have the effect of impeding the right to organize;
- grant registration to the Indonesia Prosperity Trade Union (SBSI) so that it could exercise legitimate trade union activities;
- drop criminal charges against Mr. Pakpahan, Chair of SBSI, and ensure his release and ability to exercise freely his trade union activities;
- institute an independent judicial inquiry into the homicide of a trade unionist; and
- investigate the dismissal of trade unionists and ensure their reinstatement if it appears they were dismissed for trade union activities.

Similarly, the application of ILO Convention No. 98, The Right to Organise and Collective Bargaining Convention, 1949, by Indonesia was discussed many times by the International Labour Conference's Committee on the Application of Standards. In 1997, the committee urged the government to respect the civil liberties essential for full implementation of the Convention, and recalled the need to:

- strengthen the protection of workers in respect of anti-union discrimination;
- adopt specific legislative provisions to protect workers' organizations from acts of interference by the employer; and
- eliminate restrictions imposed on the right to bargain collectively in the public and private sectors.

Even the policies of the World Bank, International Monetary Fund (IMF) and Asian Development Bank (ADB) in their assistance to Indonesia following the financial crisis recognized the need to bring stability into employer-employee relations, while maintaining a regard for appropriate labour standards, as important means for achieving "sustainable economic development". It is important

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to note that freedom of association and social dialogue are seen as important parts of the democracy movement in Indonesia.<sup>35</sup>

Although the financial crisis created major difficulties in Indonesia, it also precipitated many of the positive changes that eventually took place, including calls for democracy; changes in government; requests for ILO assistance in reforming the country's labour laws; the opening up of freedom of association, which led to the birth of new independent unions; and the ratification of all the ILO core Conventions. The crisis revealed that the social partners, especially the trade unions, were weak and that although tripartite structures existed, they were ineffective. As the existence of free, independent and representative trade unions is a precondition for social dialogue, changes were needed in the labour laws to allow for freedom of association so that productive social dialogue could take place. The actions of the ILO Committees on Freedom of Association and the Application of Standards also encouraged many of these positive actions, and led to the ILO's direct contacts mission in the fall of 1998.

## **The Process of Change from 1998-2000**

As discussed above, prior to 1998 free and representative parties to dialogue did not exist, as there was only one government-controlled union in the country, the FSPSI. So even though there were institutions of social dialogue in place prior to 1998, they were not democratic in their composition or in their function. The following is a description of the process conducted by the ILO from 1998 to 2000 to promote freedom of association and effective social dialogue in Indonesia.<sup>36</sup>

Owing in part to the financial crisis that deeply affected the country, there was a change in government in May 1998, with President B.J. Habibie succeeding President Suharto, who had been in power for nearly 32 years. The new government was called upon to bring about reform, and to put an end to KKN – corruption, collusion and nepotism. Integral to this was the recognition of the need for workers to form and run organizations of their own without political interference by the government, as well as the need for representative bodies to look after the interests of workers and to provide a safeguard against abuses of power by the authorities. An important symbolic step in this regard came in June 1998, when the government recognized the SBSI and released its chairperson, Mr. Muchtar Pakpahan from imprisonment. At the same time, the government also included leaders of the union in the delegation to the ILO conference.<sup>37</sup> The government's overall response to the cries for reform and change involved a new respect for human rights, basic freedoms and democratic processes – as well as a new willingness to work with international organizations such as the ILO.

## **ILO Activities**

The ILO's activities began with a Direct Contacts Mission in August 1998 to assist the government in ensuring that its labour legislation fully complied with the requirements of the Right to Organize and Collective Bargaining Convention, No. 98 (1949) and the Freedom of Association and Protection of the Right to Organize Convention, No. 87 (1948).

The direct contacts mission was carried out from 24 to 28 August 1998, with the aim of examining the steps taken to ensure full application of Convention No. 98 and to provide advice on the necessary measures to ensure full compliance with Convention No. 87. The mission held discussions

<sup>35</sup> Alan Boulton: *New labour laws in Indonesia: Promoting freedom of association and the right to collective bargaining*, op. cit.

<sup>36</sup> ILO: *Demystifying the core Conventions of the ILO through social dialogue: The Indonesian experience* (Jakarta, 1999).

<sup>37</sup> Alan Boulton: *New labour laws in Indonesia: Promoting freedom of association and the right to collective bargaining*, op. cit.

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with representatives of government, employers' and workers organizations, and other interested parties. The mission examined the present laws on trade union registration, demonstrations and industrial dispute settlement, as well as the laws scheduled to come into operation in October 1998, i.e., the Manpower Act, 1997 and its implementing regulations. The Minister wrote to the President in August 1998 recommending that the President take steps to postpone the coming into effect of the Manpower Act for one year, in order to allow time for the ILO to conduct its analysis.<sup>38</sup> Pending further deliberations, the implementation of the Act has since been delayed until September 2002.

The mission was requested to provide technical assistance to the government in drafting new legislation on the registration of workers' organizations and on the settlement of industrial disputes, as well as the revision of the Manpower Act, 1997 and the drafting of the implementing regulations. These efforts culminated in two major legislative proposals: the Trade Union Bill, which is directed at providing scope for the registration and operation of new workers' organizations; and the Industrial Dispute Settlement Bill, which is to reform the system and institutions dealing with the settlement of industrial disputes. Both Bills deal with two fundamental problems in Indonesian labour law – the denial of effective workers' representation through independent trade unions; and the absence of an accepted and independent mechanism for the prevention and settlement of industrial disputes.

The mission team also met with senior officers of the Indonesian Armed Forces (ABRI). The Head of Staff of General Affairs, General Razi, raised a number of issues, including: the new policy of ABRI not to interfere in industrial disputes except for security reasons (that of public order); the recognition that, in the past, the military has interfered too far in matters which were not its business; the concern of the military about long disputes with potentially adverse effects on investment and the damage of factories or property being destroyed in the course of disputes; the "expectations" within Indonesian society that the military might help to resolve industrial disputes or contribute their ideas towards the resolution of such disputes; the problem of local level commanders taking too active an interest in everything that happened in their area and interfering too much; and the need for time for the new changes and reformation ideas to work their way through the system. The direct contacts mission emphasized that according to ILO principles, there should be no military interference in industrial disputes or in the exercise of the right to freedom of association in the future.<sup>39</sup>

The report of the ILO's direct contacts mission was sent to the Indonesian government in September 1998. The report contained the following recommendations:<sup>40</sup>

- to establish a truly representative tripartite body to promote social dialogue and cooperation in the field of industrial relations (including effective consultation on the preparation and implementation of labour legislation);
- to ensure that civil servants and workers in state-owned enterprises have the right to freedom of association;
- to establish an appropriate system for the registration and recognition of unions;
- to establish an effective and impartial dispute settlement institution;
- to provide protection for workers against anti-union discrimination and protection for unions against acts of interference by employers;
- to ensure that the security forces refrain from intervening in industrial disputes; and
- to ensure the immediate release from imprisonment of labour activists, such as Dita Sari.

These findings were addressed during a Special Session of the People's Consultative Assembly, held in Jakarta in November 1998. The session adopted 12 decrees, among them Decree No.

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<sup>38</sup> Internal ILO document (18 Sep. 1998).

<sup>39</sup> Ibid.

<sup>40</sup> Alan Boulton: *New labour laws in Indonesia: Promoting freedom of association and the right to collective bargaining*, op. cit.

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XVI/MPR/1998 on political economy in an economic democracy, which among other things stipulates: "Economic democracy for workers shall be achieved through labour participation and freedom of association in line with the law and ownership share in the company employing them." Furthermore, Decree No. XVIII/MPR/1998 revokes the 1978 Assembly decree on the Propagation and Implementation of Pancasila (P4). The decree rules that the government must stop the compulsory P4 propagation program, and added a chapter to the original draft decree on the right to information.<sup>41</sup>

In December 1998, a seminar on the Fundamental Human Rights Conventions of the ILO was held in Jakarta, jointly run by the ILO and the Ministry of Manpower. About 100 participants attended the seminar, including senior officers of unions, government departments and employers' organizations, as well as representatives from NGOs and the universities. From this seminar, it became evident that there was limited understanding of the ILO Conventions and human rights issues generally, and training was needed towards promoting an understanding and acceptance of basic principles embodied in the instruments.

Days following the ILO seminar, Indonesia signed a Letter of Intent regarding the ratification of the seven fundamental ILO Conventions. Having already ratified four Conventions, this meant that Indonesia would ratify Convention No. 105, the Abolition of Forced Labour Convention, 1957, Convention No. 111, the Discrimination (Employment and Occupation) Convention, 1958, and Convention No. 138, the Minimum Age Convention, 1973, by June 1999. The Letter of Intent also provided for the establishment of a Tripartite Task Force to follow up on the agreement. The Task Force was established by Ministerial Decree 7/1999 and was chaired by the Secretary General of the Ministry of Manpower, Suwanto. It had 36 members, including representatives from various Government Ministries (including Manpower, Foreign Affairs, Home Affairs, Industry and Trade, Information, State/Cabinet Secretariat, Women's Affairs, Promotion of State Enterprises, Justice, Education and Culture, Defence, and Security), employers (APINDO) and trade unions (including FSPSI, SPSI Reformasi, SBSI, PPMI, FSBDSI, SARBUMUSI, GASPERMINDO, KPNI and KBM).

The role of the task force was to:

- prepare the ratification of the three fundamental Conventions that had not yet been ratified;
- socialize the seven fundamental Conventions;
- make an inventory of the regulations that were not in line with the seven fundamental Conventions; and
- report the result of its task implementation in writing to the Minister of Manpower.

### ***Process of Social Dialogue - Awareness Raising Workshops***

A total of 66 awareness-raising tripartite workshops on fundamental principles and rights at work were held within one year, with the technical advisory and financial support of the ILO. In an attempt to reach the various regions, the workshops were spread out over 17 of the country's 27 provinces. A total of 1,660 participants attended these workshops, with broad representation from the social partners, as well as other groups in civil society. The approximate breakdown of participants was as follows: 35% from government; 19% from workers' organizations; 34% from employers' organizations; 4% from NGOs; 2% from the military and police; and 6% from the ILO.

These workshops provided an opportunity to disseminate information about international labour standards, and to discuss fundamental issues such as freedom of association, military and police

<sup>41</sup> Directorate of foreign information services, department of information: *Indonesia 1999 an Official Handbook*, op. cit.

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intervention in industrial disputes, the role of the Ministry of Manpower and the problems with its inspection function, the changing industrial relations scene, labour law reform, and the need for changing attitudes regarding the employment of women and children.

Although there was considerable ILO input and assistance in these workshops, the control of the process and the final decisions were made by the government of Indonesia, in particular the Ministry of Manpower. As a result, the outcome of the exercise rests with the Ministry of Manpower and is the result of tripartite consultation.

An emphasis was placed on sustainability, based on internal tripartite capacity building. Training of tripartite Master Trainers (TOMT) was conducted on the concept, content and substance of the core ILO Conventions. A total of 154 resource persons emerged from these “train the trainer” sessions, drawn from workers (28), employers (28) and government (98). The resource persons were then on hand for each of the 66 tripartite workshops. Importantly, the trainers were able to communicate with the participants in their own language and were not hindered by cultural barriers.

As a result of these efforts, and thanks largely to the establishment of a Tripartite Task Force for the ratification of the fundamental human rights Conventions, Indonesia became the first country in the Asia Pacific region to ratify all of the ILO’s fundamental Conventions. President B.J. Habibie signed into law the Bills on ratification of the three remaining core Conventions in April 1999.

Furthermore, the Ministry of Manpower convened a meeting of the National Tripartite Task Force in July 1999 to put into motion the ratification of Convention No.182, the Worst Forms of Child Labour Convention, 1999. Following this meeting, the task force recommended the immediate ratification of the Convention and formed a working group to formulate the report and recommendations of the Task Force on the ratification of the Convention. As a result, Convention No. 182 was ratified by Indonesia in March 2000.

Both a self-evaluation and a tripartite assessment of the methodology of the awareness raising workshops were conducted. The self-evaluation revealed that the workshops were very well received by the participants, as they provided an opportunity for education on and debate of the fundamental Conventions, their practical application and discussion on labour issues in general. The social partners, the military and the police all came away with a better awareness of the ILO, the fundamental Conventions, and the effect of their implementation. The tripartite assessment involved a one-day meeting in March 1999 to evaluate the workshops and training materials used.

Part of the success of the workshops was attributed to the use of both national trainers and ILO experts. The national trainers were able to communicate with the participants in their own language, and the ILO experts were on hand to ensure that technically correct and objective information was being provided to the participants.

## **Labour Law Reform Process**

Running parallel to the efforts to raise awareness about the fundamental ILO Conventions was an effort to reform and revise the country’s labour legislation. Following the onset of the financial crisis, the direct contacts mission of the ILO, and the ratification of Convention No. 87, it became evident that there was a need for a revision of the labour laws in Indonesia. The emergence of new trade unions, which could compete with the government-sanctioned union, required the development of a Trade Union Bill to provide for the registration and operation of workers’ organizations and for the representation of workers in the collective bargaining process. The disputes arising from the crisis, particularly those over layoffs, highlighted the inadequacies of the dispute settlement mechanisms – the National and Regional Labour Dispute Settlement Committees (P4P and P4D). The main legislation on

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labour disputes is more than 40 years old, and the regulation of trade unions was through decrees of the Minister of Manpower, and not through a law made by Parliament.

After the change in government, there was a decision to postpone the effective date of the new Manpower Act of 1997, an umbrella piece of labour legislation, until October 2000 (its implementation has since been delayed again). Based on concerns raised by various workers organizations, women's groups, NGOs and the ILO, primarily that the legislation curtailed workers' rights, it was agreed that revisions would be made to the law before its implementation.

A process of drafting three pieces of labour legislation began shortly thereafter, with tripartite plus consultation and involvement. The three pieces of legislation dealt with issues governing trade unions, industrial disputes, and manpower protection and development. Of these three pieces of legislation, priority was given to the adoption of the Trade Union Bill as it dealt most specifically with the issues of freedom of association. This Bill was adopted by the Indonesian Parliament in August 2000 and became the Trade Union Act No. 21 of 2000.

The Trade Union Act contains the following components:

- protection for the right to organize for workers in private sector employment as well as in government agencies (but not civil servants, who are to be dealt with in separate legislation);
- the right of any ten workers to form a union of their choosing;
- protection against anti-union discrimination and interference by employers;
- the registration of unions with the government agency responsible for manpower affairs;
- basic requirements regarding constitution and rules, rights and obligations, financial administration, the holding of property and dissolution; and
- the right to conduct collective labour agreement negotiations and the right of workers to choose which union shall represent them in such negotiations.

The Trade Union Act makes significant improvements over the provisions of the Ministerial Regulation No. 5 of 1998 on the Registration of Workers' Organizations, and incorporates many features of international labour standards. The law provides a sounder basis for the registration and operation of the growing number of new unions and for the representation of workers in collective bargaining negotiations. A growing concern, however, has arisen over the ever-burgeoning number of trade union federations that have emerged following enactment of the law.

Second priority was given to enactment of the Industrial Dispute Settlement Bill, with tripartite consultations being initiated in October 1998. The Bill covers a range of industrial disputes, including disputes over interests, disputes over rights, disputes over termination of employment, and conflicts between unions in the same enterprise concerning the implementation of trade union rights and obligations. The draft legislation provides for a number of processes for the settlement of industrial disputes, including bipartite negotiations, mediation, voluntary industrial arbitration, industrial tribunals, and settlement by judges.

The draft Bill has been considered at various tripartite-plus workshops and by the National Tripartite Council.<sup>42</sup> A group of 12 unions walked out of a tripartite consultation on the draft Bill in July 1999 because they preferred the introduction of a Labour Court system rather than one based on central and regional dispute settlement agencies, as proposed by the Ministry. The group of unions was convened by SBSI president, Muchtar Pakpahan, and intended to prepare its own draft legislation on six subjects: trade unions, labour courts, social security, wages, business and labour rights/working conditions.

<sup>42</sup> For a discussion of this and other tripartite bodies, please see Chapter 4.

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Several tripartite consultations have also been held regarding the drafting of revisions to the Manpower Act. A drafting team is taking into consideration international labour standards in the revision work, particularly the fundamental Conventions. The ILO has supported the holding of a series of workshops on women workers and child labour to assist in the revision process. The same group of 12 unions, however, walked out of a tripartite plus meeting on revisions of the Act because they felt that the reformulation should be left to the Parliament.

Indonesia's labour legislation needed to be revised not only because it was outdated and unsuited to a modern economy, but emerging conditions and circumstances had to be addressed as well. Among these were the operation of new and free trade unions; the extension of collective bargaining and the implications of multi-union representation; the changing aspirations and expectations of workers; and a growing number of industrial disputes which could not be dealt with effectively by present mechanisms or simply suppressed by military or police action.

### ***Reaction of the Parties to New Labour Legislation***

The ILO conducted an advisory mission on Freedom of Association in January 2000, holding meetings with senior representatives from the three most representative workers' organizations – the Federation of All-Indonesian Trade Unions (FSPSI), the SPSI Reformasi and the Indonesian Prosperity Trade Union (SBSI) – as well as the employers' association and the government. The following concerns were raised regarding the new draft labour legislation.<sup>43</sup>

The larger unions criticized the trade union legislation because it allowed any number of unions to form, and it was felt that this multiplicity would serve to weaken the union movement. But as there are many small and medium enterprises, it was decided that a relatively small number of workers should be able to come together and form their own unions. Under the new law, the minimum number of workers required to form a union is 10, at least five unions can form a federation of trade unions, and at least three federations can form a confederation of trade unions.<sup>44</sup>

The SPSI Reformasi felt that the conditions of eligibility of union membership at the enterprise level should be determined by union by-laws and not by legislation. The mission informed them that the government had agreed to delete this provision from the draft Trade Union Bill. The FSPSI expressed concern that a growing number of unions were emerging which lacked solid grass roots support, and this posed a threat to a stable industrial relations system. They proposed that the draft Trade Union Bill should only provide for the registration of unions made up solely of workers, rather than of NGOs, students and so forth. They also believed that the ability for plant-level unions to affiliate directly with international organizations of workers could weaken national federations and confederations. The mission explained that the question of affiliation was a matter of union by-laws; however, the affiliation of enterprise-level unions to international workers' organizations was unlikely given that the by-laws of these organizations often provided only for the affiliation of national centres.

The SBSI objected to the absence under the draft Trade Union Bill of the establishment of tripartite consultative bodies at the district, regional and national levels. The SBSI also wanted the law to include a provision for the compulsory deduction of trade union dues, as it was having problems in obtaining dues from its members due to employers' refusal to deduct these contributions. The mission pointed out that union security clauses were compatible with Convention No. 87, as long as they were the result of free negotiation between workers' organizations and employers; however, they could not

<sup>43</sup> Internal ILO document (24-27 Jan. 2000).

<sup>44</sup> ILO: *Demystifying the core Conventions of the ILO through social dialogue...*, op. cit.

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be imposed by the law itself.<sup>45</sup> The SBSI was also concerned that two existing laws, the Criminal Law and the Law on Public Servants, violated freedom of association principles. The union feared that these laws would take precedence over the ratified ILO Conventions, because the laws were passed by Parliament and the Conventions were only ratified by Presidential Decree.<sup>46</sup>

The advisory mission also held meetings with senior representatives of the Indonesian Chamber of Commerce (KADIN) and the Indonesian Employers' Association (APINDO) to discuss the employers' concerns with the new draft labour legislation. APINDO raised the problem associated with the rapid growth of trade unions since the ratification of Convention No. 87. They noted that many of these newly formed unions had poor negotiating skills. APINDO expressed its preference for negotiating with a sole union which represented a majority of the workers, rather than a multitude of unions. If no union in an enterprise had the support of a majority of workers, then APINDO said that employers were ready to negotiate with a coalition of trade unions.

According to KADIN, the most serious threat to a stable industrial relations system was the emergence of new unions that had no idea of what their proper functions were, or how to defend their members' interests. KADIN suggested that the situation could be improved if the ILO offered its services to educate workers about the proper role and functioning of workers' organizations.<sup>47</sup>

In discussions with the government on the draft labour law, the advisory mission found that the government was willing to revise its draft on almost all the points raised by the mission.<sup>48</sup> Nonetheless, more than a year and a half following the conduct the ILO advisory mission in January 2000, the draft labour legislation was still not enacted.

### ***Latest Developments in Labour Law***

Deliberations on the Manpower Protection and Development Bill (PPK) should continue into early 2002. A number of trade union federations have indicated that they would like to divide the Manpower Protection and Development Bill into five separate pieces of legislation, covering: 1) social security; 2) termination of employment; 3) wages and workers' welfare; 4) collective bargaining; and 5) remnants of the original PPK Bill.

Parliament is likewise continuing deliberations on the Industrial Dispute Settlement Bill. Despite initial hopes that the Bill would be enacted before the end of 2001, it's adoption is most likely to be delayed until some time in 2002, owing in part to the debate over an objectionable component of the Bill that would allow the employer to unilaterally refer a dispute to the industrial tribunal, thus rendering strike action illegal. Such a provision runs contrary to the principles of freedom of association on the right to strike, and the ILO has consistently advised against its inclusion in the final Bill.

Following the enactment of these Bills, it will be important to conduct an education campaign, particularly at the enterprise level, so that workers and employers are aware of their rights and responsibilities under the new laws. In a country as diverse as Indonesia, it will be a challenge to reach out to all workers and employers.

<sup>45</sup> Internal ILO document (24-27 Jan. 2000).

<sup>46</sup> Internal ILO document (30 Apr.- 6 May 2000).

<sup>47</sup> Internal ILO document (24-27 Jan. 2000).

<sup>48</sup> Ibid.

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## Chapter 3 - The Parties to Social Dialogue

### Workers' Organizations

Following the ratification in June 1998 of Convention No. 87 on Freedom of Association and Protection of the Right to Organize Convention, 1948, there has been a proliferation of trade unions. As described above, prior government policies had imposed a trade union monopoly and restricted the rights of workers to organize and bargain collectively. With the promulgation of the Trade Union Act in August 2000, however, any group of 10 or more workers can come together to form a union. As of October 2001, there were 60 registered trade union federations at the national level, with most organized along sectoral lines, and 146 national unions representing workers at multinational companies such as Coca Cola and Nestlé. There are also thousands of independent unions at the provincial level, with some only at the enterprise level. Most unions are established at the enterprise level (there were 6,600 such unions formed as of May 2000), and in a growing number of cases, there is more than one union per enterprise.<sup>49</sup>

The existence of dozens of trade union federations, hundreds of independent unions and thousands of enterprise level unions has caused a number of problems. With too many unions, and with dispersed membership, it is difficult for unions to gain strength and authority. In tripartite consultations, it is problematic to determine which unions should take part in the discussions. Employers do not know which unions to bargain with in multi-union settings. To compound the problem, unions were allowed to register with the Ministry of Manpower without providing any proof of their structure or membership data. Consequently, the Ministry has no reliable data on the actual number of members belonging to a given trade union. This problem of verification of trade union data will be discussed in more detail below.

A number of international trade secretariats have been working with the unions to encourage them to consolidate the number of federations into a more manageable number. Some have advised that the unions should establish structures at the sector level to affiliate the new unions into larger organizations and strengthen workers' representation in collective bargaining agreements. Positive signs of unions coming together are beginning to emerge. In 1999, a group of 10 unions banded together to work jointly on a union version of the new labour law for consideration by Parliament. Then in late 1999 or early 2000, a group of eight trade union federations (SPSI-Reformasi, SBSI, Sarbumusi, FNPBI, PPMI, AJI, ASPEK and FOKUBA) formed the Forum Solidarity of Unionists (FSU) in order to adopt a common position in the ongoing parliamentary debate on the pending trade union legislation.<sup>50</sup> There has also been an initiative to form a confederation of trade unions, known as the Confederation of All Indonesian Trade Unions, KSPSI. A group of 18 trade union federations (those formerly affiliated with FSPSI) drew up a constitution in the Spring of 2001, and the confederation was formalized in July 2001.

The government has also acknowledged that the multiplicity of trade unions and collective work agreements could create problems. Trade unions would face increased competition for members, and a greater number of collective agreements could lead to an increase in trade disputes, particularly since the new law on trade disputes still has not been enacted. Regarding consultation, the government had to go through many different forums at many different levels if it wanted to consult with workers.

<sup>49</sup> ILO: *Demystifying the core Conventions of the ILO through social dialogue...*, op. cit.

<sup>50</sup> Internal ILO document (7 Apr. 2000).

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This was both time-consuming and inefficient. “A delicate balance needs to be struck between the right of workers to form unions and the need to have a workable system to identify the true representatives of workers for purposes of industrial action.”<sup>51</sup> Currently no such system exists.

### **Verification Process**

As of October 2001, there were 60 trade union federations registered with the Ministry of Manpower, although this figure has been in constant flux throughout the year. Adding further complication to the ever-growing number of registered trade unions is the fact there has been no effective system of verification in place to determine how many members each federation actually has. Under the current process of trade union registration, for example, the Ministry does not require the unions to substantiate the figures they present on the number of members they claim. As a result, many unions are inclined to exaggerate. The Ministry is aware of the fact that it needs to develop a system of verification, and has been discussing this issue during meetings of the National Tripartite Council.

The Department of Industrial Relations of the Ministry of Manpower and Transmigration, in coordination with the government statistical office, has recently come up with a proposal for verifying trade union membership data. The proposal calls for the setting up of verification teams, comprised of Ministry officials, trade union representatives and academics, to validate the trade union membership data. The unions would have to sign off on the membership figures collected from the lowest levels (enterprise) to the highest levels (federation), as a means of ensuring the accuracy, and non-contestability, of the figures. The Ministry arrived at this process following a tripartite workshop sponsored by the Friedrich Ebert Stiftung Foundation, where ideas were solicited from the social partners on how to conduct the verification process in the most fair, equitable, transparent and cost effective manner possible. In May 2001, the Minister sent letters to the Governors in each province explaining the procedure and asking them to participate in this initiative. (Due to the law on regional autonomy, the Minister is no longer in a position to command the regions to take part in such initiatives, he or she can only request their cooperation and participation.) The process, however, has been stalled because the Minister has rejected the plan’s budget, claiming that there is no money available to carry out such an initiative. The Ministry is now looking to outside donors to find the funding needed to proceed with the verification, as well as to develop a more sustainable process to ensure that trade union data is kept up-to-date in the future.<sup>52</sup>

### **Representativeness of Trade Unions**

Another matter that needs attention is the problem of representativeness of trade unions. There is no clear indication of how representativeness should be determined: whether it be on the basis of numerical strength; or by formation of a coalition of trade unions; or by some trade unions delegating their authority to other trade unions. The ILO does not provide a definition of “most representative organizations”. However, the ILO has provided some guidance in this regard, particularly in respect to the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144):

the most representative organizations of employers and workers does not mean only the largest organization of employers and the largest organization of workers. If in a country there are two or more organizations of employers or workers that represent a significant body of opinion, even though one of them may be larger than the others, they may all be considered to be most

<sup>51</sup> Ibid.

<sup>52</sup> Interview with the Ministry of Manpower and Transmigration, 22 May 2001.

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representative organizations for the purpose of the Convention. The Government should endeavour to secure an agreement of all the organizations concerned in establishing the consultation procedures provided for by the Convention, but if this is not possible, it is in the last resort for the Government to decide, in good faith in the light of national circumstances, which organizations are to be considered as the most representative.<sup>53</sup>

Representativeness issues are important in several aspects. First, the current regulation establishing the National Tripartite Council (LKS) only allows for the participation of the former government-controlled union, FSPSI. This regulation needs to be amended to include the participation of other unions, but the Ministry of Manpower and Transmigration will not take this step until it has conducted the verification of trade union membership data. Even though the most representative unions are not necessarily the largest in size, the Ministry believes that it is nonetheless important to determine the actual number of members belonging to a given union before it reallocates seats on the National Tripartite Council. Once the verification of trade union data is completed, the Ministry will have to decide which unions should participate, and in what proportion. The current composition of the National Tripartite Council includes 20 representatives from government and 10 each from the employers (APINDO) and the workers (FSPSI). If these ratios remain unchanged, the question rests as to which unions should occupy these 10 seats – simply those with the largest membership figures, or should other factors be taken into consideration as well? One trade union federation, FSPM, for example, suggested additional criteria for determining which unions should have a seat on the tripartite bodies, including the total dues paid by members and whether the federation is affiliated with an international trade secretariat.<sup>54</sup>

One of the trade union federations, SBSI, has devised a collective concept for trade union representation on tripartite advisory bodies. The concept has gained the tentative support of 11 other trade union federations and the Ministry. The formulae prepared for determining which unions are entitled to seats on the National, Regional and District Tripartite Councils are as follows:<sup>55</sup>

1. *National level*
  - a. minimum of 10 branches registered at the Ministry in five provinces,
  - b. registered at the Central Ministry as a federation,
  - c. union has 500 plant level unions or a total of 500,000 members.Federations meeting these criteria are entitled to a seat on the National Tripartite Council.
2. *Regional level*
  - a. minimum of four branches registered at the Ministry in two cities or districts,
  - b. registered at the Ministry at the regional level,
  - c. union has at least 20 plant level unions or a total of 20,000 members.Unions meeting these criteria are entitled to a seat on the Regional Tripartite Council.
3. *District level*
  - a. minimum of two branches registered at the Ministry,
  - b. registered at the Ministry at the district level,
  - c. union has at least five plant level unions or a total of 5,000 members.Unions meeting these criteria are entitled to a seat on the District Tripartite Council.

It is possible, however, that support for this formula could diminish once the verification of trade union data has been completed. Trade union estimates of membership data may give way to the reality of the government verified figures, particularly since many unions are thought to greatly exaggerate their membership figures.

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<sup>53</sup> ILO: *General survey of 2000*, Geneva (2000), para. 34.

<sup>54</sup> Interview with the Bandung office of The Independent Worker-s Union (FPSM), in Bandung, 25 May 2001.

<sup>55</sup> Interview with the Indonesian Prosperity Trade Union (SBSI), in Jakarta, 23 May 2001.

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Second, representativeness holds implications for determining delegates to the International Labour Conference (ILC) each year. In 2001, there were no less than 17 trade union delegates from Indonesia taking part in the conference. There was an attempt to hold an election of delegates in early May 2001, with each federation given one vote, but not all of the federations were present and the voting resulted in some of the smallest federations being chosen. Since two of the largest trade union federations were not among those selected, it was then decided to expand the delegation to include a total of 17 trade unionists. An objective formula for determining representativeness would, it is hoped, obviate the need for such extravagant numbers of union participants at future ILC events.<sup>56</sup>

Third, representativeness issues arise from the fact that a minority of workers in Indonesia are members of trade unions. Given the above-mentioned problems related to verification of trade union data, it is difficult to get a precise determination of trade union density in the country, but estimates place the figure at well below 10 percent. According to government statistics, for example, only 12,000 of the 180,000 enterprises in Indonesia with 50 or more employees are unionised.<sup>57</sup>

Finally, representativeness matters have begun to cause major problems in the collective bargaining arena, as there is no effective means for determining who should be the bargaining agent when there is more than one union in an enterprise. This issue will be discussed in a later section of this report dealing with collective bargaining.

## **Employers' Organizations**

In contrast to the multiplicity of unions, there is only one employers' organization: the Indonesian Employers' Association, known as APINDO. Independent industry associations – in the textile, shoe, garment, and toy industries, for example – are beginning to speak up on labour issues; thus, it is possible that a splintering amongst the employers' organization could happen in the future. An Indonesian Chamber of Commerce (KADIN) also exists to further the interests of employers. Generally speaking, however, the Chamber only offers assistance regarding business expertise and does not provide expertise on labour relations.

The Indonesian Employers Association, which had been registered in the past as an NGO, is now registered as an employers' organization. Following a memorandum of understanding between the Chamber of Commerce and APINDO, it was determined that APINDO alone would deal with labour relations and industrial relations. Some argue, however, that this arrangement of splitting duties between the Chamber and APINDO has led to a weak employers' association. Overall, APINDO is recognized as weak and not highly representative of employers in Indonesia, as only 10,000 of the 179,000 registered employers in Indonesia – fewer than 6% of all employers – are members of APINDO. Moreover, APINDO does not represent owners and has no authority to negotiate on behalf of employers.

Despite its shortcomings, APINDO remains one of the more representative organizations dealing with labour and social policy. In fact, many of the larger Indonesian employers are members of APINDO, and the association provides them with considerable help in dealing with labour issues. On the other hand, medium and small enterprises, which are often Chinese-owned businesses, are less likely to be members of APINDO.

<sup>56</sup> Interview with Abhik Gosh, Senior Specialist on Industrial Relations, ILO-SEAPAT, in Jakarta, 21 May 2001.

<sup>57</sup> Interview with the Indonesian Textile, Garment and Leather Workers Union (SPTSK), in Jakarta, 28 May 2001.

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Representatives from APINDO recognize the need for training and capacity building among their member employers, and, in coordination with the ILO, efforts are underway to provide these services. APINDO is currently focussing its energies on upgrading the skills of staff, improving facilities, and educating member and non-member employers on how to properly treat workers. As much of the attendees at the awareness raising workshops conducted by the ILO (described in Chapter 2) had been from upper-level management, greater attention is now being paid to educating employers at the company level on the terms of ILO Conventions.<sup>58</sup>

## **Autonomy of Social Partners from Political Parties**

In the period before 1998 when FSPSI was the only legally recognised union, it was essentially controlled by the government and had very close ties with GOLKAR, the ruling political party during the Suharto era. Consequently, there was little or no autonomy on the trade union side. Following the establishment of freedom of association in 1998, a large number of unions have been created, some of which have definite political objectives. Unions are not officially controlled by political parties, and they are free to associate as they wish, but most have political connections and tend to be affiliated with one or more political parties. This is clearly evident in the case of the current Minister of Manpower and Transmigration, Jacob Nuwa Wea, who continues to hold his position as chair of the KSPSI. Some federations, however, have made a conscious effort to separate the trade union from politics. SPTSK, a trade union federation representing workers in the textile and garment industries, has forbidden its union leadership from simultaneously holding leadership positions in a political party.<sup>59</sup>

There have also been complaints lodged by some unions that certain employers are establishing their own employer-controlled (“yellow”) unions as a means of dividing workers and discouraging them from joining the newly developed trade unions. This situation was more likely to occur among local companies than in multinational companies, with the latter apparently being more open to freedom of association.<sup>60</sup>

## **Financial Autonomy**

The employers’ organization, APINDO, and the various trade unions are financially autonomous, being supported by membership dues money rather than government funds. The trade unions, however, garner a substantial amount of financial support from international sources, including international trade union secretariats and NGOs. The relative importance of these contributions prompted the issuance of Ministerial Decree 16/2001, which called for unions to report the funds that they receive from these international sources.

Pre-1998, union dues money was collected by a check-off system at the enterprise and then distributed to the single, government-controlled union, FSPSI. Many unions have complained that this system of dues check-off is not working properly, as employers are continuing to send all of the dues money to FSPSI, even if there are other unions present in the enterprise. To be ensured of getting the dues owed to them, unions such as SBSI have all but abandoned the check-off system – except in cases

<sup>58</sup> Internal ILO document (30 Apr.- 6 May 2000).

<sup>59</sup> Interview with SPTSK, 28 May 2001.

<sup>60</sup> Interview with the Association of Indonesian Trade Unions (ASPEK), in Jakarta, 22 May 2001.

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where they represent a majority of the workers – and are collecting dues manually. This process of manual dues collection, however, provides less than satisfactory collection rates, as a rather small percentage of the total members are currently paying dues. The distribution of dues is as follows: 40% goes to the enterprise-level union, 30% to the branch level, and 30% to the central level. Every three months, the central federation then distributes 5% to the provincial level, 15% to the sectoral national level, and retains 10% at the central level.<sup>61</sup>

According to ASPEK, for example, dues are collected both manually and through the check-off system. Of the total dues collected, 15% goes to the federation, with the remainder left to the local union. The federation conducts a national meeting every three months to review the state of the union's finances, including how the dues money is collected and spent. Each affiliate is required to update its membership data every three months, which helps ensure an accurate accounting of the collection of union dues.<sup>62</sup>

In part due to the problems associated with dues check-off, many unions are able to survive only with the help of contributions from international trade union bodies. It will no doubt take time for unions to establish more reliable systems of dues collection so that they can eventually become financially self-supporting.

## **State Bodies Involved in Social Dialogue**

### ***Ministry of Manpower and Transmigration***

The primary state body involved in social dialogue is the Ministry of Manpower and Transmigration. Given the relatively low level of budget allocations afforded this Ministry, it is apparent that labour issues have traditionally not been a priority for the government. The notion of its declining importance was further reinforced early in 2001 when the Ministry of Manpower was merged with the Ministry of Transmigration. The first Minister of this joint department, Mr. Hamdi Alhilal, hailed from the transmigration side and was perceived to have limited experience and expertise in the areas of labour and employment policy.

The turmoil surrounding the impeachment of the President, Abdurrahman Wahid, has also taken its toll on the Ministry. For months, staff were more preoccupied about the fate of the government than about the day-to-day administration of their duties. Following the transfer of power to Megawati in July 2001, and the appointment of Jacob Nuwa Wea as Minister of Manpower and Transmigration in August 2001, it is hoped that efforts and energies will now be focused on resolving key labour and employment issues.

Despite these problems and upheavals, the Ministry continues to play a major role in industrial relations – although this has declined substantially from the pre-1998 period when government was the predominant actor in industrial relations. The government's role can be divided into four parts:

- a regulator, through the issuance of regulations including Ministerial Decrees after consultation with relevant parties;
- a facilitator, by creating structures for social dialogue and mechanisms for dispute resolution;
- a mediator, by providing for an official mediator who is required to provide advice for the settlement of disputes; and
- a patron, by ensuring a supply of efficient and capable human resources.

<sup>61</sup> Interview with SBSI, 23 May 2001.

<sup>62</sup> Interview with ASPEK, 22 May 2001.

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The Ministry produced a book entitled *Guidelines on the Implementation of Industrial Relations in Indonesia, 1999*. The book identifies the roles and responsibilities of the social partners, and maintains that trade unions have a conventional role to play in industrial relations of channelling the aspirations of their members, protecting them, and improving their welfare. Moreover, it identifies the trade unions' development function and the need for increasing participation in development, as well as educating members about their obligations to the company and the community and assisting in the creation of an industrial society with discipline and productivity.<sup>63</sup>

### **Other State Bodies**

A number of other government Ministries also take part in the tripartite structures, with the following holding one seat apiece on the National Tripartite Council, LKS:

The Ministry of Industry and Trade  
The Ministry of Communication  
The Ministry of Home Affairs  
The Ministry of Forestry

### **Involvement of Civil Society**

There is a tripartite plus structure in place at both the national and regional levels, with representatives from academia and professionals such as lawyers and doctors participating in the tripartite forums.

Civil society organizations have been actively involved in the labour law reform process, with legal aid foundations in particular being brought in for their legal expertise – which is admittedly weak on both the employers' and unions' side. The trade unions even went so far as to subcontract the legal aid foundations to provide them with comments on the draft labour law. Workers felt that there was a need for a tripartite plus structure, bringing in experts and academics, as a way to improve the quality of the discussions. Women's groups, migrant workers associations, and NGOs dealing with child labour issues are also included in the process. As the NGOs tend to be very vocal, it was decided that it would be better to bring them into the deliberations. There was also the fear that the NGOs could take members away from the employers' and the workers' organizations, so it was considered preferable to include them as partners.

### **Situation of Women, Lack of Input and Influence**

#### ***Women in the Economy***

According to the 2000 Population Census, women constitute 38.5% of the total labour force aged 15 and above. Female labour force participation was 51.7% in 2000, compared to 84.2% for men, and these percentages have remained fairly consistent since the mid-1980s. As demonstrated in Table 4, women are employed in all major sectors of the economy in Indonesia, although there tend to be very

<sup>63</sup> ILO: *Tripartite summit on social dialogue: proceedings*, Tripartite Summit on Social Dialogue, by Tara Soeprbo, op. cit.

few women in the construction and transportation, storage, and communications industries. Women, however, comprise nearly half of the workforce in wholesale and retail trade, restaurants and hotels, and a significant share of those employed in agriculture, manufacturing and community, social and personal services.

**Table 4. Employment Across Industries, by Sex, 2000**

<b>Sector</b>	<b>% Women</b>	<b>% Men</b>
Agriculture, forestry, hunting and fishery	39.5	60.5
Mining, quarrying, electricity, gas and water	16.7	83.3
Manufacturing	42.3	57.7
Construction	4.0	96.0
Wholesale trade, retail trade, restaurants, and hotels	47.6	52.4
Transportation, storage, and communications	4.2	95.8
Financing, insurance, real estate, and business services	28.9	71.1
Community, social and personal services	41.0	39.0

Source: Indonesia Population Census 2000

Despite the relatively strong presence of women in certain sectors of the economy, they continue to hold a disadvantaged position in the Indonesian labour force. There have been, however, some legislative attempts to improve the situation of women workers. For instance, there are four categories of legislation and regulations on increasing and improving women's participation in the labour market. These include: regulations aimed at promoting equal opportunity to enter the labour market; regulations against discrimination; legislation and regulations to provide safe and healthful working conditions; and legislation and regulations to increase the availability of factors of production for women, such as credit, information and technology to enable women to create their own businesses.<sup>64</sup>

Although legislation does exist in the above-mentioned areas that deal with women workers, compliance remains a problem. This is largely due to the fact that workers and employers alike are unaware of their rights and responsibilities under the law; consequently, discrimination in hiring and wages persists. Trade unions tend to be male-dominated, and so have not paid enough attention to women's issues and concerns. Another problem is that many women work in the informal economy, so they are not covered by labour legislation. Problems of occupational sex stereotyping also persist, among government officials, employers and trade unions.

A recent case demonstrates the extent to which women workers have been denied their rights, both from employers and the government. A corporate regulation in the banking sector required women to sign a statement saying that they would not become pregnant for at least two and a half years. Even though this requirement was against the law – which clearly states that there should be no discrimination against the employment of pregnant women – the Ministry approved this corporate regulation with this illegal, discriminatory provision in tact. The case was later contested in court and the offending provision was removed.<sup>65</sup>

<sup>64</sup> ILO-SEAPAT: *Indonesia: A gender review of globalization, legislation, policies and institutional frameworks* (Manila, 1999).

<sup>65</sup> Interview with the Bandung office of the FPSM, 25 May 2001.

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## **State Ministry for the Role of Women**

In addition to the legislative initiatives addressing issues related to women workers, a national Ministry was created in 1978 to consider the role of women. It was upgraded from a State Junior Ministry to a State Ministry for the Role of Women (Menperta) in 1983. According to Presidential Decree 25/1983, the functions of the State Ministry for the Role of Women are:

- preparing and planning the formulation of government policies pertaining to the enhancement of the role of women in all fields of development;
- coordinating all activities in order to achieve cooperative, balanced and integrated efforts in overall implementation;
- coordinating operational activities of various government agencies, non-governmental institutions and organizations concerning programmes for the enhancement of the role of women in development; and
- submitting reports, information, and recommendations concerning the enhancement of the role of women in development.

There are seven working groups of this State Ministry, some involving NGOs, but they are not tripartite, as there is no employer participation. The Working Group on Female Productivity is coordinated by the Assistant Minister for Female Workers or Women in the Workforce. A major problem with the Ministry is a lack of human and other resources, which makes implementation of policies difficult.<sup>66</sup>

## **Women and Social Dialogue**

Although there are no reliable data available about the numbers of women belonging to employers' associations and trade unions, anecdotal evidence indicates that women are generally excluded from positions of authority and decision-making within these organizations. One union in the textile industry, SPTSK, admitted to this being a problem. Although 70% of their membership are women, fewer than 25% of the leadership are drawn from the female ranks. The union is thus trying to improve the leadership capability of women, and is providing training for men and women together to help build women's confidence that they are equally capable of being in leadership positions as men.<sup>67</sup>

Women also tend to be very poorly represented on the various tripartite bodies. On the National Tripartite Council, for example, all of the representatives from the employers' and workers' sides are men, and there are just two women representing the government. Women are likewise absent from the issue-specific Tripartite Councils dealing with productivity, safety and health, wages, and vocational training. Not surprisingly, issues of particular concern to women workers, such as maternity leave, pregnancy protection and child-care, are rarely discussed at these tripartite forums.<sup>68</sup>

<sup>66</sup> ILO-SEAPAT: *Indonesia: A gender review of globalization, legislation, policies and institutional frameworks*, op. cit.

<sup>67</sup> Interview with SPTSK, 28 May 2001.

<sup>68</sup> Interview with the Central Ministry of Manpower and Transmigration, 28 May 2001.

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## Chapter 4 - Forms and Processes of Social Dialogue

### Institutionalised and/or Ad hoc Dialogue

Social dialogue in Indonesia can either take place through formal tripartite institutions, or on an ad hoc basis. The institutionalised dialogue, including the constitution of various tripartite bodies, will be described in the following section. Such dialogue has generally been viewed as unproductive and inefficient, in part due to the lack of proper union representation, as only the FSPSI is legislatively allowed to participate in these tripartite bodies. To bridge the gap until the legislation can be changed to reflect the emergence of new unions under freedom of association, ad hoc dialogue – involving a wider range of trade union federations – has been taking place.

Some of the more active, although not necessarily wholly effective, social dialogue that has taken place over the past few years has been on an ad hoc basis. Of particular note are the ILO-sponsored tripartite seminars on labour law reform and the fundamental ILO Conventions. Upon approval by the government, a tripartite, ad hoc, drafting team was created to review the labour law. The members of the team were chosen after the plenary session, where the organizations present were asked to send representatives to the drafting team. As the process began in 1999, before any kind of union membership verification process got fully underway, it was not possible to determine which unions were the most representative. Consequently, all of the labour federations (there were 33 at the time) were invited to send representatives, half of which did so. Unfortunately, these representatives did not bring the authority of their members' interests and viewpoints with them; instead, many people just gave their own personal opinions, rather than that of their membership. Another problem stemmed from the fact that a changing array of people attended the meetings; consequently, there was no consistency of representation from one meeting to the next. In general, the ad hoc drafting team was not seen as very effective, as groups claimed that their views were not incorporated into the text. Public hearings were also held on the draft legislation to give groups another chance to express their views and opinions.<sup>69</sup>

### *Tripartite Communication Forum*

In March 2000, the Ministry of Manpower, 25 trade union federations, APINDO, the Chamber of Commerce (KADIN), and the National Council for Business Development (DPUN), signed a Joint Declaration aimed at encouraging harmonious industrial relations and a productive business climate. To this end, the group formed the Indonesia Tripartite Communication Forum, an informal, consultative body that meets monthly and includes representatives from a broader range of unions and employers, making it more inclusive than the formal, National Tripartite Council. The Declaration was developed in recognition of the lack of understanding of labour issues in Indonesia, which frequently resulted in strikes, mass demonstrations, layoffs and lockouts. It appealed to employers to respect the legal rights of workers, including freedom of association, and to honour anti-discrimination principles. It appealed to workers to maintain a sense of responsibility on the job, optimise their performance, and refrain from destroying private property and disturbing public order during demonstrations. The Joint Declaration

<sup>69</sup> Interview with Oktavianto Pasaribu, program officer in the ILO office in Jakarta, Dec. 2000.

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appealed to government to remain neutral in industrial relations matters, enforce the laws consistently, and to initiate legislative reforms where necessary.<sup>70</sup>

Despite the good intentions of the parties to establish the Communication Forum, it is not working well in practice. A major problem is its sustainability. The institution has no substantial institutional backing and it cannot be maintained unless it is given a budget and proper funding. Under the current situation, proponents volunteer their time and resources to address short-term issues and disputes. The forum has been operating much like a fire-fighting brigade, where a few members rush in to help resolve major industrial disputes. It is uncertain how much longer it will be able to maintain itself, particularly with no budget to support its activities.<sup>71</sup>

During 2001, there was a series of joint tripartite meetings involving both the National Tripartite Council and the Tripartite Communication Forum to discuss Decrees 150/2000 and 78/2001, regarding severance pay for dismissed workers. These informal gatherings have enabled other trade union federations, besides just the FSPSI, as well as other employers who are not members of APINDO, to give voice to their concerns over these issues. The end results, unfortunately, were not very promising, as the deliberations resulted first in objections from employers, and later, upon revision, in demonstrations by the unions.<sup>72</sup>

Even when conducted on an ad hoc basis, it seems that the tripartite meetings are basically open forums for groups to express their opinions, which the government may or may not take into consideration. There is no effort to reach a consensus; as a result, various groups complain that their views have not been taken into consideration when the government takes action on a particular issue.

### ***Joint Statement of the Indonesian Delegation to the 89th International Labour Conference (ILC)***

During the 89th International Labour Conference in June 2001, the Minister of Manpower and Transmigration, along with representatives of trade unions and APINDO, conducted a series of meetings facilitated by the Ambassador of Indonesia for the United Nations. The group called for the creation of a tripartite forum, comprised of representatives of government, trade unions and employers, and assisted by an advisory team of academics and ILO experts. The forum would be charged with assisting the Minister of Manpower and Transmigration in reviewing key components of industrial relations, including labour laws, as well as providing recommendations of ways to resolve disputes and promote economic development and foreign investment.<sup>73</sup>

### **Institutions for social dialogue**

The following tripartite bodies exist in Indonesia.

- National and Regional Tripartite Councils (LKS)
- Joint Secretariat of National and Regional Tripartite Councils
- Occupational Safety and Health Council (DK3N)

<sup>70</sup> Joint Declaration of the Indonesian Tripartite Communication Forum, 30 March 2000 (Jakarta, 2000).

<sup>71</sup> Interview with the Central Ministry of Manpower and Transmigration, 22 May 2001.

<sup>72</sup> Interview with the Central Ministry of Manpower and Transmigration, 23 May 2001.

<sup>73</sup> Joint Statement of the Indonesian Delegation to the 89<sup>th</sup> International Labour Conference, Geneva, June 2001.

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National Wages Council (DPPN)  
National Training Council (DLKN)  
National Productivity Forum (DPN)  
Five Sectoral Tripartite Committees  
National and Regional Labour Dispute Settlement Committees

The LKS National Tripartite Council is an institution for deliberation, consultation and cooperation, which provides input, advice and opinions to the Minister of Manpower and Transmigration on a wide range of labour-related policies. The Council is based on the principles of Pancasila, with the objectives of creating peaceful work, productivity improvements, better income and welfare for workers, and continuous and smooth operations for business.<sup>75</sup>

LKS tripartite bodies exist at the national, regional and district levels. Prior to the adoption of the law on regional autonomy, there had been a link between the national, regional, and district tripartite bodies to ensure that the policies enacted at the national level were being implemented at the lower levels. With decentralization, this coordination has been seriously eroded, and policy making on labour issues is generally left to the discretion of the provinces. Industrial relations issues will increasingly be discussed and determined at the regional level rather than at the central level, causing regional and local tripartite bodies to assume greater importance than those at the central level.

The LKS National Tripartite Council was set up under Ministerial Decree 258/1983. It is comprised of 40 representatives, with a ratio of 2:1:1, from government, employers and workers, respectively. From the government side, there are a total of 20 representatives, with 16 from the Ministry of Manpower and Transmigration, and one each from the Ministries of Industry and Trade, Communication, Home Affairs, and Forestry. There are 10 employer representatives, all from APINDO, and 10 worker representatives, all from FSPSI. Other actors, including legal advisors, academics and other professionals also take part in this tripartite forum. The body is chaired by the Minister of Manpower and Transmigration and it is administered by a secretariat known as SEKBER National. The secretariat is itself tripartite in composition, with a membership ratio of 1:1:1, from the government (Ministry of Manpower and Transmigration), employers (APINDO), and workers (FSPSI). All expenses for the Council are borne by the Ministry of Manpower and Transmigration.<sup>76</sup>

On the national level, there are currently 12 tripartite committees (including five sectoral tripartite committees) that fall within the overall LKS tripartite structure, each dealing with a particular issue. Among the specialized bodies are those dealing with occupational safety, wages, training and productivity. The tripartite composition of the membership of these bodies is not numerically specified by Ministerial Decree, but they are regulated to be tripartite plus. Aside from the traditional partners, the other actors include professionals, such as lawyers (for legislative reform) and doctors (for safety and health), and NGOs (for the environment) and university academics.

In the area of minimum wage, for example, each Governor decides what the minimum wage should be for the province upon the advice of a Regional Tripartite Advisory Council. The tripartite body researches the cost of living in the area, and uses this as the basis for its recommendation. Usually, the minimum wage is adjusted annually, except during periods of high inflation when it is increased more frequently. The advice of the Tripartite Council on wages is particularly significant considering that many industrial workers earn the minimum wage, typically with the addition of allowances for such things as food, housing and transportation. Collective bargaining negotiations frequently do not touch

<sup>75</sup> Ministerial Decree 258/1983.

<sup>76</sup> Interview with the Central Ministry of Manpower and Transmigration, 21 May 2001.

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upon wages, although unions have been running political campaigns to gain increases in the minimum wage above what the Tripartite Council recommends.<sup>77</sup>

The tripartite structure for the regional level was established under Ministerial Decree 7/1984. Its objectives and mandate are similar to those described for the National Tripartite Council. The membership is comprised of 16 persons, including eight from government, four from employers (APINDO) and four from workers (FSPSI). The Governor of the province is the chair of the regional tripartite body, with the head of the regional office of the Ministry of Manpower and Transmigration designated as the substitute chair. As with the national body, the secretariat at the regional level has a ratio of 1:1:1, with a maximum of two representatives from government, two from employers (APINDO), and two from workers (FSPSI).<sup>78</sup>

In Bandung, the capital city of the province of West Java, there is a regional Tripartite Labour Council comprised of representatives from the government, employers and workers, as well as representatives from the academic community and NGOs. In addition, there are four tripartite bodies at the regional level: a regional dispute resolution committee; a district wages council; a productivity council; and a regional manpower council, which has a number of commissions attached to it. These tripartite bodies provide recommendations to the Governor on various labour-related issues. Recently, for example, the wages council offered suggestions on how to improve the cost of living survey that is used to set minimum wages. The council advised that in order to gain a more accurate reflection of the cost of living, people should be surveyed on weekdays in traditional markets, rather than on weekends in grocery stores.<sup>79</sup>

In addition to the LKS national and regional tripartite bodies, there was also a Sectoral Tripartite Cooperation Institute formed under Ministerial Decree 98/1994, covering five major sectors of the economy: mining and energy; communication and transportation; plantations; financial institutions; and public works. The composition of this sectoral body was to be 1:1:1, from government, employers, and workers. Although the regulation is on the books, this sectoral tripartite body does not function in practice. However, a new sectoral tripartite forum is currently under development, following a tripartite agreement reached in February 2001 on the set up of a Sectoral National Tripartite Council. The Council would be comprised of representatives from the government, APINDO, and sectoral trade union federations, and it is envisioned to include the following sectors: industry and trade; communication; regional development and financial facilities; tourism and culture; mining and energy resources; agriculture; and plantations.<sup>80</sup>

### ***Tripartite Bodies on Dispute Settlement***

Tripartite bodies, both at the national and regional levels, also exist to deal with dispute resolution. The National Labour Dispute Settlement Committee (P4P) was established under Act 22/1957. Its tripartite composition is based on a ratio of 1:1:1, with five members from government, five from employers (APINDO), and five from workers (FSPSI). The Regional Labour Dispute Settlement Committee (P4D) also has a tripartite composition with a 1:1:1 ratio, with five members

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<sup>77</sup> Interview with Patrick Quinn, CTA, Workers Education Assistance to Workers and their Organizations in Indonesia, in Jakarta, 22 May 2001.

<sup>78</sup> Ministerial Decree 7/1984.

<sup>79</sup> Interview with the Secretariat of the Regional Tripartite Council of Bandung, 25 May 2001.

<sup>80</sup> Soewarto: *An Analysis of the Practical Utilization of Industrial Relations Mechanisms in Indonesia*, ILO/USA Declaration Project, Jakarta, 2001.

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from government, five from employers (APINDO), and five from workers (FSPSI).<sup>81</sup> In Jakarta and West Java, the P4P and P4D committees have an additional five deputy members from each party. The functioning of these bodies will be discussed in further detail in the section of this report on collective bargaining and dispute resolution.

### ***Planned Institutions of Social Dialogue***

The Bill on Manpower Protection and Development includes a requirement to establish bipartite forums in enterprises employing 50 or more workers. In addition, it provides for tripartite forums at the national and regional levels. One tripartite commission at the national level would replace the three that currently exist. The Ministry has estimated that 13 tripartite bodies will have to be set up in each region, each dealing with a different issue, such as safety and health, wages, and labour inspection.<sup>82</sup> According to the draft legislation, the parties to the dialogue would determine their own method of election of representatives to sit in these forums.<sup>83</sup> Current thinking is to wait until the new labour law has been enacted before repealing the old regulation on tripartism (Ministerial Decree 258/1983) and instituting a new system of membership for the trade unions on the tripartite bodies.

The Bill on Industrial Dispute Settlement would also bring significant changes to the tripartite bodies on dispute settlement. This matter will be elaborated upon in Chapter 6 of this report on collective bargaining and dispute resolution.

<sup>81</sup> Ibid.

<sup>82</sup> Interview with the Central Ministry of Manpower and Transmigration, 22 May 2001.

<sup>83</sup> ILO: *Tripartite summit on social dialogue: proceedings*, Tripartite Summit on Social Dialogue, by Tara Soeprono, op. cit.

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## Chapter 5 - Functioning of Social Dialogue Processes

### Frequency of Meetings and Issues Discussed

According to Ministerial Decree 258/1983, the secretariat of LKS National and Regional Tripartite Councils meet at least twice a month, the general session of LKS National Tripartite Council meets at least four times a year and the LKS Regional Tripartite Council meets at least once every two months. Any of these bodies can hold meetings more frequently if there is a particular issue that needs to be addressed. On the matter of severance pay, for example, there were several tripartite meetings held within a couple of weeks to try to resolve the issue – although without success. A number of additional meetings were also held on the matter of developing a process for verification of trade union data.

The agenda of the meetings is based on priority matters, and can be set by any of the members of the tripartite body, whether they be from government, the employers or workers. A wide range of labour and employment issues can be addressed. If there are specific issues to be dealt with – such as wages, occupational safety and health, training, productivity improvements, dispute settlement, collective bargaining – they are typically handled by separate committees of the full Tripartite Council. There are 12 such committees at the national and regional levels.

Some of the main issues to top the agenda of the LKS National Tripartite Council in 2001 have been: the new Ministerial Decrees on severance pay for dismissed workers (Decree 150/2000 and the amended version 78/2001); the verification process for determining an accurate account of trade union membership data; the determination of a system of representativeness of trade unions; and the expansion of the Tripartite Council to formally include other unions in addition to the FSPSI. The LKS Regional Tripartite Council has largely been preoccupied with minimum wage setting and dispute prevention and settlement.<sup>84</sup>

Other issues that workers' groups would like to raise in a tripartite forum include social welfare, better wage levels, the paying of minimum wages, and developing bipartite relations.<sup>85</sup> Among the issues that are conspicuously absent from tripartite dialogue are those that are particularly relevant for women workers, including such matters as maternity leave, sexual harassment, child care and occupational safety and health for pregnant workers.<sup>86</sup> This may stem from the fact that there are very few women members of the tripartite bodies.

### Effectiveness of Institutions

Overall, the Ministry believes that the tripartite system is working well, although they acknowledge that the composition of the trade union members has to be revised in order to include a broader representation of trade union federations, beyond just the FSPSI. In the Bandung Regional Tripartite Council, this objective has already been achieved, as six of the 18 registered trade union

<sup>84</sup> Interviews with the Central Ministry of Manpower and Transmigration, 21 and 25 May 2001.

<sup>85</sup> Internal ILO document (30 Apr.- 6 May 2000).

<sup>86</sup> Interview with the Central Ministry of Manpower and Transmigration, 28 May 2001.

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federations in the province are currently participating in the Regional Labour Dispute Settlement Committee (P4D.) The new composition of this tripartite body was established in April 2001, two months after the new head of the regional office of the Ministry assumed his duties. The Ministry proceeded with this change because they felt it was important to ease labour tensions through dialogue. West Java, where Bandung is located, is one of the “hot spots” of industrial unrest, as many of the labour demonstrations that occurred in Indonesia in 2000 took place in this part of the country. Although there were many demonstrations in April and May 2001 over the severance pay issue, the Ministry nonetheless felt that the labour situation had started to become more stable since the initiation of the Tripartite Council meetings in April 2001.<sup>87</sup>

From the perspective of the other participants and observers of the system, however, the various institutions for social dialogue that exist are not functioning properly. Aside from the persistent problem of the FSPSI acting as the monopoly trade union in these forums, other concerns raised include the absence of a clear agenda at the tripartite meetings and no precise timeline for achieving the objectives. As a result, tripartite consultations often continue on at length, without any real progress being made towards achieving a workable agreement.<sup>88</sup>

Other reasons cited for the ineffectiveness of the tripartite bodies include a lack of trust and respect between the parties, which prevents them from coming to consensus. Employers and unions state their positions, but are unwilling to compromise to arrive at a consensus on a given issue. The government, for its part, is not an effective mediator, as it is unable to bring the two sides together towards some common ground. The Ministry says that it only has to consult the parties; it is not obliged to come up with a binding agreement. The ineffectiveness of tripartite dialogue is evident in the recent discussions on severance pay, where the government held several tripartite consultations, but no progress was made. The Minister then chose to speak with the employers and the unions separately, since tripartite dialogue had proven futile.

There are some examples, however, of cases where tripartite dialogue has enjoyed some success, including the ILO work on labour law and ratification of the core Conventions, described in Chapter 2 of this report. The relatively positive outcomes derived from these deliberations, however, may be attributed to the major role of the ILO in providing direction, guidance, and support to the process. Yet even these tripartite sessions were not without their problems. Chapter 7 of this report will highlight some of the obstacles to social dialogue that have impeded the development of a more effective process in Indonesia.

<sup>87</sup> Interview with the Secretariat of the Regional Tripartite Council of Bandung, 25 May 2001.

<sup>88</sup> Interview with the Indonesian Employers Association (APINDO), in Jakarta, 28 May 2001.

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## Chapter 6 - Collective Bargaining and Dispute Resolution

### Collective Bargaining

Although this report has primarily focused on tripartite dialogue, it is nonetheless important to touch upon collective bargaining. According to various union leaders interviewed, the priority for workers is bipartite negotiations – whether at the enterprise level or at the central level – rather than tripartite dialogue. SBSI, for example, would like to see a national agreement establishing basic labour conditions, which could facilitate the bargaining process at the enterprise level by leaving less critical issues to be worked out during these negotiations.<sup>89</sup>

Although collective bargaining exists, and has existed for quite some time in Indonesia, the agreements are often not very different from the minimum conditions required by law. This may stem from the fact that negotiated collective agreements do not have to be put to a ratification vote of the membership in order to be approved. Rather, collective agreements are reviewed every two years by management and the union, although frequently the terms of these agreements are not revised following this review. Another important consideration is that most collective agreements have been developed with the old government-controlled union, FSPSI, and very few of the newer unions have collective bargaining agreements. ASPEK, a union in the banking, post, and telecommunications sectors, for example, said that only 10% of its membership are covered by collective bargaining agreements.<sup>90</sup> By contrast, SPTSK, a union in the textile and garment sector that was revived from an old FSPSI sectoral union, claims that about 60% of its local unions have collective agreements. Most of these agreements, however, were in place prior to SPTSK becoming independent from FSPSI in 1998, and the majority of them bear a close resemblance to minimum conditions found in government regulations.<sup>91</sup>

Given that this is the case for most collective agreements, it raises an important consideration regarding the verification process for trade unions (discussed Chapter 3), as the Ministry would like to include the number of collective agreements as well as union membership in its verification process. They believe this would help differentiate between unions that are political entities with no grassroots membership and unions that have members at the enterprise level.<sup>92</sup> Such a process, however, would heavily favour the FSPSI and the Reformacie unions, which have collective agreements in place from prior years that bear a close resemblance to the minimum requirements set by law, and would disfavour the newer unions which have yet to conclude many collective agreements.

In non-unionised settings, or in unionised companies where there is still no collective agreement, there is a requirement, under Ministerial Decree 2/1978, for the company to submit to the Ministry a “corporate regulation”. As with a collective agreement, the corporate regulation sets out the terms and conditions of employment, should be reviewed every two years, and must be approved by the Ministry of Manpower and Transmigration. The approval is more of a witnessing, or a sign-off, than a formal approval process. Frequently, there is very little difference between the terms of a collective

<sup>89</sup> Interview with SBSI, 23 May 2001.

<sup>90</sup> Interview with ASPEK, 22 May 2001.

<sup>91</sup> For further illustration of the contents of these kinds of agreements, see Annex I on the terms of a collective agreement between FSPSI and P.T. Vonex, a textile company in Bandung, West Java.

<sup>92</sup> Interview with the Central Ministry of Manpower and Transmigration, 28 May 2001.

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agreement and a corporate regulation – both tend to follow the minimum terms established under the law. Corporate regulations, however, remain far more prevalent than collective agreements. Of the approximately 25,000 companies registered in West Java, for example, roughly 20,000 had corporate regulations while just 5,000 had collective agreements.<sup>93</sup>

The problem of representativeness, as discussed in Chapter 3 of this report, also has important implications for collective bargaining. Currently, employers complain that they do not know who to bargain with in a multiple union setting, especially since they do not have accurate data on the distribution of workers belonging to a given union. In some cases, no one union represents the clear majority of workers, making it very difficult to determine which union is the proper bargaining agent. There have been reports of cases where one union has negotiated an agreement with the employer, only to have a significant segment of the workers at the enterprise reject the agreement because they say that the union does not represent their interests.

One union, SBSI, has come up with a formula for establishing a labour assembly, where workers in a multiple union setting would elect a bargaining team drawn from the various unions having membership in the enterprise. The proposal has been discussed with the Ministry of Manpower and Transmigration, as well as with 11 other trade union federations, all of whom agree in principle with the plan. A labour assembly would be established in every enterprise based on the following representation:

<b>Number of Employees</b>	<b>Number of Representatives in Assembly</b>
10 – 100	3
101 – 500	4
501 – 1000	5
1001 – 5000	6
5001 – 10,000	7

Representatives would be elected by the membership of all unions within the enterprise, on a proportional basis. The proportional representation figures would be reviewed every two years to account for shifts in membership figures among the various unions present at the enterprise. A primary function of the labour assembly would be to determine which unions should participate in the bargaining team to negotiate collective agreements with the employer in workplaces where there is more than one union present.<sup>94</sup>

## **Dispute Prevention and Settlement**

Industrial unrest remains a major problem throughout Indonesia. There are no effective dispute resolution systems established at the enterprise level, such as grievance and arbitration procedures, to deal with disputes as they arise at the workplace. Even in unionised settings, there are no formal grievance procedures established at the enterprise level; rather grievances tend to be dealt with on an informal basis, or raised before the Regional Labour Dispute Settlement Committee (P4D). Accordingly, there is little emphasis on dispute prevention, with disputes often resulting in the permanent dismissal of the aggrieved workers. Moreover, dispute resolution tends to focus on providing severance payments to dismissed workers, instead of trying to settle the dispute in order to reinstate workers who have been dismissed or gone on strike.

<sup>93</sup> Interview with the Secretariat of the Regional Tripartite Council of Bandung, 25 May 2001.

<sup>94</sup> Interview with SBSI, 23 May 2001.

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The lack of established, effective dispute prevention mechanisms is quite evident in the high rate of industrial disputes and labour demonstrations that occur throughout Indonesia on a regular basis. In 2000, there were 187 labour demonstrations recorded – an average of more than one every two days – some of which turned violent and resulted in destruction of property. Employers and workers have both complained that the Ministry is not playing an effective role in dispute prevention and resolution. Each side brings complaints before the Ministry, and then they say that nothing is being done to settle the disputes.

Under current regulation, disputes and conflicts over dismissals or any other breach of contract are to be resolved in accordance with Act No. 22 (1957) and Act No. 12 (1964). If there is a labour dispute, and either a strike or lockout is envisioned, the party concerned has to submit its intentions in writing to the other party, and to the chairperson of the Regional Labour Dispute Settlement Committee.<sup>95</sup> During this time, any suspension of activities by the employer requires them to pay salaries, and any cessation of work by the workers will result in a loss of wages. After six days of a strike, individual contracts can be terminated. Workers can be dismissed without severance payments unless otherwise agreed to in a collective agreement or stated in a company policy. If the dismissals are deemed “justified”, the employer does not have to make a severance payment. If the worker contests this determination, the case goes to a Labour Dispute Settlement Committee, either the P4P (National) or the P4D (Regional). If the Committee determines the dismissal to be justified, the worker is denied a severance payment. But if the Committee finds the dismissal non-justified, the worker gets the legally required severance payment, which equals the maximum amount the employer would have offered voluntarily. As a result, the employer assumes very little risk when a case is taken before the Committee.<sup>96</sup>

Unions have also complained that the existing Labour Dispute Settlement Committees, P4P and P4D, are biased because the only workers’ representatives on them are from FSPSI. A trade union federation representing workers in the hotel industry, FSPM, recently brought a case before the ILC (Case No. 2116 GB.28216) on the grounds that they were denied a fair hearing over a strike at a Jakarta hotel. Workers at Shangri-La Hotel went on strike in December 2000, and then were locked out by management. When the case was brought before the tripartite dispute settlement body, the FSPSI representatives on the P4P sided with the employers in the ruling, allowing the hotel management to dismiss about 600 workers, including the chairperson of the union. Management later offered to rehire those workers who agreed to give up their union membership and reopened the hotel with a non-unionised workforce. FSPM claims that the FSPSI representatives were incapable of providing an objective ruling in the case, as the workers at Shangri-La had disaffiliated in 1996 from FSPSI and organized into an independent union, FSPM. The hotel workers’ union is now appealing the decision of the P4P before the state administrative high court, but such an appeals process is usually quite protracted and costly.<sup>97</sup>

As mentioned in Chapter 5, the issue of severance pay has been the subject of ongoing tripartite consultation since mid-2000. Following discussions with the trade unions, particularly FSPSI, Ministerial Decree 150/2000 was issued which granted workers severance payments, regardless of the reason for their separation from employment – including retirement, voluntary resignation, and dismissal for committing major violations. As this drew substantial opposition from employers and investors, it was then replaced by another Ministerial Decree, 78/2001, which restricted severance payments to cases where the worker was laid off involuntarily, and without just cause. This change then generated protests from the unions, which held a number of demonstrations to express their opposition.

<sup>95</sup> Act No. 22, 1957, art. 6.

<sup>96</sup> Ministry of Manpower, Indonesia and World Bank: *Labour market policies for Indonesia...*, op. cit.

<sup>97</sup> Interview with the Bandung office of the FSPM, 25 May 2001.

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A third Ministerial Decree, 111/2001, was issued in May 2001, which basically upheld the earlier Decree, 78/2001, but added a requirement that employers comply with the terms of collective agreements if the amount of the severance pay is higher than that stipulated in the Decree. This change has not satisfied the trade unions, which continued with their rallies, protests and demonstrations against this Decree.<sup>98</sup> The latest development, however, is that the newly appointed Minister of Manpower and Transmigration has reverted back to Ministerial Decree 150/2000, a move strongly favoured by trade unions.

It is hoped that industrial unrest will diminish over time, particularly once an acceptable form of the Bill on Industrial Dispute Settlement is agreed upon and implemented. Despite its shortcomings, the new Bill seeks to provide a more effective system for the settlement of industrial disputes, one that is less costly and time consuming for the parties involved. Under the proposed legislation, the parties would first engage in deliberations to reach consensus in a bipartite forum. If this fails to produce an agreement, the dispute may be settled through mediation, industrial arbitration or industrial tribunals. Workers and employers would be able to jointly choose the mediator or arbitrator to resolve the dispute, and could select either a government official or someone in private practice. Once a dispute is submitted to one of these forums, a strike or lockout must cease; otherwise, it would constitute a criminal offence.

The Labour Dispute Settlement Committees (P4P and P4D) would continue to function until the Industrial Tribunals are established under the new Bill. The composition of these Committees is expected to change, with the representation of workers to be expanded to include unions other than just FSPSI.

<sup>98</sup> *Jakarta Post* (Jakarta), 1 June, 2001.

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## Chapter 7 - Problems, Obstacles and Prospects

### Longstanding Problems

Despite the recent changes to the labour laws in Indonesia and the advent of freedom of association, many problems and obstacles to effective social dialogue remain to be overcome. Many of these problems and obstacles are longstanding, having been initially identified by the ILO in the early 1990s.

According to an ILO report from 1994,<sup>99</sup> prepared in connection with a Norwegian funded project on tripartism in six countries in Asia, the following observations were made regarding the obstacles to social dialogue in Indonesia. One was the existence of a large informal economy, which remains the case today. A second obstacle was the low rate of union density. Although it is difficult to obtain reliable figures on union density rates, it is still clear that only a minority of workers are members of trade unions. A third obstacle was insufficient tripartite cooperation, despite the existence of numerous tripartite bodies. Given the recent tripartite activity overseen by the ILO in the area of labour law reform, it is evident that some progress has been made on this last point.

The need for tripartism and social dialogue has also been identified for many years. For example, the ILO Jakarta work plan for 1994-99, which was signed by the ILO and the Ministry of Manpower and supported by the social partners, emphasized the need for effective tripartism to ensure socio-economic development and stability.

### Obstacles to Social Dialogue

Indonesia has made significant progress on the industrial relations front since the onset of the financial crisis in 1997, but much remains to be done. Due to work that has been accomplished over the last couple of years, particularly in the areas of freedom of association, the right to collective bargaining and the promotion of democracy, some of the vital preconditions for effective social dialogue are now in place. But significant obstacles remain that have to be worked through before meaningful social dialogue can occur. One of the key problems concerns the representativeness of the parties to dialogue. This issue holds critical importance for social dialogue in Indonesia – from determining the composition of the National Tripartite Council to selecting representatives for bargaining committees at the enterprise level. Some of the other obstacles to effective social dialogue are summarized below.

- *Capacity building of the social partners and the government*

The importance of training and education of the social partners, particularly trade union members, has been mentioned frequently. Although literacy levels have improved considerably in recent decades, many Indonesians remain poorly educated, and this has a spill-over effect on the functioning of the industrial relations system.

One component of an education and training effort for the social partners would be to promote a better understanding of terms of the new Trade Union Act, and the implications of the ratification of Conventions No. 87 and No. 98. It is also important for employers and workers to realize the

<sup>99</sup> Internal ILO document (16-19 May 1994).

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relationship between the two Conventions – that the purpose of freedom of association is to enable free and democratic unions and employers’ organizations to engage in collective bargaining for the benefit of their members.<sup>100</sup>

Another often cited problem is that many trade union leaders in small and medium-size enterprises lack negotiating skills and a basic understanding of industrial relations. Moreover, private investors, particularly those from abroad, have complained that it is very difficult to negotiate with the unions due to their lack of capacity and understanding of the basic laws and procedures on collective bargaining and labour relations. Some investors have threatened to leave the country if the situation does not improve. Thus, training and capacity building for these union leaders is needed in order to improve the functioning of social dialogue, particularly at the local level.<sup>101</sup>

It is evident that trade unions and their members need assistance in understanding and raising awareness about their rights and obligations in industrial relations. In addition, they need labour education on matters such as administering their own organizations, organizing and attracting more members, collective bargaining, handling grievances, exercising the right to strike, preventing and settling labour disputes, and engaging in tripartism and social dialogue. An ILO project on workers’ education has already begun to conduct this kind of training. Under the project, an anticipated 4,000 union members – the majority of them under age 35 and one-third of them women – will have been trained in basic union skills.<sup>102</sup> Additional training programs for union members are also being carried out by international trade secretariats and national unions, such as the American Center for International Labor Solidarity (ACILS). The ACILS provides training programs in a number of areas, including basic training on union administration, a program for marginalized workers such as migrants and child labourers, civic education, and a lobbying project.<sup>103</sup>

Employers need similar assistance and education on the above-mentioned subjects. Furthermore, the parties could benefit from a better understanding of the dynamics of the global marketplace, competitiveness, and achieving win-win solutions. In addition, the Ministry of Manpower and Transmigration needs to reform itself in order to effectively apply the laws, facilitate collective bargaining and social dialogue, and support the initiatives of the social partners in order to earn the trust, respect and confidence of workers and employers. Such training is expected to form a core part of the ILO Declaration project on “Promoting and Realizing Freedom of Association and Collective Bargaining by Building Trust and Capacity in Industrial Relations in Indonesia” which started in February 2001.

- *Lack of respect and cooperation among the parties*

The industrial relations climate has been characterized as one of mutual mistrust and a lack of confidence and cooperation, stemming from the experiences over the past 30 years before democracy. Workers complain that they are not consulted, and assert that their calls upon employers for consultation – as well as help from the Ministry of Manpower and Transmigration – are often ignored. When the government restructured the banking industry, for example, the result was that 55,000 workers were made redundant, and the unions were not consulted in the process. Employers respond that they do not know which unions to talk to, as the multiplicity of unions has made social dialogue unwieldy and complex.

<sup>100</sup> Interview with SPTSK, 28 May 2001.

<sup>101</sup> Interview with APINDO, 28 May 2001.

<sup>102</sup> Interview with Patrick Quinn, 22 May 2001, op. cit.

<sup>103</sup> Interview with the American Center for International Labor Solidarity (ACILS), in Jakarta, 22 May 2001.

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Many unions feel that employers and the government have an unsympathetic attitude towards workers at tripartite meetings, which creates a negative atmosphere and discourages consensus. This mind-set has impelled unions to resort to strikes and demonstrations as a means of ensuring that workers' welfare is not ignored. The high incidence of strikes and demonstrations has served to heighten feelings of animosity and distrust among the parties. Employers and the government often complain that workers do not balance their call for rights – to pay increases, better working conditions, freedom of association – with corresponding attention to their obligations and responsibilities. Unions, on the other hand, assert that employers are continuing to deny workers their fundamental rights, and that worker harassment and intimidation remain commonplace.

Furthermore, all sides complain of a general lack of information sharing. Employers express concern about how little information they have about the unions in their companies, including which unions represent which workers. Unions would like to have information on the financial status of companies to assist them in setting attainable targets during collective bargaining. The apparent lack of transparency on both sides contributes to the feelings of mistrust, which in turn keep industrial relations highly adversarial.

- *Police and Military*

Although reforms have been initiated by the government, the police and military reportedly continue to play a major role in suppressing workers' rights. There are reports of employers hiring former police and military personnel to control the trade unions. They arrive at the work sites dressed in plain clothes and harass, beat and intimidate workers. Legal aid has also reported cases where the police and military have seats at the bargaining table in some companies, owing to the fact that they have partial ownership in certain private companies – an outgrowth of the period of corruption under the Suharto regime.<sup>104</sup> Employers, for their part, insist that they have a right to protect their property and feel that police protection can be the only means in some cases to prevent criminal misconduct by protesting workers.

- *Handling of industrial disputes*

Reforms are needed in the handling of industrial disputes, so that responsibility for dispute settlement is more clearly defined. Currently, the practice is for people to take industrial disputes to Parliament rather than going through the established procedures, which can be extremely time consuming and costly.

The government feels that the responsibility for settling disputes should be moved to the labour courts. The government can mediate disputes, but if mediation fails, then the courts should be used to make final decisions in labour disputes – not the government. People are concerned, however, that the judges, who are not specialized in labour disputes, do not know the labour laws well enough to enforce them wisely. Accordingly, the draft proposal on dispute settlement would give the judges training for a period of two years on the new labour laws and regulations. The new labour courts will have presiding officers with legal expertise, as well as people representing workers' and employers' interests, in order to make the system effective and fair.

- *Gender discrimination*

Discrimination against women starts at birth and continues throughout the life cycle. A Ministry of Manpower survey showed that although girls get better marks at school than boys, young men are given preference in recruitment over young women. Employers prefer hiring men because it is assumed that after women get married, they will need to take time off for childbirth and rearing. Women are often fired after getting married for this reason. Employing women is also discouraged

<sup>104</sup> Ibid.

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because they are seen as being too costly. For example, women are granted menstruation leave each month and are legally entitled to three months' maternity leave. Some employers have even suggested restricting women to part-time employment as a means of dealing with the high level of unemployment in the country.<sup>105</sup>

Evidence of gender discrimination is also apparent in the disparities in wage levels for men and women. According to ILO statistics from 1999, average earnings of men were one and half times higher than those of women.<sup>106</sup> Furthermore, the findings of a recent study by AKATIGA, a Bandung research organization, indicate that certain companies pursue policies of only hiring young women, which better enables them to suppress wage levels. This practice of exclusively recruiting young women has been found in textile, electronics and cigarette making factories where low-skilled, low-wage jobs are the norm.

Another problem stems from the fact that a majority of women work in the informal economy. As a result, most women are not covered by labour and workers' rights legislation, nor can they benefit from pensions or other forms of social protection. Moreover, women wanting to start their own businesses can only receive credit by first obtaining the permission of their fathers or husbands. Given these culturally rooted conditions, women will only begin to enjoy equality if the life cycle of discrimination is eventually broken.<sup>107</sup>

- *Lack of labour inspectors*

Labour inspectors perform a key role in social dialogue as the main enforcers of labour legislation. The Ministry, however, has raised the problem of an inadequate number of labour inspectors. There were only 960 labour inspectors for the whole county, including just 400 occupational safety and health inspectors, while there were some 179,000 companies registered throughout Indonesia. As the inspectors only had the capacity to inspect eight companies per year, fewer than 5% of all companies would be subject to inspection in a given year.<sup>108</sup> Concerns raised in West Java pointed to an even smaller ratio of safety inspectors. Of the 178 labour inspectors designated to cover the entire province, only 43 of these (less than 25%) are trained in the area of safety inspection. Training is desperately needed to increase the number of qualified labour inspectors in Indonesia, particularly in safety inspection. In addition to training labour inspectors, employers also should be given some awareness raising of the need for safety and health in the workplace.<sup>109</sup>

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<sup>105</sup> Presentation by Lin Lim, at the Tripartite Summit on Social Dialogue; see ILO: *Tripartite Summit on Social Dialogue: proceedings*, op. cit.

<sup>106</sup> ILO: *Labour market dynamics in Indonesia* (Jakarta, 1999).

<sup>107</sup> Presentation by Lin Lim, op. cit.

<sup>108</sup> Internal ILO document (30 Apr.- 6 May 2000).

<sup>109</sup> Interview with the Secretariat of the Regional Tripartite Council of Bandung, 25 May 2001.

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## Chapter 8 - The Way Forward

### Outcome of Tripartite Technical Consultation

A technical consultation was held to discuss the findings of this study with the tripartite constituents in October 2001. A set of questions were posed with regard to the structure and functioning of the tripartite institutions, with a view to formulating a number of recommendations on how to overcome the obstacles to effective social dialogue.

The questions concerning the structure of the tripartite institutions were as follows:

- Is the mix of tripartite bodies appropriate?
- Are there too many tripartite bodies, or not enough?
- Should the representation on the bodies be revised?
- Is there sufficient coordination between the bodies at different levels?

The questions concerning the functioning of the tripartite institutions included the following:

- Are meetings held too frequently, or not often enough?
- Are the issues being discussed appropriate?
- Is there enough attention being given to all matters of concern?
- How can outcomes be more targeted?

The consultation produced four sets of recommendations, each offering suggestions for either reforming the structure of the tripartite institutions or changing the functioning of social dialogue.

#### 1. *Resolve issue of representativeness*

The issue of representativeness of the social partners on the tripartite bodies, particularly with regard to trade unions, has been the subject of sustained deliberations for over three and a half years. It appears, however, that significant movement has finally been made in resolving this matter. On the regional level, the problem has already been addressed to a large extent. Tripartite constituents on the regional and district levels have conducted a verification process to determine which are the largest unions in the area, and these unions have subsequently been given seats on the tripartite bodies. At the national level, a new Ministerial Decree which establishes a mechanism for determining representativeness of the trade unions has been prepared. If signed, it would help ensure a more democratic voice on the various tripartite institutions.

#### 2. *Build a spirit of compromise and consensus building*

A key obstacle to effective social dialogue has been the seeming inability of the parties to reach consensus, owing in large part to the lack of a spirit of compromise. Each side wants to win individually, rather than work towards achieving win-win solutions that benefit all. To overcome this obstacle, training could be provided to the tripartite constituents on basic negotiation techniques and skills, with an emphasis on how to accept trade-offs and work towards achieving compromise. The development of these techniques, which would seek to build a spirit of compromise and consensus, would be useful not only in conducting tripartite dialogue, but in furthering collective bargaining at the enterprise level as well.

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### 3. *Move from decisions to implementation and enforcement*

A common complaint is that even when agreements have been reached, such as on the ratification of the core ILO Conventions, much still needs to be done to promote the implementation and enforcement of these decisions in the field. Enforcement requires a multi-pronged strategy. One approach is to improve the quality and competence of the country's labour administration, including increasing the number of trained and qualified labour inspectors, so that better compliance with the labour laws and ILO Conventions can be facilitated. Another approach is to inform workers and employers of their rights and responsibilities under the laws and Conventions so that they can do their own monitoring and ensure that rules and laws are being followed. Current ILO projects have focused on providing this kind of training and education to workers, employers and government officials. In addition, greater emphasis should be placed on pursuing follow-up action, in order to work towards achievement of the outcomes reached at various tripartite meetings. The best way to guarantee follow-up is for each party to the agreement to assume some responsibility for implementation of the decisions reached.

### 4. *Improve links among the different levels of government*

The law on regional autonomy has led to a decline in coordination among and between the various levels of government. In order to preserve national unity and promote cohesiveness in the industrial relations system, however, it is important for the central government to maintain strong links with these different levels of government. One strategy for achieving this objective is to harmonize the rules regulating the tripartite structures so that there is greater consistency throughout all levels of government. This may be achieved, for example, by creating an "umbrella" institution, under which the other tripartite bodies would fall. Another tactic is to build in feedback and communication mechanisms into the tripartite structures so that information can be shared throughout the country.

## **Concluding Comments**

Although this study of the social dialogue institutions and processes in Indonesia has drawn attention to the many problems and obstacles to the effective operation of social dialogue in Indonesia, it also highlights instances where social dialogue has been used successfully to promote desired outcomes – most notably the ratification of the core ILO Conventions and the adoption of new labour legislation. Important successes such as these point the way towards further development of social dialogue as a means for promoting democracy and stability in the country.

There is an on-going role for the ILO to play in improving the functioning of social dialogue as well. In particular, the ILO is investing considerable resources through two technical cooperation projects: one funded by the United States and the other by the United Kingdom.

The American-funded project, which began in February 2001, is designed to assist in the implementation of the new labour legislation, with a view to creating a more harmonious climate for industrial relations – one that supports economic growth while guaranteeing workers' rights. The project provides training and capacity building for the social partners and the government, including the industrial judicial system and bipartite and tripartite social dialogue institutions. A component of the project will also focus on providing training in labour inspection and industrial safety. Bearing in mind the law on regional autonomy, project activities will be concentrated in six provinces: Jakarta, West Java, East Java, North Sumatra, Riau and East Kalimantan.

The UK-funded project began in 1999 and aims to assist in the development of strong, democratic, independent, and accountable trade unions; to promote sound industrial relations; and to improve the living and working conditions of workers. The project has concentrated on training union representatives from the workplace level, with training programmes covering the basic aims and values

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of unions, workers' legal rights, collective agreements, procedures for resolving disputes, women at work and in the unions, health and safety, and local administration of trade unions. A special effort has been made to reach out to younger workers and women. The project has also provided educational methods training and basic information technology training for unions, and a range of these training materials can be accessed on the project web site in Bahasa Indonesian.

Of course, it is up to the tripartite constituents to determine the future direction of social dialogue in Indonesia, including the form it will take and the processes that it will follow. Indications are positive, however, that workers, employers and government are committed to building more dynamic and responsive institutions and processes for social dialogue.

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## **List of Mission Contacts, Jakarta and Bandung, Indonesia, 21-29 May 2001**

Ministry of Manpower and Transmigration  
Department of Industrial Relations and Labour Standards  
Bureau of Public Relations  
Association of Indonesian Trade Unions, ASPEK  
American Center for International Labor Solidarity, ACILS  
Indonesian Employers' Association, APINDO  
Indonesian Prosperity Trade Union, SBSI  
Indonesian Textile, Garment and Leather Workers' Union, SPTSK  
Regional Tripartite Council, Bandung  
Bipartite Bargaining Committee, PT. Vonex Indonesia, Bandung  
Independent Workers' Union, Bandung Office, FSPM  
American Chambers of Commerce in Indonesia  
Abhik Ghosh, Senior Specialist on Industrial Relations, ILO/SEAPAT, Manila  
Carmelo Noriel, CTA, ILO Declaration Project, Indonesia  
Christianus Panjaitan, National Project Coordination, ILO Declaration Project  
Oktavianto Pasaribu, Program Officer, ILO Jakarta  
Sioe Lan, Program Officer, ILO Jakarta  
Morten Nielsen, Associate Expert in Workers' Activities, ILO Jakarta  
Patrick Quinn, CTA, ILO Project on Workers' Education, Indonesia

## **List of Attendees at Technical Consultation Meeting, Jakarta, Indonesia, 31 October 2001**

Mr. Sutanto, BLHI, Ministry of Manpower and Transmigration  
Mr. Margono, APINDO  
Mr. Hasanuddin Rachman, APINDO  
Mr. Ch. David, KSPSI  
Mr. Chandra Mahlan, SPSI Reformasi  
Mr. Yani, SBSI  
Mr. Sjaiful Tavip, ASPEK Indonesia  
Mr. Alan Boulton, Director, ILO Jakarta  
Mr. Werner Blenk, Director, ILO/SEAPAT Manila  
Ms. Mukda Sunkool, ILO Jakarta  
Ms. Djoa Sioe Lan, ILO Jakarta  
Mr. Frederick Thomasson, ILO/SEAPAT, Manila  
Mr. Raphael Crowe, ILO/SEAPAT Manila  
Mr. Patrick Quinn, CTA INS/98/MO1/UKM  
Mr. Carmelo Noriel, CTA, INS/00/M51/USA  
Mr. Rainer Pritzer, GLLAD, ILO Geneva  
Mr. Morten Nielsen, INS/00/M51/USA  
Ms. Helle Poulsen, INS/00/M51/USA (University of Copenhagen)

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## Annex I

### **Terms of Collective Agreement between FSPSI and P.T.Vonex Bandung, Indonesia**

A bargaining team, comprised of five management and five union representatives, has negotiated a collective agreement at P.T. Vonex, a textile company in Bandung, Indonesia. The details of this agreement are described below. FSPSI is the sole union in the company, and it has represented the workers since the company's founding 26 years ago. The company says that it has never laid off any workers, although some workers have resigned, and there has never been a strike in the company's history.

The collective agreement is reviewed every two years by labour and management, but it is only revised if the parties determine that it is necessary. There is no ratification of the agreement by the workers, but the union bargaining team keeps the membership informed of developments during each step in the negotiations. If the negotiations become difficult, management will invite the government to act as a mediator, or it will take the negotiations to another site to help dispel tensions. All agreements have to be registered with the Ministry of Manpower and Transmigration, and the Ministry must also sign its approval (as a witness) of the collective agreement.

The terms of the collective agreement for 2000-2002 include the following components:

1. Code of conduct for employees
2. Facilities for trade unions
  - a. check-off system for dues collection
  - b. provision of office and equipment for the union
3. Working relations
  - a. requirements for employees
  - b. probationary period
  - c. minimum and maximum age of workers
  - d. termination of work based on illness
  - e. responsibilities of employees in the company
  - f. incentive bonus system
4. Working hours and days of work
  - a. three shifts, each 8 hours per day
  - b. 40 hour work week – three days on, one day off
  - c. minimum 12 days paid leave per year
5. Wages
  - a. 389,500 rupia is the minimum wage for Bandung
  - b. 422,000 rupia is the minimum salary at the company
  - c. salary based on inflation rate in Bandung
6. Health and social security
  - a. on-site clinics
  - b. health insurance
  - c. life insurance
  - d. workers' compensation is provided through Jamostek
7. Equipment
  - a. workers' uniforms provided
  - b. workers' helmets, goggles and other safety gear provided
8. Code of order for employees
  - a. rules regarding the starting and ending of shifts
  - b. sanctions for not obeying the rules

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- i. begin with verbal notice
      - ii. proceed to written notice
      - iii. followed by a warning
      - iv. suspension
      - v. dismissal
    - c. the union has a team to help workers wanting to contest the sanctioning decision
  - 9. Grievances
    - a. discuss grievances informally between management and workers (there is no formal grievance procedure)
    - b. an annual retreat is held so that employees and management can get together in an open forum and air their grievances

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## Annex II

### Ratifications of Social Dialogue-related Conventions by Indonesia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	Ratified 09.06.1998
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	Ratified 15.07.1957
Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	Ratified 17.10.1990